

FISCAL NOTE
Requested by Legislative Council
02/06/2017

Revised
Amendment to: SB 2134

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(286,287,872)		\$(35,603,513)
Expenditures				\$350,000		
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill changes the definition of sovereign minerals within Missouri River reservoirs.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

For portions of the Missouri River, the bill would sever the public's ownership of the riverbed from its ownership of the minerals beneath the bed. N.D.C.C. ch. 61-33 defines sovereign land to include beds and islands lying within the ordinary high watermark of navigable lakes and streams and assigns management of the oil, gas and related hydrocarbons to the Board of University and School Lands. The State Engineer manages the islands and the bed of navigable waters and all other minerals therein. On behalf of the State, the Board has leased these oil and gas minerals to the estimated historic ordinary high watermark of the Missouri River as defined by state law as it existed prior to inundation. The revenue is deposited into the Strategic Investment and Improvements Fund.

The bill would make the U.S. Army Corps of Engineers' river surveys prior to inundation by Lakes Sakakawea and Oahe determinant of the State's sovereign mineral boundary. Because the method the Board has used to lease the State's oil and gas rights differs markedly from the area of the historic river depicted by the federal surveys, substantial mineral acres would be surrendered to the federal government and to private title claims.

The US Department of Interior's recent position is that the Missouri River is owned by the tribes within the boundary of the Fort Berthold Reservation. The State disputes this position and claims ownership. If passed, North Dakota would forego its assertion to all riverbed minerals within the Fort Berthold and Standing Rock Reservations.

The State would return revenue on an estimated 910 mineral tracts involving 64,000 acres and relinquish future royalty revenue. The impact includes the return of bonus, rent, and royalty already collected; escrowed royalties that are anticipated to be collected; and estimated lost future royalties based upon 2015-2017 Biennium (to date) production and prices.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill would have a negative revenue impact on the Strategic Investment and Improvements Fund, which collects the proceeds of all sovereign mineral leasing.

There is an acreage difference between the federal river survey and estimated historic ordinary high watermark as identified by the Board of University and School Lands' contractor in a 2010 investigation.

Presently under Lake Sakakawea the Board, on behalf of the State, leases oil and gas minerals within the estimated historic high watermark both within and outside of the reservation. With passage of this bill, North Dakota would abandon its claim to riverbed minerals located within the Fort Berthold and Standing Rock reservations.

The combined impacts are that the State would repay from the SIIF, revenue it has collected on 910 mineral tracts involving an estimated 64,000 acres and would also abdicate future royalty revenue.

The impacts includes the return to lessees of \$129,489,819 of bonus and rent; the repayment to operators of \$71,974,869 in royalties collected and anticipated through FY 2017; and the forfeiture of claim to \$49,219,671 of presently escrowed royalty.

Additionally, based upon 2015-2017 Biennium (to date) average level prices and production, the estimated impact on future royalty revenue would be a reduction of \$35,603,513 in each of the next two biennia.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Technical and legal expenditures and the need for additional staff for implementing the bill cannot be determined.

The costs of hiring a qualified contractor to determine the acreage and tracts within the "historical Missouri riverbed channel" as determined by the Army Corps of Engineers' last known survey conducted in connection with its determination of the amount of land acquired for the impoundment of Lake Sakakawea and Lake Oahe is estimated at \$350,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No anticipated impact on present biennium appropriations.

Continuing appropriation authority (N.D.C.C. §§ 15-05-19, 15-07-22) is used for spending authority to manage, preserve, and enhance the value of the SIIF; it is unknown if this same authority can be used for expenditures related to reducing the State's previously claimed asset.

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Projected Revenues Based on Acreage Changes in Engrossed SB 2134 ¹
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	FY 2015-2017	FY 2017-2019	FY 2019-2021
Oil and Gas Lease Bonus & Rent ²	\$ -	\$ (129,489,819)	\$ -
Royalties Collected ³	-	(71,974,869)	
Projected Royalties ⁴		(35,603,513)	(35,603,513)
Escrowed Royalties ⁵	-	(49,219,671)	-
Change in Revenue	<u>\$ -</u>	<u>\$ (286,287,872)</u>	<u>\$ (35,603,513)</u>

Appx. Acres ¹	Affected Tracts ¹
64,000	910

¹ Difference between the Corps' survey and the Board of University and School Lands' estimated historic ordinary high watermark. The bill eliminates the State's claim to all minerals underlying the Missouri River within the boundary of the Fort Berthold Reservation.

² Bonuses collected and held in the SIIF, to be returned to lessees.

³ Includes projected royalties through the end of FY 2017.
Already collected royalties would be returned to operators.

⁴ Based upon 2015-2017 bienium (to date) average level prices and production

⁵ Funds held in escrow accounts at the Bank of North Dakota due to title disputes.