

2011 SENATE NATURAL RESOURCES

SB 2033

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2033
1/06/11
12633

Conference Committee

Committee Clerk Signature

Veronica Spurling

Explanation or reason for introduction of bill/resolution:

Relating to the energy development impact office and grants.

Minutes:

Written testimony attached

Chairman Lyson: Opened the hearing on SB 2033.

Senator Rich Wardner: (District 37) This bill came out of the Energy Development and Transmission Interim committee which I chaired. We took out the amount of the appropriation on the bill because they couldn't determine the impact of the bill and we had to complete our work and move on. So this bill would just change the way things are done as far as granting the grants from the impact office to the oil and gas companies. What we basically have done instead of one person, we have used the Land Commission Board to be the ones to give the impact grants. The board consists of the Governor, the State Treasurer, the Superintendent of Public Instruction, the Secretary of State and the Attorney General. There was discussion about an advisory group but that was left undecided. In reality this bill is a vehicle. If you kill the bill, this will be taken care of. They do have a proposal in HB 1013, not that we should rely on that body to bring it forward but you can amend this any way this committee thinks. We know now that the governor put in \$100,000,000 for the impact grant. In HB 1013 they put in an advisory group from the oil and gas counties to make recommendations to the board. This bill is a vehicle.

Chairman Lyson: We will hear testimony in this bill, then we will set it on the shelf and see what is going on down the line after the Governor's budget comes out, etc.

Tim Dawson: Legislative Council explained the draft of the bill. He added to Senator Wardner's comments. He reviewed the changes to Section three.

Senator Triplett: Was there any discussion at the interim committee that there was any impropriety on the part of the person who was doing it before or was it just the notion that it was getting to be so much money that it should be the decision of more than one person?

Tim Dawson: Actually there was high praise for the person that had done it before. It was just that since so much more money was expected to go into this fund that there should be more oversight.

Justin Dever, Manager, Office of Innovation and Entrepreneurship, ND Dept of Commerce presented testimony in favor of the bill. See Attachment #1.

No- one spoke in opposition to the bill.

Jeff Engelson, Director, Energy Development Impact Office, ND State Land Dept. presented neutral testimony. See attachment #2. On audio tape 10:30–19:55 with an explanation of the chart on page 4 of the testimony on the audio tape at 15:10 – 17:00.

There was some discussion about the difficulty in determining what is direct impact and what is secondary impact. It is challenging to handle 32 million dollars of requests when there are 4 million dollars available.

Senator Triplett: Congratulations on what you have done in the past in this job. You have shown flexibility in changing with the times and in moving swiftly and keeping the process really flexible and easy for the small entities that don't have staff. With adding more structure, could you keep the level of flexibility and informality in the application process?

Jeff Engelson: I do hope that at least part of the funds will remain dedicated to a less formal process.

Senator Hogue: Two questions. Do you know where the governor's 100,000,000 dollars are coming from?

Second question, in Section Three it adds this idea that you are going to consider what other sources of revenue are available to the political subdivisions and I am curious to know whether you considered that or not and that's why we are adding that.

Jeff Engelson: As far as your second question, that part has always been in the law. I do not know that specific nature of that number, but I can tell you that as funding has increased in the last few years I was told that the legislative intent was: The big guys will be taken care of through the gross production tax formula. The bottom line is there are counties that have quit asking for funds.

Chairman Lyson: Closed the hearing on SB 2033

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2033
January 20, 2011
13144

Conference Committee

Committee Clerk Signature *Veronica Spauling*

Relating to the energy development impact office and grants

Minutes:

No Attachments

Chairman Lyson: Opened discussion on SB 2033.

Senator Hogue: There is a companion bill in the House. Has anyone looked at that? It may be useful to compare those.

Chairman Lyson: Let's not act on this, because there is another one out there.

Senator Hogue: I will bring it to the committee tomorrow.

Chairman Lyson: Closed the discussion on SB 2033

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2033
January 21, 2011
13207

Conference Committee

Committee Clerk Signature

Veronica Spaulding

Relating to the energy development impact office and grants

Minutes:

No Attachments

Chairman Lyson: Opened the discussion on SB 2033.

Senator Hogue: We thought there was a bill in the House that did the same thing as or something similar to this bill. I looked at HB 1013 and it is just an appropriations bill that doesn't contain any policy. I still think there is another bill out there on the House side that proposes to revise the way the impact funds are handled. The impact office should not be dealing with roads. That should be taken care of by the Department of Transportation. I am still trying to find that policy bill on the House side and compare it to SB 2033.

Chairman Lyson: When we talk about roads, the Highway Dept. deals only with state and federal highways. They do not deal with county and township roads so I think that roads are a necessity in here. I think that they are a local problem.

There was discussion about the possibility of another bill addressing the same matter as SB 2033.

The committee asked the intern if she would find out if there was another bill on this topic.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2033

February 3, 2011

13973

Conference Committee

Committee Clerk Signature	<i>Veronica Appling</i>
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Explanation or reason for introduction of bill/resolution:

Relating to the energy development impact office and grants.

Minutes:

Attachments

Chairman Lyson opened the discussion on SB 2033.

The committee mentioned there were some amendments to consider. See **Attachment #1**.

Ryan Bernstein, Deputy Chief of Staff from the governor's office, was called in to answer questions.

Chairman Lyson: This is identical to the bill in the House.

Ryan Bernstein: The bill does the same thing as HB 1013 especially if you adopt the amendments. One of the reasons I suggested amending this bill was to add the advisory committee which is something the counties and cities wanted to see.

Senator Triplett: HB 1013 does have an advisory committee. Isn't the concept already in there?

Ryan Bernstein: The concept of the advisory committee is in HB 1013. These amendments make SB 2033 and HB 1013 almost identical.

Senator Triplett: Why would we not just kill this bill and then just add those two lines to HB 1013?

Senator Triplett: Do Not Pass Motion

Senator Schneider: Second
Roll Call Vote: 6-1-0

Carrier: Senator Triplett

Date: 2-3-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2033

Senate Natural Resources Committee

Legislative Council Amendment Number _____

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

Motion Made By Tripllett Seconded By Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider		✓
Vice-Chair Hogue	✓		Senator Tripllett	✓	
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglem	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Tripllett

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

REPORT OF STANDING COMMITTEE

SB 2033: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2033 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2033

#1

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2033
JANUARY 6, 2011, 10:00 A.M.
SENATE NATURAL RESOURCES COMMITTEE
FORT LINCOLN ROOM
SENATOR STAN LYSON, CHAIRMAN**

**JUSTIN DEVER – MANAGER, OFFICE OF INNOVATION AND ENTREPRENEURSHIP, ND
DEPARTMENT OF COMMERCE**

Good morning, Mr. Chairman and members of the committee, my name is Justin Dever and I serve as the manager of the Office of Innovation and Entrepreneurship for the North Dakota Department of Commerce. I am here today on behalf of Commerce Commissioner Paul Govig who is the chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and made permanent by the 2009 legislative assembly. Its members are appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

Senate Bill 2033 was recommended by the EmPower ND Commission to the interim Energy Development and Transmission Committee as a vehicle to enhance the Oil and Gas Impact grants. Since that time the governor has proposed a substantial increase to the Oil and Gas Impact Grant Fund, as well as changes that would seek to accomplish the same goals as SB 2033. The governor's proposal is included in House Bill 1013, which would raise the Oil and Gas Impact Grant Fund cap to \$100 million and create an advisory committee to make recommendations to the Board of University and School Lands concerning the grants.

The EmPower North Dakota Commission has not yet reviewed the provisions of HB 1013. However, they appear to be consistent with what the EmPower ND Commission was attempting to accomplish in SB 2033.

Mr. Chairman and members of the Natural Resources Committee, that concludes my testimony and I am happy to entertain any questions.

TESTIMONY OF JEFF ENGLESON
Director, Energy Development Impact Office
North Dakota State Land Department

NEUTRAL ON SENATE BILL NO. 2033

Senate Natural Resources Committee
January 6, 2011

PURPOSE

The mission of the Energy Development Impact Office (EDIO) is to provide financial assistance to local units of government that are affected by energy activity in the state. Over the years, the EDIO has helped counties, cities, schools districts and other local units of government (organized townships, fire and ambulance districts, etc.) deal with both the booms and the busts associated with energy development in North Dakota. The EDIO became a part of the Land Department in 1989.

Since 1991, the EDIO has made grants only for impacts related to oil and gas development. Funding for these grants is appropriated by the State Legislature from a portion of the 5% Oil & Gas Gross Production Tax. For the 2009-11 biennium, the amount available to this program is capped at \$8.0 million; for the 2007-09 biennium, the cap was \$6.0 million.

At the present time, the Director of the EDIO is responsible for making all decisions related to the oil impact grant program. The Board of University and School Lands is the appellate for applicants not satisfied with the decisions made by the director. Over time, very few appeals have been made.

CURRENT PROGRAM

The EDIO is managed under NDCC Chapter 57-62. NDCC 57-62-05 and 57-62-06 provide the following guidance to the EDIO Director:

- Grants should be used "to meet initial impacts affecting basic government services, and directly necessitated" by oil and gas development impact. Basic government services does not mean marriage or guidance counseling, programs to alleviate other sociological impacts or programs to meet secondary impacts.
- The amount of tax an entity is entitled to from real property and from other tax or fund distribution formulas provided by law must be considered when determining grants.

The following award criteria are used when making grants to political subdivisions:

- A grantee must demonstrate the negative impact caused by oil and gas development in the area.
- A grantee must demonstrate its tax effort and financial need.
- The funds granted must be used to alleviate the hardship caused by oil and gas development.

Under current state law, a portion of the gross production taxes collected by the state flow back to counties, cities and school districts. The amount of gross production taxes flowing back to many of these entities increased substantially during the current biennium. However, organized townships, fire and ambulance districts, and many other political subdivisions do not share in any of the gross production taxes collected by the state even though those entities can be greatly impacted by oil and gas development in a given area.

HISTORIC INFORMATION

Historically, the oil impact grant program has been run with minimal rules and policies, which has provided the Director with the flexibility needed to adapt the program over time. The program has been able to adapt to the cycles in the industry, and to shift the focus to those areas and entities that most need immediate financial assistance. The minimal 'red tape' associated with this program has also benefited entities such as volunteer fire departments, first responders, townships and small cities, that are not always familiar with more formal grant writing processes.

The attached tables provide a breakdown of grants requested and awarded over the past 5 biennia by political subdivision type, by county, and by function. These tables contain a lot of information; however, there are a few specific things I'd like to point out:

- The amount of grant requests has increased substantially over the past nine years, from a total of \$24.1 million for the 2001-03 biennium to \$31.9 million in fiscal year 2010 alone.
- The amount of grants awarded to counties has decreased over the past nine years, while the amount awarded to organized townships has increased. This is partly due to the fact that the amount of tax revenue going to counties has increased substantially in recent years. It is also partly a result of the program recognizing that organized townships have major, direct impacts from oil and gas development, but do not receive any share of the gross production tax revenues collected by the state.
- The amount of grants awarded to political subdivisions in Bowman County has decreased, while the amount of grants awarded to entities in Mountrail and Dunn counties have increased. This is result of the focus of development activity moving from the Cedar Hills area in Bowman County in the late 1990s and early part of last decade to the Bakken play in the Mountrail and Dunn County areas in more recent years.
- The one thing that hasn't really changed much over the years is the fact that the vast majority of the grants awarded (85%-9%) have been for transportation related projects/functions and for fire and ambulance related equipment and services.

As these tables show, the flexibility of the EDIO program has allowed the Director to try to balance the needs of the various political subdivisions at any given point in time with the resources available.

PROPOSED CHANGES

As currently proposed, SB 2033:

- Makes the EDIO Director an appointee of the Land Commissioner, not of the Land Board, as is currently the case.
- Moves the authority to making grants from the Director to the Land Board. The role of the Director would be one of an advisor, who makes grant recommendations to the Land Board.
- Expands the focus of the program to include providing grants for "long-term planning and engineering studies associated with" various infrastructure needs.

The EDIO takes a neutral position on all of the proposed changes included in SB 2033. The EDIO and the Land Board both understand that if funding for this program increases dramatically, as is expected, then the structure of the office/program and how it functions will have to change.

As you may already know, Governor Dalrymple's budget increases funding for this program from its current \$8.0 million per year to \$100.0 million per year. The Land Department's budget bill, HB 1013, contains the Governor's proposed changes to the EDIO. HB 1013 moves authority to make grants from the EDIO Director to the Land Board, creates an oil and gas impact advisory committee, and makes other changes to the program.

It is my expectation that over the next four months, various ideas and proposals will be batted around before a final bill is approved that includes both increased funding and a change in structure for the EDIO. We look forward to being a part of helping western North Dakota deal with the challenges of oil and gas development.

I would like to make a couple of personal observations about this bill and how the proposed changes could impact the way that the EDIO oil impact grant program is administered:

- The EDIO has historically focused on “filling in the gaps” for those entities that receive no funding or inadequate funding under the gross production tax distribution formula. If the amount of funding for this program increases substantially, the EDIO will become an integral part of planning and financing infrastructure projects in western North Dakota.
- The Director of the Energy Development Impact Office is currently a part-time position which utilizes approximately 25-30% of one FTE position. I am the current Board-appointed Director. I am also the Land Department’s Investment Director and the Deputy Commissioner. The EDIO program is also served by department support staff in processing grant applications and reimbursement requests. Including the director and support staff, approximately 60% of one FTE is currently allocated to the EDIO. If funding for this program increases substantially, it is my belief that the position of EDIO Director will need to become a full-time position, and there will also be a need for additional support staff.

With those comments, I end my testimony, and will try to answer any questions you may have.

ENERGY DEVELOPMENT IMPACT OFFICE
Grant Requests/Awards By Political Subdivision and County
2001-03 Biennium Through Fiscal Year 2010
(all dollar amounts shown are in millions)

Breakdown By Political Subdivision Class

Class	2001-03 Biennium Requested Awarde	%	2003-05 Biennium Requested Awarde	%	2005-07 Biennium Requested Awarde	%	2007-09 Biennium Requested Awarde	%	Fiscal Year 2010 Requested Awarde	%
County	\$ 8,929	39.0%	\$ 9,092	28.3%	\$ 44,353	24.0%	\$ 26,614	13.1%	\$ 11,038	8.8%
School	2.164	6.9%	3.394	7.7%	3.499	5.1%	1.555	2.7%	1.194	3.6%
City	7.942	17.1%	12.018	17.3%	12.508	13.6%	16.857	17.8%	9.167	17.0%
Park District	0.077	0.0%	0.244	0.0%	0.351	0.0%	0.203	0.0%	0.080	0.0%
Airport Auth.	0.249	0.6%	0.502	0.8%	0.337	0.0%	0.650	0.1%	0.390	0.0%
Township	2,559	25.0%	3,652	30.7%	8,117	45.0%	13,712	43.6%	7,707	52.0%
Fire/Ambul.	2.141	11.4%	2.804	15.2%	3.616	11.5%	4.587	14.7%	2.315	18.6%
TOTAL	\$ 24,061	100%	\$ 31,706	100%	\$ 72,781	100%	\$ 64,178	100%	\$ 31,891	100%

Breakdown By County

County	2001-03 Biennium Requested Awarde	%	2003-05 Biennium Requested Awarde	%	2005-07 Biennium Requested Awarde	%	2007-09 Biennium Requested Awarde	%	Fiscal Year 2010 Requested Awarde	%
Billings	\$ -	0.0%	\$ 0.081	0.1%	\$ 0.073	0.1%	\$ 0.007	0.0%	\$ -	0.0%
Bottineau	1.741	8.5%	1.365	10.0%	1.481	8.3%	1.712	5.2%	0.934	7.5%
Bowman	6,125	20.8%	7,004	12.4%	3,710	7.3%	12,202	5.0%	3,806	4.6%
Burke	0.837	7.8%	0.932	8.2%	1.683	9.9%	1.840	7.5%	1.057	8.8%
Divide	0.507	4.9%	0.610	6.0%	1.630	10.1%	4.156	7.7%	1.120	9.4%
Dunn	0,683	4.0%	0,753	4.6%	2,742	5.0%	8,290	15.2%	2,746	9.2%
G. Valley	0.716	5.5%	1.221	7.5%	1.789	7.4%	1.469	3.6%	0.929	2.6%
Hettinger	-	0.0%	0.005	0.0%	-	0.0%	-	0.0%	-	0.0%
McHenry	0.067	0.7%	0.070	1.0%	0.070	0.8%	0.060	0.0%	0.030	0.0%
McKenzie	1.513	4.0%	1.545	4.4%	3.141	3.7%	1.140	3.2%	0.909	2.7%
McLean	0.005	0.1%	0.010	0.1%	0.005	0.0%	0.006	0.0%	0.013	0.2%
Mercer	0.012	0.0%	0.032	0.2%	0.035	0.2%	0.053	0.5%	1.443	0.8%
Mountrail	0,892	5.4%	1,143	6.0%	3,769	12.9%	15,290	28.2%	7,013	26.3%
Renville	1.694	7.8%	1.920	9.0%	1.676	8.1%	2.292	6.0%	1.779	6.4%
Slope	0.517	3.6%	0.646	3.1%	0.826	3.1%	1.245	1.7%	0.814	1.4%
Stark	2.618	8.5%	3.270	7.9%	4.272	4.8%	2.999	2.7%	1.926	5.1%
Ward	0.064	0.6%	0.185	1.0%	0.180	0.8%	0.363	0.9%	0.245	1.5%
Williams	6.072	17.8%	10.914	18.3%	40.700	16.7%	11.054	12.6%	7.127	13.5%
TOTAL	\$ 24,061	100%	\$ 31,706	100%	\$ 72,781	100%	\$ 64,178	100%	\$ 31,891	100%

January 27, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2033

Page 1, line 1, after "a" insert "new subsection to section 15-01-02, a new subsection to section 15-02-05, and three"

Page 1, line 1, replace "section" with "sections"

Page 1, line 2, remove the first "and"

Page 1, line 2, after "reenact" insert "subsection 1 of section 57-51-15 and"

Page 1, line 4, after "grants" insert "; and to declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. A new subsection to section 15-01-02 of the North Dakota Century Code is created and enacted as follows:

Authority to award and distribute oil and gas impact grants from moneys deposited in the oil and gas impact grant fund.

SECTION 2. A new subsection to section 15-02-05 of the North Dakota Century Code is created and enacted as follows:

Serve as chairman of the oil and gas impact grant advisory committee.

SECTION 3. AMENDMENT. Subsection 1 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall:
 - a. ~~Credit thirty three and one third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding eightone hundred million dollars per biennium;~~
 - b. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; and
 - c. Credit the remaining revenues to the state general fund."

Page 2, line 8, replace "funding award recommendations to the board of university and school lands" with "disbursements"

Page 2, line 9, after "grants" insert "awarded by the board of university and school lands under chapter 15-01"

Page 2, line 10, remove the overstrike over "~~In determining the~~"

Page 2, remove the overstrike over lines 11 through 14

Page 2, after line 14, insert:

"4. Serve as a member of the oil and gas impact grant advisory committee."

Page 2, after line 27, insert:

"SECTION 7. A new section to chapter 57-62 of the North Dakota Century Code is created and enacted as follows:

Oil and gas impact grant advisory committee - Membership.

The oil and gas impact grant advisory committee consists of:

1. The commissioner of university and school lands.
2. The energy development impact director.
3. The director of the division of energy of the department of commerce.
4. The director of the department of transportation.
5. One member appointed by the governor from a list of three nominees submitted by the North Dakota association of oil and gas-producing counties to represent incorporated cities with a population of ten thousand or more, based on the most recent official decennial federal census, that are impacted by oil and gas development.
6. One member appointed by the governor from a list of three nominees submitted by the North Dakota association of oil and gas-producing counties to represent incorporated cities with a population less than ten thousand, based on the most recent official decennial federal census, that are impacted by oil and gas development.
7. Two members appointed by the governor from a list of six nominees submitted by the North Dakota association of oil and gas-producing counties to represent counties impacted by oil and gas development.
8. The senate majority leader or designee.
9. The house majority leader or designee.

SECTION 8. A new section to chapter 57-62 of the North Dakota Century Code is created and enacted as follows:

57-62-08. Oil and gas impact grant advisory committee - Duties - Expense reimbursement.

1. The oil and gas impact grant advisory committee shall:

- a. Establish its own rules of operation and procedure, including rules relating to terms of office, vacancies, quorums, and meetings, provided that the rules do not conflict with this chapter.
 - b. Develop a plan to be considered by the board of university and school lands for providing grants to counties, cities, school districts, and other political subdivisions in oil and gas development impact areas.
 - c. Review applications for impact assistance using procedures and forms approved by the energy development impact director under this chapter.
 - d. Make recommendations, not less than once each calendar quarter, to the board of university and school lands on grants to counties, cities, school districts, and other political subdivisions in oil and gas development impact areas based on identified needs, other sources of revenue available to the political subdivision, and criteria established by the committee.
 - e. Make recommendations to the board of university and school lands providing for the distribution of thirty-five percent of moneys available in the oil and gas impact fund to incorporated cities with a population of ten thousand or more, based on the most recent official decennial federal census, that are impacted by oil and gas development.
 - f. Make recommendations to the board of university and school lands providing for the distribution of sixty-five percent of moneys available in the oil and gas impact fund to cities not otherwise eligible for funding under this section, counties, school districts, and other political subdivisions impacted by oil and gas development.
2. Members of the advisory committee are entitled to reimbursement for actual and necessary expenses incurred in the same manner as state officials."

Page 3, after line 7, insert:

"SECTION 10. EMERGENCY. Sections 1, 2, 5, 7, and 8 of this Act are declared to be an emergency measure."

Renumber accordingly