

FISCAL NOTE
Requested by Legislative Council
01/08/2015

Amendment to: HB 1145

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 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.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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).*

The bill requires operators to obtain and maintain copies of water permits from water providers for a period of two years. This bill has no fiscal impact to State or local government.

- 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.*

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

Name: David Laschkewitsch

Agency: ND State Water Commission

Telephone: (701) 328-2750

Date Prepared: 01/12/2015

FISCAL NOTE
Requested by Legislative Council
01/08/2015

Bill/Resolution No.: HB 1145

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	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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Name: David Laschkewitsch

Agency: ND State Water Commission

Telephone: (701) 328-2750

Date Prepared: 01/12/2015

2015 HOUSE ENERGY AND NATURAL RESOURCES

HB 1145

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1145
1/16/2015
Job #22076

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kenneth M. Toole

Explanation or reason for introduction of bill/resolution:

Relating to tracking of water used for oil and gas development.

Minutes:

Attachments #1

Chairman Porter opens hearing on HB 1145.

Rep. George Keiser: This bill provides the State Water Commission with information so they can track water utilization primarily in the oil basin. Water is an extremely valuable resource, whether it's agricultural, industrial or residential. But in the oil basin, the amount of water required to frack and operate the drilling process is significant. It is somewhat easy in a sense to drop a straw line into any source of water and to fill your truck and deliver it to the wellsite for use. The Water Commission has the responsibility of monitoring the water usage throughout our state, and would simply like to have some mechanism developed so they can track it. They attempted, with this legislation, to be not overburdensome in terms of the regulatory authority. It was discussed with Ron Ness and the petroleum folks, and this was really a compromise solution to the problem. And what it simply does is: the operator may not use any water on a wellsite unless the operator receives a copy of the water permit for the source of the water, the amount of water in the shipment, and the name of the person owning the means of shipment. They shall keep that record or information on hand for two years, and shall make the information available to the Oil and Gas Division of the Industrial Commission and the State Engineer upon request. It does provide them the means of tracking water usage in the basin. I believe this is good policy for the State of North Dakota.

Rep. Hofstad: I'm wondering, because a commercial operator of a carrier or truck usually carries a bill of lading. And I'm wondering, as you've talked with the Water Commission or looked at the issues within this bill, if you've had this discussion. Do they actually have that bill of lading? Because most of this information other than the water permit would be on there.

Rep. Keiser: There are a lot of things that could and should be done, and a lot of things that aren't done. For the Water Commission to do that, it would have required a lot of regulatory authority, because that's kind of on the DOT side, not on the Water Commission

side. This was the solution they felt was the least restrictive and had the least amount of impact on the industries involved. This is requiring them to provide, through the operator, a copy of where the water came from.

Chairman Porter: As you were discussing this methodology of tracking, did you have any thoughts on auditing periods to say that the Water Commission has to, at least do a back audit of 10 percent of this, so that there is kind of a mandatory look at this, rather than just receive it and maybe do nothing with it?

Rep. Keiser: We did not have that discussion. More importantly, this doesn't require them to do anything. It just provides a record upon which they can rely if they have a complaint or somebody initiates a complaint or concern. Whatever may happen, wherever there may be an issue; this would give them some reasonable recourse to go out and see if water is being appropriately used.

7:07

Jon Patch, Director-Water Appropriations Division; Office of the State Engineer/State Water Commission:
(See Attachment #1)

Chairman Porter: Is it your position that we need to change the word "operator" to "owner" throughout this section? Or do we need to put "owner/operator", because the person that may be a contractor for the actual owner that is doing the fracking of the well. So who do we actually want to hold the records? Or do we want both?

Rep. George Keiser: I did meet with Legislative Council. Our attorneys really like "operator," and they went through a variety of scenarios where all the terms you thought of were considered. "Operator" is a common term used in this industry, and is recognized in this industry, and is, in their opinion, the appropriate term in this legislation.

Rep. Brabandt: How big an issue is illegal and unauthorized water usage in the oil and gas industry?

Patch: I think we've got a good handle on the process, right now, and we don't believe it's a widespread, rampant problem out there. And part of it is because of the mandate that we had to kind of keep things under control. There was a legislative audit that was ordered of our division, and one of the primary purposes of that audit was to ensure that we're tracking and keeping track of...and we have a very sophisticated system of reporting...daily reporting of water use from water depots. There was one instance where a large amount of water was taken from a source and delivered to a well for fracking, and we found out about it kind of haphazardly, and in our investigation, it would have been very useful if we would have had the ability to ask the final benefitter of that water, which was the oil company, "where's the permit for this?" And so, all this bill is asking for is: for them to keep track of the source of water that is being applied in their industry, and I think it's a very simple process. It's not burdensome or onerous on anybody. They just have to keep track of where the water came from, through keeping a copy of a water permit. Every drop of water should be permitted for industrial use if it's used legally. Obviously, the oil companies are paying

for this from somebody, so they're getting a bill of sale or bill of lading. Just have them collect the permit at the same time from whoever they're receiving the water from. So we don't think it's a real onerous requirement, but we think it would be very useful in helping prevent illegal water taking and also in the event of an investigation, it would help track that, of where that water came from or if it was pumped legally or not.

Rep. Mike Lefor: Will you also be using this to gather statistical information in the future? Would it help you in that regard?

Patch: This bill isn't intended to help us with that. We've already got a complicated and sophisticated and useful method of keeping track of those numbers. And we're concerned about and have regulatory control over waters of the state, and making sure they're not being abused and our resources aren't being depleted or diminished illegally. So, we do keep track of that already. This is more for the times where we have to do investigation of illegal sales. And we think it will also help prevent companies from wanting to buy that water.

Todd Cranda (sp?), attorney, representing the N.D. Petroleum Council: The Council represents over 500 entities involved in the oil and gas industry. We are in support of this legislation to track the water use.

16:17

OPPOSITION

None

Chairman Porter closed the hearing on HB 1145.

Chairman Porter reopened the hearing on HB 1145.

Rep. Mock moved a Do Pass
Rep. Lefor Seconded.

Chairman Porter called for a Roll Call Vote

A Roll Call Vote was taken: Yes: 12 No: 0 Absent: 1(Rep. Dick Anderson)

Do Pass carries 12-0.

Rep. Curt Hofstad will carry the bill.

Date: Click here to enter a date. 1-16-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 1145
BILL/RESOLUTION NO. "Enter Bill/Resolution No."

House Energy and Natural Resources Committee

☐ Subcommittee

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Mock Seconded By Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Damschen	✓		Rep. Corey Mock	✓	
Rep. Dick Anderson	✓		Rep. Naomi Muscha	✓	
Rep. Roger Brabandt	✓				
Rep. Bill Devlin	✓				
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. George Keiser	✓				
Rep. Mike Lefor	✓				
Rep. Mike Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Hofstad

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

REPORT OF STANDING COMMITTEE

HB 1145: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1145 was placed on the Eleventh order on the calendar.

2015 SENATE ENERGY AND NATURAL RESOURCES

HB 1145

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1145
3/20/2015
25204

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to tracking of water used for oil and gas development.

Minutes:

2 Attachments

Chairman Schaible called the committee to order and opened the public hearing on HB 1145. Representative Keiser was on hand to introduce the bill.

Representative Keiser: District 47. This bill addresses a really important issue. In the industrial application water has a lot of value. The water commission approached me early on about seeing if there was something we can do to help us track the utilization of water and to see that it is being properly taken and sets up a tracking system for oil and gas development. They are a result of all of the parties coming together once again saying that we would have a greater comfort level if the proposed amendments are adopted. See attachment #1.

Vice Chair Unruh: The last sentence lines 9-11, is that a requirement?

Representative Keiser: On request.

Vice Chair Unruh: Need to add that in?

Representative Keiser: It would not change the intent.

Jon Patch: Water Appropriations Division Office of the State Engineer/State Water Commission. See attachment #2.

Senator Triplett: Can you give us an understanding of the problem?

Jon Patch: We have been dealing with water use in the patch for a while now and have gone through a performance audit and the suggestions were that we very highly monitor the water usage that is happening in the oil field because of it is a very valuable commodity. We have started a program for water depots; there are 270 depots where people can purchase water legally, we have been tracking water use but we would like to have the

ability to ask where the water has come from. We don't have any other way to know other than asking, that is what the intention of the bill is.

Senator Triplett: Some years ago the temporary use of some existing irrigation permits to be used for industrial purposes, is that still going on?

Jon Patch: That is our in lieu of policy the reason it was implanted is the reason it still exists. There is a huge resource that is being underutilized so we have to put a lot of stress on other much more vulnerable resources. What was allowed to happen was a suspension, on a temporary basis, of an existing permit and in lieu of irrigating we issued an industrial permit for that purpose that policy is still in place because the condition still exists. The Corps of Engineers is not opened up the lake, they control the access to through the take line and they are the actual property around the lake; in order to cross through their property you need to get a real estate permit and they are not issuing those because they want to do a study on this. My understanding is that they have allocated the state's water, which is considered federal waters once it hits the reservoirs, freed up 1,000 feet. We are hearing from some that isn't true; they are still holding back on allowing access. They have some very restrictive policy only allowing intakes every 25 miles or so.

Senator Triplett: You have been reissuing them on an annual basis? You know how to quantify that?

Jon Patch: No we do not allow a portion to be used for irrigation or industrial; all or nothing, one drop for industrial cannot use irrigation it is in violation of the policy.

Senator Murphy: That is a zero sum game for their allocation. It has to be one or the other?

Jon Patch: For the person who has requested that their permit be suspended is all or nothing.

Senator Murphy: Some of the former irrigators built water depots?

Jon Patch: Yes.

Senator Murphy: 270 is the latest number that is active and are selling water.

There was no further testimony and Chairman Schaible closed the public hearing on HB 1145.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1145
3/26/2015
25491

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kata Oliver

Explanation or reason for introduction of bill/resolution:

Relating to tracking of water used for oil and gas development.

Minutes:

Chairman Schaible opened the committee work on HB 1145, Senator Triplett made a motion to adopt the amendment presented by Senator Keiser and a second from Vice Chair Unruh.

Vice Chair Unruh: We had chatted about adding the words "upon request" on line 1.

There was no further discussion, roll was taken and amendment number .01001 passed on a 5-2-0 count.

Vice Chair Unruh then made a motion to further amend the bill with a second by Senator Triplett, roll was taken, the motion passed on a 6-1-0 count.

Senator Triplett then made a motion for a do pass as amended with a second by Senator Murphy.

Senator Armstrong: I am not going to support the do pass motion, I think in the realm of what is going on and the industry we are taking a lot of steps on bigger issues. This is another level of regulation and I do not think that we heard any testimony to the degree that warrants such regulation.

Senator Triplett: What I recall is that we heard that this was recommended for the department by the performance audit that was done.

Senator Armstrong: I do not disagree with anything that the Senator has said I disagree that it is a problem.

Senator Murphy: I would remind the committee of the testimony on behalf of the state engineer that said it is necessary to help prevent illegal water uses in the oil and gas industry.

Senator Armstrong: I do not think that water theft is occurring at a rate that warrants the amount of regulation that this is suggesting. The agency can implement it but the burden doesn't go on the agency, the burden goes to everyone who is moving every one of these trucks. This is one of those situations that leads to death by 1,000 pieces of paper. I understand what the audit says but I have not heard from farmers or landowners in my area about illegal use of water.

Senator Hogue: I do not think that we as a legislature should have our policy driven by what farmer's audits indicate. They go in and they review what is in statute with what the agency is doing. What we should be driven by is a fundamental problem and this is just not that big of an issue. I think that this is the classic case of the auditor said we should do this so let's put a bill in.

Vice Chair Unruh: I concur to Senator Hogue, this is just unnecessary regulations.

Senator Triplett: I do not think it is unnecessary although, maybe I will agree with Senator Armstrong on the notion of the endless piles of paper. Maybe we should take a min and amend this overnight and authorize the water commission to write a rule on this topic making it a paperless process. If someone is in the water hauling process and they get their water from a particular depot and they could file one time with the water commission. For people who are obtaining it illegally there should be a way of stopping it; having the requirements of saying where the water comes from.

Chairman Schaible: Could they write the regulation now without the bill?

Senator Triplett: I suppose they could, but if they get a mixed message from us that some people think it is a problem and some people do not.

John Paczkowski: State Water Commission. I know that the intent is to track water use we have had issues in the past where those with water permits are going well over their allocation of water usage.

Chairman Schaible: Could you write a rule that does what this bill is suggesting without passing a bill.

John Paczkowski: That could take place.

Senator Triplett: The conversation is that Senator Armstrong's idea is that it requires paper copies that would be less of regulatory burden on companies. Could it be done better and in a more nuanced way?

John Paczkowski: It could be done, water usage as a whole, regardless of the permit type is sent out paper copies every year that they report their water usage on. With some companies we now have the real time data but we do not know where they are getting their water from.

There was no further discussion, roll was taken on the do pass as amended motion, the motion failed on a 2-5-0 vote.

Vice Chair Unruh then made a motion for a do not pass as amended with a second by Senator Laffen, there was no further discussion, roll was taken, the motion passed on a 5-2-0 count with Senator Armstrong carrying the bill to the floor.

Chairman Schaible then closed the committee work for HB 1145.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1145

Page 1, line 1, replace "38-08" with "61-04"

Page 1, line 4, replace "38-08" with "61-04"

Page 1, line 7, replace "may not use" with "that uses"

Page 1, line 7, replace "unless the operator receives" with "for hydraulic fracturing purposes shall obtain"

Page 1, line 8, remove ", the amount of water per shipment, and the name of the"

Page 1, line 9, remove "person owning the means of shipment"

Renumber accordingly

March 26, 2015

3/27/15
Jone

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1145

Page 1, line 1, replace "38-08" with "61-04"

Page 1, line 4, replace "38-08" with "61-04"

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Page 1, line 8, remove ", the amount of water per shipment, and the name of the"

Page 1, line 9, remove "person owning the means of shipment"

Page 1, line 10, after "and" insert "upon request"

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1145**

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 15.0581.01001

Action Taken Adopt Amendment

Motion Made By Senator Triplett Seconded By Vice Chair Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy	X	
Vice Chair Unruh	X		Senator Triplett	X	
Senator Armstrong		X			
Senator Hogue		X			
Senator Laffen	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

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

Date: 3/26/2015
Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1145**

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken	Further Amend

Motion Made By Vice Chair Unruh Seconded By Senator Triplett

[illegible]

Total	(Yes)	6	No	1
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Absent	0
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Floor Assignment

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

Add words, "upon request" to Page 1, Line 10

Date: 3/26/2015
Roll Call Vote #: 3

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1145**

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Further Amended

Motion Made By Senator Triplett Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Schaible		X	Senator Murphy	X	
Vice Chair Unruh		X	Senator Triplett	X	
Senator Armstrong		X			
Senator Hogue		X			
Senator Laffen		X			

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

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

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1145

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass as Further Amended

Motion Made By Senator Triplett Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy		X
Vice Chair Unruh	X		Senator Triplett		X
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Armstrong

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

REPORT OF STANDING COMMITTEE

HB 1145: Energy and Natural Resources Committee (Sen. Schaible, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1145 was
placed on the Sixth order on the calendar.

Page 1, line 1, replace "38-08" with "61-04"

Page 1, line 4, replace "38-08" with "61-04"

Page 1, line 7, replace "may not use" with "that uses"

Page 1, line 7, replace "unless the operator receives" with "for hydraulic fracturing purposes
shall obtain"

Page 1, line 8, remove ", the amount of water per shipment, and the name of the"

Page 1, line 9, remove "person owning the means of shipment"

Page 1, line 10, after "and" insert "upon request"

Renumber accordingly

2015 TESTIMONY

HB 1145

TESTIMONY ON HOUSE BILL NO. 1145

House Energy and Natural Resources Committee

Jon Patch, Director - Water Appropriations Division
Office of the State Engineer/State Water Commission

January 16, 2015

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is Jon Patch. I am the Director of the Water Appropriation Division of the Office of the State Engineer/State Water Commission. On behalf of State Engineer Todd Sando, I am here in support of House Bill No. 1145.

The information to be kept by the owner of an oil and gas well, especially the tracking of the water permit for the source of the water, is necessary to help prevent illegal and unauthorized water usage in the oil and gas industry. These records will also assist in the event of an investigation of unauthorized usage.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

H1
Pg. 1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1145

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Renumber accordingly

Attachment 1
3/20/15

TESTIMONY ON HOUSE BILL NO. 1145

Attachment 2

Senate Energy and Natural Resources Committee

**Jon Patch, Director - Water Appropriations Division
Office of the State Engineer/State Water Commission**

March 20, 2015

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is Jon Patch. I am the Director of the Water Appropriation Division of the Office of the State Engineer/State Water Commission. On behalf of State Engineer Todd Sando, I am here in support of House Bill No. 1145.

The information to be kept by the owner of an oil and gas well, especially the tracking of the water permit for the source of the water, is necessary to help prevent illegal and unauthorized water usage in the oil and gas industry. These records will also assist in the event of an investigation of unauthorized usage.

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