

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1106

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1106

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1106

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-11-05

Tape Number
1

Side A
x

Side B

Meter #
8.5-21.6

Committee Clerk Signature



Minutes:

Chairman Keiser: Opened the hearing on HB 1106. All committee members were present.
(REP. BOE-Absent).

Tony Clark, Commissioner, PSC: Appeared in support of HB 1106 and provide written testimony (**SEE ATTACHED TESTIMONY**).

Chairman Keiser: Will you share with the committee how much was accruing in the fund prior to putting this cap on the fund?

Tony Clark: Right now we have \$140,000.00 that has been collected and that should be attached to my testimony. \$142,000.00 since March of 2003 has accrued tot the fund we would expect between down and when the biuemiumends you will see a slight increase in that amount over the next 6 months or so.

Chairman Keiser: We are now using it for a purpose other than what it was designed, it was designed for a compensatory fund and now we are using it as a subsidy to the general fund, we always look out for businesses in this committee.

Representative Dosch: What about cost of the audit down the road will there be sufficient money left in this account left to cover it if the anticipated revenues deplete?

Tony Clark: I think so, over time it is very likely that the scope of the audit of what Quest, has to lease out to competitors will be changed and there will be a time when the audit themselves will wither away.

Hearing closed.

Representative Ekstrom: I MOVE a DO PASS ON HB 1106.

Representative Nottestad: SECOND THE MOTION.

Motion carried. VOTE: 13-YES 0-NO 1-ABSENT(REP. BOE)

Meeting adjourned.

FISCAL NOTE
Requested by Legislative Council
01/10/2005

REVISION

Bill/Resolution No.: HB 1106

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$11,202	\$85,707	\$10,152	\$34,656	\$10,152
Expenditures		\$2,538	\$0	\$10,152	\$0	\$10,152
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Performance Assurance Fund was created by the 2003 Legislature. The fund is a component of Qwest's Performance Assurance Plan, which is a required part of Qwest's authority to provide out-of-region (InterLATA) long distance services. The Performance Assurance Plan is essentially a contract between Qwest and competitive local exchange companies that interconnect with Qwest. The plan includes service quality goals and benchmarks which Qwest must meet. If Qwest fails to meet these goals and benchmarks, the plan provides pre-determined damages that Qwest must pay both the competitive local exchange companies and the state. The state must monitor and audit the effectiveness of the plan. Current law includes a continuing appropriation to use the fund moneys to carry out the monitoring and auditing functions.

HB 1106 removes the sunset provision and caps the balance of the fund at \$100,000 with any amount over that deposited in the general fund.

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.*

Estimated revenue is based on the 2004 monthly amounts actually received from Qwest. Monthly average for 2004 is \$1,867, times 24 months, resulting in an estimated revenue for the 2005-07 biennium of \$44,808. The same approach was used for the six months remaining in the current biennium, as well as the 24 months in the 2007-09 biennium. If the balance of the fund is greater than \$100,000, the amount over \$100,000 is to be deposited into the general fund. We do not expect the revenues through the 2007-2009 biennium to be greater than \$100,000. However, the fund is currently at \$142,386.50 so when this bill takes effect at the conclusion of the 2003-2005 biennium (1 August 2005) \$100,000 of current monies will move from the special fund into the general fund. Also, added to that \$100,000 will be the excess revenues for the remaining months of the 2003-2005 biennium, estimated to be \$8664 (\$11,202 minus \$2,538) as well as the excess revenues for the 2005-2007 biennium which we estimate to be \$34,656 (\$44,808 minus \$10,152). Consequently, we estimate a total of \$85,706.50 to be deposited in the general fund in the 2005-2007 biennium. For the 2007-2009 biennium, we estimate the excess revenues over expenditures to be \$34,656 (\$44,808 minus \$10,152). Note that estimated expenditures are probably minimum amounts, since greater expenditures are expected due to a pending audit on performance indicator reporting and

payments. However, expenditures cannot be accurately estimated so the average of actual expenditures was used.

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.*

Estimated expenditures are calculated the same way as revenue. A monthly average of 2004 actual expenditures is multiplied by 24 to arrive at total estimated expenditure for each biennium, and by 6 to arrive at a total estimated expenditure for the remainder of the current biennium. Monthly average for 2004 is \$423. Biennium total is \$10,152. Note that the estimated expenditures are probably minimum amounts, since greater expenditures are expected due to a pending audit on performance indicator reporting and payments. However, expenditures cannot be accurately estimated so the average of actual expenditures was used.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No appropriation is indicated because a continuing appropriation exists in current law. The proposal only removes the sunset and caps the fund at \$100,000, with the overage, if any, deposited into the general fund. No overage is expected.

Name: Illona Jeffcoat-Sacco
Phone Number: 701-328-2400

Agency: PSC
Date Prepared: 01/10/2005

FISCAL NOTE

Requested by Legislative Council
12/22/2004

Bill/Resolution No.: HB 1106

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues		\$11,202		\$44,808		\$44,808
Expenditures		\$2,538		\$10,152		\$10,152
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Performance Assurance Fund was created by the 2003 Legislature. The fund is a component of Qwest's Performance Assurance Plan, which is a required part of Qwest's authority to provide out-of-region (InterLATA) long distance services. The Performance Assurance Plan is essentially a contract between Qwest and competitive local exchange companies that interconnect with Qwest. The plan includes service quality goals and benchmarks which Qwest must meet. If Qwest fails to meet these goals and benchmarks, the plan provides pre-determined damages that Qwest must pay both the competitive local exchange companies and the state. The state must monitor and audit the effectiveness of the plan. Current law includes a continuing appropriation to use the fund moneys to carry out the monitoring and auditing functions. HB 1106 removes the sunset provision and caps the fund at \$100,000.

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.*

Estimated revenue is based on the 2004 monthly amounts actually received from Qwest. Monthly average for 2004 is \$1,867, times 24 months, resulting in an estimated revenue for the 2005-07 biennium of \$44,808. The same approach was used for the six months remaining in the current biennium, as well as the 2007-09 biennium. If the fund is greater than \$100,000, the amount over \$100,000 is to be deposited into the general fund. We do not expect the revenues through the 2007-2009 biennium to be greater than \$100,000.

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.*

Estimated expenditures are calculated the same way as revenue. A monthly average of 2004 actual expenditures is multiplied by 24 to arrive at total estimated expenditure for each biennium, and by 6 to arrive at a total estimated expenditure for the remainder of the current biennium. Monthly average for 2004 is \$423. Biennium total is \$10,152.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive*

budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

No appropriation is indicated because a continuing appropriation exists in current law. The proposal only removes the sunset and caps the fund at \$100,000, with the overage, if any, deposited into the general fund. No overage is expected.

Name: Illona Jeffcoat-Sacco
Phone Number: 701-328-2400

Agency: PSC
Date Prepared: 01/10/2005

Date: 1-11-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1106

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Rep. Ekstrom

Seconded By

Rep. Nottestad

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	A	A
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes)

13

No

0

Absent

1 (Rep. Boe)

Floor Assignment

Rep. Clark

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

REPORT OF STANDING COMMITTEE (410)
January 11, 2005 10:58 a.m.

Module No: HR-06-0253
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1106: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1106 was placed on the Eleventh order on the calendar.

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1106

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1106

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-02-05

Tape Number

1

Side A

xxx

Side B

Meter #

3306-4300

Committee Clerk Signature



Minutes: **Chairman Mutch** opened the hearing on HB 1106. All Senators were present.

HB 1106 relates to the maximum balance of the public service commission performance assurance fund.

Tony Clark, President of the Public Service Commission, introduced the bill. See written.

Senator Espegard: How much action happens in this account?

Tony Clark: There is a difference in tier one and tier two.

Senator Espegard: What is there to audit?

Clark: The easiest example of a performance indicator that Qwest tracks each month and reports. Installation and repair, things like that.

Senator Klein: Was the sunset the PSC's idea or Qwest's idea, last session?

Clark: I don't think it was either. It was the legislature's idea.

There was no opposition.

The hearing was closed. No action was taken.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1106

Hearing Date 3-02-05

The committee met on March 8, 2005, to make a recommendation on the bill.

Senator Fairfield and Senator Heitkamp were absent.

Senator Klein moved a DO PASS. Senator Espegard seconded.

Roll Call Vote: 5 yes. 0 no. 2 absent.

Carrier: Senator Espegard

Date: 3-8-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1106

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Klein

Seconded By

Espiegard

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	A	
Senator Klein	X		Senator Heitkamp	A	
Senator Krebsbach	X				
Senator Espiegard	X				
Senator Nething	X				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Espiegard

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

REPORT OF STANDING COMMITTEE (410)
March 8, 2005 3:58 p.m.

Module No: SR-42-4456
Carrier: Espgaard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1106: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1106 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1106

H. B. 1106

**Presented by: Tony Clark, Commissioner
Public Service Commission**

**Before: Industry, Business and Labor
Honorable George Keiser, Chairman**

Date: 11 January 2005

TESTIMONY

Mr. Chairman and committee members, my name is Tony Clark. I am the President of the Public Service Commission. The Commission asked me to appear here today to testify in favor of House Bill 1106, introduced at our request.

The Performance Assurance Fund is a special fund created by the legislature in 2003 to handle the payments that Qwest Corporation makes to the state under Qwest's Performance Assurance Plan.

As many of you know, some time ago Qwest obtained authorization from the Federal Communications Commission (FCC) to provide long distance service. As part of the process of obtaining such authorization, the FCC required Qwest to institute a plan, for

PSC approval, that assures Qwest's continued good performance in how it treats its local phone competitors in the wholesale market.

The FCC requires strong financial incentives that ensure that Qwest and other Bell Companies keep up good wholesale performance. The plan to which Qwest has agreed sets numerous quality of service goals and benchmarks which Qwest must meet. A key component of this self-executing contract is compensatory payments. Qwest's plan calls for two types of payments. The first is a direct payment to the competitors that have been harmed by Qwest's bad actions. The second are payments Qwest makes to the State of North Dakota for injuries done to the competitive marketplace, when Qwest fails to meet the standards to which Qwest has agreed. If Qwest fails to meet these obligations, it pays pre-determined amounts to its competitors and to the state.

By creating the fund, the legislature agreed with interested parties that a portion of the payment money should be set aside for the continuing administration, monitoring and auditing of the plan. The PSC and regional commissions are required to continue to work collaboratively with all parties, monitoring, auditing and enforcing this

wholesale market. The PSC has and will continue to incur expenses associated with continuing regional collaboration.

The money received under the plan is to be used by the PSC to offset the inevitable expenses of administering the plan. This allows the PSC to continue to do the work the FCC and others in the telecommunications marketplace expect, but it does so by limiting taxpayer exposure. It is, effectively, a regulatory plan that pays for itself.

As originally created, the fund would accrue deposits until the total deposits during a biennium reached \$100,000. The proposed change caps the fund balance at \$100,000, with any additional funds beyond \$100,000 going to the general fund. Under current law, the PSC has authority to spend up to \$100,000 per biennium, if needed. No change is proposed to this continuing appropriation.

In 2003, the legislature envisioned that in two years the commission and legislature should revisit the plan, recognizing that everyone would then have a better idea of the income and expenses associated with this plan. Consequently, the original proposal carried a sunset date of 30 June 2005. We now have some experience

regarding payments and expenses, and how the plan is generally working. The current bill consequently removes the sunset provision.

This completes my testimony. I will be happy to answer any questions you may have.

NDPSC Performance Assurance Fund Summary

Payment month	Tier 2 (income)	Adjustments to Tier 2 Funds	Tier 2 Fund Disbursements
Mar-03	29,031		
Apr-03	0		
May-03	12,900		
Jun-03	12,300		
Jul-03	26,700		(480.77)
Aug-03	12,900		
Sep-03	9,600		
Oct-03	6,900	39.00	
Nov-03	2,400	4.00	(407.41)
Dec-03	7,300	(87.50)	(1,303.64)
Jan-04	300		
Feb-04	900		
Mar-04	3,100		(543.75)
Apr-04	1,500		(587.50)
May-04	300		(1,117.45)
Jun-04	0		(365.24)
Jul-04	0		(1,430.44)
Aug-04	2,700		
Sep-04	1,200		(647.60)
Oct-04	1,900		
Nov-04	8,400		(379.23)
Dec-04	2,100		
Jan-05			(389.41)
Feb-05			
Mar-05			
Apr-05			
May-05			
Jun-05			
Total	142,431.00	(44.50)	(7,652.44)

Prepared by Patrick Fahn, NDPSC, Public Utilities Division
January 10, 2005

H. B. 1106

**Presented by: Tony Clark, Commissioner
Public Service Commission**

**Before: Senate Industry, Business and Labor
Honorable Duane Mutch, Chairman**

Date: 2 March 2005

TESTIMONY

Mr. Chairman and committee members, my name is Tony Clark. I am the President of the Public Service Commission. The Commission asked me to appear here today to testify in favor of House Bill 1106, introduced at our request.

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The money received under the plan is to be used by the PSC to offset the inevitable expenses of administering the plan. This allows the PSC to continue to do the work the FCC and others in the telecommunications marketplace expect, but it does so by limiting taxpayer exposure. It is, effectively, a regulatory plan that pays for itself.

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Nov-04	8,400		(379.23)
Dec-04	2,100		
Jan-05	3,300		(389.41)
Feb-05	3,600		
Mar-05			
Apr-05			
May-05			
Jun-05			
Total	149,331.00	(44.50)	(7,652.44)

Prepared by Patrick Fahn, NDPSC, Public Utilities Division
March 1, 2005