

2013 HOUSE JUDICIARY


HB 1451

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1451
January 29, 2013
Job 17903

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

The requirements for calling a grand jury.

Subcommittee Minutes:

Testimony 1

Chairman Koppelman opened the hearing.

Aaron Burst, Association of Counties testified in support of the bill. I have a proposed amendment. The grand jury system in ND is not usable by state prosecutors primarily because of some language that I am suggesting changing.

Rep. Delmore: Can you tell me why you are using a percent for the number of signatures needed instead of a required number?

Burst: It is harder to use a numbers-basis due to population fluctuations.

Rep. Paur: Is there a mechanism in the process now?

Burst: In the case where the state's attorney refuses to do their job, there should be some sort of citizen's aspect. Rep. Kasper's bill leaves in a citizen component; it just changes the thresholds. Secondly, there are parts in the code already that allow the citizen to petition for failure to the state's attorney to do their duty.

Rep. Klemin: Does the amendment refer to a grand jury procedure when a private citizen is the subject of the inquiry, whereas the bill covers conditions of public prisons in the county or misconduct of public officials? Are there two focuses on what the grand jury is to do?

Burst: Correct.

Rep. Klemin: Does the term public prisons include the state penitentiary in Burleigh County?

Burst: It would have to include the Department of Corrections.

Chairman: Should the wording be changed from public prisons?

Burst: The committee could change the wording.

Rep. Kasper (17:04) introduced the HB 1451.

Rep. Klemm: In regards to the number of persons required, are there other situations that use a percentage of the population of the county?

Rep. Kasper: I don't want to exclude people who did not vote.

Rep. Delmore: Is there ever a situation where the grand jury would be convened anywhere other than Burleigh county?

Rep. Kasper: The gathering of the signatures is not limited to Burleigh County if that is where the public officials live. Any county can convene a grand jury by meeting the 25% of the county population. The jury trial itself would move to the county in which the state-wide official lives.

Chairman: Is your reason for this bill because you think the grand jury will be used more or because it is antiquated and needs updating?

Rep. Kasper: It needs to be updated.

Susan Beehler (35:26) testified neutral to the bill.

Chairman closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1451
Job 17977
DATE January 30, 2013

☐ Conference Committee

Cameron Heick

Explanation or reason for introduction of bill/resolution:

Relating to the requirements for calling a grand jury.

Minutes:

Chairman Kim Koppelman: Reopens to appoint a subcommittee. Rep. Roger Brabandt will serve as chairman of the subcommittee. Rep. Bill Kretschmar and Rep. Ben Hanson will also serve on the committee. Vice Chairman Larry Klemin looking into the requirements in the law with regard to recall, he asked the subcommittee to look this. He said recall is serious a grand jury is more serious because it deals with a criminal offense. Whereas recall could deal with an official did in office that the constituents are unhappy with. He suggested rather than tying the bill to the census tying to a certain percentage of the vote for Governor in the last election as that's how it reads elsewhere in law.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1451
Job 18230
DATE February 4, 2013

☐ Conference Committee

Carman Neale

Explanation or reason for introduction of bill/resolution:

Relating to the requirements for calling a grand jury

Minutes:

Subcommittee met on this date with Chairman Brabandt, Rep. Bill Kretschmar, and Rep. Ben Hanson attending.

Rep. Ben Hanson: Questioned in the intention of the bill and to modernize the grand jury selection process?

Rep. Roger Brabandt: Said to make it more difficult to call a grand jury.

Rep. Bill Kretschmar: Stated he has never known a grand jury in his area of the state for as long as he has been practicing law.

Rep. Roger Brabandt: It's almost nonexistent.

Rep. Ben Hanson: With the 5000 cap in the bill, my problem is in Case County they would hit the 5000 cap fast to call a grand jury. He felt this bill makes it easier to call a grand jury in the larger counties that takes the 5000 cap down to 3% of the population. I fear this would make it too easy and have the opposite effect of what I am reading is the intent of the bill.

Rep. Roger Brabandt: It is going from 10% of the total vote cast to 25% of the resident population.

Rep. Bill Kretschmar: which of those options would we like to do, the census one or the election one?

Rep. Ben Hanson: I prefer the election one.

Rep. Bill Kretschmar: I would too. Then we have to determine the percent that we want to use.

Rep. Roger Brabandt: He suggested we leave the bill the way it is proposed.

Rep. Bill Kretschmar: Feels the bill is because a group from Dunn County that brought the grand jury against Governor Dalrymple. They claim he took campaign money from oil companies. If we are leaving it the resident population we should add in as of the last federal census.

Rep. Roger Brabandt: It says on page 2 the word felonious.

Rep. Bill Kretschmar: If we take Burst's amendment we can take that sentence out.

Rep. Ben Hanson: Are grand juries only called for felonies?

Rep. Bill Kretschmar: It has to be a crime misdemeanors or felonies.

Rep. Ben Hanson: This would change it to only felonies?

Rep. Roger Brabandt: Willfully and corrupt felonious misconduct.

Rep. Bill Kretschmar: I like Burst's new language better than the old language.

Rep. Ben Hanson: That pertains to anyone who's committed a crime?

Rep. Bill Kretschmar: Anyone alleged to have committed a crime.

They discussed language in the bill that the a grand jury be called and convened in the county in which the statewide public official resides.

Rep. Ben Hanson: Feel the grand jury should be held in the county where the crime was committed.

Rep. Bill Kretschmar: That is current law. You have to be indicted or arrested in the county where you allegedly committed a crime. In Burst's amendment they can inquire into misdemeanors any offense against the criminal laws of the state. That would include all crimes.

Rep. Roger Brabandt: I talked with John Bjornson about the difference of what is struck and what is underscored. He read it and said he was not sure there was a difference.

Rep. Ben Hanson: If my understanding of this is correct, I don't like item two because of committing a crime in one county and force the resident county to make the arrest.

Rep. Roger Brabandt: Recess.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1451
Job 18418
DATE February 6, 2013

☐ Conference Committee

Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to the requirements for calling a grand jury

Minutes:

Rep. Roger Brabandt: Chairman of the subcommittee opened the meeting. Also present were Rep. Bill Kretschmar, and Rep. Ben Hanson.

Rep. Ben Hanson: Stated he looked at his notes on the testimony and questions asked why the increase or do the Association of Counties or Law Bar request that number?

Rep. Bill Kretschmar: Rep. Kasper just wanted to have the number increased. On page 2 of the bill I would like to delete the new language. Delete lines 4, 5, and 6.

Rep. Ben Hanson : I agree.

Rep. Bill Kretschmar: In place of that use Birst's amendment.

Rep. Ben Hanson: We talked about that last time and I agree with that. It makes it less confusing and is more accurate.

Rep. Bill Kretschmar: That is what grand juries are for is to investigate violations of the criminal laws of the state.

Rep. Roger Brabandt: A grand jury shall inquire of the willful and corrupt felonious misconduct in office of a statewide public official must be drawn, summoned, and convened in the county in which the statewide public official resides. Subsection two needs to be eliminated and this inserted.

Rep. Bill Kretschmar: We also need to replace on page 1 line 14, put the State's Attorney in there. Change this to 25% of the resident population of the county at the most recent federal census but the number of signatures required may not exceed five thousand. Back page the word felonious was inserted on line 2. We are going to do away with subsection two and insert Birst's amendment. We will adjourn for today and come back on Tuesday.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1451
Job 18230
DATE February 12, 2013

☐ Conference Committee

Carman Heide

Explanation or reason for introduction of bill/resolution:

Relating to the requirements for calling a grand jury

Minutes:

Proposed amendment 1

Rep. Roger Brabandt: Opened the subcommittee hearing. Chairman Brabandt, Rep. Bill Kretschmar, and Rep. Ben Hanson attending.

The committee discussed the proposed amendment changes.

Rep. Bill Kretschmar: made a motion to adopt amendments.

Rep. Ben Hanson: Second the motion

Carried

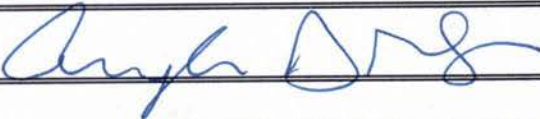
Rep. Roger Brabandt: Closed the subcommittee

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1451
February 13, 2013
Job 18897

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the requirements for calling a grand jury.

Minutes:

Chairman called the meeting to order.

Rep Boehning introduced the amendments from the subcommittee.

Rep Steiner: What was your rationale from moving from 25 to 40 on line 18 on the first page?

Rep Boehning: An office recall requires 25%. To be indicted by the grand jury should have to be substantially more than that.

Chairman: Note the other change is that it goes from resident population back to the vote issue. It's a higher percentage of a lower number of people. If this threshold were met, if a grand jury were called, it's still up to a judge to determine whether a grand jury will be impanelled or not.

Rep Klemin: If there is the requisite number of signatures, can the judge still decide not to call a grand jury?

Chairman: No.

Rep Steiner: Why the state's attorney versus the board of the county commissioners?

Rep Boehning: That was at the request of Aaron Birst, who represents the counties.

Rep Klemin: In section 3, where you took out the part about the trial. The grand jury must be summoned and convened in the county in which the state-wide public official resides. So this has nothing to do about where the trial is held then?

Chairman: No.

Rep Klemin: Where is the trial held?

Rep Boehning: It would be in the county whereby the crime occurred.

Rep Klemin: What about the governor?

Rep Delmore: If this inconveniences somebody that may have to be.

Chairman: I think that's why the subcommittee is recommending the exclusion of that from the bill.

Rep Klemin: Does the misconduct have to occur in that county?

Chairman: Yes.

Rep Paur: Originally, it was 25% of the resident population. Now it's 40% of the total votes cast. But there may not be that many voters. So this could be a reduction. We are lower the requirement.

Chairman: It would depend on the number of the population which are eligible to vote and on who voted.

Rep Hanson: Let's use Dunn County as an example. Current law has a 10% of resident population. As of the 2010 census, we have 3,720 people living in Dunn County. Thereby 372 people are required to call a grand jury. They had 2,016 people who voted in the gubernatorial race of 2012. In which case, 40% would be about 807 votes needed for a grand jury, an increase of double to triple the current number.

Rep Maragos: I would move that we hog house this into a study for this interim.

Chairman: I would like the courtesy of the subcommittee's report to at least be voted on. You are entitled to make that motion.

Rep Klemin: I move the subcommittee amendments.

Rep Larson: Second.

Chairman: If the grand jury were empaneled, the job of the grand jury is to examine evidence and take testimony to try to determine whether a crime is likely to have been committed. If they determine that, what happens next? Do they bring the charges?

Rep Kretschmar: They issue an indictment and that goes into the criminal court.

Chairman: Would the state's attorney prosecute?

Rep Kretschmar: Yes.

Voice Vote: Motion carried.

Rep Maragos: I wish to further amend that we turn this bill into a study.

Chairman: We've had a motion to hog house the bill into a study resolution.

Rep Klemin: I'm going to resist the motion. I don't think we need to study it.

Rep Boehning: I'm going to reject the motion. It's probably not the best bill, but it's probably going to work.

Rep Kretschmar: I would resist Rep Maragos's motion for a hog house bill. But I certainly would support if an amendment were made that in addition to the bill, that we'd include the study.

Rep Maragos: I withdraw my motion.

Rep Boehning motioned for Do Pass as Amended.

Rep Brabandt seconded.

Roll Call Vote:

Yes: 9

No: 5

Absent: 0

Chairman: Motion passed.

Rep Brabandt carried.

Chairman adjourned the meeting.

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Amendment to: HB 1451

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This bill changes the requirements for calling a grand jury.

- 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.*

There is no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Don Wolf

Agency: Court System

Telephone: 328-3509

Date Prepared: 01/22/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1451

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
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This bill changes the requirements for calling a grand jury.

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There is no fiscal impact.

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Name: Don Wolf

Agency: Court System

Telephone: 328-3509

Date Prepared: 01/22/2013

VK
2/13/13
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1451

Page 1, line 1, after "29-10.1-02" insert ", 29-10.1-21,"

Page 1, line 2, after "calling" insert "and the duties of"

Page 1, line 9, remove the overstrike over "Any"

Page 1, line 9, remove "Except as provided in subsection 2"

Page 1, line 10, remove "of section 29-10.1-22, any"

Page 1, line 14, overstrike "board of county commissioners" and insert immediately thereafter "state's attorney"

Page 1, line 16, remove the overstrike over "qualified"

Page 1, line 17, replace "twenty-five" with "forty"

Page 1, line 17, remove the overstrike over "total"

Page 1, line 18, remove the overstrike over "vote cast in"

Page 1, line 18, remove "resident population of"

Page 1, line 18, remove the overstrike over "for the office of governor of the state"

Page 1, line 19, remove the overstrike over "general election"

Page 1, line 19, remove "federal decennial census"

Page 1, after line 20, insert:

"SECTION 2. AMENDMENT. Section 29-10.1-21 of the North Dakota Century Code is amended and reenacted as follows:

29-10.1-21. General duties of grand jury.

~~The grand jury shall inquire into the cause of detention of every person imprisoned in the jail of the county against whom neither a criminal complaint nor information has been filed, or who has not had or waived a preliminary examination, and into all public offenses committed or triable in the county, and if the evidence so warrants, shall present them to the court by written indictment. Each grand jury~~
impaneled within any county shall inquire into offenses against the criminal laws of the state alleged to have been committed within that county. The alleged offenses may be brought to the attention of the grand jury by the court or by any state's attorney or the state's attorney's designee. The state's attorney or the state's attorney's designee shall inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's attorney or state's attorney's designee's action or recommendation. As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of an information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury is not required to inquire into such offense. The presentment of an indictment against a

person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court."

Page 1, line 24, remove "1."

Page 2, line 1, remove the overstrike over "4."

Page 2, line 1, remove "a."

Page 2, line 2, remove the overstrike over "2."

Page 2, line 2, remove "b."

Page 2, remove lines 4 through 6

Renumber accordingly

Date: 2-13-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1451

House Judiciary 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. Klemin Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote - Carried

Date: 2-13-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1451

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		/
Rep. Randy Boehning	/		Rep. Kathy Hogan		/
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos		/			
Rep. Gary Paur	/				
Rep. Vicky Steiner		/			
Rep. Nathan Toman		/			

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Brabandt

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

REPORT OF STANDING COMMITTEE

HB 1451: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1451 was placed on the Sixth order on the calendar.

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Renumber accordingly

2013 SENATE JUDICIARY

HB 1451


2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1451
3/26/2013
Job #20486

☐ Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to the requirements for calling and the duties of a grand jury

Senator David Hogue - Chairman

Representative Jim Kasper - District 47 - Rep. Kasper explains the bill and how it amends the grand jury rules on how and when a grand jury may be called. Senator Hogue questions the 40% and Rep. Kasper replies when a grand jury is called there should be a substantial amount that wants it. He goes on to say that this bill suggest that a grand jury requirement is serious, grand jury has a serious charge and has no place in a political agenda.

Aaron Birst - Association of Counties - See written testimony **(1)**. He explains the grand jury system.

Ryan Younggren - Assistant Cass County State's Attorney - See written testimony **(2)**.

Ladd Erickson - McLean County States Attorney - Mr. Erickson gives a history of the grand jury system and explains the signature process.

Opposition

David Thompson - Attorney, Grand Forks - See written testimony **(3)**. Mr. Thompson would like to see this bill put into a study. He says this is too complex to be amending on the fly.

Charles Tuttle - Minot - Mr. Tuttle speaks of all the petitions he has out now and that he is the one responsible for the Dunn County petition. He goes on to explain what a grand jury is for. He speaks of citizens not having any recourse but to call a citizen petition grand jury. He charges people in the room that are in the petitions and he is offended that they are trying to pass a law that limits the ability of citizens to convene grand juries for misdemeanors.

David Schwalbe - Bismarck resident - See written testimony **(4)**.

Paul Sorum - He states the citizen petition for grand jury is not in way a political agenda. He asks if government works for the people or people work for the government. He also recommends a study.

Close the hearing

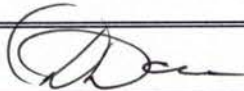
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1451
4/2/2013
Job #20786

☐ Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Hogue explains the bill and proposes an amendment which he explains the changes it makes to the bill. The committee discusses the percentages for the petition drives and the 180 days. They also discuss the many ways an elected official may be removed from office other than grand jury and the proper use of a grand jury.

Senator Sitte moves to adopt the amendment 13.0321.03001
Senator Grabinger seconded

Verbal vote - 5 yes, 2 no
Motion passes

Senator Grabinger moves a do not pass as amended
Senator Nelson seconded

Vote - 2 yes, 5 no
Motion fails

Senator Sitte moves a do pass as amended
Senator Lyson seconded

Vote - 4 yes, 3 no
Motion passes

Senator Sitte will carry

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Amendment to: HB 1451

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Name: Don Wolf

Agency: Court System

Telephone: 328-3509

Date Prepared: 01/22/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1451

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This bill changes the requirements for calling a grand jury.

- 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.*

There is no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Don Wolf

Agency: Court System

Telephone: 328-3509

Date Prepared: 01/22/2013

April 2, 2013

JB
4-3-13
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 1, line 1, after "sections" insert "16.1-08.1-03.1,"

Page 1, line 2, after "to" insert "disclosure requirements for petition sponsors and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. Contributions statement required of persons and measure committees circulating or promoting passage or defeat of initiated or referred measure - Statement of petition sponsors.

1. At the time the sponsoring committee for an initiated measure petition submits signed petitions to the secretary of state, the committee also shall submit a statement disclosing the total amount of contributions received by the committee to aid the committee in drafting and circulating the petition, the name and mailing address of each person that contributed more than one hundred dollars in the aggregate to the sponsoring committee, the date each such contribution was received, and the total amount of expenditures made by the committee to aid in the drafting and circulation of the petition.
2. Any person or measure committee, as described in section 16.1-08.1-01, that is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly at any election shall file a statement in accordance with this subsection if the person has received any contribution in excess of one hundred dollars. The statement must include the name and mailing address of each person that contributed in excess of one hundred dollars to the person, the amount of each reportable contribution, and the date each reportable contribution was received. The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.
3. A person or measure committee that is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly may not accept a contribution of more than one hundred dollars from an out-of-state person or political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person that contributed more than one hundred dollars of the contribution. The statement must indicate if no person contributed in excess of one hundred dollars of the out-of-state person's or political committee's overall contribution. The certified statement must also list the occupation, employer, and principal place of

2 of 2

business for each individual who contributed more than one hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure shall include this statement with the contribution statement required to be filed under subsection 2.

4. The statement required of a person or measure committee under subsection 2 must be filed with the secretary of state no later than the twelfth day before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day before the date of the election. A complete statement for the entire calendar year for each statement required to be filed under subsections 2 and 3 must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person shall file a statement as required by this chapter. A statement filed according to subsections 2 and 3 during the reporting period must show the following:
 - a. The gross total of all contributions received and expenditures made in excess of one hundred dollars;
 - b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.
5. Within one hundred eighty days after the approval of a petition to initiate or refer a measure or to recall an official or after the submission of a petition to convene a grand jury as provided under section 29-10.1-02, the sponsoring committee or the individual responsible for submission of the petition shall file a statement with the secretary of state which discloses whether petition circulators have been or will be paid for the circulation of petitions and which lists the total amount of money paid or which is expected to be paid to circulators."

Page 1, line 18, replace "forty" with "twenty-five"

Page 1, line 20, after "not" insert "be fewer than two hundred twenty-five nor"

Renumber accordingly

Date: 4-2-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1451

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13, 0321. 03001

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

Motion Made By S. Sitte Seconded By S. Grabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry		1			
Senator Kelly Armstrong					

Total (Yes) 5 No 2

Absent Verbal vote

Floor Assignment Motion passes

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

Date: 4-2-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1451

Senate JUDICIARY 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 S. Grabinger Seconded By S. Nelson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue		X	Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger	X	
Senator Stanley Lyson		X			
Senator Spencer Berry		X			
Senator Kelly Armstrong		X			

Total (Yes) 2 No 5

Absent _____

Floor Assignment Paul

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

Date: 4/2/13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1451

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0321.03001

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

Motion Made By S. Sitte Seconded By S. Lyson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte	X		Senator John Grabinger		X
Senator Stanley Lyson	X				
Senator Spencer Berry		X			
Senator Kelly Armstrong	X				

Total (Yes) 4 No 3

Absent _____

Floor Assignment S. Sitte

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

REPORT OF STANDING COMMITTEE

HB 1451, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1451 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "16.1-08.1-03.1,"

Page 1, line 2, after "to" insert "disclosure requirements for petition sponsors and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. Contributions statement required of persons and measure committees circulating or promoting passage or defeat of initiated or referred measure - Statement of petition sponsors.

1. At the time the sponsoring committee for an initiated measure petition submits signed petitions to the secretary of state, the committee also shall submit a statement disclosing the total amount of contributions received by the committee to aid the committee in drafting and circulating the petition, the name and mailing address of each person that contributed more than one hundred dollars in the aggregate to the sponsoring committee, the date each such contribution was received, and the total amount of expenditures made by the committee to aid in the drafting and circulation of the petition.
2. Any person or measure committee, as described in section 16.1-08.1-01, that is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly at any election shall file a statement in accordance with this subsection if the person has received any contribution in excess of one hundred dollars. The statement must include the name and mailing address of each person that contributed in excess of one hundred dollars to the person, the amount of each reportable contribution, and the date each reportable contribution was received. The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.
3. A person or measure committee that is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly may not accept a contribution of more than one hundred dollars from an out-of-state person or political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person that contributed more than one hundred dollars of the contribution. The statement must indicate if no person contributed in excess of one hundred dollars of the out-of-state person's or political committee's overall contribution. The certified statement must also list the occupation, employer, and principal place of business for each individual who contributed more than one hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a

statewide initiated or referred measure shall include this statement with the contribution statement required to be filed under subsection 2.

4. The statement required of a person or measure committee under subsection 2 must be filed with the secretary of state no later than the twelfth day before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day before the date of the election. A complete statement for the entire calendar year for each statement required to be filed under subsections 2 and 3 must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person shall file a statement as required by this chapter. A statement filed according to subsections 2 and 3 during the reporting period must show the following:
 - a. The gross total of all contributions received and expenditures made in excess of one hundred dollars;
 - b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.
5. Within one hundred eighty days after the approval of a petition to initiate or refer a measure or to recall an official or after the submission of a petition to convene a grand jury as provided under section 29-10.1-02, the sponsoring committee or the individual responsible for submission of the petition shall file a statement with the secretary of state which discloses whether petition circulators have been or will be paid for the circulation of petitions and which lists the total amount of money paid or which is expected to be paid to circulators."

Page 1, line 18, replace "forty" with "twenty-five"

Page 1, line 20, after "not" insert "be fewer than two hundred twenty-five nor"

Renumber accordingly

2013 TESTIMONY

HB 1451

Aaron Burst
1-29-13

1

PROPOSED AMENDMENTS TO HOUSE BILL NO 1451

Page 1, line 14, replace "board of county commissioners" with "state's attorney"

Page 2, after line 6 insert;

"SECTION 3. AMENDMENT. Section 29-10.1-21 of the North Dakota

Century Code is amended and reenacted as follows:

29-10.1-21. General duties of grand jury. ~~The grand jury shall inquire into the cause of detention of every person imprisoned in the jail of the county against whom neither a criminal complaint nor information has been filed, or who has not had or waived a preliminary examination, and into all public offenses committed or triable in the county, and if the evidence so warrants, shall present them to the court by written indictment.~~ Each grand jury impaneled within any county shall inquire into offenses against the criminal laws of the state alleged to have been committed within that county. The alleged offenses may be brought to the attention of the grand jury by the court or by any state's attorney or the state's attorney's designee. The state's attorney or the state's attorney's designee shall inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's attorney or state's attorney's designee's action or recommendation. As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of an information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury is not required to inquire into such offense. The presentment of an indictment against a person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court."

Renumber accordingly

Introduced by

Representatives Kasper, Beadle, Becker, Dosch, Monson, Nathe, Owens, Streyle, Thoreson
Senators Berry, Klein, Wardner

1 A BILL for an Act to amend and reenact sections 29-10.1-02, 29-10.1-21, and 29-10.1-22 of the
2 North Dakota Century Code, relating to the requirements for calling and the duties of a grand
3 jury.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 29-10.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **29-10.1-02. When grand jury may be called.**

8 No grand jury may be drawn, summoned, or convened in any county within this state unless
9 the district judge thereof shall so direct by a written order filed with the clerk of the court in the
10 county wherein the said grand jury is required to attend. Any ~~Except as provided in subsection 2~~
11 ~~of section 29-10.1-22, any~~ judge of the district court for any county must direct, in the manner
12 herein provided, that a grand jury be drawn and summoned to attend whenever:

- 13 1. The judge deems the attendance of a grand jury necessary for the due enforcement of
14 the laws of the state;
- 15 2. The ~~board of county commissioners~~ state's attorney of the county wherein the court is
16 to be held, in writing, requests the judge so to do; or
- 17 3. A petition in writing requesting the same is presented to the judge, signed by qualified
18 electors of the county equal in number to at least ~~ten~~ twenty-five ~~forty~~ percent of the
19 ~~total vote cast in~~ resident population of the county ~~for the office of governor of the state~~
20 ~~at the last general election~~ federal decennial census, but the number of signatures
21 required may not exceed five thousand.

22 **SECTION 2. AMENDMENT.** Section 29-10.1-21 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **29-10.1-21. General duties of grand jury.**

2 ~~The grand jury shall inquire into the cause of detention of every person imprisoned in the jail~~
3 ~~of the county against whom neither a criminal complaint nor information has been filed, or who~~
4 ~~has not had or waived a preliminary examination, and into all public offenses committed or~~
5 ~~triable in the county, and if the evidence so warrants, shall present them to the court by written~~
6 ~~indictment.~~ Each grand jury impaneled within any county shall inquire into offenses against the
7 criminal laws of the state alleged to have been committed within that county. The alleged
8 offenses may be brought to the attention of the grand jury by the court or by any state's attorney
9 or the state's attorney's designee. The state's attorney or the state's attorney's designee shall
10 inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's
11 attorney or state's attorney's designee's action or recommendation. As to any offense
12 committed while the grand jury is in session, the state's attorney or prosecutor may proceed
13 with a preliminary examination or the filing of an information, as provided for by law, and
14 prosecute the charge, and, under such conditions, the grand jury is not required to inquire into
15 such offense. The presentment of an indictment against a person does not preclude the
16 prosecution of such person for the same offense upon a criminal complaint or information
17 previously filed with the court.

18 **SECTION 3. AMENDMENT.** Section 29-10.1-22 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **29-10.1-22. Subjects of grand jury inquiry.**

21 ~~1.~~ Whenever directed by the district court, the grand jury shall inquire into:

22 1. ~~a.~~ — The condition and management of the public prisons in the county; and

23 2. ~~b.~~ — Willful and corrupt felonious misconduct in office of public officials of every
24 description in the county.

25 ~~2.~~ A grand jury called to inquire into the willful and corrupt felonious misconduct in office
26 of a statewide public official must be drawn, summoned, and convened in the county
27 in which the statewide public official resides.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1451

- Page 1, line 1, after "29-10.1-02" insert ", 29-10.1-21,"
- Page 1, line 2, after "calling" insert "and the duties of"
- Page 1, line 9, remove the overstrike over "Any"
- Page 1, line 9, remove "Except as provided in subsection 2"
- Page 1, line 10, remove "of section 29-10.1-22, any"
- Page 1, line 14, overstrike "board of county commissioners" and insert immediately thereafter "state's attorney"
- Page 1, line 16, remove the overstrike over "qualified"
- Page 1, line 17, replace "twenty-five" with "forty"
- Page 1, line 17, remove the overstrike over "total"
- Page 1, line 18, remove the overstrike over "vote-east-in"
- Page 1, line 18, remove "resident population of"
- Page 1, line 18, remove the overstrike over "for the office of governor of the state"
- Page 1, line 19, remove the overstrike over "general election"
- Page 1, line 19, remove "federal decennial census"
- Page 1, after line 20, insert:

"SECTION 2. AMENDMENT. Section 29-10.1-21 of the North Dakota Century Code is amended and reenacted as follows:

29-10.1-21. General duties of grand jury.

~~The grand jury shall inquire into the cause of detention of every person imprisoned in the jail of the county against whom neither a criminal complaint nor information has been filed, or who has not had or waived a preliminary examination, and into all public offenses committed or triable in the county, and if the evidence so warrants, shall present them to the court by written indictment. Each grand jury impaneled within any county shall inquire into offenses against the criminal laws of the state alleged to have been committed within that county. The alleged offenses may be brought to the attention of the grand jury by the court or by any state's attorney or the state's attorney's designee. The state's attorney or the state's attorney's designee shall inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's attorney or state's attorney's designee's action or recommendation. As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of an information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury is not required to inquire into such offense. The presentment of an indictment against a~~

person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court."

Page 1, line 24, remove "1."

Page 2, line 1, remove the overstrike over "4."

Page 2, line 1, remove "a."

Page 2, line 2, remove the overstrike over "2."

Page 2, line 2, remove "b."

Page 2, remove lines 4 through 6

Renumber accordingly

Testimony to the: SENATE JUDICIARY
Prepared March 26, 2013 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING HB 1451

Chairman Hogue and members of the committee, HB 1451 is a bill that seeks to bring the grand jury structure into harmony with the modern criminal justice system.

Currently, the Grand Jury process has not been modified in forty-two years. Additionally, many of the Grand Jury concepts have origins that date back to 1877 under the Revised Codes - Territory of Dakota.

This lack of modernization has left the grand jury process essentially useless in North Dakota State Courts. Modern criminal practice has evolved through court rules and other statutorily authorizations which prosecutors can initiate charges against a suspect without resorting to the use of grand jury proceedings. However, for many years, State's Attorneys and Assistant State's Attorneys have considered requesting the legislature revamp the grand jury chapter to make it more usable.

HB 1451 is the result of those efforts.

Section 1 of the bill makes clear on the county level it is the State's Attorney who is entitled to call the grand jury and not the county commission. State's Attorneys are the only county officials with the statutory duty to bring actions in criminal court to enforce state law. County commissioners lack such statutory authority and their placement in the grand jury system is outdated. Section 1 also adjusts the threshold of the required amount of citizen's petitions to request a grand jury. Under current law by only requiring 10% means in certain counties simply having 45 people sign a petition would result in the calling of a grand jury. Such a minimalist requirement could allow the criminal justice system to be abused and subject innocent people to criminal charges.

Section 2 of the bill removes the most confusing language of existing law. The struck language is inconsistent with the current criminal justice system. The new language defines the parameters of how the proceedings are to be conducted and which cases are subject to the proceedings.

Section 3 of the bill deals with old language but seeks to clarify grand jury proceedings are appropriate in cases of investigating felonies by officials and other misdemeanor crimes could be conducted in the normal criminal process.

We ask for your support.

North Dakota 63rd Legislative Assembly

Senate Judiciary Committee

House Bill 1451

29-10.1-21 General Duties of grand jury

Tuesday, March 26, 2013

Chairman Hogue and members of the Senate Judiciary Committee. I am Ryan Younggren, Assistant Cass County State's Attorney and I support House Bill 1451.

Our Grand Jury statute as currently worded in 29-10.1-21, makes the grand jury a useless tool for law enforcement. I have not seen nor heard of a grand jury being used in the State of North Dakota in recent history. Under our current law, if a grand jury is seated, it currently requires that the "cause of detention of every person arrested at the county jail and not yet waived or had a preliminary hearing" and into "all public offenses committed in the county."

As our law exists, seating a grand jury supplants the current system that we all work under where a complaint is filed by the State's Attorney upon presentation of the reports by law enforcement. Informations are an efficient and effective way of charging out crimes and getting the responsible into the criminal justice system. The grand jury law as we have it now, is cumbersome and resource intensive. State's Attorney's offices do not have the ability to bring all cases to a standing grand jury for charges day in and day out. Some days our office charges out a couple dozen cases. It would require calling a witness and presenting testimony and or evidence for each case we charge. In smaller jurisdictions, there would be great difficulty assembling a grand jury every time a crime has been committed. This would become increasingly difficult when a warrantless arrest is made. A grand jury would have to be assembled within 48 hours to secure an indictment.

The utility of a grand jury is to take a case in front of the public, citizens of your jurisdiction and ask for their input in charging a crime. Not all crimes are cut and dry. Many require balancing legal and human factors. Others require close calls to be made about very serious crimes. But most importantly, in criminal actions, one does not know for certain how a jury will view a case. In law school, they teach us to think like a lawyer. While quite useful in front of a judge or when writing a brief, the true perspective of a jury, an average person off the street with little or no legal training, isn't always clear.

2

I practiced in downtown Denver, Colorado for 6.5 years and our office used grand juries on a regular basis to investigate and indict murder cases and other complex economic crimes. I was personally involved in presenting witnesses and evidence to the grand juries. We would subpoena witnesses and have their sworn testimony recorded. It gave us a first-hand look at how the witnesses would present and how the evidence appeared in front of a real jury. The vast majority and more routine cases were charged out by information.

One of the more famous cases which my former boss was involved in presenting to a grand jury was the Jon Benet Ramsey case. After days of evidence and several witnesses, the jury came back with a "no true bill" and no indictment was handed down. The case has remained unsolved. The decision not to charge wasn't just the opinion of a single or even several prosecutors. This made the difficult decision easier to grasp as the public had literally passed judgment on the evidence.

I take no position on the proposed amendments of section 29-10.1-02 as that is beyond the scope of my job and why a grand jury would be useful to our office. However, I urge support for the Amendments in 29-10.1-21.

Thank you.

HOUSE BILL 1451 (2013 Session)

Written Testimony and Legal Brief submitted by
David C. Thompson, Attorney at Law, to the North Dakota Senate Judiciary
Committee, Tuesday, March 26, 2013

Members of the Senate Judiciary Committee, thank you for allowing me to testify today in opposition of House Bill 1451.

House Bill 1451 proposes to eliminate the independent power which North Dakota citizens have had since North Dakota was admitted as a state to the Union back in 1889 to petition for and conduct grand jury proceedings for the purpose of investigating “(w)illful misconduct in office of public officials of every description” in any North Dakota county -- separately from those elected public officials who serve as State’s Attorneys.

Specifically, House Bill 1451 proposes to eliminate the ability of boards of county commissioners to cause grand juries to be convened upon their request, and this bill also completely removes the current independence which citizen-petitioned-for grand juries have from the charging decisions of State’s Attorneys.

Reduced to the essentials, House Bill 1451 -- *if enacted into law* – would effectively transfer all control over those offenses which a grand jury may investigate into the hands of State’s Attorneys -- while the power of North Dakota citizens to cause grand juries to independently investigate public offenses identified by the petitioning citizens would be terminated.

Indeed, this evisceration of the very essence of N.D.C.C. § 29-10.1-21 by Section 2 of House Bill 1451 contravenes the very purpose of the grand jury under existing N.D.C.C. Chapter 29-10.1, as the grand jury’s purpose was explained by the late Robert

L. Vogel -- a former North Dakota Supreme Court Justice, a former United States Attorney for the District of North Dakota, and a former State's Attorney for McLean County.¹

Judge Vogel is reported in official minutes to have explained as follows during a meeting on December 10, 1970 of the "Joint Committee of the Judicial Council and the State Bar Association for the Adoption of the Rules of Criminal Procedure" -- which Committee actually drafted the bill which was enacted as Chapter 315, 1971 Session Laws § 1, which enacted the existing grand jury statutory scheme in N.D.C.C. Chapter 29-10.1:

Mr. Vogel read from 38 C.J.S. Grand Juries § 1, page 983, and said that this is what he endorses.

"It is judicially noted that some states have practically abolished the grand jury, as by allowing, through constitutional provisions, all prosecutions to be begun and carried out without the intervention of a grand jury, but wisely providing that a grand jury may be called where prosecuting officers will not act. The view is asserted that, generally speaking, under modern conditions, a grand jury is an antiquated, superfluous, and well-nigh useless piece of legal machinery, there being seldom any reason for invoking the cumbersome proceeding before it where prosecuting officers are willing to act." (emphasis added)²

Under existing law of N.D.C.C. § 29-10.1-28, a State's Attorney already is permitted to be present at sessions of a grand jury, and under current N.D.C.C. § 29-10.1-29, a State's Attorney may advise the grand jurors regarding their duties "upon the

¹ See, the obituary and biography of Robert L. Vogel on the web page of the North Dakota Supreme Court, a copy of which is attached hereto for reference as **Appendix "A"**.

² See, the relevant except of the Minutes of the December 10, 1970 meeting of the "Joint Committee of the Judicial Council and the State Bar Association for the Adoption of the Rules of Criminal Procedure", at page 12 thereof, attached hereto for reference as **Appendix "B"**.

request of the grand jurors”, and a State’s Attorney may “at all reasonable times” appear before the grand jurors upon the State’s Attorney’s “own motion for the purpose of giving the grand jurors information or advice regarding any matter cognizable by them and may interrogate witness before them” whenever the State’s Attorney should believe it necessary.

Therefore, the existing law of N.D.C.C. Chapter 29-10.1 already prescribes a substantial role for a State’s Attorney within the context of grand jury proceedings. But Section 2 of House Bill 1451 proposes to remove completely the right of North Dakota citizens to petition for a grand jury to investigate specific “public offenses committed or triable in the county”, and “if the evidence so warrants” presentation of a written indictment to the District Court. *See*, N.D.C.C. § 29-10.1-21.

Additionally, Section 2 of House Bill 1451 limits the subject matter of potential offenses which may be brought to the attention of the grand jury to those offenses which would be “brought to the attention grand jury by the court or by any state’s attorney or by the state’s attorney’s designee.” This section of the bill further provides that, “(t)he state’s attorney or the state attorney’s designee shall inform the grand jury of the alleged offense, the identity of the alleged offender, and the state’s attorney or state’s attorney’s designee’s action or recommendation.”

Parenthetically, it should be noted that *the content of Section 2 of House Bill 1451 originated in the office of Attorney General Wayne Stenehjem* -- who also serves as one of three members of the North Dakota Industrial Commission -- along with North Dakota Governor Jack Dalrymple, and North Dakota Agriculture Commissioner Doug

Goehring -- with the Attorney General also serving as the statutory legal advisor of the Industrial Commission.³

It is important to understand the vital and extremely important purpose of the right granted to citizens by states -- *whether by constitutional provision or by statute* -- to convene a grand jury by petition for the purpose of investigating public offenses.

The New Mexico Supreme Court, in a 1992 decision which actually mentioned our own N.D.C.C. § 29-10.1-02, explained as follows in this setting:

The petition method provides a mechanism for convening a grand jury that is directly responsive to the public. In so doing, Section 14 reflects populist values. The citizens have reserved for themselves direct access to the criminal process. The petition-initiated grand jury checks the traditional process by permitting the citizens to trigger inquiry into matters that for reasons of political acquiescence, oversight, or impasse evade traditional means of inquiry.³

3 **The petition-initiated grand jury is not a forgotten constitutional relic.** First effective in 1925, Section 14 was recently amended in 1980. The 1980 amendment changed the petition requirement from "not less than seventy-five resident taxpayers" to "not less than the lesser of two hundred registered voters or five percent of the registered voters."

As such, Section 14 cannot suffer discretionary screening of the scope, nature, or subject matter of inquiry. To do so would subvert the very purpose that Section 14 seeks to advance. It is the grand jurors, under the oath of *NMSA 1978, Section 31-6-6(A)(1)* (Repl.Pamp.1984), and properly charged with their statutory duties according to *Section 31-6-9*, who must decide, after full and rigorous inquiry, whether probable cause exists to initiate prosecution against any persons associated with the

³ Significantly, House Bill 1451, as originally introduced by its legislator sponsors, **did not** propose to eliminate the ability of North Dakota citizens to petition-for and identify specific "public offenses" as subjects for investigation by grand juries. **Rather, the content of Section 2 of Engrossed House Bill 1451 was provided -- word-for-word by the Office of the Attorney General to a Subcommittee of the House Judiciary Committee,** and was incorporated within the bill, as given a "Do Pass" by that committee, and as voted-upon by the House as a whole. See, *House Bill 1451 versions 13.0321.02000, 13.0321.2002, and 13.0321.3000, said version attached hereto in sequence for reference as Appendix "C".*

misconduct identified in the petition. To hold otherwise would disparage the critical values of public participation that we identify in Article II, Section 14. (emphasis added)

Cook v. Smith, 834 P2d 418, 420 (N.M. 1992).

Even more recently in 2011, the New Mexico Court of Appeals further elaborated upon the importance of the role of petitioned-for grand juries, stating as follows:

The grand jury has been recognized since colonial times to act "in the nature of local assemblies . . . protesting against abuses in government, performing administrative tasks, and looking after the welfare of their communities." Richard D. Younger, *THE PEOPLE'S PANEL: The Grand Jury in the United States, 1634-1941*, at 2 (Am. Hist. Res. Ctr., Brown Univ. Press) (2d ed. 1965). . . . (T)here is great importance in providing the public with an avenue specifically to inquire "into matters that for reasons of political acquiescence, oversight, or impasse evade traditional means of inquiry[.]" . . . (emphasis added)

In Re Rescue Ecovercity Petition, 270 P.3d 104, 107 (N.M. App. 2011).

Put as simply and directly as possible, I respectfully submit to you members of the Senate Judiciary Committee, that removing the right of North Dakota citizens to petition for grand jury investigation of public corruption -- particularly where elected State's Attorneys would refuse or decline such investigation "for reasons of political acquiescence, oversight, or impasse" -- is exactly the wrong thing for this committee, and the North Dakota Legislative Assembly, to do.

The "Pink Elephant in the Living Room"

Proponents of House Bill 1451 speaking in favor of this bill on the House floor professed -- *rather incredibly I must say* -- to have been "unaware" that a grand jury petition had been filed in Dunn County pursuant N.D.C.C. Chapter 29-10.1 to investigate Governor Jack Dalrymple, within the context of North Dakota's Class C Bribery Statute of N.D.C.C. § 12.1-12-01, relative to Governor Dalrymple's acceptance of many thousands of dollars in political contributions for his 2012 election campaign.

One such Dunn County grand jury petition was filed last October, and another similar grand jury petition was filed in Dunn County earlier this year. I assume all of you members of this Senate Judiciary Committee were aware of this petition effort by citizens of Dunn County. But the failure of the proponents of this House Bill 1451 to even acknowledge this situation makes it -- *by my nomenclature* -- "Pink Elephant in the Living Room" of this Legislative Assembly.

I have attached -- *and do hereby incorporate wholly within my testimony today by reference* -- a copy of the second such Dunn County grand jury petition for your consideration and for the record of this committee proceedings. *See, the "Petition for a Written Order by the District Court Directing That a Grand Jury Be Convened in Dunn County, North Dakota, Pursuant to N.D.C.C. Chapter 29-10.1 – Signed by the Requisite Number of Qualified Electors of Dunn County, North Dakota", attached hereto as Appendix "D".*

I have also attached as **Appendix "E"** hereto -- and do also hereby incorporate wholly within my testimony today by reference -- a copy of the investigative report which I authored with my associate Erik Escarramán -- entitled "**Political Campaign Money from "Big Oil," Governor Jack Dalrymple, and North Dakota's Class C Felony Bribery Statute**" -- a report which the United States Attorney for the District of North Dakota has acknowledged is in his possession. This United States Attorney has stated in response to press inquiries that he neither confirms, nor denies, that there is a pending federal criminal investigation regarding the subject matter of this report.

Implicit in the content of Section 2 of House Bill 1451 -- *language which apparently was drafted by the Attorney General and added to the Bill as originally-introduced by its sponsors* -- is the assumption that no real harm will result from removing the right of North Dakota citizens to petition for a grand jury independent from the State's Attorney.

Also implicit in the content of Section 2 of this bill is the assumption that State's Attorneys will always act to prosecute public offenses where such prosecutions are warranted. Unfortunately, that is often not the case -- in truth and reality.

In one glaring example -- and something which has not been reported in the media thus far -- is the fact that the above-mentioned detailed and substantiated report concerning the many thousands of dollars in oil industry campaign contributions from parties that had interest in a pending Industrial Commission -- was sent to the office of the Dunn County State's Attorney back

in early October of 2012 -- long before any consideration had been given by the citizens of Dunn County to the filing of a petition to convene a grand jury to investigate the potential Class C Felony Bribery violations of N.D.C.C. § 12.1-12-01 referenced in this report.

In response to the conveyance of this report by e-mail from my office to the office of the Dunn County State's Attorney of the afternoon of Friday, September 28, 2012, the alternate Dunn County State's Attorney sent back an e-mail the following Monday, October 1, 2012, stating as follows:

RE: Per David Thompson's request

From: **Dennis Johnson** (redacted)
Sent: Mon 10/01/12 4:11 PM
To: (redacted)

Please convey to Mr. David Thompson that if there are violations of the campaign contributions law those violations did not take place in McKenzie or Dunn County and we would not have jurisdiction.

Thank you.

*See, a copy print of the e-mail from the office alternate Dunn County State's Attorney Dennis Johnson to the office of Grand Forks Attorney David C. Thompson, dated October 1, 2012, attached hereto as **Appendix "F"**.*

Therefore, the matter of a potential violation by Governor Jack Dalrymple of North Dakota's Class C Felony Bribery Statute of N.D.C.C. § 12.1-12-01 was presented to (*but not even considered for inquiry or preliminary investigation by*) the Dunn County State's Attorney's Office, long before any petition was filed by Dunn County citizens to convene a grand jury pursuant to N.D.C.C. Chapter 29-10.1.

In fact, the purported reason set forth by the Dunn County State's Attorney for his refusal to even preliminarily investigate the circumstances set forth in lengthy and documented report attached hereto as **Appendix "E" was wrong -- as a matter of law.**

Indeed, N.D.C.C. § 29-03-04, entitled "LOCAL JURISDICTION OF PUBLIC OFFENSES", provides that:

29-03-04. Part committed in different counties - Jurisdiction in either. When a crime or public offense is committed in part in one county and in part in another, or when the acts or effects thereof constituting, or requisite to the consummation of, the offense occur in two or more counties, the jurisdiction is in either or any of said counties. (emphasis added)

This statute -- which was **ignored** by both the Dunn County State's Attorney and the District Court -- clearly grants jurisdiction for any criminal case in any North Dakota county in which: (1) "a crime or public offense is committed in part in one county and in part in another"; **or** (2) wherein "the acts or effects thereof constituting, or requisite to the consummation of, the offense" occur.

Where virtually all of the land of the huge "mega unit" subject to the North Dakota Industrial Commission decision discussed in the above-referenced report was situated in Dunn County, and where the "acts" or the "effects" of that Commission's decision occurred in Dunn County -- Dunn County without question was an appropriate county within which to convene a grand jury and to prosecute a criminal case -- if the grand jury's investigation warranted the return of an indictment.

On the basis of the foregoing, therefore, it is beyond clear State's Attorneys do not always investigate and prosecute public offenses within their jurisdictions which *should* be investigated and prosecuted.

For this compelling reason, the proposal within House Bill 1451 to eliminate the right of North Dakota citizens to cause grand juries to be convened by petition to investigate specific public offenses identified by those citizens in their petition -- *independently of the functioning of State's Attorneys* -- is wrong and injurious, and should not be enacted by this Legislative Assembly into law.

House Bill 1451 Wrongfully Calls for a 400% Increase in the Number of Electors' Signatures Necessary to Convene a Citizen-Petition Grand Jury

In a cynical and transparent design intended expressly to make the institution of citizen petition grand jury all but extinct, as a practical matter -- Section 1 of House Bill 1451 proposes to amend N.D.C.C. § 29-10.1-02(3) to require a 400% increase in the number of electors' signatures which are necessary to convene a citizen petition grand jury -- raising the requirement from the present "*ten percent* of the total vote cast for the office of governor of the state in the last general election" to "*forty percent*" of that vote cast total.

During debate on the House floor before House Bill 1451 was approved, this bill's proponents flatly admitted that this feature of the bill was specifically included to make it virtually *impossible*, as a practical matter, for citizens to successfully petition for grand jury investigation of the "(w)illful and corrupt misconduct in office of public officials of every description" subjects which are provided for grand jury inquiry in N.D.C.C. § 29-10.1-22.

Plainly and simply -- this motive and objective of Section 1 of House Bill 1451 is wrong, and should not countenanced by this Legislative Assembly.

House Bill 1451 Proposes to Remove Political and Governmental Violations of North Dakota's Corrupt Practices Act [N.D.C.C. Chapter 16.1-10] From the Reach of Grand Juries Convened by Citizen Petition

Section three (3) of House Bill 1451 proposes to amend NDCC §29-10.1-22(2) to **remove** from the permissible subjects of grand jury inquire "(w)illful and corrupt misconduct in office of public officials of every description" unless the offenses involve are felonies -- thereby precluding citizens from petitioning for grand jury investigate of all election and public official corruption offenses contained the North Dakota Corrupt Practices Act [N.D.C.C. Chapter 16.1-10] -- all of which are Class A misdemeanors. *See, NDCC Chapter 16.1-10, the North Dakota Corrupt Practices Act attached hereto as **Appendix "G"**.*

Particularly given the very purposes which attend the statutory right which North Dakota citizens presently have to petition for grand jury investigation of "(w)illful and corrupt misconduct in office of public officials of every description" -- it is particularly ironic that House Bill 1451 proposes to exempt all offenses described the North Dakota Corrupt Practices Act from grand jury inquiry.

This is wrong and this legislature should **not** effectuate the proposed change in North Dakota law which is prescribed by Section 2 of House Bill 1451.

Proposal for an Interim Study

As I have explained above in my testimony today, the current law of N.D.C.C. Chapter 29-10.1 was the product of a distinguished committee of the North Dakota Supreme Court back in 1970 and 1971 -- a number of years ago, but certainly not "ancient history" in legal terms.

Serving on this committee were former North Dakota Chief Justice Ralph Erickstad, District Judges, representatives of the Attorney General's Office, retired judges, and other distinguished members of the North Dakota Bar, along with Robert L. Vogel, a former United States Attorney for the District of North Dakota, who would later serve as a Justice on the North Dakota Supreme Court during the years 1974-1978.

I respectfully submit that the proposal within House Bill 1451 to amend a mere three (3) sections within the 39-section N.D.C.C. Chapter 29-10.1 does ***not*** constitute thorough and responsible amendment of the grand jury process here in North Dakota.

This subject -- particularly where complex matters of criminal case venue, the rights of North Dakota citizens to petition for the convening of grand juries to investigate specific subjects identified by the petitioning citizens, and the very functions of grand juries would be seriously affected if House Bill 1451 were to be enacted into law -- is a multi-faceted legal subject field far more appropriately and comprehensively addressed within the context of a Legislative Council

Interim Study -- rather than in an insular and isolated attempt at legislation, such as House Bill 1451.⁴

As result, I ask this committee today to “stop, look and listen” -- to reflect and pause, and to “hoghouse” House Bill 1451, and convert this bill into an Interim Study Resolution, which would provide for the comprehensive evaluation of the grand jury as a legal institution here in North Dakota.

⁴ For example, although Section 2 of House Bill 1451 contains language drafted within the Office of the Attorney General, the role of the Attorney General within the context of North Dakota grand juries is made ambiguous, as the Attorney General is not mentioned anywhere in the bill’s proposed amendment to N.D.C.C. § 29-10.1-21, as the bill refers only to the State’s Attorney or the State’s Attorney’s “designee”.

In contrast, N.D.C.C. § 29-10.1-28 -- a statute which *not* proposed for amendment by House Bill 1451 -- specifically provides that the Attorney General may be present during grand juries sessions in the same manner as a State’s Attorney would be. Additionally, the North Dakota Supreme Court has made clear that the Attorney General has the right to appear before any North Dakota grand jury at anytime that the Attorney General should deem it in the best interests of the state. *State ex rel. Miller v. District Court*, 19 ND 819, 124 N.W. 417 (N.D. 1910).

Against this legal backdrop, current Attorney General has curiously taken the position that the Attorney General has no authority to prosecute “allege violations of state law.” See, the letter to the editor authored by Attorney General Wayne Stenehjem, as published September 16, 2012, in the *Forum Fargo-Moorhead*, a printed copy of which letter being attached hereto as **Appendix “H”**.

Therefore, the role of the Attorney General in connection with North Dakota grand jury proceedings is but one of the multiple considerations which should be taken into account if any material part of N.D.C.C. Chapter 29-10.1 is proposed for amendment in a piecemeal manner -- as is the case with House Bill 1451.

Appendix “A”



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Robert L. Vogel 1918-2005

Robert L. "Bob" Vogel, 86, died Jan. 28, 2005, at a hospital in Rochester, Minn. Vogel was born Dec. 6, 1918, in Coleharbor, where he spent his boyhood.



One of five sons born to Frank and Louella Vogel, he attended a two-room school house, won the McLean County Spelling Bees four years in a row and later graduated from Bismarck High School. His father was a leader of the Nonpartisan League and a close confidant of Gov. William Langer. Frank Vogel was North Dakota Tax Commissioner, Highway Commissioner and manager of the Bank of North Dakota for many years.

Vogel graduated from the University of North Dakota in 1939. While working in the trust department of a bank in Minneapolis, he attended the William Mitchell College of Law at night, receiving a juris doctor degree in 1942.

He married Elsa Mork in 1942 in Minneapolis. He passed the North Dakota bar and opened a solo practice in Garrison in 1943. In 1949, he was elected as state's attorney in McLean County. During these years, he was very active in the Nonpartisan League.

President Eisenhower appointed then 36-year-old Vogel United States Attorney in 1954, at the request of Sen. William Langer. Vogel moved to Fargo and represented the United States in all civil and criminal matters for North Dakota for the following six years.

After President Kennedy took office in 1961, Attorney General Robert Kennedy asked Vogel to continue as a Special United States Attorney to conclude the Lenders Service trial, which prosecuted over a dozen defendants for defrauding farmers through the mails. The trial lasted over five months, still the longest trial in North Dakota history.

In 1961, Vogel formed the law firm of Vogel, Bair and Ulmer in Mandan. He practiced as a trial and appellate lawyer in North Dakota and regionally. He ran for Congress in the Western District

as the Democratic Non-Partisan League candidate in 1962. He served on the N.D. Parole Board from 1967 to 1973.

In 1973, Gov. Art Link appointed Vogel to the North Dakota Supreme Court. As a Supreme Court Justice he wrote a number of significant decisions, one of which guaranteed the right to a free public education to all children in North Dakota, including disabled children. He also wrote many dissents, of which he was equally proud.

He was elected to a 10-year term to the Supreme Court in 1974, but left the Court in 1978 to become a professor of law at the University of North Dakota Law School in Grand Forks. While he was teaching law, he also founded the Robert Vogel Law Office, P.C. in Grand Forks and resumed a very active trial practice focussing on medical and legal malpractice issues.

Vogel gradually reduced his teaching load to part time and moved to full time law practice. He retired in 1997, after 50-plus years as a lawyer/judge/professor, but remained abreast of current legal and political matters. In 2004, he received a rare 60-year award from the State Bar Association in Medora.

Vogel lectured at the National Association of Attorneys General. He contributed articles to the "Practical Lawyer" and "North Dakota Law Review". He was admitted to the Eighth Circuit and United States Supreme Court bars and handled over 100 appeals. He served as an expert witness in cases of legal malpractice in Canada and the United States and was named as one of the nation's outstanding malpractice lawyers. He had been elected to the American Law Institute and the American Bar Foundation, and was a member of the American and North Dakota Trial Lawyers Associations.

Apart from law, Judge Vogel had many interests, such as mountain and desert trekking, photography, music, literature, Shakespeare, progressive politics and North Dakota history. He was active in many organizations, including the Sierra Club, the North Dakota American Civil Liberties Union, the Democratic-Nonpartisan League and the Progressive Coalition. He was an active board member of the North Dakota Rural Rehabilitation Association for decades.

His lifelong interest in the Non-Partison League, his father's close connection to Senator Langer, and his legal expertise in trial analysis led to his authoring the seminal work on Bill Langer's conspiracy trials, entitled "Unequal Contest: Bill Langer And His Political Enemies." He recently appeared on Prairie Public Radio, at

the North Dakota History Conference and the Unitarian Church in Bismarck to discuss this book.

He is survived by Elsa (Mork) Vogel, his wife of 62 years. They had four children, Mary Vogel (Ron) Carrick, a retired teacher and co-owner of Classic Yard Lawn and Garden Center in Mandan; Sarah Vogel, also an attorney who practices at the Sarah Vogel Law Office, P.C. in Bismarck and was formerly North Dakota Commissioner of Agriculture; Frank (Melanie) Vogel, Professor of Islamic Law, Harvard Law School; and Robert "Bobby" Vogel of Grand Forks, a lecturer and civil rights advocate for the disabled community. He has two surviving brothers, William (Donna) Vogel, Salt Lake City, also an attorney, and Paul Vogel, Los Angeles.

He was preceded in death by his parents; and two brothers, Frank, who died in World War II, and Dave Vogel, Bismarck.

He had five grandchildren, William Carrick, Seattle, Ann Carrick (Jason) Kirchmeier, Mandan, Will (Gabrielle) Vogel, Garrison, N.Y., Andrew Vogel Gold, Ulaan Baatar, Mongolia, and Lara Vogel, Concord, Mass. He has two great-grandchildren, Cambelle Kirchmeier and John Vogel.

Memorials may be made by donations to the Robert Vogel Law Scholarship Fund, care of North Dakota Trial Lawyers Foundation, P.O. Box 365, Mandan, N.D. 58554.

- [Chief Justice Gerald VandeWalle's Tribute to Vogel](#)
- [Vogel's Judicial Biography](#)
- [Vogel's Book: "Unequal Contest"](#)

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Appendix “B”



[North Dakota Supreme Court Committees](#) ◀▲□/?

[Joint Procedure Committee](#)

MINUTES OF MEETING

Joint Committee of the Judicial Council
and the State Bar Association
for the Adoption of Rules of Criminal Procedure

December 10, 1970

The Joint Committee of the Judicial Council and the State Bar Association for the Adoption of Rules of Criminal Procedure met at 1:30 p.m., December 10, 1970, in the hearing room of the Supreme Court.

Present were:

Supreme Court Judge Ralph Erickstad, Chairman;
District Judge Eugene A. Burdick;
County Judge Kirk Smith;
District Judge Norbert J. Muggli;
First Assistant Attorney General Paul Sand;
Mr. Gerald Glaser; Mr. John Shaft; and
Former Supreme Court Judge William S. Murray.

Absent were:

Retired Supreme Court Judge James Morris;
District Judge Roy A. Ilvedson;
Mr. Robert L. Vogel;
Mr. John A. Graham; and
Mr. Roger Persinger.

Also present were

Mr. Robert Wirtz, law clerk, and
Mrs. Lorna Bender, secretary.

The chairman welcomed those present.

After the missing pages were provided for two incomplete set of minutes, Judge Muggli moved that the minutes be approved as submitted. The motion was seconded by Judge Smith, and it carried.

The chairman called on Mr. Sand, who passed out his proposed bill regarding grand juries, along with an explanatory memorandum, which follows:

GRAND JURY

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To repeal Chapter 29-10 of the North Dakota Century Code and repeal Sections 29-09-08, 29-09-09, 29-09-10, 29-09-11, Subdivision g of Subsection 2 of Section 29-14-04, and to create a new chapter 29-10.1 of the North Dakota Century Code relating to the Grand Jury, its powers, duties and activities.

"29-10.1-01. 'GRAND JURY' DEFINED--FORMATION--FUNCTIONS.--A grand jury shall consist of not less than eight nor more than eleven persons of the county possessing the qualifications of jurors prescribed by law, and impaneled and sworn to inquire into and present to the district court of all crimes or public offenses against laws of this state triable within the county for which the court is held."

"29-10.1-02. WHEN GRAND JURY MAY BE CALLED.--No grand jury shall be drawn or summoned to attend at any session of the district court within this state unless the judge thereof shall so direct by order in writing under his hand and filed with the clerk of the court in the county wherein the said grand jury is required to attend. The judge of any district court in and for any county must direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

"1. He shall deem the attendance of such grand jury necessary for the due enforcement of the laws of the state;

"2. The board of county commissioners of the county wherein the court is to be held, in writing, requests him so to do; or

"3. A petition in writing requesting the same is presented to said judge, signed by at least ten per cent of the total vote cast in said county for the office of governor of the state at the last general election preceding the calling of said grand jury."

"29-10.1-03. REQUEST AND PETITION FILED FIFTEEN DAYS BEFORE TERM.--The request provided for in subsection 2 of section 29-10.1-02 and the petition mentioned in subsection 3 of such section must presented to the judge, who shall within 15 days, unless a different time is stated in the petition, summon and convene the grand jury."

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"29-10.1-04. PETITION FOR GRAND JURY--PETITIONERS--NUMBER--SESSION.--The petition for a grand jury prescribed by

section 29-10.1-02 shall be verified on information and belief by three legal electors of the county. The formation of a grand jury under this chapter shall not be invalidated should it appear or be proven after the said grand jury has been called or summoned that any of said petitioners therefor were not such electors and that said petition was not signed by the full ten per cent of the electors of the county. No grand jury shall remain in session for a longer period than ten working days, unless the judge of said court by written order filed with the clerk of said court continues the session thereof as may be necessary. Otherwise the grand jury shall be discharged at the close of the tenth day of its session, but Saturdays, Sundays and legal holidays and days in recess shall not be included in computing the said ten days' limitation or days extended by the court."

"29-10.1-05. CHALLENGES BY STATE OR ACCUSED.--The state, or a person held to answer a charge for a public offense, who has not had a preliminary hearing or against whom no criminal information has been filed, may challenge the panel of a grand jury or an individual grand juror."

"29-10.1-06. CHALLENGE ALLOWED--PROCEDURE.--Whenever a challenge to the panel or to an individual grand juror is allowed, the court shall make an order to the sheriff or other officer to summon without delay, from the body of the county, a sufficient number of persons to complete or to form a grand jury."

"29-10.1-07. GROUNDS FOR CHALLENGE TO PANEL.--A challenge to the panel may be interposed by the state, or person held to answer a charge for a public offense, who has not had a preliminary hearing, or against whom a criminal information has not been filed, on the ground that the grand jurors were not selected or drawn according to law."

"29-10.1-08. GROUNDS FOR CHALLENGE TO INDIVIDUAL GRAND JUROR.--A challenge to an individual grand juror may be interposed by the state or a person held to answer a charge for a public offense, who has not had a preliminary hearing or against whom a criminal information has not been filed, for one or more of the following causes only:

"1. That he does not have the qualifications of a juror as prescribed by chapter 27-09 of the title Judicial Branch of Government;

"2. That he is a prosecutor upon a charge against the defendant;

"3. That he is a witness on the part of the prosecution and has been

served with process or bound by an undertaking as such;

"4. That a state of mind exists on his part which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging, but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to the jurors, founded upon public rumor, statements in public journals, or common notoriety, if it satisfactorily appears to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him."

"29-10.1-09. CHALLENGE MUST BE BEFORE JURY IS SWORN.--Neither the state, nor a person held to answer a charge for a public offense, who has not had a preliminary hearing, or against whom no information has been filed, can take advantage of an objection to the panel or to an individual grand juror unless it is by challenge before the grand jury is sworn, except that after the grand jury is sworn and before an indictment is found, the court, upon good cause shown, receive and allow a challenge."

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"29-10.1-10. CHALLENGE MAY BE ORAL OR WRITTEN.--A challenge to the panel or to an individual grand juror may be oral or in writing and must be tried by the court."

"29-10.1-11. CHALLENGE ALLOWED OR DISALLOWED--ENTRY BY CLERK.--The court must allow or disallow a challenge to the panel of a grand jury or to an individual grand juror, and the clerk must enter its decision upon the minutes."

"29-10.1-12. IF CHALLENGE IS ALLOWED JURY DISCHARGED.--If a challenge to the panel is allowed, the grand jury must be discharged."

"29-10.1-13. EFFECT OF SUSTAINING CHALLENGE TO INDIVIDUAL GRAND JUROR.--If a challenge to an individual grand juror is allowed, he cannot be present at nor take part in the consideration of the charge against the defendant who interposed the challenge, nor the deliberations of the grand jury thereon."

"29-10.1-14. VIOLATING DISQUALIFICATION A CONTEMPT.--If a grand juror violates the provisions of section 29-10.1-13, he may be punished by the court for contempt."

"29-10.1-15. COURT MAY ORDER ANOTHER GRAND JURY.--The court may order another grand jury summoned, if:

"1. A grand jury is discharged by sustaining a challenge to the whole panel;

"2. An offense is committed during the sitting of the court, after the regular discharge of the grand jury;

"3. After such discharge, a new indictment becomes requisite by reason of an arrest of judgment or by the quashing of an indictment; or

"4. From any other good and sufficient cause another grand jury may become necessary,

and to that end forthwith may make an order to the county commissioners for the immediate selection and furnishing to the clerk of a list of jurors, and such further orders to the clerk, sheriff, and other officers for an immediate performance of their duties as may be proper to obtain another grand jury at and during the same term of the court."

"29-10.1-16. SPECIAL GRAND JURY.--If a grand jury is formed and impaneled in a particular case, after challenges to individual grand jurors have been allowed, the jurors shall be sworn only to act in such particular case, and as to all other cases at the same term of the court the grand jury shall be formed in the usual manner provided by law."

"29-10.1-17. COURT TO APPOINT FOREMAN AND VICE FOREMAN.--When the grand jury is completed, the court must appoint one of the jurors to be foreman, and another to act as foreman in case of the absence of the foreman."

"29-10.1-18. OATH OF GRAND JURORS.--The following oath must be administered to the members of the grand jury:

'You, as members of this grand jury, shall diligently inquire into, and true presentment make, of all public offenses against this state, committed or triable within this county, which shall be placed in your charge or which otherwise shall come to your knowledge. You will keep your own counsel, and that of your fellows, and of the state, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor disclose anything which you or any other

grand juror may have said, nor the manner in which you or any other grand juror

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may have voted on any matter before you. You shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, nor for any reward or the promise of hope thereof, but in all your presentments or indictments, you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding. So help you God."

"29-10.1-19. COURT MUST CHARGE GRAND JURORS--DUTY OF COURT TO ADVISE GRAND JURORS.--After the grand jurors are impaneled and sworn, the court must charge them concerning the offenses that may be considered by them or that are likely to come before them, and concerning their duties as prescribed by law. The court, upon request of the grand jurors, at all reasonable times, shall advise them regarding their duties."

"29-10.1-20. RETIREMENT OF GRAND JURORS.--After the charge by the court, the grand jurors must retire to a private room which shall be provided for by the county commissioners and perform their duties as prescribed by law."

"29-0.1-21. CLERK, APPOINTMENT BY GRAND JURORS--DUTY.--The grand jury, unless a competent reporter is appointed, shall appoint a member of the jury as clerk, who must preserve minutes of all the proceedings of the jurors, and exhibits presented, except of the votes of the individual members, and of the evidence given before them. Upon the conclusion of the grand jury session, all exhibits shall be placed in the custody of the state's attorney unless otherwise directed by the court."

"29-10.1-22. STENOGRAPHIC REPORTER--TRANSCRIPT.--

"1. Unless otherwise directed by the court, the grand jury shall appoint a competent stenographic reporter who shall be sworn and who shall report in shorthand or stenotype notes, the testimony given in matters before the grand jury. When an indictment is returned and if so directed by the court, the reporter shall transcribe the testimony.

"2. When the court has directed the testimony to be transcribed, the reporter shall certify and file with the clerk of court the original and

sufficient copies so as to provide a copy for each defendant and one for the prosecutor. Except as otherwise provided in this chapter, each defendant shall upon request be entitled to a copy of the transcript as same pertains to him and to the charge or indictment filed against him. The reporter shall complete such certification within thirty days from the date of its order or a shorter period of time as may be specified by the court.

"3. All exhibits presented to the grand jury shall be placed in the custody of the state's attorney unless otherwise directed by the court."

"29-10.1-23. SELECTION OF JURORS--MILEAGE AND EXPENSES.--

"1. Grand jurors shall be selected from the jury list in the same manner as petit jurors are selected, and shall receive mileage and expenses in the same amount and manner.

"2. Before accepting a person drawn as a grand juror, the court shall be satisfied that such person is duly qualified to act as such. A person drawn as a juror may be excused for good cause by the court before he is sworn."

"29-10.1-24. EXPENSES.--All expenses of the grand jury incurred in its official capacity shall be paid by the county out of the general fund."

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"29-10.1-25. SUBPOENAS.--The grand jury shall have the power to issue subpoenas or subpoenas duces tecum to any witness within the state. Such subpoenas may be issued by the state's attorney or prosecutor in the manner provided for in criminal procedures in this code."

"29-10.1-26. FILLING VACANCIES.--When the membership is reduced for any reason, after the grand jury consisting of the required number of persons has been impaneled pursuant to law, such vacancy within an existing grand jury may be filled so as to maintain the minimum full membership by the clerk of the district court in the presence of the district judge from the jury list in the same manner as the original members were selected. No person selected as a grand juror to fill a vacancy shall vote on any matter upon which evidence has been taken prior to the time of his selection."

"29-10.1-27. GENERAL DUTIES OF GRAND JURORS.--The grand juror shall inquire into the case of every person imprisoned in the jail of the county on a criminal charge who has not had a preliminary hearing and against whom no information has been filed, and into all public offenses committed or triable in the county, and if the evidence so warrants, shall present them to the court by indictment or accusation in writing. However, as to any offense committed while the grand jury is in session, the state's attorney may proceed with preliminary hearing or filing an information as provided for by law and process the criminal matter independent of the grand jury, and under such conditions the grand jury will not be required to inquire into such offense."

"29-10.1-28. SUBJECTS OF GRAND JURY INQUIRY.--A grand jury, when directed by the district court, must inquire:

"1. Into the condition and management of the public prisons in the county; and

"2. Into the willful and corrupt misconduct in office of public officials of every description in the county."

"29-10.1-29. GRAND JURORS ENTITLED TO ACCESS TO PRISONS AND PUBLIC RECORDS.--Grand jurors are entitled to free access, at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county."

"29-10.1-30. MEMBER MUST REPORT OFFENSE KNOWN TO HIM AND MUST GIVE EVIDENCE.--If a member of the grand jury knows or has reason to believe that a public offense which is triable in the county has been committed, he must declare such fact to his fellow jurors, must investigate the same. In such investigation, the grand juror may be sworn as a witness."

"29-10.1-31. OATH TO WITNESS--ADVISE OF CONSTITUTIONAL RIGHTS.--The foreman or the prosecuting officer may administer an oath to any witness appearing before the grand jury. Upon completion of the oath, the witness shall be advised of his constitutional right to remain silent on the grounds that the testimony may incriminate him and that the testimony given may be used against him. The witness may also be asked to sign a waiver of immunity for testimony he is about to give. If the witness refuses to answer questions or produce evidence of any other kind on the ground that he may be incriminated thereby, proceedings may be had under Section 31-01-09."

"29-10.1-32. RECEPTION OF EVIDENCE.--

"I. Subject to Subsection 2 of this section, in the investigation of a charge, the grand jury shall receive no other evidence than such as is:

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"A. Given by witnesses produced and sworn before the grand jury;

"B. Furnished by writings, material objects, or other things presented to the senses; or

"C. Contained in a deposition that is admissible under the rules of criminal procedure.

"2. The grand jury shall receive none but evidence that would be admissible over objection at the trial of a criminal action, but the fact that evidence which would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury."

"29-10.1-33. EVIDENCE OF THE ACCUSED.--The grand jurors, upon the request of the accused, if he has not had a preliminary hearing and against whom no information has been filed, shall, and, of their own motion, may, hear the evidence for the accused. It is their duty to weigh all the evidence submitted to them and when they have reason to believe that there is other evidence, they may order such evidence to be produced, and for that purpose the state's attorney shall issue process for the witnesses."

[OR, IN THE ALTERNATIVE, THE FOLLOWING:]

"29-10.1-33. EVIDENCE OF THE ACCUSED.--The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that purpose may require the state's attorney to issue process for the witnesses."

"29-10.1-34. WHO MAY BE PRESENT DURING SESSIONS OF GRAND JURY.--No person shall be present at a session of the grand jurors other than the witnesses under examination, the state's attorney, or the assistant prosecutor appointed by the court, attorney general, and the reporter or interpreter, if any. No other person

whomsoever shall be present while the grand jurors are deliberating or voting. Where the grand jury is investigating the state's attorney or any person connected with the office of state's attorney, neither the state's attorney nor any of his assistants or deputies shall be present before such grand jury during the time of such investigation, but may be present only as a witness and after such appearance as a witness has left the place where the grand jury is in session. Any person violating the provisions of this section may be held in contempt of court."

"29-10.1-35. DUTY OF STATE'S ATTORNEY.--The state's attorney, upon the request of the grand jurors, shall advise them regarding their duties. He at all reasonable times may appear before them on his own motion for the purpose of giving the grand jurors information or advice regarding any matter cognizable by them and may interrogate witnesses before them whenever he believes it necessary."

29-10.1-36. SECRECY OF THINGS SAID, AND VOTES.--Every member of a grand jury must keep secret whatever he himself or any other grand juror may have said, or in what matter he or any other grand juror may have voted on a matter before the jurors."

"29-10.1-37. WHEN JUROR MAY DISCLOSE TESTIMONY UPON ORDER OF THE COURT.--A member of a grand jury may be required by any court to disclose the testimony of a witness examined before the grand jurors for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor."

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"29-10.1-38. GRAND JUROR CANNOT BE QUESTIONED.--A grand juror cannot be questioned for anything he may say, or any vote he may give, in a session of the grand jury, relative to a matter legally pending before the jurors, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors."

"29-10.1-39. WHEN INDICTMENT OUGHT TO BE FOUND.--The grand jurors shall find an indictment charging the defendant with the commission of an offense when all the evidence before them, taken together, is such as in their judgment would warrant a conviction by the trial."

"29-10.1-40. FINDING INDICTMENT--NUMBER OF JURORS REQUIRED.--An indictment cannot be found without the concurrence of at least six grand jurors. When so found, it must be endorsed 'a true bill' and the endorsement must be signed by the foreman of the grand jury. The names of the witnesses shall be endorsed thereon before the indictment is presented to the court."

"29-10.1-41. WHEN ACCUSED MUST BE DISMISSED.--If six grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the original complaint and the certified record of the proceedings before the magistrate transmitted to them must be returned to the court with an endorsement thereon, signed by the foreman, to the effect that the charge is dismissed."

"29-10.1-42. DISMISSAL OF CHARGE--RESUBMISSION.--The dismissal of a charge by grand jurors does not prevent its being again submitted to a grand jury as often as the court may direct. Without such direction it cannot be again submitted."

"29-10.1-43. PRESENTMENT OF INDICTMENT TO COURT BY FOREMAN.--An indictment, when found by the grand jurors, must be presented by the foreman, in their presence, to the court, and must be filed with the clerk as a public record."

"29-10.1-44. PERSONS INDICTED, HOW ARRESTED.--When an indictment is found against a defendant who has not been previously arrested and who is not under bail, the proceedings prescribed in sections 29-12-02 to 29-12-09, inclusive, must be had against a defendant who fails to appear for arraignment."

"29-10.1-45. JURORS TO BE DISCHARGED UPON COMPLETION OF BUSINESS.--Upon the completion of the business before them or whenever the court shall be of opinion that the public interests will not be subserved by a further continuation of their sessions, the grand jurors must be discharged by the court."

"29-10.1-46. OPTION TO DEMAND PRELIMINARY HEARING--OR TRANSCRIPT.--A person against whom an indictment has been found, at his option, may make a written demand within five days to the district judge for a preliminary hearing, or in the alternative to be furnished a copy of the transcript of the testimony as it applies to him and the charges against him. Upon receipt of such written demand, the jury shall issue the appropriate order. Such written demand must be presented to the judge within five days after the indictment was served upon the

defendant; otherwise, such option is waived and the defendant will not be entitled to either a preliminary hearing or a copy of the transcript."

REPEALS

To repeal Chapter 29-10 of the North Dakota Century Code

To repeal Section 29-09-08

To repeal Section 29-09-09

To repeal Section 29-09-10

To repeal Section 29-09-11

To repeal Subdivision g of Subsection 2 of Section 29-14-04

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"The attached is a proposed revision of the Grand Jury consisting of some of the basic provisions in Chapter 29-10, provisions of the California Grand Jury, and new ideas developed from other states.

"The repeal of Chapter 29-10 and some of the other related statutes and the creation of Chapter 29-10.1 was done deliberately to give the benefit of being a new provision.

"Another reason for the revision was to incorporate all of the material matters in one chapter.

"To assist in understanding and correlating the revised provisions with the existing laws, the prior statutes of the North Dakota Century Code appear in pencil notes in the left margin. [Omitted in these minutes.] For example, on page 1, Section 29-10.1-01, the proposed revised provision, has its origin in Section 29-09-08. Others are notated with the word 'new.' Some also have a notation referring to the California Penal Code. I would specifically like to call attention to Section 29-10.1-27 because it incorporates ideas to overcome some of the problems now existing, such as requiring all criminal proceedings to be through the Grand Jury while it is in session.

"We have provided two revisions of Section 29-10.1-33 with the thought that the committee might wish to elect which one should be adopted. My preference is the second one.

"Section 29-10.1-46 is a new provision in the correct sense of the word because I am not aware of any other state having a similar provision. This is a provision which should be given some independent thought before it is adopted, rejected, or amended.

"The provisions relating to presentment have been left out."

Mr. Sand said that he proposed the repeal of Subdivision g of Section 29-14-04 on the ground that it is almost unmanageable. He said it was probably put in for a good purpose, but that he questioned its workability, since it allows any person indicted to accuse a juror of bias or prejudice and thus undo everything that had been done. He mentioned there had been a supreme court case on that subdivision and that the court had been very critical of this provision.

The chairman referred to a recent argument before the supreme court about whether a person indicted has a right to be called and to testify without requesting an opportunity to do so, and he asked if Mr. Sand's proposed bill would make that issue clear.

Mr. Sand said the new number is 29-10.1-33. The first proposition under that number is in language that has been discussed, and the alternative is in some of the language which was in the actual provisions.

Judge Burdick said grand jury acts make a distinction between a grand jury bringing an original indictment, where defendant has no right to be heard unless they want him to be, and a grand jury bringing a true bill, where a charge is made by the state's attorney and left with the grand jury to investigate and requires the defendant to testify.

Mr. Sand agreed and said he was approaching it somewhat along that same line, but that the current statutes do not provide that a man would actually have to be arrested and charged before he was entitled to appear before a grand jury. He said he would prefer that spelled out in detail:

"Upon request of accused who has been held to answer to a judge."

Judge Erickstad said the problem with our statute now is a question of when an accused must make his request if he does not

know he has been accused. If he is not in jail or charged, grand jury would have to be held open until indictment.

Mr. Sand asked if when a jury filed a true bill and the accused requested to appear, would the jury be required to again consider it? Judge Erickstad said he was wondering if that had been eliminated clarified and that the alternative in the proposed bill did not seem to give the accused any right.

Mr. Sand said the bill needed to use language that would clearly say (1) what is meant by "accused", and (2) under what conditions he becomes an accused and who must inform him and who must act. He said that a number of states, including South Dakota, don't have half the statutes we have on this and that theirs work better.

Mr. Glaser asked that if the accused is entitled to submit evidence to a grand jury, is he entitled to counsel to submit that evidence for him? Mr. Sand said no, and that New York goes the farthest, permitting counsel to be outside the courtroom, but that every person to be called as a witness has immunity unless he waives it in writing. They ask every witness to waive and they permit cross-examination on everything the witness says and he may not refuse cross-examination. Judge Burdick mentioned there is a difference between being called to testify and being permitted to testify.

Judge Muggli, referring to 29-10.1-46 of the draft, said he had previously suggested taking statute on state's attorney's inquiry and making it apply to all criminal action, so that a state's attorney could act as a one-man grand jury, and the accused could still have his preliminary hearing.

Judge Erickstad said that under present law witnesses may not decline to answer questions at a state's attorney's inquest. Judge Muggli said you can't force anyone to incriminate himself.

Judge Erickstad said there is a conflict to be worked out between the state's attorney's inquest statute and the bill proposed here. He pointed out that 29-10.1-31 provides that upon completion of the oath the witness shall be advised of his right to remain silent and may also be asked to sign a waiver of immunity, which is quite a change from the language of present state's attorney's inquest statute, in which no witness called may refuse to answer questions put to him. Judge Burdick said a waiver of immunity could be an arm twist when considered from one point of view.

Judge Muggli said a grand jury may be useful as an investigative

body higher than state's attorney or sheriff, but that generally it was an unwieldy and cumbersome system. He said he thought that under a state's attorney's inquest the state's attorney could go out on his own and make investigations and get witnesses to come in, whereas under present law nobody wants to say anything to him, witnesses don't want to get involved.

Mr. Glaser noticed that the proposed draft is set up as though it would be repealing certain statutes and he wanted to know if it was going to be enacted in the form of rules. He was told no, that this was merely presented to the Committee for their ideas before it goes to the Legislature.

Judge Smith said he had some material on Iowa procedures (Chapter 754, Iowa Criminal Code), for reducing preliminary hearings. He read an excerpt from a letter he received from Donald J. Olson, dated October 22, 1970, as follows:

"It appears that a county attorney in Iowa has more flexibility than a state's attorney in North Dakota in choosing the method of prosecution. . . . (I)n Iowa, a preliminary information may be filed in Municipal Court if the County Attorney desires to have a preliminary hearing. If the County Attorney believes he has a strong

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case, he may proceed by way of a county attorney's information, thereby placing the case immediately before the district court for arraignment. . . . (A) county attorney in Iowa may initially file a preliminary information and subsequently dismiss the preliminary information prior to a preliminary hearing and file a county attorney's information. This procedure would be utilized when additional evidence strongly incriminates an accused."

During the discussion that followed, Mr. Sand read from the Proposed New York Criminal Procedure Law:

"(a) When a criminal charge against a person is being or is about to be or has been submitted to a grand jury, such person has a right to appear before such grand jury as a witness in his own behalf if, prior to the filing of any indictment or any direction to file a prosecutor's information in the matter, he serves upon the district attorney of the county a written notice making such request and stating an address to which communications may be sent. The district attorney is not obliged to inform such a person that such a grand jury proceeding against him is pending, in progress or about to occur unless such

person is a defendant who has been arraigned in a local criminal court upon a currently undisposed of felony complaint charging an offense which is a subject of the prospective or pending grand jury proceeding...." Section 190.50, 1969 Bill, effective July 1, 1971 (West Pub.Co.).

Judge Burdick said that if a state's attorney approves a complaint, there is no necessity for further hearing before a grand jury, as the defendant is entitled to preliminary hearing then. Mr. Glaser said that a grand jury should be simply another means of making accusations, but the defendant should be entitled to a transcript. Judge Burdick added that this creates an opportunity to have the matter considered by a law-trained individual. As laymen, the grand jury may think there has been a crime committed, when a law-trained individual may not think so.

There were some questions on whether testimony should be recorded, and Judge Muggli pointed out that 29-10.1-22 of the proposed bill covered transcripts.

After further discussion, Judge Burdick moved that the subcommittee draft a recommended grand jury statute around the philosophy that a grand jury is supplementary only, an additional accusatory body, and that the draft implement the concept that a grand jury should not be permitted to call the accused, but may permit him to testify; that he has no right to testify; that no one is to be given any warning before a grand jury unless he is the accused and has been invited by the grand jury to testify; that in the event of his indictment by a grand jury the defendant would be entitled to a preliminary examination, but not to any exploration of the work of the grand jury, not to explore what they did or the way they did it.

Judge Smith seconded the motion and the discussion continued. Judge Muggli said it would change the concept of grand jury to give the right of hearing to an accused. He said the court's power springs from the very citizens who compose a grand jury, and he did not think it would be a good situation if a grand jury felt that prosecution was necessary and in a hearing the court said no. He added that that would be granting the accused more rights.

Mr. Sand said he objected to 29-10.1-46, Option to Demand Preliminary Hearing--or Transcript, in his bill and did not want any part of it.

Judge Burdick decided he wanted to include in his motion that if a transcript was not made for any reason, the accused could have a preliminary hearing, and that 29-10.1-46 would have to be reworded to make the transcript required rather than an alternative. The accused would get a copy of the transcript but no preliminary; if a transcript were not available, it wouldn't make the indictment illegal, but would give him a right to a preliminary hearing.

The chairman recapitulated the present form of the motion as being to provide for general powers such as contained in Section 29-10-18; that accused not have right to appear before grand jury, but if indicted he should have right to transcript; if transcript is not available, he has absolute right to preliminary hearing before a district judge or county court with increased jurisdiction.

Judge Muggli mentioned that under federal laws the accused is not entitled to a transcript or a preliminary hearing.

Mr. Shaft said he had agreed with Judge Burdick's motion until it was changed to remove right of defendant to make a choice of grand jury transcript or preliminary hearing. He said he thought the defendant should be given that option.

Judge Murray said he would vote for the motion, but that he wanted to state that he favors the entire abolition of the grand jury system because it is a cumbersome adherence to a past structure that has no meaning in modern times. He favored a proceeding whereby the prosecuting attorney could secure evidence on his own initiative.

Mr. Glaser said he was inclined to favor broadening the state's attorney's power. There would be less need to use a grand jury, but it is desirable to have both. He said the state's attorney should have the right to subpoena people beforehand, advise them of their rights, including self-incrimination, and he would also have the right to give a witness immunity.

Judge Burdick, referring to the Uniform Reciprocal Enforcement Act, suggested that the accused have to raise the objection himself and needn't be told he has the right to remain silent. He can't refuse to testify, but if he should, he is granted immunity.

Judge Smith said his seconding the motion meant he endorsed it without qualification.

Judge Muggli said he thought the motion was a good, sound one, and that he wanted to make sure that it is understood that the grand

jury has power and is not limited in any way. He said he thought having a reporter record a grand jury hearing would have a good effect on everybody present.

Judge Burdick summarized his motion as follows: Grand jury would be preserved. We would recommend legislation giving grand jury full power to investigate and indict upon any matters it so set to delve into. It would serve as an additional accusatory arm, in addition to filing information by state's attorney. Defendant would have no right to appear before grand jury at any time he may not know about it; however, grand jury would have right to invite him to attend as witness, and he could assert immunity from testifying if he thought his testimony might incriminate him. Five days later he could demand transcript of testimony, but if for some reason a transcript were not available, he would be entitled to a preliminary hearing. Judge Burdick said he would propose that the state's attorney be allowed to challenge individual jurors and the panel at the time they were sworn, and the defendant would not be able to challenge individual jurors. He could challenge the legality of the panel at the time the indictment is returned, but only for the reason that it has been illegally constituted, not for

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prejudice or preconceived ideas. It would have to be on a defect that applied to all the jurors, such as they weren't citizens or weren't residents of the county; whatever the reason, it would have to be a challenge to the entire panel. State's attorneys would have to raise objections before they were sworn. Judge Burdick added that refinements would have to be made on this.

During the ensuing discussion Judge Burdick said he would vote to have nothing in grand jury statute on testimony, because it is already covered. The discussion continued on whether the Fifth Amendment applied to grand jury witnesses who were subsequently indicted.

Mr. Sand called attention to 29-10.1-31, Oath to Witness--Advise of Constitutional Rights, and read the statute referred to in the last sentence of that section.

"31-01-09. Privilege against self-incrimination--Grant of immunity.--No person shall be compelled to be a witness against himself in a criminal action. Notwithstanding any provision of law to the contrary, in any criminal proceedings before a court or grand jury or state's attorney's inquiry, if a person refuses to answer a question or produce evidence of any kind on the ground that he may

be incriminated thereby, and if the prosecuting attorney, in writing and with approval of the attorney general, requests the court to order that person to answer the question or produce the evidence, the court after notice to the witness and hearing may so order, and that person shall comply with the order. In the case of a state's attorney's inquiry such application shall be made to the district court. After complying, and if, but for this section, he would have been privileged to withhold the answer given or evidence produced by him that person shall not be prosecuted or subject to penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in accordance with the order, he gave answer or produced evidence. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing or failing to produce, evidence in accordance with the order."

Mr. Sand said that the last sentence of the statute applied after the witness could no longer incriminate himself.

The chairman asked if there was a consensus of opinion that the proposed statute should not include any requirement that a witness be advised of his constitutional rights, and it should include that a witness not be asked to sign a waiver of immunity.

Mr. Glaser said he didn't want his silence to be construed as an endorsement.

Mr. Vogel read from 38 C.J.S. Grand Juries § 1, page 983, and said that this is what he endorses.

"It is judicially noted that some states have practically abolished the grand jury, as by allowing, through constitutional provisions, all prosecutions to be begun and carried out without the intervention of a grand jury, but wisely providing that a grand jury may be called where prosecuting officers will not act. The view is asserted that, generally speaking, under modern conditions, a grand jury is an antiquated, superfluous, and well-nigh useless piece of legal machinery, there being seldom any reason for invoking the cumbersome proceeding before it where prosecuting officers are willing to act."

Mr. Vogel's vote was the only one opposed to the motion. Judge Burdick said he would be glad to review Mr. Sand's draft to see if it can be kept consistent with the motion.

Mr. Sand asked that any corrections be given to him in a form he could use for the final bill.

The committee adjourned at 5:20 p.m. and reconvened at 9:10 a.m. on Friday, December 11.

The chairman called on Judge Burdick for his draft of Rule 31.

Judge Burdick said that that rule had already been adopted, but that there were things to be added. Federal Jury Practice and Instructions, Devitt & Blackmar (West Publishing Co.), Vol. 2, § 17.15, Chapter 60, Treason, should be added to the citation. In answer to Judge Muggli's question, Judge Burdick said the State treason statutes were Sections 12-03-02 and 12-07-02.

Judge Burdick moved to reconsider Rule 31, Verdict, and to add subdivision (e) as follows:

"(e) Special Verdicts

"(1) Whenever the defendant interposes the defense of insanity and evidence thereof is given at the trial, the jury, if it finds him not guilty on that ground, shall declare that fact in their verdict.

"(2) Whenever the defendant interposes the defense that he has been formerly convicted or acquitted of the same offense or an offense necessarily included therein, or once in jeopardy, and evidence thereof is given at the trial, the jury, if it so finds, shall declare that fact in their verdict.

"(3) Whenever the defendant is charged with treason or conspiracy to commit treason and more than one overt act is charged, the jury, before returning a verdict of guilty, must return a special verdict with respect to each overt act charged."

Judge Muggli seconded the motion. Judge Burdick then read (e)(2) of the Alaska rules, which is the same as (e)(1) above.

In regard to the matter of former acquittal, Mr. Glaser read from N.D.C.C. as follows:

"29-14-19. Plea to be oral--Form of plea.--Every plea must be oral, and must be entered upon the minutes of the court, and in substantially the following form:

"1. If the defendant pleads guilty: 'The defendant pleads that he is guilty of the offense charged in this information (or indictment)';

Appendix “C”

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1451

Introduced by

Representatives Kasper, Beadle, Becker, Dosch, Monson, Nathe, Owens, Streyle, Thoreson
Senators Berry, Klein, Wardner

1 A BILL for an Act to amend and reenact sections 29-10.1-02 and 29-10.1-22 of the North
2 Dakota Century Code, relating to the requirements for calling a grand jury.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 29-10.1-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **29-10.1-02. When grand jury may be called.**

7 No grand jury may be drawn, summoned, or convened in any county within this state unless
8 the district judge thereof shall so direct by a written order filed with the clerk of the court in the
9 county wherein the said grand jury is required to attend. ~~Any~~Except as provided in subsection 2
10 of section 29-10.1-22, any judge of the district court for any county must direct, in the manner
11 herein provided, that a grand jury be drawn and summoned to attend whenever:

- 12 1. The judge deems the attendance of a grand jury necessary for the due enforcement of
13 the laws of the state;
- 14 2. The board of county commissioners of the county wherein the court is to be held, in
15 writing, requests the judge so to do; or
- 16 3. A petition in writing requesting the same is presented to the judge, signed by ~~qualified~~
17 electors of the county equal in number to at least ~~ten~~twenty-five percent of the ~~total~~
18 ~~vote cast in~~resident population of the county for the office of governor of the state at
19 ~~the last general election~~federal decennial census, but the number of signatures
20 required may not exceed five thousand.

21 **SECTION 2. AMENDMENT.** Section 29-10.1-22 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **29-10.1-22. Subjects of grand jury inquiry.**

24 1. Whenever directed by the district court, the grand jury shall inquire into:

Sixty-third
Legislative Assembly

- 1 4. a. The condition and management of the public prisons in the county; and
- 2 2. b. Willful and corrupt felonious misconduct in office of public officials of every
- 3 description in the county.
- 4 2. A grand jury called to inquire into the willful and corrupt felonious misconduct in office
- 5 of a statewide public official must be drawn, summoned, and convened in the county
- 6 in which the statewide public official resides.

HOUSE BILL NO. 1451

Introduced by

Representatives Kasper, Beadle, Becker, Dosch, Monson, Nathe, Owens, Streyle, Thoreson
Senators Berry, Klein, Wardner

1 A BILL for an Act to amend and reenact sections 29-10.1-02, 29-10.1-21, and 29-10.1-22 of the
2 North Dakota Century Code, relating to the requirements for calling and the duties of a grand
3 jury.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 29-10.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **29-10.1-02. When grand jury may be called.**

8 No grand jury may be drawn, summoned, or convened in any county within this state unless
9 the district judge thereof shall so direct by a written order filed with the clerk of the court in the
10 county wherein the said grand jury is required to attend. ~~Any~~Except as provided in subsection 2
11 of section 29-10.1-22, any judge of the district court for any county must direct, in the manner
12 herein provided, that a grand jury be drawn and summoned to attend whenever:

- 13 1. The judge deems the attendance of a grand jury necessary for the due enforcement of
14 the laws of the state;
- 15 2. The ~~board of county commissioners~~state's attorney of the county wherein the court is
16 to be held, in writing, requests the judge so to do; or
- 17 3. A petition in writing requesting the same is presented to the judge, signed by qualified
18 electors of the county equal in number to at least ~~ten~~twenty-five percent of the
19 total vote cast in ~~resident population of~~ the county for the office of governor of the state
20 at the last ~~general election~~federal decennial census, but the number of signatures
21 required may not exceed five thousand.

22 **SECTION 2. AMENDMENT.** Section 29-10.1-21 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **29-10.1-21. General duties of grand jury.**

2 ~~The grand jury shall inquire into the cause of detention of every person imprisoned in the jail~~
3 ~~of the county against whom neither a criminal complaint nor information has been filed, or who~~
4 ~~has not had or waived a preliminary examination, and into all public offenses committed or~~
5 ~~triable in the county, and if the evidence so warrants, shall present them to the court by written~~
6 ~~indictment.~~ Each grand jury impaneled within any county shall inquire into offenses against the
7 criminal laws of the state alleged to have been committed within that county. The alleged
8 offenses may be brought to the attention of the grand jury by the court or by any state's attorney
9 or the state's attorney's designee. The state's attorney or the state's attorney's designee shall
10 inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's
11 attorney or state's attorney's designee's action or recommendation. As to any offense
12 committed while the grand jury is in session, the state's attorney or prosecutor may proceed
13 with a preliminary examination or the filing of an information, as provided for by law, and
14 prosecute the charge, and, under such conditions, the grand jury is not required to inquire into
15 such offense. The presentment of an indictment against a person does not preclude the
16 prosecution of such person for the same offense upon a criminal complaint or information
17 previously filed with the court.

18 **SECTION 3. AMENDMENT.** Section 29-10.1-22 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **29-10.1-22. Subjects of grand jury inquiry.**

21 ~~1.~~ Whenever directed by the district court, the grand jury shall inquire into:

- 22 1. ~~a.~~ — The condition and management of the public prisons in the county; and
23 2. ~~b.~~ — Willful and corrupt felonious misconduct in office of public officials of every
24 description in the county.

25 ~~2. A grand jury called to inquire into the willful and corrupt felonious misconduct in office~~
26 ~~of a statewide public official must be drawn, summoned, and convened in the county~~
27 ~~in which the statewide public official resides.~~

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1451

Introduced by

Representatives Kasper, Beadle, Becker, Dosch, Monson, Nathe, Owens, Streyle, Thoreson
Senators Berry, Klein, Wardner

1 A BILL for an Act to amend and reenact sections 29-10.1-02, 29-10.1-21, and 29-10.1-22 of the
2 North Dakota Century Code, relating to the requirements for calling and the duties of a grand
3 jury.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 29-10.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **29-10.1-02. When grand jury may be called.**

8 No grand jury may be drawn, summoned, or convened in any county within this state unless
9 the district judge thereof shall so direct by a written order filed with the clerk of the court in the
10 county wherein the said grand jury is required to attend. Any judge of the district court for any
11 county must direct, in the manner herein provided, that a grand jury be drawn and summoned to
12 attend whenever:

- 13 1. The judge deems the attendance of a grand jury necessary for the due enforcement of
14 the laws of the state;
- 15 2. The ~~board of county commissioners~~ state's attorney of the county wherein the court is
16 to be held, in writing, requests the judge so to do; or
- 17 3. A petition in writing requesting the same is presented to the judge, signed by qualified
18 electors of the county equal in number to at least ~~ten~~ forty percent of the total vote cast
19 in the county for the office of governor of the state at the last general election, but the
20 number of signatures required may not exceed five thousand.

21 **SECTION 2. AMENDMENT.** Section 29-10.1-21 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **29-10.1-21. General duties of grand jury.**

2 ~~The grand jury shall inquire into the cause of detention of every person imprisoned in the jail~~
3 ~~of the county against whom neither a criminal complaint nor information has been filed, or who~~
4 ~~has not had or waived a preliminary examination, and into all public offenses committed or~~
5 ~~triable in the county, and if the evidence so warrants, shall present them to the court by written~~
6 ~~indictment.~~ Each grand jury impaneled within any county shall inquire into offenses against the
7 criminal laws of the state alleged to have been committed within that county. The alleged
8 offenses may be brought to the attention of the grand jury by the court or by any state's attorney
9 or the state's attorney's designee. The state's attorney or the state's attorney's designee shall
10 inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's
11 attorney or state's attorney's designee's action or recommendation. As to any offense
12 committed while the grand jury is in session, the state's attorney or prosecutor may proceed
13 with a preliminary examination or the filing of an information, as provided for by law, and
14 prosecute the charge, and, under such conditions, the grand jury is not required to inquire into
15 such offense. The presentment of an indictment against a person does not preclude the
16 prosecution of such person for the same offense upon a criminal complaint or information
17 previously filed with the court.

18 **SECTION 3. AMENDMENT.** Section 29-10.1-22 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **29-10.1-22. Subjects of grand jury inquiry.**

21 Whenever directed by the district court, the grand jury shall inquire into:

- 22 1. The condition and management of the public prisons in the county; and
23 2. Willful and corrupt felonious misconduct in office of public officials of every description
24 in the county.

Appendix “D”

FILED

FEB 04 2013

THE DISTRICT COURT, DUNN CO., ND

STATE OF NORTH DAKOTA
COUNTY OF DUNN

IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT

In Re: Petition for Grand Jury

File No. 13-2013-CV-12

**PETITION FOR A WRITTEN ORDER BY THE DISTRICT COURT DIRECTING
THAT A GRAND JURY BE CONVENED IN DUNN COUNTY, NORTH
DAKOTA, PURSUANT TO N.D.C.C. CHAPTER 29-10.1 -- SIGNED BY THE
REQUISITE NUMBER OF QUALIFIED ELECTORS OF DUNN COUNTY,
NORTH DAKOTA**

WHEREAS, the North Dakota Constitution, Article I, entitled "Declaration of Rights" provides, in pertinent part, that;

Section 2. *All political power is inherent in the people.* Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

Section 9. All courts shall be *open*, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered *without* sale, denial or *delay*. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

WHEREAS, N.D.C.C. § 29-10.1-02(3) provides, in pertinent part, that;

Any judge of the district court for any county **must** direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

3. A petition in writing requesting the same is presented to the judge, signed by qualified electors of the county equal in number to at least ten percent of the total vote cast in the county for the office of governor of the state at the last general election¹; and

¹ In a decision of the New Mexico Court of Appeals in *In Re Rescue Ecoversity Petition*, 270 P.3d 104, 107 (N.M. App. November 15, 2011), decided in a jurisdiction which has a similar grand jury by petition law as N.D.C.C. Chapter 29-10.1 in (one of only five states which do) – the New Mexico Appellate Court emphasized that addresses are not required on these kinds of petitions.

WHEREAS, under N.D.C.C. § 29-10.1-21, entitled, "General duties of grand jury", it is provided, in pertinent part, that:

The grand jury shall inquire . . . into all public offenses committed or triable in the county, and if the evidence so warrants, shall present them to the court by written indictment; and

WHEREAS, under N.D.C.C. § 29-10.1-22(2), entitled "Subjects of grand jury inquiry", it is provided in pertinent part, that: Whenever directed by the district court, the grand jury shall inquire into . . .

2. Willful and corrupt misconduct in office of public officials of every description in the county; and

WHEREAS, N.D.C.C. § 12.1-12-01, entitled "Bribery", provides that:

1. A person is guilty of bribery, a class C felony, if he knowingly offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, a thing of value as consideration for:
 - a) The recipient's official action as a public servant; or
 - b) The recipient's violation of a known legal duty as a public servant.
2. It is no defense to a prosecution under this section that a recipient was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.
3. *A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered, given, or agreed to be given by, or solicited, accepted, or agreed to be accepted from, a person having an interest in an imminent or pending: a. examination, investigation, arrest, or judicial or administrative proceeding; or b. bid, contract, claim, or application, and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his known legal duty as a public servant.* (bold, italicized, underlined emphasis added).

WHEREAS, Rule 18 of the North Dakota Rules of Criminal Procedure provides that, "(a) criminal trial must be in the county where the offense was committed, unless a statute or these rules permit otherwise"

WHEREAS, N.D.C.C. § 29-03-04, entitled "LOCAL JURISDICTION OF PUBLIC OFFENSES", provides that:

29-03-04. Part committed in different counties - Jurisdiction in either. When a crime or public offense is committed in part in one county and in part in another, or when the acts *or effects thereof constituting, or requisite to the consummation of, the offense occur in two or more counties, the jurisdiction is in either or any of said counties.*

The following qualified electors of Dunn County -- *acting pursuant to the provisions of N.D.C.C. Chapter 29-10.1* -- hereby petition the district court in Dunn County, Southwest Judicial District, to direct by written order that a grand jury be convened in Dunn County, as required under N.D.C.C. § 29-10.1-02(3), upon the submission of the instant petition, which has been signed by qualified electors of the county equal in number to at least ten percent of the total vote cast in the county for the office of governor of the state at the last general election, with this grand jury to be directed by the district court's written order to inquire into willful and corrupt misconduct in office committed with respect to property situated in Dunn County -- specifically 30,883.94-acre "mega unit" in the so-called "Corral Creek-Bakken Unit" established by the North Dakota Industrial Commission on December 20, 2011 -- with said willful and corrupt misconduct in office having been committed by the following person, among others:

Jack Dalrymple, Governor of North Dakota

The following facts present a *prima facie* case that North Dakota Jack Dalrymple is culpable under North Dakota's Class C Felony Bribery statute, specifically N.D.C.C. § 12.1-12.01(3):

North Dakota Governor Jack Dalrymple: Beginning January 1, 2011, and extending through at least May 23, 2012, North Dakota Jack Dalrymple accepted a total of \$81,600.00 in political campaign money from persons who had an interest in the imminent and pending administrative case over which Governor Dalrymple literally sat as an administrative judge in his capacity as Chair of the North Dakota Industrial Commission, the most powerful administrative agency in North Dakota government, and the entity that regulates the oil and gas industry in North Dakota. *See, the attached "Timeline" chart depicting "Corral Creek-Bakken Unit" regulatory actions by the Industrial Commission and political campaign money accepted by Governor Jack Dalrymple through his election campaign, attached hereto and incorporated herein as Exhibit 1.*

Specifically, on December 12, 2011, Governor Jack Dalrymple accepted \$20,000.00 in political campaign money from Harold Hamm, president and owner more than sixty-eight percent (68%) of shares of Continental Resources, Inc., with Governor Dalrymple also having previously accepted other campaign money from Continental Resources executive Mike Cantrell.

Eight days later, on December 20, 2011, Governor Jack Dalrymple, as Chair of the three-member North Dakota Industrial Commission, approved the massive 30,833.94-acre oil and gas exploration and production "mega unit" -- part of which is situated within Dunn County -- and covers a large portion of the Bakken Oil Pool -- in which Hamm's company Continental Resources, Inc., held and continues to hold oil and gas exploration and development leases. In addition, the vast majority of all tracts of land within this "mega unit" are leased by oil and gas exploration companies affiliated with individuals and entities which also contributed political campaign money to Governor Jack Dalrymple through his campaign committee. *See, the attached map depicting the leased tracts within the "Corral Creek-Bakken Unit" as leased by oil and gas companies related to political campaign money contributors to Governor Dalrymple's campaign committee, attached hereto and incorporated herein as Exhibit 2.*

By Governor Jack Dalrymple's acceptance of political campaign money from persons who had and continuing to have financial interests in this imminent and pending administrative proceeding, and by knowing that his official action as Chair of the North Dakota Industrial Commission could affect those persons' interests in that administrative proceeding relating to the "Corral Creek-Bakken Unit", a prima facie case exists under N.D.C.C. § 12.1-12-01(3) that North Dakota's Class C Felony Bribery statute has been violated by Governor Dalrymple.

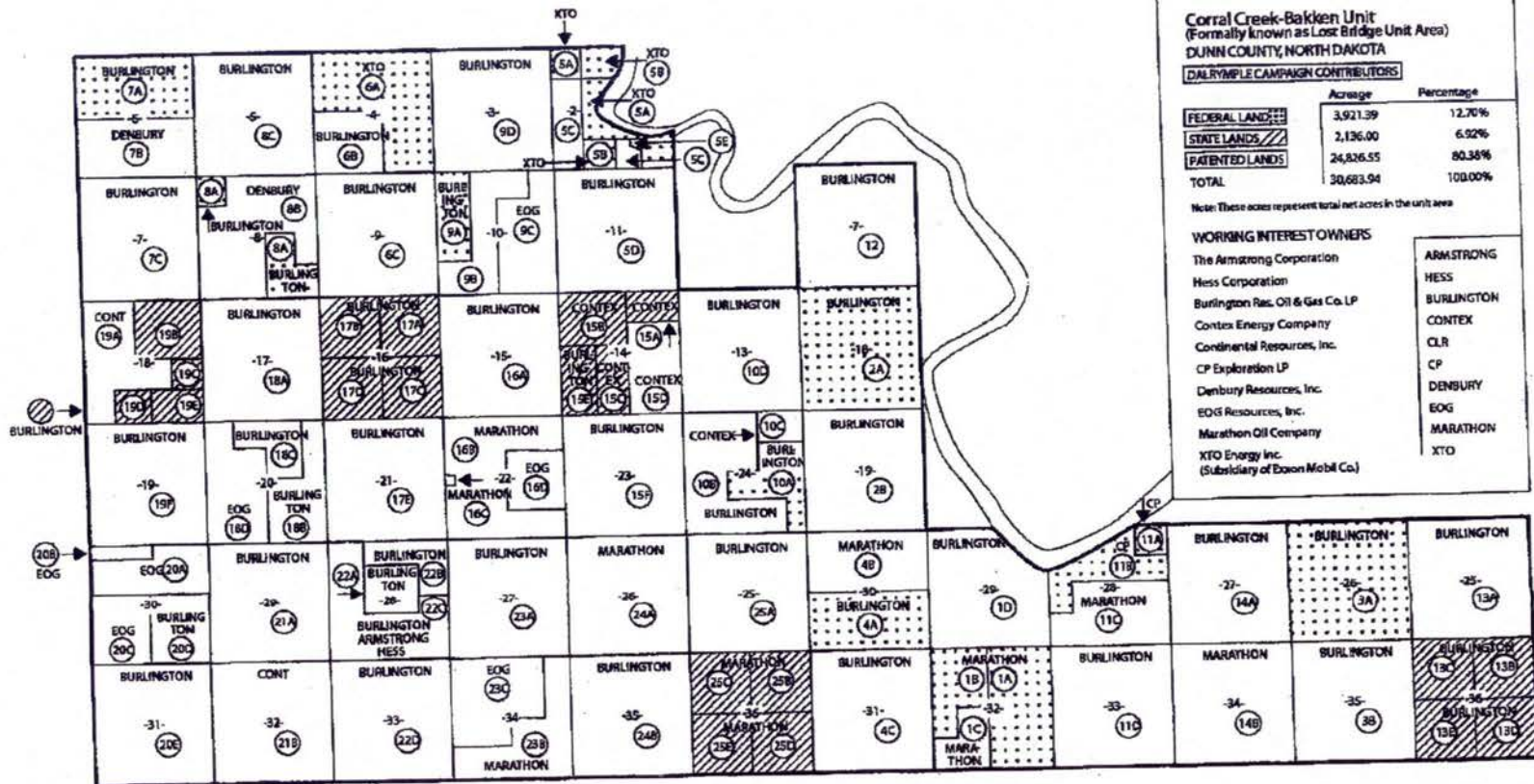
In addition, because of the establishment by the North Dakota Industrial Commission of the 30,883.94-acre "Corral Creek-Bakken Unit", and existing North Dakota law relating to the Oil Extraction Tax-exempt status of so-called "stripper wells" -- whereby the presence of a single approved "stripper well" could immunize the entire 30,883.94-acre "mega unit" from contributing Oil Extraction Tax revenue to the State of North Dakota -- Governor Jack Dalrymple, immediately caused a potential loss of dozens of millions of dollars in Oil Extraction Tax revenue for the State of North Dakota, as well as the nullification of contingent lease term provisions in the many oil and gas lease contracts between mineral interest owners (MIO) -- both private individuals and state owned whose property lies within the contours of this "mega unit".

Furthermore, evidence exists that the establishment of this "Corral Creek-Bakken Unit" -- *which was directly created by Governor Dalrymple's official adjudicative action as Chair of the three-member of the North Industrial Commission* -- has severely reduced royalty payments for private mineral interest owners of tracts located within the huge 30,883.94-acre area of this "mega unit."

EXHIBIT 1

Corral Creek-Bakken Unit Timeline		DALRYMPLE CAMPAIGN CONTRIBUTORS	
UNIT ACTIONS			
	01/01/2011	Mike Cantrell (Continental)	\$5,000.00
Petition to Industrial Commission for unitization with UnitSource packet to working interest owners notifying of August 4 O&G hearing	06/20/2011		
	07/21/2011	Mike Armstrong	\$5,000.00
Notice of continuance from August 4 to August 25	08/04/2011		
O&G hearing on unitization petition	08/25/2011		
O&G notice of 60 day continuance	09/28/2011		
Attorney for industry provides follow-up information from August 25 hearing	10/12/2011		
	10/27/2011	Conoco Phillips Spirit PAC	\$1,000.00
Attorney for industry complains that O&G is informally taking information from opponents	11/16/2011		
O&G notice of 45 day continuance	12/05/2011		
	12/05/2011	Exxon Mobil Corporation PAC	\$600.00
	12/12/2011	Harold Hamm (Continental)	\$20,000.00
Affidavit of mailing 12/05 notice of 45 day continuance	12/14/2011		
	12/17/2011	Marathon Oil-MEPAC	\$5,000.00
Industrial Commission meets, approves unitization	12/20/2011		
	12/21/2011	Lawrence Bender (Cont. Atty)	\$5,000.00
	12/27/2011	Denbury Res. Inc. Pol. Comm.	\$5,000.00
		Total 2011:	\$46,600.00
	05/17/2012	Mike Armstrong	\$4,000.00
	05/21/2012	John Hess	\$25,000.00
	06/22/2012	Marathon Oil Co. Employees PAC	\$5,000.00
	06/23/2012	Denbury Res. Inc. Pol. Comm.	\$1,000.00
Industrial Commission meets, approves expansion of the Corral Creek-Bakken Unit	07/13/2012		
		Total 2012:	\$35,000.00
		Total Political Contributions:	\$81,600.00

EXHIBIT 2



THIS PETITION FOR A WRITTEN ORDER BY THE DISTRICT COURT
DIRECTING THAT A GRAND JURY BE CONVENED IN DUNN COUNTY
PUSUANT TO N.D.C.C. § 29-10.1-02(3) IS HEREBY SIGNED BY THE
FOLLOWING QUALIFIED ELECTORS OF DUNN COUNTY:

	Name	Address (County/City)	Zip Code	Date	Signature
1.	Alan Pennington	Killdeer	5864	12-31-12	[Signature]
2.	Ted Kupper	10439 4th St. NW Killdeer, ND		12-31-12	Ted Kupper
3.	Shasta Patterson	206 1st St E Dunn Center, N.D.	58640		Shasta Patterson
4.	James D. Schreder	252 - 1st Ave NW Killdeer, ND	58640		
5.	Candice Keemann	10680 Hwy 22N Killdeer, ND	58640		
6.	Dorey J. Demerut	1875 113th Ave. SW Dickinson, N.D.	58601		
7.	Rhonda Semmel	1875 113th Ave. SW Dickinson, ND	58601		
8.	Lee A. Gosling	178 Main St W Killdeer, ND	58640	12/13	[Signature]
9.	George Spiehler	117 S. Main Dickinson ND	58601		[Signature]
10.	Patricia Drenth	8465 20th Str SW Richardson, ND	58652		
11.	Clarence J. Iton	P.O. Box 374 Killdeer ND	58640		
12.	SCOTT BAILEY	415 1st SW Dunn Center ND	58626		
13.	Charles Thomas Lannert	Blacks P.O. 788 Killdeer ND	58640		
14.	Cody Pavlicek	3and 9nd Ave NE Dunn Center ND	58626		
15.	Dan J. Dolechek	100 1st ST NW Killdeer, ND	58640		
16.	David Nodland	1025 9th Ave SW Dunn Center ND	58626		[Signature]
17.	Donald H. Wenzel	Killdeer 224 Houdon Drive			
18.	David Hest Manning	ND 10491 12th ST SW			
19.	Robert P. Galt	KILLDEER ND 10550 7th ST SW			
20.	Cecilia Hinchman	Manning ND 537 Lilly Ave			
21.	Nancy Jensen	607 Lilly Ave Manning ND	58642		
22.	Niel Berg	9549 Hwy 200	58626	1-13-13	Niel Berg
23.	[Signature]	349 Manning Ave	58642	1-7-13	[Signature]

**THIS PETITION FOR A WRITTEN ORDER BY THE DISTRICT COURT
DIRECTING THAT A GRAND JURY BE CONVENED IN DUNN COUNTY
PUSUANT TO N.D.C.C. § 29-10.1-02(3) IS HEREBY SIGNED BY THE
FOLLOWING QUALIFIED ELECTORS OF DUNN COUNTY:**

Name	Address (County/City)	Zip Code	Date	Signature
1. <u>Lynn Bullinger</u>	<u>11426 19th St SW Dickinson</u>	<u>58601</u>	<u>11/1/13</u>	<u>Lynn Bullinger</u>
2. <u>Ernie Bullinger</u>	<u>11426 19th St SW Dickinson</u>	<u>58601</u>	<u>1/1/13</u>	<u>Ernie Bullinger</u>
3. <u>Harlan R. Bullinger</u>	<u>11379 23rd St SW Dickinson ND</u>	<u>58601</u>	<u>1/1/13</u>	<u>Harlan R. Bullinger</u>
4. <u>Charles K. Kadmas</u>	<u>11475 23rd St SW Dickinson N.D.</u>	<u>58601</u>	<u>1/1/13</u>	<u>Charles K. Kadmas</u>
5. <u>Jason Kadmas</u>	<u>11475 23rd St SW Dickinson ND</u>	<u>58601</u>	<u>1/1/13</u>	<u>Jason Kadmas</u>
6. <u>Susan Kadmas</u>	<u>11475 23rd St SW Dickinson, ND</u>	<u>58601</u>	<u>1-1-13</u>	<u>Susan Kadmas</u>
7. <u>Gregory R. Bezdieck</u>	<u>10677 23rd St. W. Manning N.D.</u>	<u>58642</u>	<u>1-3-13</u>	<u>Gregory R. Bezdieck</u>
8. <u>Robert J. Bezdieck</u>	<u>10677 23rd St. S.W. Manning</u>	<u>58642</u>	<u>1-3-13</u>	<u>Robert J. Bezdieck</u>
9. <u>Dean J. Jablonsky</u>	<u>2648 Highway 22, Dickinson, N. Dak.</u>	<u>58601</u>	<u>1-4-13</u>	<u>Dean Jablonsky</u>
10. <u>Mrs. Donna Jablonsky</u>	<u>11460 28th St SW Dickinson, ND</u>	<u>58601</u>	<u>1-8-13</u>	<u>DONNA JABLONSKY</u>
11. _____	_____	_____	_____	_____
12. _____	_____	_____	_____	_____
13. _____	_____	_____	_____	_____
14. _____	_____	_____	_____	_____
15. _____	_____	_____	_____	_____
16. _____	_____	_____	_____	_____
17. _____	_____	_____	_____	_____
18. _____	_____	_____	_____	_____
19. _____	_____	_____	_____	_____
20. _____	_____	_____	_____	_____
21. _____	_____	_____	_____	_____
22. _____	_____	_____	_____	_____
23. _____	_____	_____	_____	_____

**THIS PETITION FOR A WRITTEN ORDER BY THE DISTRICT COURT
DIRECTING THAT A GRAND JURY BE CONVENED IN DUNN COUNTY
PUSUANT TO N.D.C.C. § 29-10.1-02(3) IS HEREBY SIGNED BY THE
FOLLOWING QUALIFIED ELECTORS OF DUNN COUNTY:**

Name	Address (County/City)	Zip Code	Date	Signature
1. <u>Anthony W. Wetsch</u>	<u>275 Main St W</u>	<u>58640</u>	<u>12-31-12</u>	<u>Anthony W. Wetsch</u>
2. <u>Joe Kim</u>	<u>409 Highway 22 N</u>	<u>58640</u>	<u>12/31/12</u>	<u>Joe Reems</u>
3. <u>Robert H Kleeman</u>	<u>10684 Hwy 22 N</u>	<u>58640</u>	<u>12/13/12</u>	<u>Robert H Kleeman</u>
4. <u>Scott Kleemann</u>	<u>10684 Hwy 22 N</u>	<u>Killdeer ND 58640</u>		<u>Scott Kleemann</u>
5. <u>Daryl Kling</u>	<u>11010 3rd St NW</u>	<u>Killdeer ND 58640</u>		<u>Daryl Kling</u>
6. <u>Colleen Murphy</u>	<u>11010 3rd St. NW</u>	<u>Killdeer, ND 58640</u>	<u>1-4-13</u>	<u>Colleen Murphy</u>
7. <u>Maddison Voigt</u>	<u>11010 3rd St. NW</u>	<u>Killdeer, ND 58640</u>	<u>1-4-13</u>	<u>Maddison Voigt</u>
8. <u>River Voigt</u>	<u>11010 3rd St. NW</u>	<u>Killdeer, ND 58640</u>	<u>1-4-13</u>	<u>River Voigt</u>
9. <u>Bernel Appledorn</u>	<u>1511 98th Ave SW</u>	<u>Gladstone ND</u>		<u>Bernel Appledorn</u>
10. <u>Kevin Buchner</u>	<u>376 98th Ave NW</u>	<u>Dunn Center ND 58626</u>		<u>Kevin Buchner</u>
11. <u>Amos Buchner</u>	<u>376 98th Ave NW</u>	<u>Dunn Center ND 58626</u>		<u>Amos Buchner</u>
12. <u>Stavon Plotan</u>	<u>212 107th Ave NW</u>	<u>Killdeer ND 58640</u>		<u>Stavon Plotan</u>
13. <u>Gordon Beck</u>	<u>615 Hwy 22</u>	<u>Killdeer ND 58640</u>	<u>1-7-2013</u>	<u>Gordon Beck</u>
14. <u>Delroy Schwalbe</u>	<u>810 104 Ave NW</u>	<u>Killdeer ND 58640</u>		<u>Delroy Schwalbe</u>
15. <u>Brien Dennis</u>	<u>879 111th Ave NW</u>	<u>Killdeer ND</u>		<u>Brien Dennis</u>
16. <u>Brad Dennis</u>	<u>879 111th Ave NW</u>	<u>Killdeer, ND</u>		<u>Brad Dennis</u>
17.				
18.				
19.				
20.				
21.				
22.				
23.				

**THIS PETITION FOR A WRITTEN ORDER BY THE DISTRICT COURT
DIRECTING THAT A GRAND JURY BE CONVENED IN DUNN COUNTY
PUSUANT TO N.D.C.C. § 29-10.1-02(3) IS HEREBY SIGNED BY THE
FOLLOWING QUALIFIED ELECTORS OF DUNN COUNTY:**

Name	Address (County/City)	Zip Code	Date	Signature
1. Shelley Flaget	Box 126 Halliday (Dunn)	58636	12/27/12	Shelley Flaget
2. William Flaget	Box 126 Halliday (Dunn)	58636	12/27/12	William Flaget
3. Fred Lorenz	1051 81st Ave SW Dodge (Dunn)	58625	12/29/12	Fred Lorenz
4. Kyle Lorenz	1046 81st Ave SW Dodge (Dunn)	58625	12/29/12	Kyle Lorenz
5. ERVIN LORENZ	1041-81st Ave S.W. Dodge (Dunn)	58625	12/29/12	Ervin Lorenz
6. MABEL LORENZ	1041-81st Ave S.W. Dodge (Dunn)	58625	12/29/12	Mabel Lorenz
7. Clark Neurohr	8340 8th St SW Dodge (Dunn)	58625	1-2-13	Clark Neurohr
8. Elaine Neurohr	8340 8th St SW Dodge (Dunn)	58625	1-2-13	Elaine Neurohr
9. Adrian Neurohr	8340 8th St SW Dodge (Dunn)	58625	1-2-13	Adrian Neurohr
10. Chris Flaget	8208 3rd St SW (Dunn) Halliday	58636	1-2-13	Chris Flaget
11. Brady Flaget	133 1st Ave North (Dunn) Halliday	58636	1-2-13	Brady Flaget
12. Tracy Flaget	8208 3rd St SW (Dunn) Halliday	58636	1-2-13	Tracy Flaget
13. Casey Fredericks	61 92nd Ave NW (Dunn) Halliday	58636	1-2-13	Casey Fredericks
14. Harold Voigt	401 92nd Ave NW (Dunn) Halliday	58636	1-2-13	Harold Voigt
15. Patricia Voigt	401 92nd Ave NW (Dunn) Halliday	58636	1-2-13	Patricia Voigt
16. Andrew A. Voigt	403 92nd Ave NW (Dunn) Halliday	58636	1-2-13	Andrew A. Voigt
17. Mary A. Voigt	403 92nd Ave NW (Dunn) Halliday	58636	1-2-13	Mary A. Voigt
18. Dean Knutson	230 95th Ave NW (Dunn) Dunn Center ND	58626	1-2-13	Dean Knutson
19. LARK KNUDSON	179 96th Ave SW Dunn Dunn Center ND	58626	1-2-13	Lark Knudsen
20. Janene Knudsen	179 96th Ave SW Dunn Dunn Center ND	58626	1-2-13	Janene Knudsen
21. ZANE VOIGT	3 88th Ave NW HALLIDAY ND	58636	1-3-13	Zane Voigt
22. Alice M. Voigt	3 88th Ave NW Halliday ND	58636	1-3-13	Alice M. Voigt
23.				

Appendix “E”

POLITICAL CAMPAIGN MONEY FROM "BIG OIL,"
GOVERNOR JACK DALRYMPLE, AND NORTH DAKOTA'S
CLASS C FELONY BRIBERY STATUTE

By David C. Thompson and Erik A. Escarraman

Timeline and map are provided at the end of this document.

**POLITICAL CAMPAIGN MONEY FROM "BIG
OIL", GOVERNOR JACK DALRYMPLE, AND
NORTH DAKOTA'S CLASS C FELONY BRIBERY
STATUTE**

DAVID C. THOMPSON and ERIK A. ESCARRAMÁN¹

- A. **The \$46,600.00 in political contribution money taken by Dalrymple for Governor" -- and Dalrymple's decision to approve as Chairman of the North Dakota Industrial Commission -- a massive 30,883.94-acre oil and gas development "mega unit" in which the money contributors had working interests**

Less than two weeks before Christmas last year, Harold Hamm -- the Oklahoma oil man whom Bloomberg Businessweek Magazine called "The Man Who Bought North Dakota"² -- gave twenty thousand dollars (\$20,000) to Governor Jack Dalrymple's election campaign³ -- at the very same time that Hamm's company Continental Resources Inc.⁴ had an interest in a pending case which awaited an imminent decision by Dalrymple's Industrial Commission (NDIC) -- the most powerful administrative agency in North Dakota state government.⁵

¹ David C. Thompson, University of North Dakota School of Law (J.D. 1982), and Erik Escarramán, University of North Dakota School of Law (J.D. 2012).

² See, the Bloomberg Businessweek article, "The Man Who Bought North Dakota," By Bryan Gruley, on January 19, 2012, <http://www.businessweek.com/magazine/the-man-who-bought-north-dakota-01192012.html>.

³ See, 2011, North Dakota Secretary of State Online Services - Election Management System Disclosure Reports, indicating a \$20,000 contribution made on December 12, 2011, to Dalrymple for Governor by Harold Hamm, the CEO and majority shareholder of Continental Resources Inc. <https://apps.nd.gov/sec/emspub/gp/cfdisclosureptsearchbycontrib.htm?year=2011&search.x=99&zipCode=73702&result=10&cmd=byContribZip&type=byContrib&search.x=0&search.y=0>

⁴ Harold G. Hamm is the Chief Executive Officer (CEO) and Chairman of the Board of the Oklahoma corporation Continental Resources, Inc. According a to a "Schedule 13D" filing on August 13, 2012 with the United States Securities and Exchange Commission, Harold G. Hamm is the beneficial owner of 126,196,166 voting shares of stock in this corporation, representing 68.2 % of the aggregate amount of such company shares.

⁵ The Legislative Assembly created the Industrial Commission of North Dakota (the "Commission") in 1919 to conduct and manage, on behalf of the State, certain utilities, industries, enterprises and business

A mere eight (8) days after Harold Hamm gave this twenty thousand dollar (\$20,000.00) contribution to Governor Dalrymple's election campaign -- Dalrymple sat down as the Chairman of the three-member Industrial Commission and approved a massive (30,883.94-acre) oil and natural gas exploration and production "mega unit" -- possibly unprecedented in terms of its size in North Dakota history -- covering a portion of the Bakken Oil Pool in which Hamm's company Continental Resources, Inc. held oil and gas exploration and development leases.⁶

projects established by state law. See, e.g., the historical description of the Industrial Commission, as narrated in North Dakota Administrative Code § 43-01-01-01(1). The 1953 North Dakota Legislative Assembly passed oil and gas conservation legislation, codified within N.D.C.C. Chapter 38-08, which gave the Industrial Commission jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of the legislation. *Id.* The 1967 Legislative Assembly passed legislation, codified at N.D.C.C. Chapter 38-12, for the regulation, development, and production of subsurface minerals. *Id.* This 1967 legislation gave the Industrial Commission jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of that legislation as well. *Id.* The members of the Industrial Commission are the Governor, the Attorney General and the Agriculture Commissioner of the State. North Dakota Administrative Code § 43-01-01-01(2). The Governor is the Chairman, and a quorum for the transaction of business consists of the Governor and only one additional member. North Dakota Administrative Code § 43-01-01-01(3). The Attorney General serves as attorney for the Industrial Commission. *Id.* Governor Dalrymple's term expires December 14, 2012. Attorney General Wayne Stenehjem has been elected to office for a term expiring December 31, 2014. Commissioner Goehring has been elected to office for a term expiring December 31, 2014. See, e.g., <http://www.nd.gov/ndic/ic-about.htm>.

It is important to note that the role that Governor Dalrymple occupies as the Chairman of the North Dakota Industrial Commission is essentially that of a judge -- in which the Governor renders decisions in administrative cases which pend before him and the other two Industrial Commission members for adjudication.

In this sense, the Class C felony crime of "Bribery" defined in N.D.C.C. § 12.1-12-01 -- which will be discussed in detail hereafter -- treats those, such as Governor Dalrymple, who serve as administrative case decision-makers, in the same manner as the statute treats judges who are presiding over civil and criminal cases in the courts of this state. In this respect, the taking of political campaign contribution money by Governor Dalrymple in his capacity as an administrative case decision-maker is considered -- within the context of this Bribery criminal statute -- in a far more serious vein than a general campaign contribution to the "Dalrymple for Governor Campaign" would be treated -- where no "pending" or "imminent" administrative proceeding implicating an "interest" of the money-giver would be involved. In this respect the North Dakota "Bribery" statute treats the payment of political contribution money to a member of the Industrial Commission no differently than a situation in which someone would give a district judge money while that judge was presiding over a case in which the payer of the money has an interest.

⁶ **The December 20, 2011, decision of the Industrial Commission to approve this 30,883.94-acre "Corral Creek-Bakken Unit" -- which had been known only fifteen days previously in Industrial Commission filings as the "Lost Bridge-Bakken Unit" -- was made after a strange sequence of events that began on December 5, 2011.**

Harold Hamm's \$20,000.00 contribution on December 12, 2011, to Governor Dalrymple's election campaign joined with another \$26,600.00 in contributions made to the Dalrymple Campaign in 2011 from five other individuals and corporate entities who (which) which had oil lease interests this "mega unit"⁷ – first named the "Lost Bridge (Bakken Pool) Unit Area" – and then later renamed the "Corral Creek-Bakken Pool."

In an "Order of The (Industrial) Commission" signed on **December 5, 2011**, Commission Director Lynn D. Helms narrated the procedural history of this "mega unit," and Helms then noted that at a prior hearing (August 4, 2011), "(c)ounsel for two mineral owners within the proposed Lost Bridge-Bakken Unit (Unit), requested the hearing be continued to a date in November 2011. The hearing officer continued the case to August 25, 2011." (emphasis added). See, "Order of the (Industrial) Commission," "Order No. 18128," entered into Case No. 15332 on December 5, 2011.

In this **December 5, 2011**, Order, Helms stated that, "(5) The issues in this case are of such complexity that additional time is necessary for the Commission to render a decision, therefore, this matter should be continued." This Order which was entered by Oil and Gas Director Lynn D. Helms, on behalf of the (Industrial) Commission" this order **December 5, 2011**, concluded by stating, "(1) This matter is hereby continued for forty-five (45) days or until further order of the (Industrial) Commission." (emphasis added). See, North Dakota Industrial Commission Order No. 18128, entered in Case No. 15332.

Inexplicably, this Order No. 18128 -- although dated December 5, 2011, -- was not mailed to the parties in interest until a full nine days later, on December 14, 2011 -- two days after Oklahoma oil man Harold Hamm gave the sum of \$20,000.00 to Governor Jack Dalrymple's election campaign.

For reasons which no one has ever explained, and without any order from the Industrial Commission to supersede or vacate the Commission's Order dated December 5, 2011 -- a mere six (6) days after the December 14, 2011, mailing of the December 5, 2011, Order No. 18128, which had announced a forty-five (45) day continuance of the "mega unit" hearing by the Commission -- incredibly, the North Dakota Industrial Commission sat down on December 20, 2011, to approve this 30,883.93-acre "mega unit" in which Harold Hamm's Continental Resources possessed a "working interest" along with several other oil companies.

After the Industrial Commission gave its sudden approval to the "Corral Creek-Bakken Unit" on **December 20, 2011** -- on the following day **December 21, 2011**, Bismarck attorney Lawrence Bender -- the attorney who represented Harold Hamm's Continental Resources Inc. -- gave \$5,000.00 to Governor Jack Dalrymple's election campaign.

⁷ These additional contributors to "Dalrymple for Governor" are the following: Mike and Linda Cantrell, employees of **Continental Resources, Inc.** -- which owns leases in the "mega unit" -- contributed \$5,000.00 on January 1, 2011; Mike Armstrong, **Armstrong Corp.**, contributed \$5,000 on July 21, 2011; **Conoco Phillips Spirit PAC**, the political action committee of the parent company of **Burlington Resources Oil & Gas Company LP** -- a working interest owner in the Corral Creek-Bakken Unit. Burlington Resources Oil & Gas Company LP operates as a subsidiary of **Conoco Phillips** contributed \$1,000.00 on October 27, 2011 -- See, e.g. <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=4251646>; **Exxon Mobil Corporation PAC** -- the political action committee of the parent company of **XTO Energy, Inc.**, which had merged with Exxon Mobil Corporation on June 25, 2010, contributed \$600.00 on December 5, 2011 (fifteen days before the above referenced December 20, 2011 Industrial Commission decision) -- See, e.g. <http://www.upstreamonline.com/live/article218921.ece>; **Marathon Oil-MEPAC**, the political action committee of **Marathon Oil Company**, a working interest owner in the Corral Creek-Bakken Unit, which contributed \$5,000.00 on December 17, 2011 (a contribution which was made only three days before the Industrial Commission's above-referenced December 20, 2011 decision to approve the 30,883.94 "mega unit"); Lawrence Bender, attorney for Continental Resources, contributed \$5,000.00 on December 21,

As will be explained hereafter, this approval on December 20, 2011 by the North Dakota Industrial Commission of the 30,883.94-acre Corral Creek-Bakken Pool "mega unit" immediately brought with it the potential for the loss of millions of dollars in lost Oil Extraction Tax revenue for the State of North Dakota -- as well as the actual *nullification* of contingent lease term provisions in the many oil and gas lease contracts between the mineral interest owners (MIO) -- whose properties lie within the contours of this "mega unit" -- and oil and natural gas production companies such as Harold Hamm's Continental Resources Inc.⁸

The abrogation of lease term duration and the effect that the establishment of this "mega unit" has in holding the MIO leases by production within the unit may well be particularly disadvantageous for the North Dakota Board of School Lands, which enters into lease agreements with oil producers⁹ -- a particularly ironic situation, given the fact

2011; **Denbury Resources Inc Political Committee** -- political action committees of **Denbury Resources Inc.** -- and a working interest owner in the "Corral Creek-Bakken Unit", contributed \$5,000.00 on December 27, 2011. Documentation of these contributions can be accessed from the North Dakota Secretary of State website at the following link:

<https://apps.nd.gov/sec/emspub/gp/cfdisclosuresearchbyrpt.htm?cmd=DisplayReport&type=byRpt&filerSeqNo=4149&lastName=Dalrymple&filingDate=01/31/2012&reportNo=1&year=2011&filerType=SCF&reportType=Y&result=All&searchReportType=Y&offset=0&offset2=0>

⁸ Once the Industrial Commission has approved a "unitization," "(p)roperty rights, leases, contracts, and all other rights and obligations must be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of . . . any valid and applicable plan of unitization or order or the [Industrial Commission] . . ." N.D.C.C. § 38-08-09.8.

In fact, once a unit is established by the North Dakota Industrial Commission, the unit becomes its own legal entity, being "a body politic and corporate, capable of suing, being sued, and contracting as such in its own name." N.D.C.C. § 38-08-09.7.

⁹ See the demarcation of twenty (20) separate tracts of North Dakota State Lands which lie within this "Corral Creek-Bakken" "mega unit" -- as illustrated in Exhibit "A" of the Burlington Resources Oil & Gas Company, LP petition for unitization to the North Dakota Oil & Division, dated June 13, 2011.

Significantly, the potential for serious oil production royalty revenue deficits for public School Trust Funds -- administered by the North Dakota Department of Trust Lands Surface Management Division -- ***was described in an e-mail dated October 20, 2011***, from Drew A. Combs, Director of Minerals Management Division of the North Dakota Department of Trust Lands, on which e-mail Mike Brand, Director of that department's Surface Management Division, was copied -- ***to Bruce E. Hicks, the Assistant Director of the Industrial Commission's Oil and Gas Division [Lynn Helms' assistant]***, wherein Mr. Combs complained to Mr. Hicks as follows,

that Governor Dalrymple sits as one of the six members of the Board of University and School Lands -- the body which administers these state lands in trust for the benefit of North Dakota's public schools and Universities.¹⁰

Anecdotal evidence already exists that the establishment of the "Corral Creek-Bakken Unit" on December 20, 2011 -- which became effective as of January 1, 2012 -- has severely reduced royalty payments for private mineral interest owners of tracts located within the huge 30,883.94-acre area of this "mega unit." Similar steep declines in

Bruce,

Mike Brand and myself have some questions about this Lost Bridge Federal unit that Conoco is proposing. Before we get all up in arms about it, we have a few questions of what the proposal is and if it is going to benefit us or not. One of the things that has got us so upset is that they are playing this off as a "done deal", when we are discussing pad locations and the like. We are just trying to figure out if we should support or protest at the next hearing and if we do decide to protest, we want our concerns to be valid, other than saying, "we don't like it".

I know you and Lynn are busy, so If you could forward me a number of someone in your shop that is familiar with this, I would appreciate the help.

Thanks,

Drew A. Combs (*emphasis added*)

However, despite these potentially serious and legitimate concerns voiced by the top officials of the Minerals Management Division of North Dakota Department of Trust Lands -- the above-referenced Bruce E. Hicks -- the second-ranking official in the Industrial Commission's Oil and Gas Division -- responded to Mr. Combs' e-mail of October 20, 2011, with a response e-mail several hours later on the same day, stating tersely that, "(t)he record of this case in now closed . . . (a)nother hearing is not being held and the Commission plans to bring an order to the IC [Industrial Commission] meeting on Nov 21 (sic) to dispose of this case." (*emphasis added*) .

This exchange apparently had the effect of terminating any further exchange between officials of the Minerals Management Division of the North Dakota Department of Trust Lands -- and officials of the North Dakota Industrial Commission's Oil and Gas Division, as no further communications between these two agencies of North Dakota state government appear in the record of this case.

As stated above, on December 20, 2011, the North Dakota Industrial Commission, chaired by Governor Jack Dalrymple, approved the 30,883.94-acre "Corral Creek-Bakken Unit" -- which was renamed from its former name referenced in the Drew A. Combs' e-mail, the "Lost Bridge" Unit.

¹⁰ See, generally, N.D.C.C. Chapter 15-01.

royalty payments to North Dakota Board of School Lands for oil development on state school lands have likely occurred as well since January 1, 2012.

- B. The Class C Felony crime of "Bribery" as defined N.D.C.C. § 12.1-12-01 -- and this criminal statute's application to the political campaign money given to "Dalrymple for Governor" - - and Governor Jack Dalrymple's decision as the Chairman of the North Dakota Industrial Commission to judge and decide the outcome of the administrative proceedings to establish an unprecedented oil and gas development "mega unit."**

Significantly in this context, almost four decades ago, back in the year 1973, a Class C Felony criminal statute entitled "Bribery" was enacted into law, with this statute having been codified as N.D.C.C. § 12.1-12-01. Specifically, N.D.C.C. § 12.1-12-01(3) provides as follows:

3. *A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered, given, or agreed to be given by, or solicited, accepted, or agreed to be accepted from, a person having an interest in an imminent or pending: a. examination, investigation, arrest, or judicial or administrative proceeding; or b. bid, contract, claim, or application, and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his known legal duty as a public servant.*

N.D.C.C. § 12.1-12-01(3). (*emphasis added*)

Under this statute, criminal liability for the contributor of political campaign money potentially occurs where that contributor need only:

- (1) have an "interest" in a *pending or imminent administrative proceeding*;
- (2) "know" that this "interest" "*could be affected*" by the receiving Industrial Commission member's performance or non performance of his official action as an Industrial Commission member; and

(3) while in possession of this knowledge, that contributor goes ahead and makes the contribution of the "thing of value"¹¹ to the Industrial Commission member.

Arguably, this criminal liability for the money contributor attaches, even if the contribution-receiving Industrial Commission member would later recuse himself.

Correspondingly, criminal liability for the campaign contribution-receiving Industrial Commission member attaches where that Industrial Commission member:

(1) "knows" that the political campaign money contributor has an "interest" in a pending or imminent administrative proceeding;

(2) knows that the Industrial Commission member's "performance or nonperformance of his official action" *"could" affect the interest which the money contributor has in the pending or imminent administrative proceeding*; and

(3) having this knowledge, the Industrial Commission member nevertheless accepts the political campaign money contribution

¹¹ It is beyond question that campaign contributions are included within the statutory definition of the term "thing of value" for the purposes of N.D.C.C. Chapter 12.1-12. See, e.g., N.D.C.C. § 12.1-12-09. Parenthetically, it should be noted that Section II: (A) (19) of the "Industrial Commission of North Dakota Code of Ethics" adopted by the Industrial Commission as a simple resolution on February 22, 1995, states that, "(a)nything of (v)alue does not mean a campaign contribution properly received and reported in accordance N.D.C.C. Chapter 16.1-08.1." This "Industrial Commission of North Dakota Code of Ethics" is of no binding legal significance, because it has never been adopted as a formal regulation of the North Dakota Industrial Commission. Specifically, this "Code of Ethics" has never been adopted as an agency regulation of the Industrial Commission pursuant to the requisite provisions of the North Dakota Administrative Agencies Practice Act, N.D.C.C. Chapter 28-32. As such, this "Code of Ethics" is not included within the North Dakota Administrative Code (N.D.A.C.), and has no binding legal effect whatsoever.

In any event, not even a valid, properly-adopted administrative regulation could possibly preempt the criminal statute N.D.C.C. § 12.1-12-01 (defining the Class C Felony crime of "Bribery") or the "Definitions" statute N.D.C.C. Chapter 12.1-12, § 12.1-12-09. To the extent that the matter even needs the citation of decisional authority at all, "it is well-settled law that an administrative regulation cannot supersede, amend, modify or expand a duly enacted statute by a legislative body, since the authority to issue such regulations is conferred by a statute." *Auburn Housing Authority v. Givens*, 821 N.Y.S.2d 839, 840 (N.Y.Ct. Ct. 2006). Stated even more directly, "an administrative regulation cannot ever supersede a statute. Whenever there is a conflict between a statute and an administrative regulation, it is elementary that the statute controls." *Halfhill v. Kentucky Retirement Systems, Board of Trustees*, 2003 Ky. App. Unpub. LEXIS 803, *11 (Ky. App. June 20, 2003).

from the "person having an interest in (the) imminent or pending . . . administrative proceeding."

In the instance of the North Dakota Industrial Commission's December 20, 2011, action approving the 30,883.94-acre "Corral Creek-Bakken Pool" oil and natural gas exploration and production "mega unit" -- *a decision which became effective January 1, 2012* -- Governor Dalrymple sat as the Chairman of the Industrial Commission after having had his election campaign committee take \$1,000 dollars¹² on October 27, 2011

¹² Of course, the \$1,000.00 contribution from Conoco Philips -- the parent company of the applicant Burlington Resources Oil & Gas Company LP -- combined with the \$45,600.00 in additional political campaign money which was taken by "Dalrymple for Governor" between October 27, 2011, and December 27, 2011. See, **Footnote 7, supra**.

Additionally, it should be noted that in the Industrial Commission's December 20, 2011 Order No. 18849, approving the "Corral Creek-Bakken Unit," the Commission ruled that it "shall have continuing jurisdiction" over this 30,883.94-acre "mega unit." See, Order No. 18849 of the North Dakota Industrial Commission entered in Case No. 15332 at ¶ 70 at page 18 thereof. See, also, N.D.C.C. § 38-08-09.2, setting forth the power and authority of the North Dakota Industrial Commission, which is "vested with continuing jurisdiction, and authority, including the right to describe and set forth in its orders all those things pertaining to the plan of unitization . . . which are necessary or proper"

Given this "continuing jurisdiction" which the North Dakota Industrial Commission thus retains over the "Corral Creek-Bakken Unit," it is also highly relevant that at least \$35,000.00 in additional political campaign money was taken by "Dalrymple for Governor" this year before the June 2012 Primary Election from the working interest owners in this "Corral Creek-Bakken" "mega unit."

These contributions include the following working interest owners in the "Corral Creek-Bakken Unit": Mike Armstrong of the **Armstrong Corporation** \$4,000.00 given on May 17, 2012, John Hess Chief Executive Officer (CEO) of **Hess Corporation**, \$25,000.00 given on May 21, 2012, the political action committee for **Marathon Oil Company**, \$5,000.00 given May 22, 2012, the political action committee for **Denbury Resources Inc.**, \$1,000.00 given on May 23, 2012. See, the 2012 Pre-Primary Candidate Committee Disclosure Report for "Dalrymple for Governor" at the following link: <https://apps.nd.gov/sec/emspub/gp/cfdisclosuresearchbyrpt.htm?cmd=DisplayReport&type=byRpt&filerSeqNo=4394&lastName=Dalrymple&filingDate=05/31/2012&reportNo=1&year=2012&filerType=SCF&reportType=P&result=All&searchReportType=P&offset=0&offset2=0>.

Indeed, the political contribution money identified in this footnote and Footnote 5, *supra*, may represent only portion of the political campaign money which has been taken by "Dalrymple for Governor" from working interest owners in "Corral Creek-Bakken Unit", because of the limitations of North Dakota's political campaign disclosure laws. Specifically, it is unknown how much political contribution money has been taken by "Dalrymple for Governor" since the pre-primary election disclosure reports were filed by the Dalrymple Campaign back in May and June of this year. No new financial disclosure reports are required until 20 days prior to the November General Election -- when contributions in excess of \$500 during the twenty day period before the election must be disclosed in a supplemental filing pursuant to NDCC section 16.1-08.1-04. Furthermore, political contributions in amounts of less than \$500 need not be reported until October 25, 2012 -- essentially one week before the November election. So at present, there is no way of knowing whether or in what dollar amounts additional political campaign money has been flowing into the "Dalrymple for Governor" campaign since the primary election disclosure reports were filed by the Dalrymple campaign in late May and early June.

from the political action committee of Conoco Philips -- the parent company of Burlington Resources Oil & Gas Company LP¹³ -- the company which had filed the application to establish this "mega unit" back on June 20, 2011.¹⁴

Therefore, for the purposes of N.D.C.C. § 12.1-12-01, Governor Dalrymple's "official action as a public servant" was to judge the petition and to render his adjudicative decision relative to it. On December 20, 2011, Governor Dalrymple, announced at the meeting of the North Dakota Industrial Commission on that date his ruling of "Yes"¹⁵ -- signifying his approval of "Corral Creek-Bakken Pool" "mega unit" application.

It is important to note that the Class C Felony crime of "Bribery," as defined in N.D.C.C. § 12.1-12-01, clearly does not require that evidence of an actual "*quid pro quo*" be presented by the prosecution in order to obtain a conviction. Understandably, a public servant who has taken political campaign money from a party who/which has a "interest" in a "pending or imminent" administrative proceeding can hardly to be expected to admit publicly that there had been a "deal," whereby the campaign contribution money had been formally traded for that public servant's official action. Indeed, N.D.C.C. § 12.1-12-01 requires no such thing, as is made clear by the express language of N.D.C.C. § 12.1-12-01(3).

¹³ See, Footnote 7, *supra*.

¹⁴ See, the document "Petition of Approval of Plan of Unitization", filed with the North Dakota Industrial Commission by Burlington Resources Oil & Gas Company LP of Midland, Texas -- a wholly owned subsidiary of Conoco Phillips Company -- dated and filed June 20, 2011.

¹⁵ See, the audiotape record of the North Dakota Industrial Commission meeting held on December 20, 2011.

From public statements, which Governor Dalrymple has made on the subject of the Dalrymple Campaign's acceptance of the twenty thousand dollar (\$20,000.00) political campaign contribution on December 12, 2011 from Harold Hamm -- it is apparent that Dalrymple openly disregards N.D.C.C. § 12.1-12-01(3).

In an article, which was published on July 15, 2012, in the Fargo Forum, Dalrymple addressed the subject of "Dalrymple for Governor" having received the \$20,000.00 from oil man Harold Hamm on December 12, 2011, and Dalrymple admitted that Hamm and other oil and gas industry executives "have been supporting my campaign for Governor, and I assume it's because they think I'm doing a good job."¹⁶

C. The unprecedented scope and impact of the North Dakota Industrial Commission's approval of the 30,883.94-acre "Corral Creek-Bakken Pool" "mega unit."

The decision by the North Dakota Industrial Commission on December 20, 2011, to create an unprecedented 30,883.94-acre "mega unit" derives from the power given to the Commission by the North Dakota Legislative Assembly to order the establishment of so called "units" -- *with or without the permission or agreement of all mineral interest owners (MIO) within the boundaries of that "unit" area* -- to provide for consolidated development and operation of an oil pool as single "unit."¹⁷

¹⁶ Fargo Forum Article "Review Show State's Republicans Benefiting More From Oil And Gas Contributions Than Democrats", by Kristen Daum, July 15, 2012. See, https://secure.forumcomm.com/?publisher_ID=1&article_id=367501&CFID=374894627&CFTOKEN=26757025. See, e.g., http://taylorfornorthdakota.com/news/?news_id=78.

¹⁷ The process of "unitization" is principally governed by statute, and here in North Dakota, it is regulated pursuant to N.D.C.C. § 38-08-09 through N.D.C.C. § 38-08-09.17.

Essentially, all power and authority in this state over the establishment and operations of these “units” -- a process known “unitization” -- has been legislatively-granted to the North Dakota Industrial Commission.¹⁸

The ostensible purpose of “unitization” is to join together -- *by the authority of an order of the North Dakota Industrial Commission* -- the mineral interests of various MIO’s within a particular oil reservoir to engage in coordinated exploration and development operations, with the purported objective of increasing the ultimate recovery of oil and gas within the area of the “unit.”¹⁹

However, in the instance of the Industrial Commission’s creation of the 30,883.94-acre “Corral Creek-Bakken Pool” “mega unit” by its action on December 20, 2011, the Commission ventured into territory highly unusual (nationally) and even unprecedented (here in North Dakota).²⁰

In addition, once the Industrial Commission established this “Corral Creek-Bakken Pool” “mega unit,” this event had the effect of superseding important features of

¹⁸ See, N.D.C.C. § 38-08-09.2, setting forth the power and authority of the North Dakota Industrial Commission, which is “vested with continuing jurisdiction, and authority, including the right to describe and set forth in its orders all those things pertaining to the plan of unitization . . . which are necessary or proper”

¹⁹ See, N.D.C.C. §§ 38-08-09.3 and 38-08-09.4.

²⁰ One party appearing before at a hearing conducted by the Oil & Gas Division of the North Dakota Industrial Commission on August 4, 2011, relative to the proposal by Burlington Resources Oil & Gas Company LP to establish what became the 30,883.94-acre “Corral Creek-Bakken Pool” “mega unit,” stated that Burlington’s proposal for unitization was highly unusual (nationally) and unprecedented in North Dakota, because it involved the use of unitization in a new oil field. See, the audio tape the Oil & Gas Division hearing of August 4, 2011. Indeed, it is a fact that the Burlington Resources proposal to establish this huge “mega unit” was unprecedented in North Dakota, because all previous unitizations in the state have been exclusively for the purpose of secondary recovery, i.e., water, air, and carbon pressurization, after existing wells in the area have been depleted over a period of many years. In fact, the law allowing for unitization discusses only “pressure-maintenance and repressuring operations” and does not even mention new production wells in a proposed unit. See generally, N.D.C.C. §§ 38-08-09 through 38-08-09.17.

mineral interest owners' (MIO) leases with oil and gas companies²¹ -- and from time that this "unitization" became effective January 1, 2012, all of the leases in the unit are "held by production" -- meaning that none of the leases will expire, and no leaseholder within the unit will be able to negotiate a new lease for the entire time that this "mega unit" continues to exist -- in practical terms, a minimum of ten (10) years -- or until January 1, 2022.²²

Another concern expressed by mineral interest owners in the proceedings conducted by the Industrial Commission's Oil & Gas Division was that Commission approval of this 30,883.94-acre "mega unit" would decrease the incentive for production and drilling within this huge "unit."

Already, the royalty payments for owners of mineral interest within the unit already have become a mere fraction of what they were before the unit was established.

D. The negative effect of "stripper wells" upon North Dakota state tax revenues -- and the corresponding potential for the gigantic and unprecedented "Corral Creek-Bakken Pool" "mega unit" to grant oil companies a loophole device to avoid completely payment of "Oil Extraction Tax" on oil production from wells situated within the boundaries of this large "unit."

²¹ Once the Industrial Commission has approved a "unitization," "(p)roperty rights, leases, contracts, and all other rights and obligations must be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of . . . any valid and applicable plan of unitization or order or the [Industrial Commission]" N.D.C.C. § 38-08-09.8.

²² N.D.C.C. § 38-08-09.4(7) provides that "the unit may be dissolved ten years after the unit agreement becomes effective upon petition . . . by the royalty owners who are credited with at least sixty percent of the production and proceeds thereof."

For more than thirty (30) years now, North Dakota state law has provided for two separate taxes upon oil production revenues -- the "Oil and Gas Gross Production Tax" and the "Oil Extraction Tax."²³

The "Oil and Gas Gross Production Tax" is a "tax of five percent (5%) of the gross (oil production) value at the well . . . including the royalty interest"²⁴ -- and the "Oil Extraction Tax" is a tax of "six and one-half percent (6.5%) of the gross value at the well of the oil extracted . . ."²⁵ [*emphasis within direct statutory quotations added*].

Therefore, between the five percent (5%) "Oil and Gas Gross Production Tax," and the six and half percent (6.5%) "Oil Extraction Tax" -- crude oil produced from wells in North Dakota are subject to total tax of eleven and half percent (11.5%) of production value -- with the actual tax revenue derived by the state from these taxes obviously varying by fluctuations in the price of oil.

²³ See, generally, NDCC Chapter 57-51.1 [the Oil Extraction Tax], and N.D.C.C. Chapter 57-51 [the Oil And Gas Gross Production Tax].

²⁴ N.D.C.C. § 57-51-02.

²⁵ N.D.C.C. § 57-51.1-02.

i. The “stripper well” exemption from the oil extraction tax

It should be noted that provision of present North Dakota law completely exempts from the 6.5% “Oil Extraction Tax” any and all production from so-called “stripper wells” -- meaning that the State of North Dakota does not collect any “Oil Extraction Tax” revenue from oil production from these “stripper wells.”²⁶

As of October 19, 2011, there existed 3,458 “stripper well properties” in North Dakota, of which 390 “stripper well properties” were situated over the Bakken Pool.²⁷

In seeking a “stripper well property” status, an oil producer operator may take advantage of the broad statutory definition of the term “property,” under which “(a) producer shall treat as a separate property each separate and distinct reservoir subject to the same right to produce crude oil”²⁸

Overlaying this administrative definition of the term “property” has been recognition by the Oil & Gas Division of the Industrial Commission that the Bakken Formation is considered to be a single reservoir of oil -- and corresponding oil production

²⁶ See, N.D.C.C. § 57-51.1-03(2), exempting from the oil extraction tax “(t)he activity of extracting from the earth from a stripper well property.” A “stripper well property” for the purposes of this “Oil Extraction Tax” exemption is defined to mean an oil well the production of which “did not exceed ten barrels per day for wells of a depth of six thousand feet or less, fifteen barrels per day for wells of a depth of more than six thousand feet but not more than ten thousand feet, and thirty barrels per day for wells of a depth of more than ten thousand feet during any preceding consecutive twelve month period.”

²⁷ See, the Minutes of the October 19, 2011, meeting of the North Dakota Legislative Assembly’s Interim Taxation Committee, at page 5 thereof, reporting testimony given at this meeting by Lynn Helms, director of Mineral Resources, the principal staff person for the Oil & Gas Division of the North Dakota Industrial Commission.

²⁸ See, North Dakota Administrative Code Section 43-02-08-02(5), as this regulation of the Oil & Gas Division of the North Dakota Industrial Commission cross-references NDCC 57-51.1-01(6).

-- for the purposes of determining Oil Extraction Tax exemption eligibility for a proposed "stripper well property."²⁹

Furthermore, in its order entered on December 20, 2011, the North Dakota Industrial Commission determined -- as it is required to do in establishing a "unit" under the statutory mandate of N.D.C.C. § 38-08-09.4 governing "unitizations" -- that the 30,883.94-acre "Corral Creek-Bakken Unit" constituted a "common source of supply or portion thereof to be included within the unit area"³⁰ -- being also a single "reservoir" and "common source (of oil)."³¹

The Industrial Commission's principal staff person who runs the Industrial Commission's Oil and Gas Division, Lynn Helms, at a meeting of the Interim Taxation Committee stated on October 19, 2011 -- *according to the Committee's formal minutes* -- that the stripper well property exemption is pool-specific, meaning that only the Bakken pool would have stripper well property status and wells drilled into the Three Forks

²⁹ See, the Minutes of the October 19, 2011, meeting of the North Dakota Legislative Assembly's Interim Taxation Committee, at page 6 thereof, reporting testimony given at this meeting by Lynn Helms, director of Mineral Resources, the principal staff person for the Oil & Gas Division of the North Dakota Industrial Commission. These minutes paraphrase Mr. Helm's testimony wherein Mr. Helms acknowledges that the Bakken formation is a common oil pool.

³⁰ However, N.D.C.C. § 38-08-09.4 contains a presumption against the creation of "mega units" such as the "Corral Creek-Bakken Pool" "mega unit" -- which relies upon the common source of supply being the entire Bakken Oil Pool. This statute states in pertinent part that, "(a) unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created" (emphasis added).

³¹ See, Order No. 18849 of the North Dakota Industrial Commission entered in Case No. 15332 at ¶¶ 35 and 36 at page 8 thereof.

Formation on that property would not be entitled to the stripper well property exemption.³²

Under the attendant circumstances in the instant case, if a single "stripper well" in the Bakken pool were to be qualified as such by the North Dakota Industrial Commission, all production from every oil well within this 30,883.94-acre "mega unit" would be exempted from the 6.5% Oil Extraction Tax -- meaning the State of North Dakota would be deprived of dozens of millions of dollars over the minimum ten-year life of this "Corral Creek-Bakken Unit."

Correspondingly, the oil industry producers and MIOs -- the so-called "working interest owners" within the boundaries of this "Corral Creek-Bakken Unit" -- would be able to themselves retain and pocket these millions of dollars, which of course would be millions in lost tax revenue for the State of North Dakota.

Ironically, therefore, through the mechanism and device of using a comparatively low production oil well qualified as a "stripper well" within the contours of the "Corral Creek-Bakken Unit" -- which oil well would thus be completely exempt from the 6.5% Oil Extraction Tax under existing law -- all wells within this unit would share the exemption of the "stripper well" from this tax -- meaning all producing wells in the unit would pay only the 5% Oil and Gas Production Tax, rather than the 11.5% combined Oil Extraction and Oil and Gas Production Tax.

³² See, Minutes of the October 19, 2011, meeting of the North Dakota Legislative Assembly's Interim Taxation Committee, at page 6 thereof, testimony given at this meeting by Lynn Helms, director of Mineral Resources, the principal staff person for the Oil & Gas Division of the North Dakota Industrial Commission. These minutes paraphrase Mr. Helms' testimony, wherein Mr. Helms acknowledges that the Bakken formation is a common oil pool.

In fact, the potential for oil industry abuse of the above-described Oil Extraction Tax exemption for “stripper wells” was even identified and discussed by North Dakota Legislators during the current 2011-2012 Biennium.³³

The analogous discussion topic at the Interim Taxation Committee of October 16, 2011, was the potential for abuse by the oil industry in a situation where oil producers would drill a new well alongside a “stripper well,” with the result being the new well “would receive the stripper well exemption” from the 6.5% Oil Extraction Tax.³⁴

One legislator at this meeting of the interim Taxation Committee is reported by the Committee’s official minutes as having stated that “there is concern that ‘gaming’ by oil companies could obtain an extraction tax exemption for a high-production well drilled on a stripper well property . . ., with Mr. Helms (having responded) said that is a valid concern for Bakken and Three Forks Formation drilling.”³⁵ (*emphasis added*).

Ironically, the very kind of abuse and “gaming” by oil producers in schemes to locate Extraction Tax-exempt “stripper wells” within large units (*such as the 30,883.94-acre “Corral Creek-Bakken Unit”*), so as to immunize high production oil wells within a unit, would accomplish the very same objective as has been advocated by Oklahoma oil man Harold Hamm. As is explained below, Hamm who first sought to lower the oil

³³ See, Minutes of the October 19, 2011, meeting of the North Dakota Legislative Assembly’s Interim Taxation Committee, at page 5-6 thereof, reporting testimony given at this meeting by Lynn Helms, director of Mineral Resources, the principal staff person for the Oil & Gas Division of the North Dakota Industrial Commission.

³⁴ See, Minutes of the October 19, 2011, meeting of the North Dakota Legislative Assembly’s Interim Taxation Committee, at page 5 thereof, reporting testimony given at this meeting by Lynn Helms, director of Mineral Resources, the principal staff person for the Oil & Gas Division of the North Dakota Industrial Commission.

³⁵ See, Minutes of the October 19, 2011, meeting of the North Dakota Legislative Assembly’s Interim Taxation Committee, at page 5 thereof, reporting an exchange between a North Dakota Legislator and Lynn Helms, director of Mineral Resources, the principal staff person for the Oil & Gas Division of the North Dakota Industrial Commission.

extraction tax, and then campaigned for repeal of this tax -- namely the reduction of North Dakota State Taxation on oil well production from the present 11.5% level to 5%.

**ii. Oklahoma oil man Harold Hamm's multi-front "play"³⁶
-- first for the *reduction* -- and then for the *repeal* of North
Dakota's 32-year-old 6.5 percent Oil Extraction Tax.**

On January 24, 2011, former Governor Ed Schafer traversed the State of North Dakota in a colorfully and professionally painted bus, his smiling face emblazoned on its side, championing that which Schafer identified as an alleged "non-profit organization" bearing the name "Fix The Tax."³⁷

While Schafer asserted at the time that the group was working to raise money through events scheduled throughout North Dakota, he declined to identify by name the financial backers of "Fix the Tax."³⁸

Later, "Schafer admitted the group was funded by Harold Hamm, CEO of Continental Resources, a company that would have benefitted hugely if the Fix The Tax scam had worked."³⁹

For his part, Harold Hamm was "speaking out of both sides of his mouth" in 2011 during his campaign to reduce or eliminate North Dakota's 32-year-old Oil Extraction Tax.

³⁶ <http://www.youtube.com/watch?v=OQ4ARP-bwfU>.

³⁷

<http://www.inforum.com/event/image/id/288911/headline/Ed%20Schafer%20announces%20the%20%22Fix%20the%20Tax%22%20campaign%20/>

³⁸ http://bismarcktribune.com/business/local/schafer-stumps-for-lower-oil-tax/article_2134calc-280a-11e0-879a-001cc4c002e0.html?print=true&cid=print

³⁹ <http://www.northdecoder.com/Latest/the-pelican-brief-part-3.html>

On one hand, Hamm rather incredibly claimed -- including in testimony before a committee of the North Dakota Legislative Assembly on March 16, 2011 -- that the 11.5 percent combined level of the state's Oil Extraction Tax and its Oil and Gas Production Tax was some how endangering future oil development.⁴⁰

On the other hand, Harold Hamm was quoted as saying "we expect the Bakken to drive our growth for many years," and as an investigative article published on March 20, 2011, revealed -- not only North Dakota's 11.5 percent total taxation of oil development competitive with oil production taxes in other jurisdictions, but also that a number of false impressions had been propagated by the "Fix The Tax" folks.⁴¹

Ultimately, the "Fix The Tax" campaign -- funded substantially by Harold Hamm -- and "fronted" at podiums throughout North Dakota in early 2011 by former Governor Ed Schafer -- was unsuccessful in persuading legislators during the 2011 Session of the Legislative Assembly to lower the "Oil Extraction Tax" below its 32-year-old original level of 6.5%.⁴²

However, despite this *failure* of the "Fix The Tax" campaign, *former Governor Schafer was granted nearly a million (\$1-million) dollars worth of shares (11,945 shares) of common stock in Harold Hamm's company⁴³ -- Continental Resources Inc. - on November 2, 2011, and also a seat on Continental's board of directors.*⁴⁴

⁴⁰ <http://www.youtube.com/watch?v=FFVztHWQ06c&feature=relmfu>

⁴¹ <http://www.northdecoder.com/Latest/nix-the-fix.html>

⁴² <http://www.legis.nd.gov/assembly/62-2011/bill-status/house/HB1467.PDF>

⁴³ See, the Form 4 United States Securities and Exchange Commission filing dated November 4, 2011, by "Reporting Person" Edward T. Schafer, and "Issuer" Continental Resources Inc., evidencing the award of 11,945 shares Continental Resources Inc. common stock to Schafer on November 2, 2011.

⁴⁴ <http://www.contres.com/about/leadership/edward-t-schafer>

- E. Because of the potential violation of N.D.C.C. § 12.1-12-01 [the North Dakota Class C Felony "Bribery" statute] as described in Subsection B above -- and because North Dakota Attorney General Wayne Stenehjem joined with Governor Jack Dalrymple in the December 20, 2011, decision by the North Dakota Industrial Commission to establish the 30,883.94-acre "Corral Creek-Bakken Unit" -- this matter is being referred to the United States Attorney for the District of North Dakota for possible federal prosecution pursuant to 18 U.S.C. § 666.

Although the North Dakota Class C Felony "Bribery" statute of N.D.C.C. § 12.1-12-01 -- as explained specifically in N.D.C.C. § 12.1-12-01(3) -- is a North Dakota state criminal statute⁴⁵ -- there is also a basis for federal criminal jurisdiction under 18 U.S.C. § 666, because of the nature of the crime described and explained in N.D.C.C. § 12.1-12-01(3). See, e.g., *United States v. Snyder*, 930 F.2d 1090, 1092-1093 & 1095 (5th Cir. 1991) [*18 U.S.C. § 666 extends federal jurisdiction to cases involving bribery by officials of state agencies -- with the crime of bribery defined by state law -- that receive federal funds -- and under 18 U.S.C. § 666 a United States District Court has jurisdiction regardless of whether the alleged offense had any impact on the federal funds actually received by the state entity*].

⁴⁵ Obviously, because N.D.C.C. § 12.1-12-01 is a North Dakota state criminal statute, there exists North Dakota state court jurisdiction over a state prosecution for violation of this statute.

However, under analogous circumstances which have been part of public discussion within the context of the current Public Service Commission election campaign -- wherein Dem-NPL PSC candidate Brad Crabtree has raised issues deriving from this North Dakota Class C Felony Bribery statute -- with specific reference to campaign contribution money taken by Republican PSC candidates Kevin Cramer, and Brian Kalk from parties to active PSC regulatory cases -- some citizens have called upon Republican North Dakota Attorney General Wayne Stenehjem to investigate and prosecute these alleged criminal Bribery violations by PSC Commissioners Cramer and Kalk.

In a letter to the editor, published in The Forum of Fargo-Moorhead on September 16, 2012, Stenehjem claimed that he did not have the "constitutional and statutory authority" to prosecute such alleged crimes, with Stenehjem stating instead that all "alleged violations of state law are prosecuted by the elected state's attorney of each county, not the attorney general."

Although the authors of this document respectfully disagree with Attorney General Stenehjem's legal position in this regard, it is apparent to these authors that Stenehjem would be especially unwilling to undertake a thorough, aggressive investigation and potential prosecution of a sitting Republican Governor who sits on the North Dakota Industrial Commission with Stenehjem and Agriculture Commissioner Doug Goehring as the three members thereof.

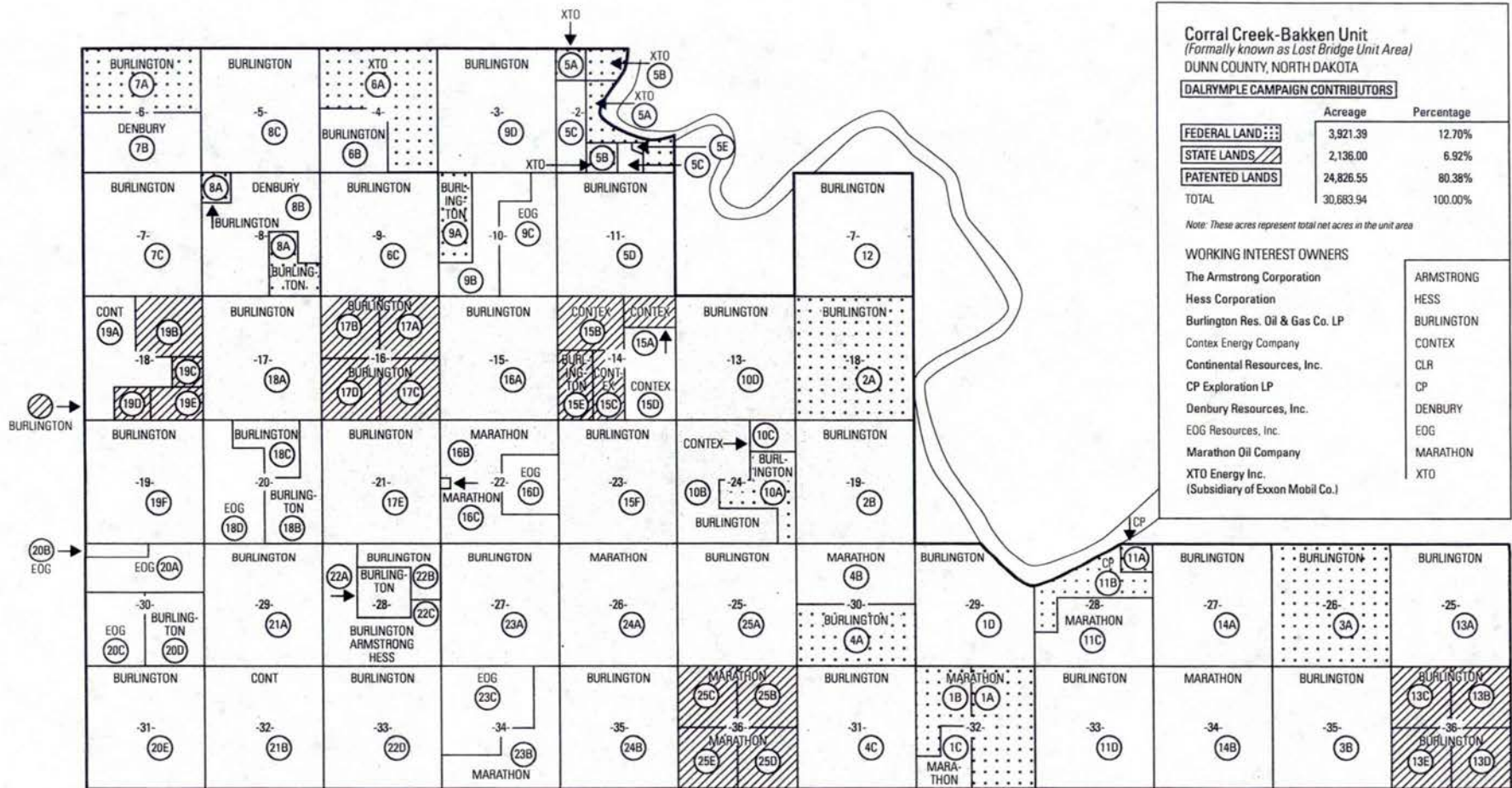
It is for these reasons that the above-recited legal grounds for the exercise of federal prosecutorial jurisdiction are recited and set forth above.

Corral Creek-Bakken Unit Timeline

UNIT ACTIONS

DALRYMPLE CAMPAIGN CONTRIBUTORS

	01/01/2011	Mike Cantrell (Continental)	\$5,000.00
Petition to Industrial Commission for unitization with UnitSource packet to working interest owners notifying of August 4 O&G hearing	06/20/2011		
	07/21/2011	Mike Armstrong	\$5,000.00
Notice of continuance from August 4 to August 25	08/04/2011		
O&G hearing on unitization petition	08/25/2011		
O&G notice of 60 day continuance	09/28/2011		
Attorney for industry provides follow-up information from August 25 hearing	10/12/2011		
	10/27/2011	Conoco Phillips Spirit PAC	\$1,000.00
Attorney for industry complains that O&G is informally taking information from opponents	11/16/2011		
O&G notice of 45 day continuance	12/05/2011		
	12/05/2011	Exxon Mobil Corporation PAC	\$600.00
	12/12/2011	Harold Hamm (Continental)	\$20,000.00
Affidavit of mailing 12/05 notice of 45 day continuance	12/14/2011		
	12/17/2011	Marathon Oil-MEPAC	\$5,000.00
Industrial Commission meets, approves unitization	12/20/2011		
	12/21/2011	Lawrence Bender (Cont. Att'y)	\$5,000.00
	12/27/2011	Denbury Res. Inc. Pol. Comm.	\$5,000.00
		Total 2011:	\$46,600.00
	05/17/2012	Mike Armstrong	\$4,000.00
	05/21/2012	John Hess	\$25,000.00
	05/22/2012	Marathon Oil Co. Employees PAC	\$5,000.00
	05/23/2012	Denbury Res. Inc. Pol. Comm.	\$1,000.00
		Total 2012:	\$35,000.00
Industrial Commission meets, approves amendment to field rules for Continental and Denbury	07/13/2012		
		Total Political Contributions:	\$81,600.00



Appendix “F”

RE: Per David Thompson's request

From: **Dennis Johnson** (Dennis@dakotalawdogs.com)

Sent: Mon 10/01/12 4:11 PM

Please convey to Mr. David Thompson that if there are violations of the campaign contributions law those violations did not take place in McKenzie or Dunn County and we would not have jurisdiction.

Thank you.

Sent: Monday, October 01, 2012 9:44 AM

To: Dennis Johnson

Subject: Per David Thompson's request

Timeline

Appendix “G”

CHAPTER 16.1-10 CORRUPT PRACTICES

16.1-10-01. Corrupt practice - What constitutes.

A person is guilty of corrupt practice within the meaning of this chapter if the person willfully engages in any of the following:

1. Expends any money for election purposes contrary to the provisions of this chapter.
2. Engages in any of the practices prohibited by section 12.1-14-02 or 12.1-14-03.
3. Is guilty of the use of state services or property or the services or property of a political subdivision of the state for political purposes.

16.1-10-02. Use of state or political subdivision services or property for political purposes.

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, commission, or political subdivision thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:
 - a. "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial. Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question.
 - b. "Property" includes motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
 - c. "Services" includes the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

16.1-10-03. Political badge, button, or insignia at elections.

No individual may buy, sell, give, or provide any political badge, button, or any insignia within a polling place or within one hundred feet [30.48 meters] from the entrance to the room containing the polling place while it is open for voting. No such political badge, button, or insignia may be worn within that same area while a polling place is open for voting.

16.1-10-04. Publication of false information in political advertisements - Penalty.

A person is guilty of a class A misdemeanor if that person knowingly, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a

candidate's prior public record, which is untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether the publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, billboard advertisements, websites, electronic transmission, or by any other public means. This section does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the political advertisement or news release.

16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements.

Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, website, or by any other similar public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, or by a measure committee, or a corporation making a direct expenditure either for or against a measure, must disclose on the advertisement the name of the person, as defined in section 16.1-08.1-01, or political party paying for the advertisement. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible individual from the political party, association, or partnership. The name of the person paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible individual from the political party, association, or partnership. In every political advertisement in which the name of the person paying for the advertisement is disclosed, the first and last name of any named individual must be disclosed. An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed. This section does not apply to campaign buttons.

16.1-10-05. Paying owner, editor, publisher, or agent of newspaper to advocate or oppose candidate editorially prohibited.

No person may pay or give anything of value to the owner, editor, publisher, or agent of any newspaper or other periodical, or radio or television station, to induce the person to advocate editorially or to oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent may accept such inducement.

16.1-10-06. Electioneering on election day - Penalty.

Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, is guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, may not, however, be deemed a violation of this section.

16.1-10-06.1. Paying for certain election-related activities prohibited.

No person may pay another person for:

1. Any loss or damage due to attendance at the polls;
2. Registering;
3. The expense of transportation to or from the polls; or
4. Personal services to be performed on the day of a caucus, primary election, or any election which tend in any way, directly or indirectly, to affect the result of such caucus or election.

The provisions of this section do not apply to the hiring of a person whose sole duty it is to act as a challenger and to watch the count of official ballots.

16.1-10-06.2. Sale or distribution at polling place.

A person may not approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. A person may not approach a person attempting to enter a polling place, who is in a polling place, or who is leaving a polling place for the purpose of gathering signatures for any reason. These prohibitions apply in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place on election day.

16.1-10-07. Candidate guilty of corrupt practice to vacate nomination of office.

If any person is found guilty of any corrupt practice, the person must be punished by being deprived of the person's government job, or the person's nomination or election must be declared void, as the case may be. This section does not remove from office a person who is already in office and who has entered upon the discharge of the person's duties when such office is subject to the impeachment provisions of the Constitution of North Dakota.

16.1-10-08. Penalty for violation of chapter.

Any person violating any provision of this chapter, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.

Appendix “H”



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Letter: Perkins wrong about jurisdiction

I appreciate Dexter Perkins' perception that I am a person of integrity.

By: Wayne Stenehjem, Bismarck, INFORUM

I appreciate Dexter Perkins' perception that I am a person of integrity. I have always strived to be so. In his letter ("Cramer's denials pathetic," published Sept. 8), however, Perkins makes a common mistake about the constitutional and statutory authority of the attorney general.

It is important to remember that in North Dakota, criminal charges for alleged violations of state law are prosecuted by the elected state's attorney of each county, not the attorney general. Violations of federal law, if appropriate, are prosecuted by the U.S. attorney.

If Perkins has credible evidence of violations of the law, then he should make a complaint directly to those authorities, if he hasn't already, and not just in a letter to the editor.

Stenehjem is North Dakota attorney general

Tags: opinion, letters

More from around the web

Testimony opposing HB1451

Senate Judiciary Committee

David Schwalbe, Bismarck

March 26, 2013

Mr. Chairman and members of the Judiciary Committee, my name is David Schwalbe. I live in Bismarck and I ask you to vote "no" on HB 1451 because, as my testimony will explain, state officials may have broken the law, and other state officials will not investigate. North Dakota has no ethics commission, so the citizens' grand jury petition is the only recourse left. The amendments in HB1451 weaken the process to the point of uselessness, so state officials will be further encouraged to ignore the law and concerned citizens will have no recourse.

I am here today talk about the changes that some are attempting to make to the citizens' right to carry a petition to give people their day in court to fight corruption and injustice by political officials. I am sure most of you have heard about the Corral Creek Field scandal, which I describe below. There has been a lot of misinformation out there.

Those of us who are petitioning for a grand jury to investigate the scandal have been vilified and made to look like a political vendetta to destroy the good name of the governor. Politics has nothing to do with it. If his name is damaged, it will be as a result of his own actions and complete disregard for the rights of the citizens of Dunn County and their property.

Here are some of the facts about the Corral Creek decision.

The North Dakota Industrial Commission created an oil field drilling unit with over 30,000 acres in it – 30 times the size of a normal unit (map attached). The decision is called "unitization." In the words of Conoco Phillips representatives, this is an experiment that has never been done on this large a field before. Unitization is normally used in old pumped-out fields to get the last drops of oil out of the ground. The oil companies found a loophole in the law which in their opinion allowed them to unitize a new field that hadn't been drilled yet.

Royalty payments for the owners of the 12 existing wells in the unit are pooled among all mineral owners in the unit, so owners in existing wells now receive only a fraction of their royalties. There are people who own minerals in the field are getting more off of my wells than I am. They won't be contributing anything back to the pool from their mineral holdings for at least 5 years if the oil company drills as planned. The companies have already violated the drilling agreement so some of the people who are getting my royalty payments won't be contributing anything back for 10 years.

The mineral owners lost all their rights to lease their minerals because the leases were given to CP free of charge. Other mineral owners in the state can lease the different layers such as the Three Forks and Tyler, but we have lost those rights.

Unitization was supposed to allow CP to drill up to 84 wells up from the 53 which would have normally been allowed under state law. Now after counting the number of stakes in the ground, some of the land owners are claiming that it is going to be over 200 wells, possibly as high as 300. One ranch has 107 well sites staked on its property. This ranch is right next to the little Missouri State Park.

The unitization gave CP the rights to all property to drill where ever they want, build roads where ever they want and treat the land owners like they are less than dirt.

The borders of the field were expanded adding another 7320 acres to the field without any public notice or public comment It now goes across Lake Sakakawea to the north and further to the west taking in a bunch of old wells. The whole field will now qualify as a stripper well field. The field is now 37,320 acres. CP can decide the experiment didn't work or the price of oil has dropped below their cost of production or they can just decide to leave. There is nothing in the agreement to make them return the money to the well owners or mineral owners. They can walk away free of any responsibility to repay the well owners for their losses. When asked if they would include a clause to repay the owners for their losses they laughed and gave a flat out no.

CP tried to cram this through as quickly as possible giving no one time to study it. It became rapidly apparent that this whole thing was really bad scheme that would benefit only the oil companies. Together those opposed spent thousands of dollars on lawyers to fight it.

At the meeting at oil and gas it was shown to them that CP could do everything they wanted here without unitizing the field. Lynn Helms assured me at a private meeting with him that CP wasn't going to get everything they wanted as it was too big. We both agreed that there were several options that could make this fairer to everyone involved. Why did he not propose them? What made him change his mind? All the money donated to campaigns or was he just following orders?

The Industrial Commission meeting to decide on unitization was scheduled for Dec 20, 2011 (timeline attached). Lynn Helms wrote a letter dated Dec 5th stating that due to the complexities of the situation the meeting of the Industrial Commission scheduled for Dec 20th was postponed for 45 days (letter attached). I got my letter on the 16th. In the period from the 5th to 20th thousands of dollars came in from the players in the field to Dalrymple's campaign fund. All of a sudden the issue wasn't complicated any more. On the 20th of December the Commission met as scheduled and passed the unitization act without notifying anyone of the change. Of course it looked good to the press as there was no opposition present. The CP people were allowed in and their public relations people went right to work selling the decision as being good for everyone especially the Little Missouri State park.

The unitization kicked in on the 1st of January 2012. About a week later I receive a letter from a Texas land man stating that due to the reduction of our royalty payments they would be willing to give us one lump sum for all the income off of them for the life of the well. It amounted to a tiny fraction of what they were worth. In a follow up phone call with them I asked them how they got all the information about everyone so quickly. I got no answer. I then asked them who they were working for. Was it

someone in the state government or was it CP. The call ended rather quickly. They didn't want to answer. The land man I talked to knew everything.

When these wells came in the owners of course followed the advice of their tax men and accountants and invested the money in machinery, land and other things to take advantage of tax programs for investments. The income was taken away in less than 10 days with no grace period to make arrangements to try and make their payments after the loss of this income.

Where could we turn for help? The Attorney General is just as much to blame as the governor. He knows it is not right to take people's income and property away without due process. If he had done his job we wouldn't be here. He sits on the Industrial Commission and knew about the letter of postponement but allowed the governor to proceed any way. So going to the Attorney General to file a complaint was not an option.

Since the state has no ethics commission – and still will not, since you have refused to do so again - the petition law you are trying to change was the only thing we had to try and get our day in court. The Dunn County petition was something that none of us wanted to do. It wasn't any fun and was very expensive and stressful. One of our petition carriers was a young lady of 52 who died of a stroke while working on the petition. Was it related to the stress of all the mess created by unitization? We will never know.

Why was the petition the only thing left for us? The attorneys we contacted wanted \$350,000 up front. They were honest with us and told us we were dealing with a huge company that had billions of dollars and hundreds of attorneys and worst of all we were dealing with a corrupt state government. Even if we did win CP would just change a few words in the unitization request and apply again while pumping more money into campaign coffers. They would just keep reapplying till everyone else was broke and they would get what they wanted any way.

The Agriculture Commissioner in his testimony at a hearing for the Killdeer Mountain drilling permit for Hess stated that the mineral owners were in their 60s and had a right to enjoy the money from their minerals and that it would be against the law to take that away from them. We in the Corral Creek are in our 60s and 70s and it didn't make any difference to him in our case. What made him change his philosophy? Was it all the money that came into Dalrymple or was he just following Dalrymple's orders? Not only did the Governor take in thousands of dollars from the 5th of December to the 20th of December, he also owns stock in Exxon Mobil which is drilling in the Corral Creek Field under the name XTO. Danbury oil, another player in the field who contributed to Dalrymple, sold out all of its Bakken holdings to Exxon making Exxon even bigger in the field (see summary of working interest owners, attached). You have probably all seen the flap over his Exxon stock and the Elkhorn ranch. The bottom line is a case can be made that he broke the law and the Attorney General should be bringing charges against him.

The petition process may not be perfect but it was all we had. The AG was directly involved so we couldn't go to him. In the words of our attorneys, litigation was not affordable and would be fruitless.

To sum it all up:

In a 15 day period, December 5-20, 2011, before the Industrial Commission vote the Governor took in thousands of dollars from the oil companies involved in the field.

The Governor owned stock in Exxon Mobil a company that is involved in the field.

The twelve existing well owners lost all but a fraction of their royalty payments.

The mineral owners lost the right to lease their minerals.

All previous contracts and their Pugh clauses, no. of barrel royalties and lease lengths were wiped out.

The Attorney General was directly involved.

CP can walk away from the unitization and not have to pay any restitution.

CP is drilling way more wells than the unitization allowed.

Oil and Gas has expanded the original field adding another 7320 acres to include a bunch of old wells.

CP has violated the terms of the drilling agreement and the NDIC has not made them comply.

CP claims we will get all of our money back but after doing the math most of us will not live long enough.

The Dunn Co. judge was appointed by Hoeven and his running mate Dalrymple.

The AG who is directly involved in the field is talking to the judge in Dunn Co.

The states attorney for Dunn Co. represented the people in the Corral Creek Field at the Oil and Gas Hearing and took money from them in the form of fees. Now he is involved in the petition – a serious conflict of interest.

- State officials may have broken the law.
- Other state officials will not investigate.
- North Dakota has no ethics commission.
- The citizens' grand jury petition is the only recourse left.
- The amendments in HB1451 weaken the process to the point of uselessness.
- State officials can be further encouraged to ignore the law.
- Concerned citizens will have no recourse.

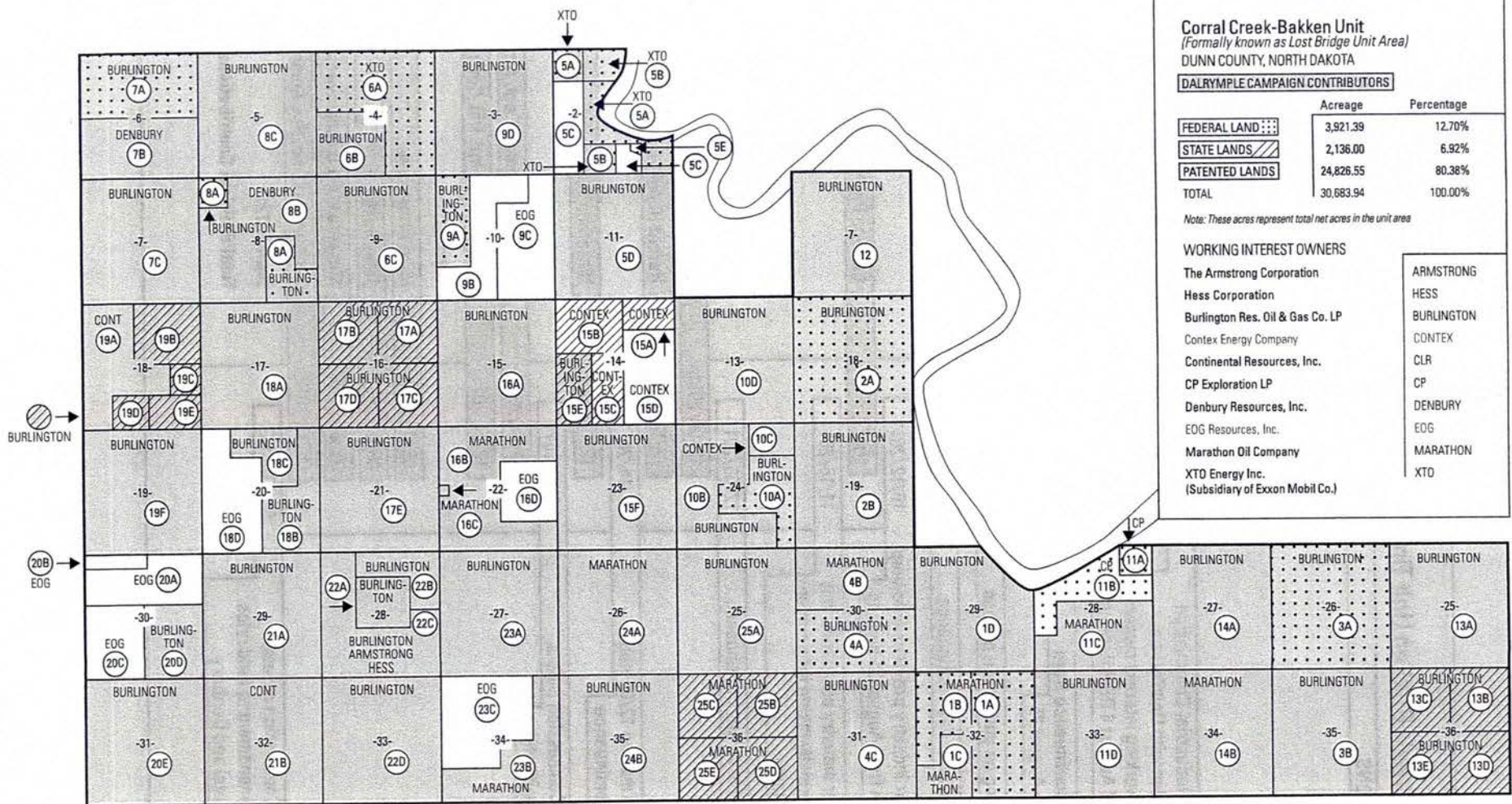
If you pass HB1451, you will effectively remove the one and only way citizens have to seek justice when they believe a public official breaks the law. I ask you to kill HB1451.

Thank You. David Schwalbe

701-223-0565

701-400-0566

oxshoeranch@msn.com



Corral Creek-Bakken Unit Timeline

UNIT ACTIONS

DALRYMPLE CAMPAIGN CONTRIBUTORS

	01/01/2011	Mike Cantrell (Continental)	\$5,000.00
Petition to Industrial Commission for unitization with UnitSource packet to working interest owners notifying of August 4 O&G hearing	06/20/2011		
	07/21/2011	Mike Armstrong	\$5,000.00
Notice of continuance from August 4 to August 25	08/04/2011		
O&G hearing on unitization petition	08/25/2011		
O&G notice of 60 day continuance	09/28/2011		
Attorney for industry provides follow-up information from August 25 hearing	10/12/2011		
	10/27/2011	Conoco Phillips Spirit PAC	\$1,000.00
Attorney for industry complains that O&G is informally taking information from opponents	11/16/2011		
O&G notice of 45 day continuance	12/05/2011		
	12/05/2011	Exxon Mobil Corporation PAC	\$600.00
	12/12/2011	Harold Hamm (Continental)	\$20,000.00
Affidavit of mailing 12/05 notice of 45 day continuance	12/14/2011		
	12/17/2011	Marathon Oil-MEPAC	\$5,000.00
Industrial Commission meets, approves unitization	12/20/2011		
	12/21/2011	Lawrence Bender (Cont. Att'y)	\$5,000.00
	12/27/2011	Denbury Res. Inc. Pol. Comm.	\$5,000.00
		Total 2011:	\$46,600.00
	05/17/2012	Mike Armstrong	\$4,000.00
	05/21/2012	John Hess	\$25,000.00
	05/22/2012	Marathon Oil Co. Employees PAC	\$5,000.00
	05/23/2012	Denbury Res. Inc. Pol. Comm.	\$1,000.00
Industrial Commission meets, approves amendment to field rules for Continental and Denbury	07/13/2012		
		Total 2012:	\$35,000.00
		Total Political Contributions:	\$81,600.00

STATE OF NORTH DAKOTA

AFFIDAVIT OF MAILING

COUNTY OF BURLEIGH

I, Linda Llewellyn, being duly sworn upon oath, depose and say: That on the 14th day of December, 2011 enclosed in separate envelopes true and correct copies of the attached Order No. 18129 of the North Dakota Industrial Commission, and deposited the same with the United States Postal Service in Bismarck, North Dakota, with postage thereon fully paid, directed to the following persons by the Industrial Commission in Case No. 15333:

JOHN MORRISON
CROWLEY FLECK PLLP
PO BOX 2798
BISMARCK ND 58502-2798

LAWRENCE BENDER
FREDRICKSON & BYRON
PO BOX 1855
BISMARCK ND 58502-1855

DENNIS JOHNSON
JOHNSON & SUNDEEN
PO BOX 1260
WATFORD CITY ND 58854

LEROY FETTIG
PO BOX 1779
DICKINSON ND 58602-1779

DAVID SCHWALBE & ELLEN CHAFFEE
9500 66TH ST NE
BISMARCK ND 58503

RAYMOND COULTRIP
507 SILVERTON COURT
COLORADO SPRINGS CO 80919

ROBERT & CANDYCE KLEEMANN
1060 HWY 22N
KILLDEER ND 58640

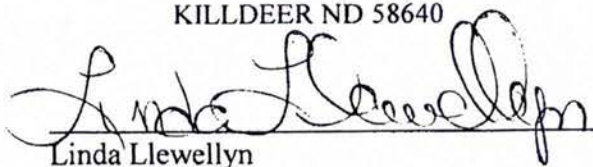
ROBERT HARMS
815 MANDAN STREET
BISMARCK ND 58501

DELMONT & LAURA RICE
560 HWY 22N
KILLDEER ND 58640

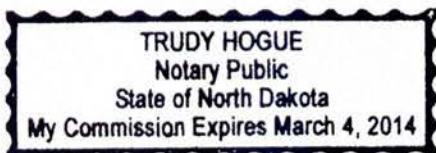
LESSLIE ANSETH
2907 E COLORADO DR
BISMARCK ND 58503

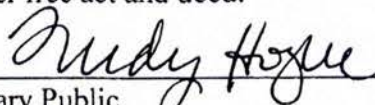
LINDSEY NIEUWSMA
BAUMSTARK BRAATEN LAW PARTNERS
222 NORTH 4TH ST
BISMARCK ND 58501

DELRV & LAURA SCHWALBE
801 104TH AVE NW
KILLDEER ND 58640


Linda Llewellyn
Oil & Gas Division

On this 14th day of December, 2011 before me personally appeared Linda Llewellyn to me known as the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.




Notary Public
State of North Dakota, County of Burleigh

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 15332
(CONTINUED)
ORDER NO. 18128

IN THE MATTER OF A HEARING CALLED ON
A MOTION OF THE COMMISSION TO
CONSIDER THE IN THE MATTER OF THE
PETITION OF BURLINGTON RESOURCES OIL
& GAS CO. LP FOR AN ORDER PROVIDING
FOR THE UNITIZED MANAGEMENT,
OPERATION, AND FURTHER DEVELOPMENT
OF THE LOST BRIDGE-BAKKEN UNIT, DUNN
COUNTY, ND; FOR APPROVAL OF THE UNIT
AGREEMENT AND THE UNIT OPERATING
AGREEMENT CONSTITUTING THE PLAN OF
UNITIZATION FOR THE LOST BRIDGE-
BAKKEN UNIT; FOR APPROVAL OF THE
PLAN OF OPERATION; FOR VACATION OF
THE APPLICABLE SPACING ORDER; AND FOR
SUCH OTHER RELIEF AS IS APPROPRIATE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

(1) This cause originally came on for hearing at 9:00 a.m. on the 4th day of August, 2011. At that time, counsel for Burlington Resources Oil & Gas Company LP (Burlington) requested this case be continued to August 25, 2011. Counsel for two mineral owners within the proposed Lost Bridge-Bakken Unit (Unit), requested the hearing be continued to a date in November 2011. The hearing officer continued the case to August 25, 2011.

(2) Evidence and testimony was received in this matter on August 25, 2011, although the record was left open to receive additional information from Burlington concerning ratification of the Unit, the type log, water saturation, porosity, and time-frame to drill wells. Burlington filed the supplemental documents on August 31, 2011 and the record was closed.

(3) North Dakota Century Code Section 38-08-11 provides that upon the filing of a petition of any interested party, the Commission must enter its order within thirty (30) days after a hearing.

(4) Commission Order No. 17577, signed September 28, 2011, continued the decision in this matter for sixty days.

(5) The issues in this case are of such complexity that additional time is necessary for the Commission to render a decision, therefore, this matter should be continued.

IT IS THEREFORE ORDERED:

(1) This matter is hereby continued for forty-five (45) days or until further order of the Commission.

Dated this 5th day of December, 2011.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director

TRACT NO.	WORKING INTEREST OWNER	TRACT %	TRACT PARTICIPATION	NET TRACT PARTICIPATION
21B	WHEATLAND OIL, INC.	5.000000%		0.104042%
				0.161209%
5A	XTO ENERGY INC.	100.000000%	0.565026%	0.565026%
5B	XTO ENERGY INC.	100.000000%	0.315069%	0.315069%
6A	XTO ENERGY INC.	67.200000%	1.571207%	1.055851%
				1.935946%
				100.000000%
SUMMARY WORKING INTEREST NET UNIT PARTICIPATION				
1	BURLINGTON RESOURCES OIL & GAS COMPANY, LP			67.944513%
2	CHERIE D. OLSON HARMS			0.115836%
3	CONTEX ENERGY COMPANY			2.030738%
4	CONTINENTAL RESOURCES, INC.			3.816858%
5	CP EXPLORATION LP			0.773756%
6	DENBURY RESOURCES, INC.			3.768852%
7	EOG RESOURCES, INC.			4.363462%
8	HERBALY EXPLORATION, LLC			0.002936%
9	HESS BAKKEN INVESTMENTS II, LLC			0.189074%
10	HESS CORPORATION			0.073066%
11	KNAPP OIL CORPORATION			0.028973%
12	LEROY P. FETTING			1.291873%
13	MARATHON OIL COMPANY			12.861699%
14	PETROMOTION LLP			0.231673%
15	ROCKY MOUNTAIN EXPLORATION, INC.			0.012921%
16	THE ARMSTRONG CORPORATION			0.028973%
17	THE TERMO COMPANY			0.304846%
18	TRACKER RESOURCE EXPLORATION ND, LLC			0.051684%
19	UNITED STATES			0.011112%
20	WHEATLAND OIL, INC.			0.161209%
21	XTO ENERGY INC.			1.935946%
				100.000000%