

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1030

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1030

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/16/09

Recorder Job Number: 7131

Committee Clerk Signature

Lou Engelson

Minutes:

Chairman Grande: House Bill 1030. I'll need the title read.

The title is read by the clerk.

Chairman Grande: Please proceed Mr. Nelson

Jeff Nelson: Good morning Madam Chairman and committee members. For the record my name is Jeff Nelson. I am a staff attorney with the Legislative Council. I am counsel for the interim employees' benefits programs committee, the committee is recommending HB 1030. To begin my comments for the record my comments should not be construed in favor of the proposal or opposed to the proposal. I will review the proposal with you and answer any questions you or the committee members might have. House bill 1030 relates to the state employee performance bonus program and would amend section 54-06-30, the section of chapter 54-06 that governs the state employee performance bonus program. Page 2 of the bill, subsection 3. This deals with the amount of the bonus and would provide that an employee may not receive more than one performance per fiscal year and may not receive \$1,000.00 in bonuses per fiscal year. Again, changing from one per biennium to one per year. Section 4, the existing language provides that agencies who pay bonuses during a fiscal year to not more than the number of employees equal to twenty-five percent of the employees

employed by the agency on July first at the beginning of each state fiscal year. The interim committee is recommending that subsection 4 be amended to provide an exception to this requirement that upon a showing of special circumstances, North Dakota human resource management services may approve pay bonuses above the twenty-five percent limitation contained in this subsection. HRMS will then be required to report any exceptions granted under this subsection to the budget section of the legislative council. Madam Chairman, that concludes my comments concerning the bill.

Chairman Grande: Any questions from the committee?

Rep. Schneider: Mr. Nelson, are you aware of any agencies that make requests to go above the twenty-five percent or any agencies that would like this special circumstance language?

Chairman Grande: We'll get to that to that shortly, I believe. There's people here that I think want to testify to that. Any other questions? Thank you Mr. Nelson. In favor of?

Ken Purdy: My name is Ken Purdy. I am the Classification and Compensation Manager of the HR Management Services Division and just a few comments regarding the performance bonus statute. It definitely is a positive and a good tool for agencies to us. Mr. Purdy provided written testimony in support of the motion. See attachment #1. So with that, one of the issues regarding the twenty-five percent kind of focuses primarily on the smallest agencies. Now we have some agencies of ten employees or even smaller, and their comments were that well, with ten employees, if we give a bonus to three employees, we're at thirty-three percent, and if they worked on a particular assignment and performed exceptionally, we're very constrained. So that is one of the examples of an exception that was discussed during the interim. So again, that's probably workable. If there are any questions, I'll be glad to try and answer them.

Rep. Amerman: Ken, if I understand this right and if it goes into effect, an employee the first fiscal year of the biennium, you get a \$1,000.00 and then the second fiscal year the same

employee could get another \$1,000.00 bonus. So my question is, just for my understanding, is how uniform, how do agencies or who determines, is it just the director of an agency who gets the bonus or is there a consensus? How does that work?

Ken Purdy: The decision regarding granting bonuses is at the agency level. The agencies are required by statute to have a policy in place and to have a written policy in place and to have ongoing performance evaluations. So then with that, it is left to the agency.

Rep. Winrich: Mr. Purdy, you said that your experience with the bonus program has been very positive. Is there any documentation of say increase in productivity or lower turnover rates among employees? Can you expand on what you mean by positive tools?

Ken Purdy: I guess by making that statement, I rely on the comments and feedback from agencies, from the agency HR representatives and agency managers. They've approached, in this case, in the performance bonus program, they've approached it very conservatively and it's taken a number of years to even get to this part with 16 agencies using it. Again, there's no quantified measure that I would be aware of. The feedback from agencies and agency HR contacts is positive.

Rep. Froseth: This isn't a question for you, it's just a comment. There's no fiscal note on this one either and it doubles the allowable bonus by \$1,000.00 per fiscal year.

Chairman Grande: Mr. Purdy will address that.

Ken Purdy: The provision of bonuses comes from salaries and benefits in budgets. In effect what happens is that it gives agencies some latitude to use dollars that are generated by big positions and that sort of thing. So in the case of performance bonuses, that's another reason for a very conservative use of it. As we get into the next bonus bill, I can talk a little bit more about that and why that fits and fits appropriately within the salary and wages line item.

Rep. Nathe: Can you talk about the exceptions in agencies who are not under your jurisdiction. Why not the Department of Commerce?

Ken Purdy: They are specifically excluded from our classification system and in our jurisdiction by statute.

Chairman Grande: Anyone else wishing to speak in favor of 1030?

Lynn Helms: For the record, Lynn Helms, Director of the Department of Mineral Resources. I have handed out testimony for 1030 and 1031 and they are very similar in many respects. Representative Schneider asked the question about agencies that this has been important to and these two parts of legislation and these parts of the HRMS system have been a critical lifeline to the Department of Mineral Resources. The handouts that I gave you show what activity has been there. See attachment #2. I like to talk with pictures but you can see it's almost the second highest year ever in well permitting, the highest year ever in case load, in terms of hearing the most oil wells we have ever had in North Dakota. The second highest year ever in rig count, and oil prices the highest. The most geothermal facilities permitted, second highest in coal exploration holes, the two highest groups ever: public fossil digs and subsurface mineral exploration holes. And then page 4 really shows our organization. It talks about the fact that, and it shows you every single department we have or subdepartment has seen increases of 10 to 2400% in activity with no increase in personnel. In fact, we've got some vacant positions. For lack of a better term, I describe this biennium as one that is over the top for us, and that happens once in a while. A small agency like ours, virtually every single employee is impacted. With the current language, that limits us to twenty-five percent of twelve employees is all we could give bonuses to. The current language is too restrictive in our opinion. It was adopted in 01 and hasn't been reviewed since 03. When you put it to the test as we have, you can see that we've got lots of people whose workload is over the top for

more than one year in a row. This language will allow us to reward those high performance employees every single year that they give us that performance and stay with us. We will be happy to work with HRMS on the twenty-five percent exception. We would like to hear a few examples in the legislative record of what special circumstances, are and if we had an opportunity to talk about that, that would be good. We've got a good relationship with HRMS and I'm sure that we can work out those items. If I might just go ahead and talk about 1031 because my testimony is very similar. (See minutes for HB 1031).

Chairman Grande: Anyone else wishing to speak in favor of 1030? Anybody opposed to 1030. Closing the hearing on 1030.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1030

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/22/09

Recorder Job Number: 7609

Committee Clerk Signature

Lou Engelson

Minutes:

Chairman Grande: Let's look at 1030. That's the bonus program. We talked a little bit about the smaller agency being trapped with that 25%. Committee's wishes. What do you think?

Do you want to do 30? Do you want to do 33? Do you want to stick to 25? They can already apply for more than 25 if they need to. That's what this does. I don't think we need to change

the 25%. All they have to do is justify it. I think if they want to go above 25, they should justify it. The bonus program isn't meant for everybody. It's meant for above and beyond duty. What are your wishes on 1030?

Rep. Dahl: I move do pass.

Chairman Grande: I have a do pass motion. Do I have a second?

Rep. Schneider: Second.

Chairman Grande: I have a do pass by Rep. Dahl, seconded by Rep. Schneider.

Discussion?

The roll was called by the clerk.

11 yes, 1 no, 1 absent. Rep. Wolf was assigned to carry the bill.

Date: 1-22-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Dahl Seconded By Schneider

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------|-----|----|-----------------|-----|----|
| Chairman Grande | ✓ | | Rep. Amerman | ✓ | |
| Vice Chairman Boehning | ✓ | | Rep. Conklin | ✓ | |
| Rep. Dahl | ✓ | | Rep. Schneider | ✓ | |
| Rep. Froseth | ✓ | | Rep. Winrich | | 0 |
| Rep. Karls | ✓ | | Rep. Wolf | ✓ | |
| Rep. Kasper | | ✓ | | | |
| Rep. Meier | ✓ | | | | |
| Rep. Nathe | ✓ | | | | |
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Total (Yes) ~~11~~ 11 No ~~1~~ 1

Absent 1

Floor Assignment Wolf

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

REPORT OF STANDING COMMITTEE (410)
January 23, 2009 10:00 a.m.

Module No: HR-13-0805
Carrier: Wolf
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1030: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1030
was placed on the Eleventh order on the calendar.

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1030

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1030

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/26/09

Recorder Job Number: 9809

Committee Clerk Signature *Katia Oliver*

Minutes:

Chairman Dick Dever opened the public hearing on HB 1030.

Jeff Nelson, Attorney for North Dakota Legislative Council, explained the changes that were proposed in the bill.

Ken Purdy: Classification and Compensation Manager HR Services Division-Office of Management and Budget. See attached testimony #1.

Senator Dever: When you talk about legislative and judicial commerce are they part of the program now?

Ken Purdy: They are.

Senator Dever: The concern you express is more about the process.

Ken Purdy: We think that for the most part it is workable. It might result in you seeing us next

Lynn Helms: Director of North Dakota Department of Mineral Resources. See attached testimony #2.

Senator Horne: The 25% rule, how do you see that working?

Lynn Helms: We would sit down with HRMS and outline what you are seeing on bottom of page 4. We would indicate which employees and positions would exceed the 25% in that area. If you are managing and measuring your business it is pretty easy.

Senator Dever: I see that you need to have a written policy; the policy has to provide at least 3 levels of performance criteria, and then it has to be communicated to the employees in advance. If we were to amend the bills to address the non classified, could we say 33% not 25%?

Lynn Helms: The 3 levels of performance criteria, they receive a score, maximum is 35 and so we have the 3 areas falling below minimum standards. The vast majority of FTE, in the last round, 45 of them are exceeding minimum standards.

Senator Nelson: These bonuses have to come out of your line item. Where are you going to find the money?

Lynn Helms: We used roll up dollars.

Senator Dever: The level of bonus is up to \$1,000, correct?

Lynn Helms: Yes.

Closed public hearing on HB 1030

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1030

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/26/09

Recorder Job Number: 10407

Committee Clerk Signature

Karla Cliva

Minutes:

Senator Dever: Do we need to draft something or would we be ok with letting OMB the clearinghouse for that?

Senator Cook: I am alright with it.

Senator Dever: The only thing is that non-classified don't answer to OMB but maybe for this purpose it is ok.

Senator Nelson: Non-classified won't answer to HMRS, either.

A motion was made by Senator Cook for a do pass with a second by Senator Horne. A vote was taken and the motion passed 5-0 with Senator Dever carrying the bill.

Date: 3-6-09
Roll Call Vote #: 1

Carrier
Dever

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

Senate Government and Veteran's Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Cook Seconded By Horne

| Senators | Yes | No | Senators | Yes | No |
|-----------------|-----|----|----------------|-----|----|
| Dick Dever | 1 | | Dwight Cook | 1 | |
| Dave Oehlke | 1 | | Carolyn Nelson | | |
| Robert M. Horne | 1 | | | | |
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Total Yes 5 No 0

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE (410)
March 6, 2009 1:38 p.m.

Module No: SR-41-4240
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1030: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1030
was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1030

HB 1030
House Government & Veterans Affairs Committee
January 16, 2009

Ken Purdy, Classification & Compensation Mgr
HR Management Services Div – OMB

HB 1030 amends the statutory provisions for state employee performance bonus programs.

NDCC 54-06-30 was originally enacted in 2001 and included a sunset in 2005. The statute provides authority for agencies to give employees performance bonuses of up to \$1,000 per biennium. They may give bonuses to up to 25% of their employees each year. Initial implementation was intentionally conservative at \$1,000/biennium with the 25% of employees limitation intended to ensure the bonuses recognized truly exceptional performance.

The chapter was amended in 2003 to broaden the application from just classified employees to include all state employees. The amendment also removed the sunset provision.

In the first 17 months of the current biennium, 16 agencies have given performance bonuses to 354 employees. The bonuses ranged from \$110 to \$1,000. Two-thirds of the bonuses given were for \$1,000.

HB 1030, introduced by the Employee Benefits Programs Committee makes two changes in the performance bonus program:

- Changes the limit of \$1,000/biennium to \$1,000/fiscal year
- Provides HRMS the authority to approve exceptions to the 25% of employees limit.

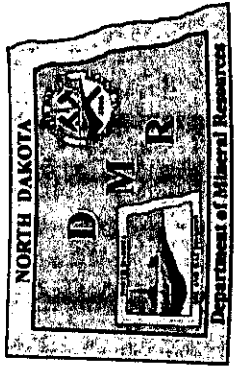
Agencies testified to the Employee Benefits Programs Committee in support of the change from one per biennium to one per fiscal year. There was also some consideration given to increasing the \$1,000 limit.

The second change allowing more than 25% of an agency's employees to receive bonuses was also supported in agency testimony to the committee and, for the most part, we believe it is workable. However, authority for exceptions in some agencies may be problematic:

- Authority for exceptions within non-executive branch agencies may be limited constitutionally (specifically: Legislative and Judicial employees)
- Authority for exceptions in agencies whose employees are not under HRMS jurisdiction in any other way may make it difficult to analyze legitimate reasons and justification for exceptions. (examples: Dept of Commerce & University System)

Attachment #1

Same testimony given to Senate



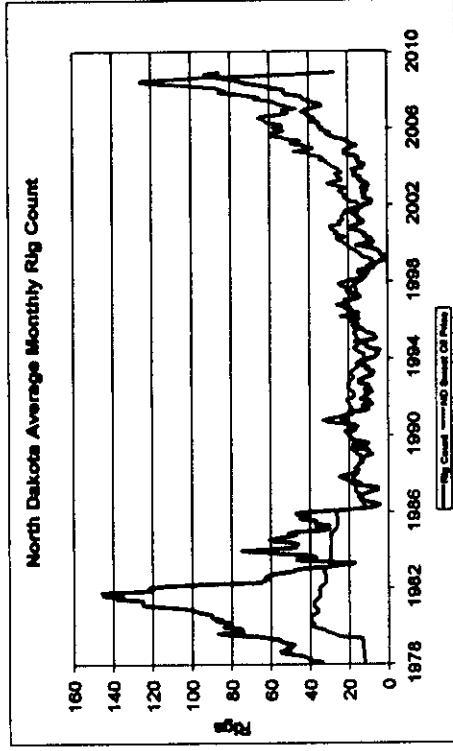
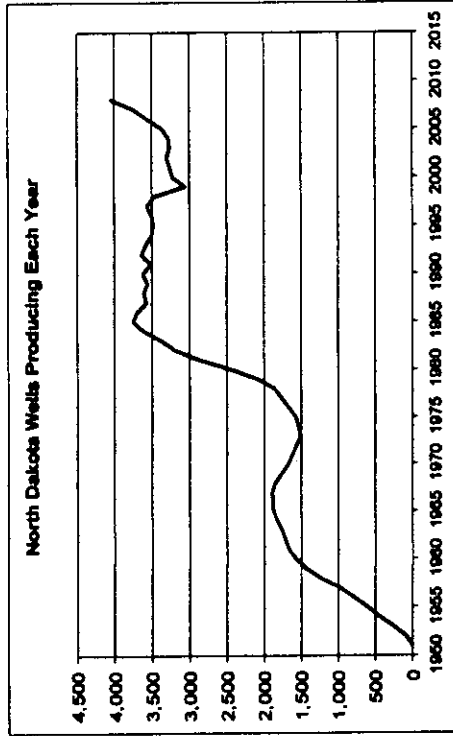
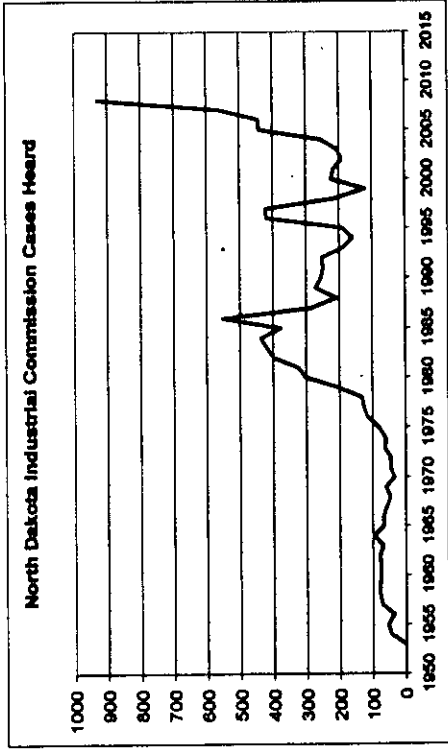
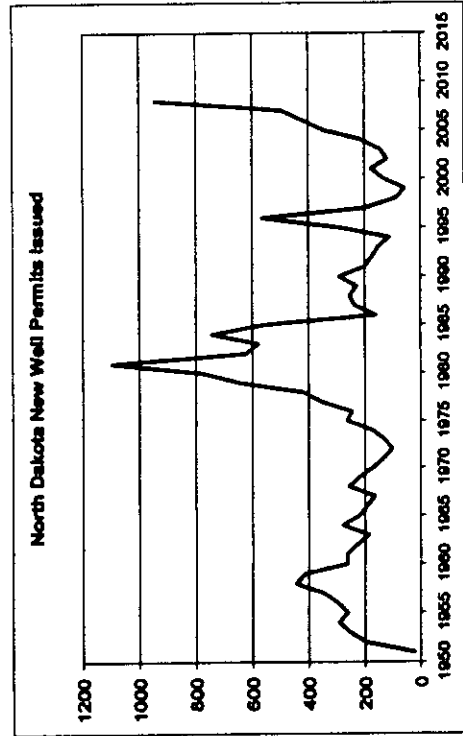
House Bill 1030

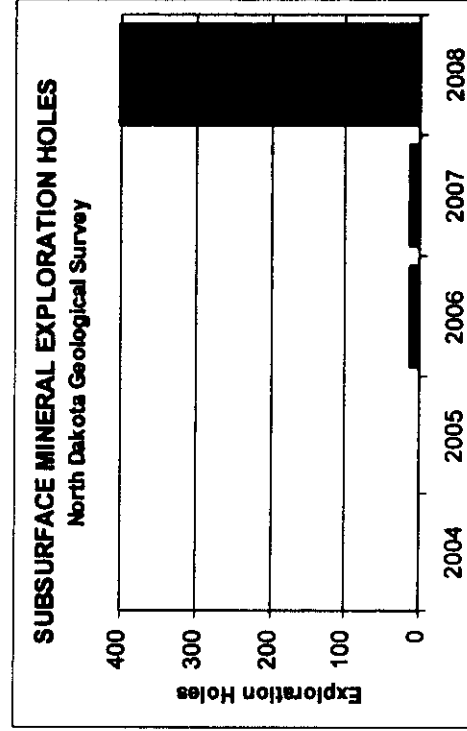
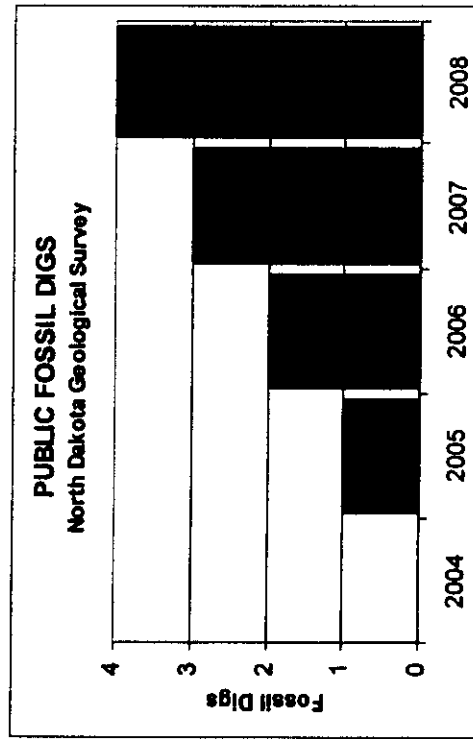
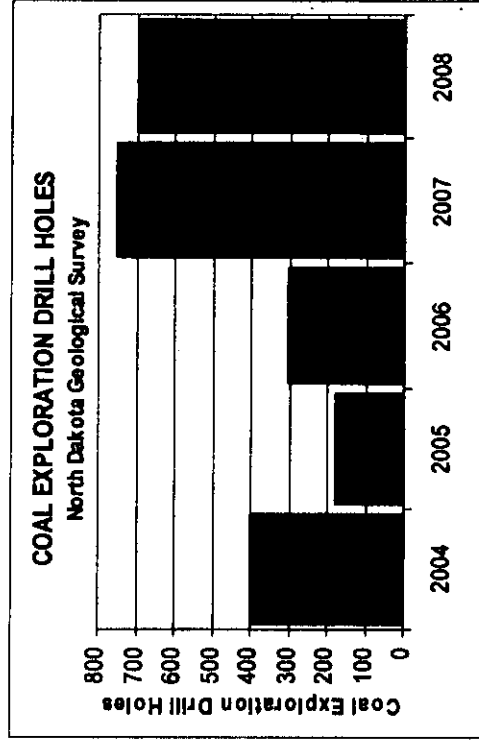
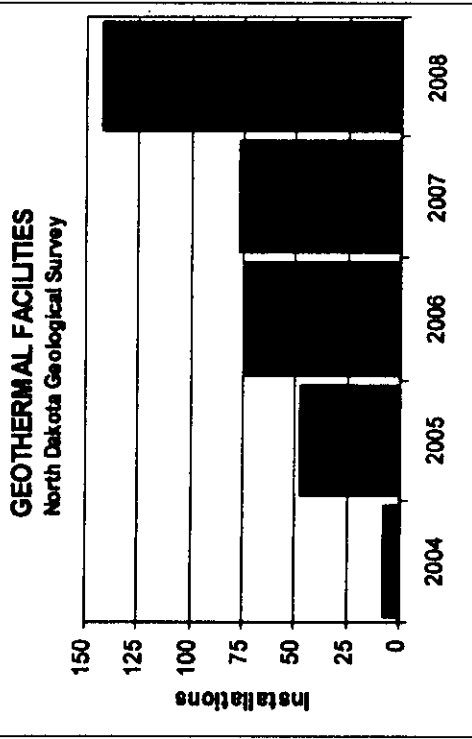
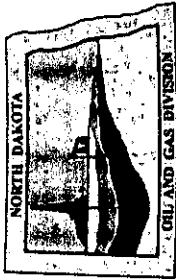
January 16, 2009

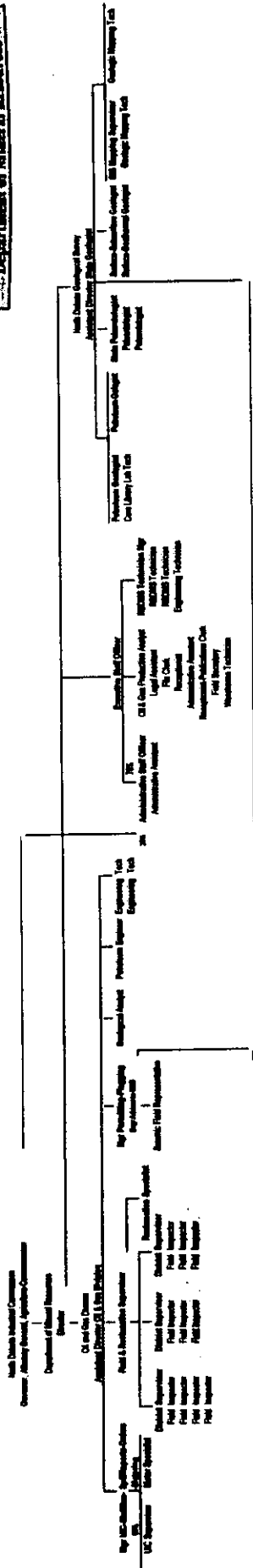
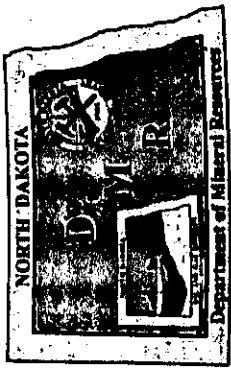
House Government and Veterans Affairs

**Lynn D. Helms, Director
Department of Mineral Resources
North Dakota Industrial Commission**

Attachment #2







Programs

Change in activity versus 2 years ago

| | |
|---|-------------------------|
| Bonding | +10 to 100% |
| Core Library | +185% |
| Field Inspection | rigs +100% & wells +15% |
| Geology – inquiries and publications | +59% |
| Hearings, dockets, and Industrial Commission orders | +100% |
| Paleontology | +100% |
| Permitting – oil and gas | +65 to +2,400% |
| Production accounting | +15% |
| Reclamation | +10% |
| Underground injection | +100% |

All agency programs have 2 or less FTE assigned to each function area. All programs are operating at maximum capacity with the current FTE count.

Occasionally a biennium comes along when everything goes “over the top”.

When this happens in a “small” agency virtually every single employee is impacted, but the current language limits management to selecting no more than 25% (in our agency 12 or less) who qualify for performance bonuses.

The current language in North Dakota Century Code 54-06-30 is very restrictive.

The language was adopted on a trial basis in 2001 and has not been reviewed since 2003.

You never really know how something works until it is put to the test.

In addition, the current language limits an employee to only one bonus per biennium even if their workload or performance is “over the top” two or more years in a row.

The Department of Mineral Resources strongly supports the proposed changes to 54-06-30.

This will allow us to reward high performance employees every year that they qualify.

We will work with Human Resources when we see the need for more than 25% of our employees to receive performance bonuses. If possible, we would like to hear a few examples of what would constitute “a showing of special circumstances”.

HB 1030
Senate Government & Veterans Affairs Committee
February 26, 2009

Ken Purdy, Classification & Compensation Mgr
HR Management Services Div – OMB

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An amendment in 2003 broadened the application of performance bonuses from just classified employees to include all state employees and removed the sunset provision.

In the first 17 months of the current biennium:

- 16 agencies have given performance bonuses to 354 employees
- The bonuses ranged from \$110 to \$1,000
- $\frac{2}{3}$ of the bonuses given were for \$1,000

HB 1030, introduced by the interim Employee Benefits Programs Committee makes two changes in the performance bonus program:

- Changes the limit of \$1,000/biennium to \$1,000/fiscal year
- Provides authority for HRMS to approve exceptions to the 25% of employees limit

Agencies testified to the interim committee in support of the change from one increase per biennium to one per fiscal year. There was also some consideration given to increasing the \$1,000 limit.

The second change allowing more than 25% of an agency's employees to receive bonuses was also supported in agency testimony to the committee and, for the most part, we believe it is workable. However, authority for exceptions in some agencies may be problematic:

- Authority for exceptions within non-executive branch agencies may be limited constitutionally (specifically: Legislative and Judicial employees)
- Authority for exceptions in agencies whose employees are not under HRMS jurisdiction in any other way may make it difficult to analyze legitimate reasons and justification for exceptions. (examples: Dept of Commerce & University System)