

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/05/2017**

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    |
| <b>Revenues</b>       |                    |             |                    | \$(48,063,708) |                    | \$(29,406,007) |
| <b>Expenditures</b>   |                    |             |                    | \$158,529,374  |                    |                |
| <b>Appropriations</b> |                    |             |                    | \$187,935,381  |                    |                |

- 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 |
|-------------------------|--------------------|--------------------|--------------------|
| <b>Counties</b>         |                    |                    |                    |
| <b>Cities</b>           |                    |                    |                    |
| <b>School Districts</b> |                    |                    |                    |
| <b>Townships</b>        |                    |                    |                    |

- 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 adopts a definition of sovereign minerals within Missouri River reservoirs as within the historical riverbed channel and implements a study to determine this location. The bill directs the adjustment of State leased mineral acres and authorizes refunds and legal cost refunds.

- 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.*

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. The State has leased sovereign oil and gas minerals within the estimated historic ordinary high watermark of the Missouri River as it existed prior to inundation by Lake Sakakawea. The revenue is deposited into the Strategic Investment and Improvements Fund (SIIF).

For portions of the Missouri River under reservoirs, the bill would define public ownership of the riverbed minerals as the historic Missouri riverbed channel. The bill initiates a study of U.S. Army Corps of Engineers' pre-inundation surveys and historic records to determine the acreage and stipulates the adjustment of mineral acreage and associated refunds.

The method the Board has used to determine the historic channel and which served as the basis to lease the State's oil and gas rights differs from the area depicted by the federal surveys, thus the bill would initiate the surrender of mineral acres from previous State claims of the historic and actual river channel.

The State would return revenue collected on an estimated 25,000 acres and relinquish future royalty revenue. The impact includes return of the bonus and rent already collected to lessees of record and the return to operators of royalties collected; reduced claim to escrowed royalties; and lost future royalties estimated upon 2015-2017 Biennium (to date) production and prices.

The bill also defers to the U.S. Bureau of Land Management's determination of public domain tracts as depicting acres owned by the federal government. Where these nonpatented lands are within the historic ordinary high watermark of the Missouri River, the State has claimed ownership and leased these acres, which are included in the

estimated fiscal impact. Revenue that the State has collected from the acres that the United States has also claimed would be returned to the lessees and operators from which it was received.

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 impact on the SIIF, 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 in 2010. Additionally, the bill would apply a determination of the historic river high watermark west of the Highway 85 Bridge in an area where the Board leased minerals based on the 2009 and 2010 survey of the ordinary high watermark.

The combined impacts are that the State would repay from the SIIF, revenue it has collected on an estimated 25,000 acres and would also not receive future royalty revenue.

The bill will require forfeiture of claim to \$18,657,701 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 \$29,406,007 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.*

Based upon the possible reduction of 25,000 mineral acres, an estimated \$87,663,214 of bonus and rent, and \$69,316,160 of royalties collected and anticipated through FY 2017 will be returned to lessees and operators.

The Bill appropriates \$800,000 to the Department of Mineral Resources for the costs of a contractor to determine the acreage and tracts within the "historical Missouri riverbed channel" as determined by the Army Corps of Engineers' surveys conducted in connection with its determination of the amount of land acquired for the impoundment of Lake Sakakawea and Lake Oahe; in combination with other historical records.

Technical and legal expenditures and the need for additional Department of Trust Land staff to implement acreage adjustments and resulting refunds cannot be determined. An additional mineral title specialist FTE to assist in the correction of leases related to over 400 leases has been requested for inclusion in the budget for the Commissioner of University and School Lands. The requested Mineral Title Specialist would cost an estimated \$206,976 per biennium with benefits and overhead, has not been included in appropriation authorization.

The Bill appropriates \$100,000,000 from the SIIF for the purpose of repayments of mineral revenues, and authorizes the Commissioner to borrow up to \$87,000,000 from the Bank of North Dakota and appropriates the amount needed for mineral revenue repayments.

The Bill appropriates up to \$750,000 from the SIIF to reimburse legal expenses of private mineral owners who sued the State regarding ownership of submerged minerals

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.*

Section 2 of the bill appropriates \$800,000 from the SIIF to the Department of Mineral Resources to hire a contractor to study the historic ordinary high water mark.

Section 3 of the bill contains appropriation authority to the Commissioner of University and School Lands of \$187,000,000 related to refunds of an estimated:  
\$87,663,214 of bonus and rent;  
\$69,316,160 of royalties collected and anticipated through FY 2017; and  
\$29,406,007 that could be collected during the time-frame of the study.

Section 4 of the bill appropriates up to \$750,000 from the SIIF to reimburse legal expenses of private mineral owners who sued the State regarding ownership of submerged minerals.

The total appropriation is \$187,935,381.

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**Date Prepared:** 04/06/2017

|                                                                  |
|------------------------------------------------------------------|
| Projected Revenues Based Upon 25,000 Impacted Acres <sup>1</sup> |
|------------------------------------------------------------------|

|                                              | FY 2017-2019 <sup>+</sup> | FY 2019-2021    |
|----------------------------------------------|---------------------------|-----------------|
| Oil and Gas Lease Bonus & Rents <sup>2</sup> | \$ (87,663,214)           |                 |
| Royalties Collected <sup>3</sup>             | (69,316,160)              |                 |
| Royalties Collected - Projected <sup>4</sup> | (29,406,007)              | (29,406,007)    |
| Royalties Escrowed <sup>5</sup>              | (18,657,701)              |                 |
| Change in Revenue                            | \$ (205,043,082)          | \$ (29,406,007) |

<sup>+</sup> Estimated funds to be disbursed in 2017 - 2019 biennium, but some may be disbursed in 2019 - 2021 biennium.

<sup>1</sup> Difference between the Corp's survey and the Board of University and schools Lands' estimated historic ordinary high water mark.

<sup>2</sup> Bonuses collected and held in SIIF, to be returned to lessees.

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

<sup>4</sup> Based upon 2015-2017 biennium (to date) average level prices and production.

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

|                            |
|----------------------------|
| Potential Bonus Repayments |
|----------------------------|

|            | Total Bonuses &<br>Rents Collected | % Impact Bill<br>2134 | Total                |
|------------|------------------------------------|-----------------------|----------------------|
| Phase I*   | \$ 26,083,522                      | 77.53%                | \$ 20,223,613        |
| Phase II** | 119,993,395                        | 56.20%                | 67,439,601           |
|            | <u>\$ 146,076,917</u>              |                       | <u>\$ 87,663,214</u> |

|                    |
|--------------------|
| Projected Revenues |
|--------------------|

Projected Future Periods

|            | Received             | Escrowed            | Total Estimated<br>Revenue | % Impact<br>Bill 2134 | Total                |
|------------|----------------------|---------------------|----------------------------|-----------------------|----------------------|
| Phase I*   | \$ 1,999,529         | \$ 1,067,123        | \$ 3,066,652               | 77.53%                | \$ 2,377,700         |
| Phase II** | 40,094,698           | 7,996,013           | 48,090,711                 | 56.20%                | 27,028,308           |
|            | <u>\$ 42,094,227</u> | <u>\$ 9,063,136</u> | <u>\$ 51,157,363</u>       |                       | <u>\$ 29,406,007</u> |

Royalties Collected

|            | Received              | Anticipated FY<br>2017 Collections | Revenues              | % Impact<br>Bill 2134 | Total                |
|------------|-----------------------|------------------------------------|-----------------------|-----------------------|----------------------|
| Phase I*   | \$ 8,790,483          | \$ 499,882                         | \$ 9,290,365          | 77.53%                | \$ 7,203,197         |
| Phase II** | 100,492,181           | 10,023,675                         | 110,515,856           | 56.20%                | 62,112,963           |
|            | <u>\$ 109,282,664</u> | <u>\$ 10,523,557</u>               | <u>\$ 119,806,221</u> |                       | <u>\$ 69,316,160</u> |

Royalties Escrowed

|            | Escrow Received      | Anticipated FY<br>2017 Escrow<br>Collections | Revenues             | % Impact<br>Bill 2134 | Total                |
|------------|----------------------|----------------------------------------------|----------------------|-----------------------|----------------------|
| Phase I*   | \$ 7,608,180         | \$ 311,244                                   | \$ 7,919,424         | 77.53%                | \$ 6,140,251         |
| Phase II** | 19,939,778           | 2,332,171                                    | 22,271,949           | 56.20%                | 12,517,450           |
|            | <u>\$ 27,547,958</u> | <u>\$ 2,643,415</u>                          | <u>\$ 30,191,373</u> |                       | <u>\$ 18,657,701</u> |

\* Phase I leased (between township 153-102 and Hwy 85)

\*\* Phase II leased (between Hwy 85 and Hwy 23)