

Sixty-second  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1013

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of  
2 university and school lands; to provide for distributions from permanent funds; to amend and  
3 reenact sections 15-01-02, 57-51-15, 57-62-03, 57-62-03.1, 57-62-04, 57-62-05, and 57-62-06  
4 of the North Dakota Century Code, relating to the powers of the board of university and school  
5 lands, the duties of the commissioner of university and school lands, the apportionment of oil  
6 and gas gross production tax proceeds, the energy development impact office, and the duties of  
7 the energy development impact director; and to declare an emergency.

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

9 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds  
10 as may be necessary, are appropriated from special funds derived from the state lands  
11 maintenance fund and the oil and gas impact grant fund in the state treasury, to the  
12 commissioner of university and school lands for the purpose of defraying the expenses of the  
13 commissioner of university and school lands, for the biennium beginning July 1, 2011, and  
14 ending June 30, 2013, as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
17 Salaries and wages	\$3,214,850	\$930,974	\$4,145,824
18 Operating expenses	739,952	691,144	1,431,096
19 Capital assets	10,000	0	10,000
20 Grants	9,777,759	90,000,510	99,778,269
21 Contingencies	<u>50,000</u>	<u>50,000</u>	<u>100,000</u>
22 Total special funds	\$13,792,561	\$91,672,628	\$105,465,189
23 Full-time equivalent positions	21.75	3.00	24.75

1       **SECTION 2. ENERGY INFRASTRUCTURE AND IMPACT GRANTS - EXEMPTION.**

2       Section 54-44.1-11 does not apply to appropriations made for energy infrastructure and impact  
3       grants in section 1 of this Act.

4       **SECTION 3. APPROPRIATION LINE ITEM TRANSFERS.** Upon approval of the board of  
5       university and school lands, the commissioner of university and school lands may transfer  
6       between the various line items in section 1 of this Act, including transfers from the contingencies  
7       line to all other line items. The commissioner shall notify the office of management and budget  
8       of each transfer made pursuant to this section.

9       **SECTION 4. DISTRIBUTIONS TO STATE INSTITUTIONS.** Pursuant to section 1 of  
10      article IX of the Constitution of North Dakota, the board of university and school lands shall  
11      distribute during the biennium beginning July 1, 2011, and ending June 30, 2013, the following  
12      amounts, from the permanent funds managed for the benefit of the following entities:

13      Common schools	\$92,514,000
14      North Dakota state university	1,424,000
15      University of North Dakota	1,310,000
16      Youth correctional center	528,000
17      School for the deaf	454,000
18      State college of science	523,429
19      State hospital	603,429
20      Veterans' home	279,429
21      Valley City state university	286,000
22      North Dakota vision services - school for the blind	247,429
23      Mayville state university	184,000
24      Dakota college at Bottineau	31,429
25      Dickinson state university	31,429
26      Minot state university	<u>31,429</u>
27      Total	\$98,448,003

28      **SECTION 5. AMENDMENT.** Section 15-01-02 of the North Dakota Century Code is  
29      amended and reenacted as follows:

30      **15-01-02. Powers - Control of public lands and permanent funds.**

31      The board has:

- 1        1. Full control of the selection, appraisal, rental, sale, disposal, and management of:
  - 2            a. Lands donated or granted by or received from the United States or from any
  - 3                    other source for the support and maintenance of the common schools.
  - 4            b. All lands which fall to the state by escheat.
  - 5            c. All lands donated or granted by or received from the United States or from any
  - 6                    other source for the maintenance of the educational, penal, or charitable
  - 7                    institutions.
  - 8            d. All lands acquired by the state through the investment of the permanent school
  - 9                    funds of the state as the result of mortgage foreclosure or otherwise.
- 10       2. Full control of the investment of the permanent funds derived from the sale of any of
- 11            the lands described in subsection 1.
- 12       3. Full control of such percent of the proceeds of any sale of public lands as may be
- 13            granted to the state by the United States on such sale.
- 14       4. Full control of the proceeds of any property that fall to the state by escheat and of the
- 15            proceeds of all gifts and donations to the state for the support or maintenance of the
- 16            common schools, and of all other property otherwise acquired by the state for the
- 17            maintenance of the common schools. Any gift to the state not specifically appropriated
- 18            to any other purpose must be considered as a gift for the support and maintenance of
- 19            the common schools.
- 20       5. Authority to expend moneys for the purpose of making refunds in cases in which an
- 21            error has been made by the board, or a person dealing with the board, with regard to
- 22            any of the lands, minerals, funds, proceeds, or any other kind of property managed by
- 23            the board. Moneys expended to make refunds must come from the same fund or
- 24            account into which the money to be refunded was originally placed.
- 25       6. Authority to award and distribute energy infrastructure and impact grants from moneys
- 26            deposited in the oil and gas impact grant fund, except that grants awarded annually
- 27            may not exceed sixty percent of the biennial appropriation for energy infrastructure
- 28            and impact grants. The board may create an advisory committee to assist the board in
- 29            making its grant award determinations.

30        **SECTION 6. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is  
31        amended and reenacted as follows:

1       **57-51-15. Apportionment and use of proceeds of tax.**

2       The gross production tax provided for in this chapter must be apportioned as follows:

- 3       1. First the tax revenue collected under this chapter equal to one percent of the gross  
4       value at the well of the oil and one-fifth of the tax on gas must be deposited with the  
5       state treasurer who shall:
- 6       a. Credit ~~thirty-three and one-third percent~~ of the revenues to the oil and gas impact  
7       grant fund, but not in an amount exceeding ~~eight~~one hundred million dollars per  
8       biennium;
  - 9       b. Allocate five hundred thousand dollars per fiscal year to each city in an  
10       oil-producing county which has a population of seven thousand five hundred or  
11       more and more than two percent of its private covered employment engaged in  
12       the mining industry, according to data compiled by job service North Dakota. The  
13       allocation under this subdivision must be doubled if the city has more than seven  
14       and one-half percent of its private covered employment engaged in the mining  
15       industry, according to data compiled by job service North Dakota; and
  - 16       c. Credit the remaining revenues to the state general fund.
- 17       2. After deduction of the amount provided in subsection 1, annual revenue collected  
18       under this chapter from oil and gas produced in each county must be allocated as  
19       follows:
- 20       a. The first two million dollars must be allocated to the county.
  - 21       b. The next one million dollars must be allocated seventy-five percent to the county  
22       and twenty-five percent to the state general fund.
  - 23       c. The next one million dollars must be allocated fifty percent to the county and fifty  
24       percent to the state general fund.
  - 25       d. The next fourteen million dollars must be allocated twenty-five percent to the  
26       county and seventy-five percent to the state general fund.
  - 27       e. All annual revenue remaining after the allocation in subdivision d must be  
28       allocated ten percent to the county and ninety percent to the state general fund.
- 29       3. The amount to which each county is entitled under subsection 2 must be allocated  
30       within the county so the first five million three hundred fifty thousand dollars is  
31       allocated under subsection 4 for each fiscal year and any amount received by a county

1 exceeding five million three hundred fifty thousand dollars is credited by the county  
2 treasurer to the county infrastructure fund and allocated under subsection 5.

3 4. a. Forty-five percent of all revenues allocated to any county for allocation under this  
4 subsection must be credited by the county treasurer to the county general fund.

5 However, the allocation to a county under this subdivision must be credited to the  
6 state general fund if during that fiscal year the county does not levy a total of at  
7 least ten mills for combined levies for county road and bridge, farm-to-market and  
8 federal-aid road, and county road purposes.

9 b. Thirty-five percent of all revenues allocated to any county for allocation under this  
10 subsection must be apportioned by the county treasurer no less than quarterly to  
11 school districts within the county on the average daily attendance distribution  
12 basis, as certified to the county treasurer by the county superintendent of  
13 schools. However, no school district may receive in any single academic year an  
14 amount under this subsection greater than the county average per student cost  
15 multiplied by seventy percent, then multiplied by the number of students in  
16 average daily attendance or the number of children of school age in the school  
17 census for the county, whichever is greater. Provided, however, that in any county  
18 in which the average daily attendance or the school census, whichever is greater,  
19 is fewer than four hundred, the county is entitled to one hundred twenty percent  
20 of the county average per student cost multiplied by the number of students in  
21 average daily attendance or the number of children of school age in the school  
22 census for the county, whichever is greater. Once this level has been reached  
23 through distributions under this subsection, all excess funds to which the school  
24 district would be entitled as part of its thirty-five percent share must be deposited  
25 instead in the county general fund. The county superintendent of schools of each  
26 oil-producing county shall certify to the county treasurer by July first of each year  
27 the amount to which each school district is limited pursuant to this subsection. As  
28 used in this subsection, "average daily attendance" means the average daily  
29 attendance for the school year immediately preceding the certification by the  
30 county superintendent of schools required by this subsection.

1                   The countywide allocation to school districts under this subdivision is subject  
2                   to the following:

3                   (1) The first three hundred fifty thousand dollars is apportioned entirely among  
4                   school districts in the county.

5                   (2) The next three hundred fifty thousand dollars is apportioned seventy-five  
6                   percent among school districts in the county and twenty-five percent to the  
7                   county infrastructure fund.

8                   (3) The next two hundred sixty-two thousand five hundred dollars is  
9                   apportioned two-thirds among school districts in the county and one-third to  
10                  the county infrastructure fund.

11                  (4) The next one hundred seventy-five thousand dollars is apportioned fifty  
12                  percent among school districts in the county and fifty percent to the county  
13                  infrastructure fund.

14                  (5) Any remaining amount is apportioned to the county infrastructure fund  
15                  except from that remaining amount the following amounts are apportioned  
16                  among school districts in the county:

17                   (a) Four hundred ninety thousand dollars, for counties having a  
18                   population of three thousand or fewer.

19                   (b) Five hundred sixty thousand dollars, for counties having a population  
20                   of more than three thousand and fewer than six thousand.

21                   (c) Seven hundred thirty-five thousand dollars, for counties having a  
22                   population of six thousand or more.

23                  c. Twenty percent of all revenues allocated to any county for allocation under this  
24                  subsection must be apportioned no less than quarterly by the state treasurer to  
25                  the incorporated cities of the county. Apportionment among cities under this  
26                  subsection must be based upon the population of each incorporated city  
27                  according to the last official decennial federal census. A city may not receive an  
28                  allocation for a fiscal year under this subsection and subsection 5 which totals  
29                  more than seven hundred fifty dollars per capita. Once this level has been  
30                  reached through distributions under this subsection, all excess funds to which  
31                  any city would be entitled except for this limitation must be deposited instead in

1           that county's general fund. In determining the population of any city in which total  
2           employment increases by more than two hundred percent seasonally due to  
3           tourism, the population of that city for purposes of this subdivision must be  
4           increased by eight hundred percent. If a city receives a direct allocation under  
5           subsection 1, the allocation to that city under this subsection is limited to sixty  
6           percent of the amount otherwise determined for that city under this subsection  
7           and the amount exceeding this limitation must be reallocated among the other  
8           cities in the county.

- 9           5.   a.   Forty-five percent of all revenues allocated to a county infrastructure fund under  
10           subsections 3 and 4 must be credited by the county treasurer to the county  
11           general fund. However, the allocation to a county under this subdivision must be  
12           credited to the state general fund if during that fiscal year the county does not  
13           levy a total of at least ten mills for combined levies for county road and bridge,  
14           farm-to-market and federal-aid road, and county road purposes.
- 15           b.   Thirty-five percent of all revenues allocated to the county infrastructure fund  
16           under subsections 3 and 4 must be allocated by the board of county  
17           commissioners to or for the benefit of townships in the county on the basis of  
18           applications by townships for funding to offset oil and gas development impact to  
19           township roads or other infrastructure needs or applications by school districts for  
20           repair or replacement of school district vehicles necessitated by damage or  
21           deterioration attributable to travel on oil and gas development-impacted roads. An  
22           organized township is not eligible for an allocation of funds under this subdivision  
23           unless during that fiscal year that township levies at least ten mills for township  
24           purposes. For unorganized townships within the county, the board of county  
25           commissioners may expend an appropriate portion of revenues under this  
26           subdivision to offset oil and gas development impact to township roads or other  
27           infrastructure needs in those townships. The amount deposited during each  
28           calendar year in the county infrastructure fund which is designated for allocation  
29           under this subdivision and which is unexpended and unobligated at the end of  
30           the calendar year must be transferred by the county treasurer to the county road  
31           and bridge fund for use on county road and bridge projects.

- 1           c. Twenty percent of all revenues allocated to any county infrastructure fund under  
2           subsections 3 and 4 must be allocated by the county treasurer no less than  
3           quarterly to the incorporated cities of the county. Apportionment among cities  
4           under this subsection must be based upon the population of each incorporated  
5           city according to the last official decennial federal census. A city may not receive  
6           an allocation for a fiscal year under this subsection and subsection 4 which totals  
7           more than seven hundred fifty dollars per capita. Once this per capita limitation  
8           has been reached, all excess funds to which a city would otherwise be entitled  
9           must be deposited instead in that county's general fund. If a city receives a direct  
10          allocation under subsection 1, the allocation to that city under this subsection is  
11          limited to sixty percent of the amount otherwise determined for that city under this  
12          subsection and the amount exceeding this limitation must be reallocated among  
13          the other cities in the county.
- 14          6. Within sixty days after the end of each fiscal year, the board of county commissioners  
15          of each county that has received an allocation under this section shall file a report for  
16          the fiscal year with the tax commissioner, in a format prescribed by the tax  
17          commissioner, showing:
- 18           a. The amount received by the county in its own behalf, the amount of those funds  
19           expended for each purpose to which funds were devoted, and the share of  
20           county property tax revenue expended for each of those purposes, and the  
21           amount of those funds unexpended at the end of the fiscal year; and
- 22           b. The amount available in the county infrastructure fund for allocation to or for the  
23           benefit of townships or school districts, the amount allocated to each organized  
24           township or school district and the amount expended from each such allocation  
25           by that township or school district, the amount expended by the board of county  
26           commissioners on behalf of each unorganized township for which an expenditure  
27           was made, and the amount available for allocation to or for the benefit of  
28           townships or school districts which remained unexpended at the end of the fiscal  
29           year.

1           Within sixty days after the time when reports under this subsection were due, the  
2           tax commissioner shall provide a report to the legislative council compiling the  
3           information from reports received under this subsection.

4           In developing the format for reports under this subsection, the tax commissioner  
5           shall consult the energy development infrastructure and impact office and at least two  
6           county auditors from oil-producing counties.

7           **SECTION 7. AMENDMENT.** Section 57-62-03 of the North Dakota Century Code is  
8           amended and reenacted as follows:

9           **57-62-03. Loans - Terms and conditions - Repayment.**

10          The board of university and school lands is authorized to make loans to coal  
11          development-impacted counties, cities, and school districts before or after the beginning of  
12          actual coal mining from moneys deposited in the coal development trust fund established by  
13          subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site  
14          permitting and by beginning actual construction of the mine or its mine mouth facility. Loans  
15          may be made for any purpose for which a grant may be made pursuant to this chapter, but  
16          before making any loan the board of university and school lands shall receive the  
17          recommendation of the energy development infrastructure and impact office. The board of  
18          university and school lands shall prescribe the terms and conditions of such loans within the  
19          provisions of this chapter and shall require a warrant executed by the governing body of the  
20          county, city, or school district as evidence of such loan. The warrants must bear interest at a  
21          rate not to exceed six percent. The warrants shall be payable only from the allocations of  
22          moneys from the coal development fund to the borrowing county, city, or school district and shall  
23          not constitute a general obligation of the county, city, or school district nor may such loans be  
24          considered as indebtedness of the county, city, or school district. Loans made in advance of  
25          actual coal mining must provide that repayment is to begin when the borrowing county, city, or  
26          school district receives allocations from the coal development fund. The terms of the loan must  
27          provide that not less than ten percent of each allocation made to the borrowing county, city, or  
28          school district pursuant to this chapter must be withheld by the state treasurer to repay the  
29          principal of the warrants and the interest thereon. The amount withheld by the state treasurer as  
30          payment of interest must be deposited in the general fund and the amount withheld by the state  
31          treasurer as payment of principal must be remitted to the board of university and school lands

1 and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02.

2 The warrants executed by the county, city, or school district have all of the qualities and  
3 incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by  
4 any political subdivision thereof.

5 The board of university and school lands is authorized to sell such warrants to other parties  
6 and the proceeds of such sale which constitute principal must be deposited in the coal  
7 development trust fund and that which constitutes interest in the general fund. If the future  
8 allocations of moneys to the borrowing county, city, or school district should, for any reason,  
9 permanently cease, the loan shall be canceled except that if the county, city, or school district is  
10 merged with another county, city, or school district which receives an allocation of moneys from  
11 the coal development fund, the surviving county, city, or school district is obligated to repay the  
12 loan from such allocation. If the loan is canceled due to the permanent cessation of allocations  
13 of moneys to the county, city, or school district pursuant to this chapter, the board of university  
14 and school lands shall cancel those warrants it holds from such county, city, or school district  
15 and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02  
16 the principal and interest, as it becomes due, on those warrants of the county, city, or school  
17 district which are held by another party.

18 **SECTION 8. AMENDMENT.** Section 57-62-03.1 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **57-62-03.1. Oil and gas impact grant fund –~~Continuing appropriation.~~**

21 The moneys accumulated in the oil and gas impact grant fund must be allocated as  
22 provided by law and as appropriated by the legislative assembly for distribution through grants  
23 by the energy development infrastructure and impact office to oil and gas development-impacted  
24 cities, counties, school districts, and other taxing districts or for industrial commission  
25 enforcement of laws and rules relating to geophysical exploration in this state. ~~The amounts-~~  
26 ~~deposited in the oil and gas impact grant fund under subsection 1 of section 57-51-15 are-~~  
27 ~~appropriated as a standing and continuing appropriation to the energy development impact-~~  
28 ~~office for grants as provided in this section.~~

29 **SECTION 9. AMENDMENT.** Section 57-62-04 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **57-62-04. Energy development infrastructure and impact office - Appointment of**  
2 **director.**

3       There is hereby created an energy development infrastructure and impact office, to be a  
4 division within the office of the commissioner of the board of university and school lands, the  
5 director of which must be appointed by and serve at the pleasure of the board of university and  
6 school lands. The director shall have knowledge of state and local government and shall have  
7 experience or training in the fields of taxation and accounting. The salary of the director must be  
8 set by the commissioner of university and school lands within the limits of legislative  
9 appropriations. The director may employ such other persons as may be necessary and may fix  
10 their compensation within the appropriation made for such purpose. The board of university and  
11 school lands shall fill any vacancy in the position of director in the same manner as listed above  
12 and, in addition, shall serve as an appeals board under rules promulgated by the board of  
13 university and school lands to reconsider grant applications for aid under this chapter which  
14 have been denied by the director. All action by the board of university and school lands,  
15 including appointment of a director, must be by majority vote.

16       **SECTION 10. AMENDMENT.** Section 57-62-05 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18       **57-62-05. Powers and duties of energy development infrastructure and impact office**  
19 **director.**

20       The energy development infrastructure and impact office director shall:

- 21       1. Develop a plan for the assistance, through financial grants for services and facilities, of  
22       counties, cities, school districts, and other political subdivisions in coal development  
23       and oil and gas development impact areas.
- 24       2. Establish procedures and provide proper forms to political subdivisions for use in  
25       making application for funds for impact assistance as provided in this chapter.
- 26       3. Make grants disbursements to counties, cities, school districts, and other taxing  
27       districts for grants awarded by the board of university and school lands pursuant to  
28       chapter 15-01, as provided in this chapter and within the appropriations made for such  
29       purposes. In determining the amount of impact grants for which political subdivisions  
30       are eligible, the amount of revenue to which such political subdivisions will be entitled

1 from taxes upon the real property of coal and oil and gas development plants and from  
2 other tax or fund distribution formulas provided by law must be considered.

3 4. Receive and review applications for impact assistance pursuant to this chapter.

4 5. Make recommendations, not less than once each calendar quarter, to the board of  
5 university and school lands on grants to counties, cities, school districts, and other  
6 political subdivisions in oil and gas development impact areas based on identified  
7 needs, and other sources of revenue available to the political subdivision.

8 6. Make recommendations to the board of university and school lands providing for the  
9 distribution of thirty-five percent of moneys available in the oil and gas impact fund to  
10 incorporated cities with a population of ten thousand or more, based on the most  
11 recent official decennial federal census, that are impacted by oil and gas development.  
12 The director may not recommend that an incorporated city receive more than sixty  
13 percent of the funds available under this subsection.

14 7. Make recommendations to the board of university and school lands providing for the  
15 distribution of sixty-five percent of moneys available in the oil and gas impact fund to  
16 cities not otherwise eligible for funding under this section, counties, school districts,  
17 and other political subdivisions impacted by oil and gas development.

18 **SECTION 11. AMENDMENT.** Section 57-62-06 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **57-62-06. Legislative intent and guidelines on impact grants.**

21 The legislative assembly intends that the moneys appropriated to, and distributed by, the  
22 energy development infrastructure and impact office for grants are to be used by grantees to  
23 meet initial impacts affecting basic governmental services, and directly necessitated by coal  
24 development and oil and gas development impact. As used in this section, "basic governmental  
25 services" do not include activities relating to marriage or guidance counseling, services or  
26 programs to alleviate other sociological impacts, or services or facilities to meet secondary  
27 impacts. All grant applications and presentations to the energy development infrastructure and  
28 impact office must be made by an appointed or elected government official.

29 **SECTION 12. EMERGENCY.** Sections 5, 7, 8, 9, 10, and 11 of this Act are declared to be  
30 an emergency measure.