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Sixty-third
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT
with Senate Amendments
REENGROSSED HOUSE BILL NO. 1358

Introduced by

Representatives Skarphol, Brandenburg, Froseth, Rust, Steiner, Glassheim, J. Kelsh

Senators Andrist, Wanzek, Wardner, Murphy, Triplett

A BILL for an Act to create and enact two new subsections to section 57-51-01 of the North Dakota Century Code, relating to definitions under the oil and gas gross production tax; to amend and reenact paragraph 1 of subdivision f of subsection 1 of section 15.1-27-04.1 of the North Dakota Century Code, as created by House Bill No. 1319, as approved by the sixty-third legislative assembly, and sections 57-51-15 and 57-62-05 of the North Dakota Century Code, relating to oil and gas gross production tax allocation and the impact aid program; to provide appropriations; to provide a transfer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 1 of subdivision f of subsection 1 of section 15.1-27-04.1 of the North Dakota Century Code, as created by House Bill No. 1319, as approved by the sixty-third legislative assembly, is amended and reenacted as follows:

(1) Seventy-five percent of all revenue received by the school district and reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08 <u>and mineral revenue received by the school district by direct allocation from the state treasurer and not reported under code 2000 of the North Dakota school district financial accounting and reporting manual</u>;

SECTION 2. Two new subsections to section 57-51-01 of the North Dakota Century Code are created and enacted as follows:

<u>"Hub city" means a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota.</u>

"Hub city school district" means the school district with the highest student enrollment within the city limits of a hub city.

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

57-51-15. Gross production tax allocation.

The gross production tax must be allocated monthly 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. Allocate to each hub city a monthly amount that will provide a total allocation of ~~five~~three hundred seventy-five 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~~for each full or partial percentage point of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota;
   b. Allocate to each hub city school district a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point of the hub city's private covered employment engaged in the mining industry, according to data compiled by job service North Dakota;
   c. Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding ~~one~~two hundred fifty million dollars per biennium; and
   ~~c.~~d. Allocate the remaining revenues under subsection 3.
2. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated as follows:
   a. The first ~~two~~five million dollars is allocated to the county.

b. Of ~~the next one~~all annual revenue exceeding five million dollars, ~~seventy-five~~twenty-five percent is allocated to the county.

~~c.~~ ~~Of the next one million dollars, fifty percent is allocated to the county.~~

~~d.~~ ~~Of the next fourteen million dollars twenty-five percent is allocated to the county.~~

~~e.~~ ~~Of all annual revenue exceeding eighteen million dollars, ten percent is allocated to the county.~~

3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.

4. ~~The amount to which each county is entitled under subsection 2 must be allocated within the county so the first five million three hundred fifty thousand dollars is allocated under subsection 5 for each fiscal year and any amount received by a county exceeding five million three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 6.~~

~~5.~~ For a county that received five million dollars or more of allocations under subsection 2 in the most recently completed state fiscal year, revenues allocated to that county under subsections 1 and 2 must be distributed by the state treasurer as follows:

a. ~~Forty-five~~Sixty-five percent ~~of all revenues allocated to any county for allocation under this subsection~~ must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if ~~during that fiscal year~~in a taxable year after 2012 the county ~~does not levy~~is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.

b. ~~Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to~~

~~school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.~~

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

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

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

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

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

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

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

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

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

~~c.~~ ~~Twenty~~Fifteen percent ~~of all revenues allocated to any county for allocation under this subsection~~ must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. A hub city must be omitted from apportionment under this subdivision. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent. ~~If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.~~

c. Two and one-half percent plus any amount allocated to school districts of the county under subdivision f of subsection 1 must be apportioned no less than quarterly by the state treasurer to the school districts of the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from apportionment under this subdivision.

d. Seven and one-half percent to the county treasurer for subsequent allocation to the organized and unorganized townships of the county in the proportion that township road miles in the township bears to the total township road miles in the county, with the board of county commissioners retaining and using the funds available for the maintenance and improvement of roads in unorganized townships. An organized township is not eligible for an allocation, and must be excluded from the calculation of township road miles, if that township in a taxable year after 2012 is not levying at least ten mills for township purposes.

e. Ten percent must be deposited in the oil-producing counties infrastructure enhancement fund in the state treasury.

5. For a county that did not reach a level of five million dollars of allocations under subsection 2 in the most recently completed state fiscal year, revenues allocated to that county must be distributed by the state treasurer as follows:

a. Forty-five percent must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.

b. Thirty-five percent must be apportioned by the state treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from apportionment under this subdivision. The total annual apportionment among school districts in the county under this subsection is limited to one million five hundred thousand dollars.

c. Twenty percent must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. A hub city must be omitted from apportionment under this subdivision. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.

~~6.~~ ~~a.~~ ~~Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 4 and 5 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.~~

~~b.~~ ~~Thirty-five percent of all revenues allocated to the county infrastructure fund under subsections 4 and 5 must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.~~

~~c.~~ ~~Twenty percent of all revenues allocated to any county infrastructure fund under subsections 4 and 5 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities~~

~~under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.~~

~~7.~~<u>6.</u> Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:

a. The county's statement of revenues and expenditures; and

b. The amount ~~available in the county infrastructure fund for allocation~~<u>allocated</u> to or for the benefit of townships ~~or school districts~~, the amount allocated to each organized township ~~or school district~~ and the amount expended from each such allocation by that township ~~or school district~~, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships ~~or school districts~~ which remained unexpended at the end of the fiscal year.

Within fifteen days after the time when reports under this subsection were due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

SECTION 4. AMENDMENT. Section 57-62-05 of the North Dakota Century Code is amended and reenacted as follows:

57-62-05. Powers and duties of energy infrastructure and impact office director.

The energy infrastructure and impact office director shall:

1. Develop a plan for the assistance, through financial grants for services and facilities, of counties, cities, school districts, and other political subdivisions in coal development and oil and gas development impact areas.

2. Establish procedures and provide proper forms to political subdivisions for use in making application for funds for impact assistance as provided in this chapter.

3. Make grants disbursements to counties, cities, school districts, and other taxing districts for grants awarded by the board of university and school lands pursuant to chapter 15-01, as provided in this chapter and within the appropriations made for such purposes. In determining the amount of impact grants for which political subdivisions are eligible, ~~the~~consideration must be given to the amount of revenue to which such political subdivisions will be entitled from taxes upon the real property of coal and oil and gas development plants and from other tax or fund distribution formulas provided by law must be considered.
4. Receive and review applications for impact assistance pursuant to this chapter.
5. 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, and other sources of revenue available to the political subdivision.
~~6.~~ ~~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. The director may not recommend that an incorporated city receive more than sixty percent of the funds available under this subsection.~~
~~7.~~ ~~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.~~

SECTION 5. APPROPRIATION - JOB SERVICE NORTH DAKOTA. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $120,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify all employees who should be included for statistical purposes in oil and gas-related employment, including employees of refineries and gas plants and oil and gas transportation services, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 6. APPROPRIATION - DEPARTMENT OF TRANSPORTATION - OIL-PRODUCING COUNTIES INFRASTRUCTURE ENHANCEMENT FUND. There is appropriated out of any moneys in the oil-producing counties infrastructure enhancement fund in the state treasury, not otherwise appropriated, the sum of $60,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of allocation as provided in this section among oil-producing counties that received $5,000,000 or more of allocations under subsection 2 of section 57-51-15 in the state fiscal year ending June 30, 2012, for the biennium beginning July 1, 2013, and ending June 30, 2015.

1. The sum appropriated in this section must be used to rehabilitate or reconstruct county paved and unpaved roads needed to support oil and gas production and distribution in North Dakota.
   a. Funding allocations to counties are to be made by the department of transportation based on data supplied by the upper great plains transportation institute.
   b. Counties identified in the data supplied by the upper great plains transportation institute which received $5,000,000 or more of allocations under subsection 2 of section 57-51-15 for the state fiscal year ending June 30, 2012, are eligible for this funding.
2. Each county requesting funding under this section for county roads shall submit the request in accordance with criteria developed by the department of transportation.
   a. The request must include a proposed plan for funding projects that rehabilitate or reconstruct paved and unpaved roads within the county.
   b. The plan must be based on data supplied by the upper great plains transportation institute, actual road conditions, and integration with state highway and other county road projects.
   c. Projects funded under this section must comply with the American association of state highway transportation officials (AASHTO) pavement design procedures and the department of transportation local government requirements. Upon completion of major reconstruction projects, the roadway segment must be posted at a legal load limit of 105,500 pounds [47853.993 kilograms].
   d. Funds may not be used for routine maintenance.

3. The department of transportation, in consultation with the county, may approve the plan or approve the plan with amendments.
4. The funding appropriated in this section may be used for:
   a. Ninety percent of the cost of the approved roadway projects not to exceed the funding available for that county.
   b. Funding may be used for construction, engineering, and plan development costs.
5. Upon approval of the plan, the department of transportation shall transfer to the county the approved funding for engineering and plan development costs.
6. Upon execution of a construction contract by the county, the department of transportation shall transfer to the county the approved funding to be distributed for county and township road rehabilitation and reconstruction projects.
7. The recipient counties shall report to the department of transportation upon awarding of each contract and upon completion of each project in a manner prescribed by the department.
8. The funding under this section may be applied to engineering, design, and construction costs incurred on related projects as of January 1, 2013.
9. Section 54-44.1-11 does not apply to funding under this section. Any funds not spent by June 30, 2015, must be continued into the biennium beginning July 1, 2015, and ending June 30, 2017, and may be expended only for purposes authorized by this section.

SECTION 7. APPROPRIATION - STATE TREASURER. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $8,760,000, or so much of the sum as may be necessary, to the state treasurer for allocation to counties for allocation to or for the benefit of townships in oil-producing counties, for the biennium beginning July 1, 2013, and ending June 30, 2015. The funding provided in this section must be distributed in equal amounts in July 2013 and May 2014. The state treasurer shall distribute the funds provided under this section as soon as possible to counties and the county treasurer shall allocate the funds to or for the benefit of townships in oil-producing counties through a distribution of $15,000 each year to each organized township and a distribution of $15,000 each year for each unorganized township to the county in which the unorganized township is located. If any funds remain after the distributions provided under this section, the state treasurer shall distribute eighty percent of the remaining funds to counties and cities in oil-producing counties pursuant to the method provided in subsection 4 of section 54-27-19 and shall distribute twenty percent of the remaining funds to counties and townships in oil-producing counties pursuant to the method provided in section 54-27-19.1. An organized township is not eligible for an allocation of funds under this subdivision if in a taxable year after 2012 that township is not levying at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision for township roads or other infrastructure needs in those townships. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads. For the purposes of this section, an "oil-producing county" means a county that received an allocation of funding under section 57-51-15 of more than $500,000 but less than $5,000,000 during the preceding state fiscal year.

SECTION 8. APPROPRIATION - COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS - OIL AND GAS IMPACT GRANT FUND. There is appropriated out of any moneys in the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of $5,000,000, or so much of the sum as may be necessary, to the commissioner of university and school lands for the purpose of providing distributions to eligible counties experiencing new oil and gas development activities, for the biennium beginning July 1, 2013, and ending June 30, 2015. As determined by the director of the department of mineral resources, a county is eligible for a distribution under this section if the county produced fewer than one hundred thousand barrels of oil for the month of November 2012 and after November 2012 the number of active oil rigs operating in the county in any one month exceeds four rigs. Upon the determination by the director of the department of mineral resources that a county is eligible for a distribution under this section, the commissioner of university and school lands shall provide $1,250,000 to the county for defraying expenses associated with oil and gas development impacts in the county. The county, in determining the use of the funds received, shall consider and, to the extent possible, address the needs of other political subdivisions in the county resulting from the impact of oil and gas development.

SECTION 9. APPROPRIATION - TRANSFER - GENERAL FUND TO OIL AND GAS IMPACT GRANT FUND. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $65,000,000, which the office of management and budget shall transfer to the oil and gas impact grant fund, for the biennium beginning July 1, 2013, and ending June 30, 2015. The funding provided in this section is considered one-time funding.

SECTION 10. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for taxable events occurring after June 30, 2013.