APPENDIX F

Energy Infrastructure and Impact Office

Grants Program Status Update

Interim Government Finance Committee

Lance Gaebe, Director
Energy Infrastructure and Impact Office

Department of Trust Lands
February 3, 2016

DEPARTMENT OF ND TRUST LANDS
INVESTING FOR EDUCATION

Energy Impact Program

Energy Infrastructure and Impact Office (EIIO)

A Division within the Office of the Commissioner of University and School Lands

The Board of University and School Lands (Land Board)

- Governor
- Secretary of State
- State Treasurer
- Attorney General
- Superintendent of Public Instruction

Land Board has the Authority to: Appoint the EIIO Director, and to Award and Distribute Impact Grants from the Oil and Gas Impact Grant Fund

Energy Infrastructure And Impact Grants Program

Energy Infrastructure and Impact Office Mission:

Provide assistance through grants, to local political subdivisions to address direct costs associated with infrastructure impacts from energy activity.

- $6 million - 2007-2009 Biennium
- $8 million - 2009-2011 Biennium
- $135 million - 2011-2013 Biennium
- $240 million - 2013-2015 Biennium
- $140 million – 2015-2017 Biennium

Coal Impacted Political Subdivision

Oil and Gas Impacted Political Subdivisions (cities, counties, school districts, other taxing districts)

Impacted means actual or anticipated extraordinary expenditures caused by energy development and associated growth

2015-2017 Biennium

Oil and Gas Impact Grant Fund - $140 million

Legislative Designations of $132.5 Million of Grants to:

- Airports (requires match local & federal) - $48 million
- School Districts - $30 million
- Law Enforcement - $10 million
  - $750,000 Organizations Servicing Human Trafficking Victims
  - $250,000 Domestic Violence and Rape Crisis Programs
- Critical Access Hospitals - $10 million*
- Bowman and Divide Counties – Equally share $8 million*
- Emergency Medical Services - $6 million*
- Eligible Political Subdivisions Receiving Less Than $5 Million GPT - $5 million
  - Golden Valley, Renville, McLean, Slope, Ward, McHenry and Mercer

*Exemption provided N.D.C.C. 57-62 Impact Aid Program

(Continued next page)

2015-2017 Biennium
Oil and Gas Impact Grant Fund - $140 million (continued)

Legislative Designations of $132.5 Million of Grants to:

- Nursing Homes, Basic Care Facilities, Home Health & Hospice Services - $4 million*
- Fire Protection Districts - $3 million
- Providers of Services to Developmentally Disabled - $2 Million*
- Domestic Violence Sexual Assault Organizations - $2 Million*
- Local District Health Units - $2 Million
- City of Stanley - $1.7 Million
- City of Kenmare - $500,000
- City of Berthold - $200,000
- City of Burlington - $100,000
- $6.8 Million Remaining for Non-Specific Awards

*Exemption provided N.D.C.C. 57-62 Impact Aid Program

Office of State Treasurer
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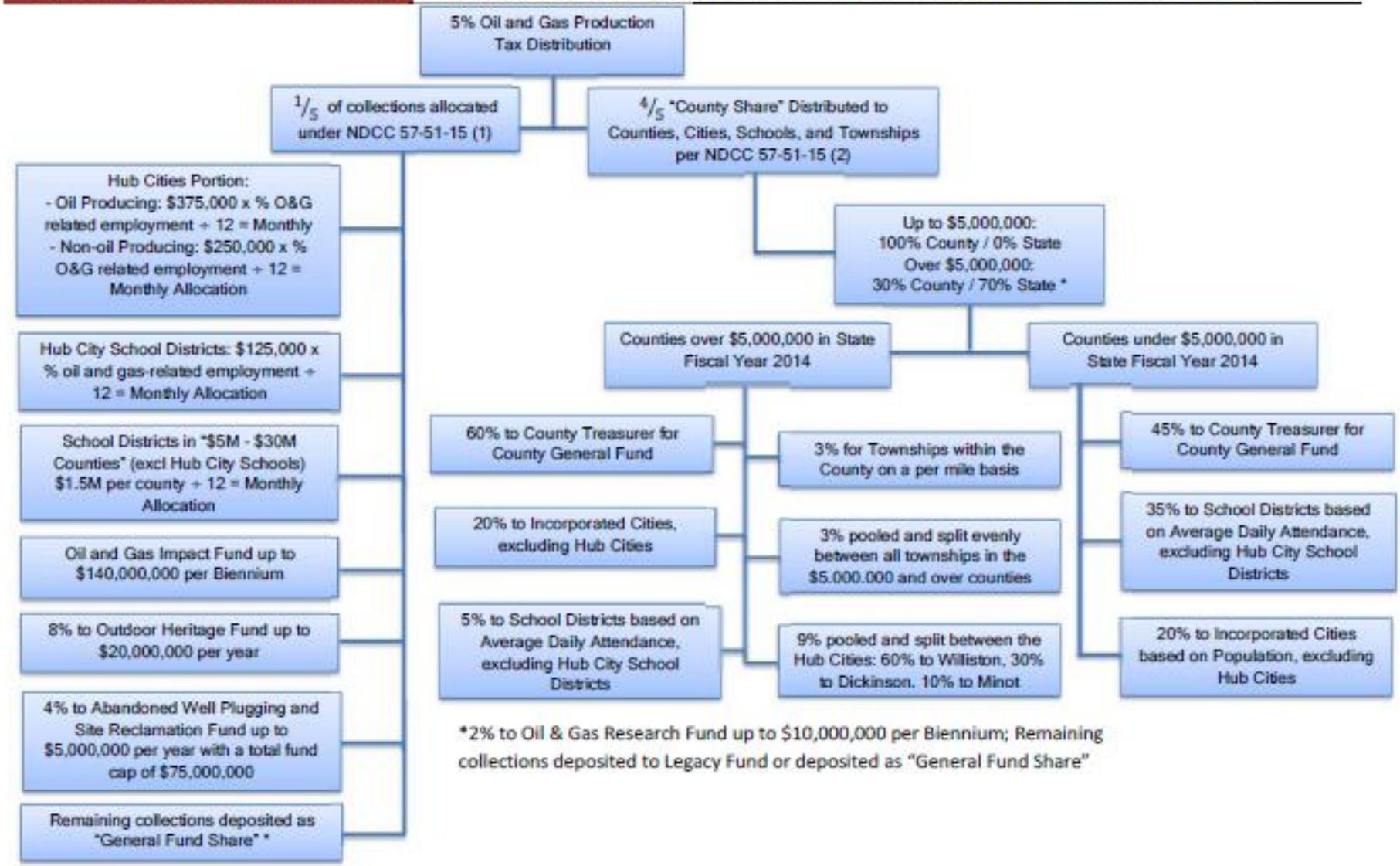
North Dakota
Oil Extraction and Gross Production Distribution Fiscal Years 2016 and 2017



*2% to Oil & Gas Research Fund up to $10,000,000 per Biennium; Remaining collections deposited to Legacy Fund or deposited as "General Fund Share"

The 2015-2017 Biennium Grants Awarded

- **Airports** - $3.5 Million Awarded
- **Emergency Medical Services** - $3.7 Million Awarded
- **K-12 School Districts** - $15 Million Awarded
- **Law Enforcement** - $7.8 Million Awarded
- **Fire Protection Districts** - $3 Million Awarded
- **Local District Health Units** - $2 Million Awarded
- **Missouri Ridge Township** - $500,000 Awarded
- **Critical Access Hospitals** - $5 Million Awarded
- **Developmentally Disabled Providers** - $1 Million Awarded
- **Sexual Assault Examiner Programs** - $247,767 Awarded
- **Human Trafficking Victim Services** - $655,424 Awarded

Total Awarded as of January 28, 2016 = $42.41 million

The 2015-2017 Biennium
GPT Distributions into the Oil and Gas Impact Grant Fund

An average $6 million each month is necessary for the fund to reach the $140 million appropriated.

September 2015 -	$6,047,181.76
October 2015 -	$3,424,406.96
November 2015 -	$3,519,660.16
December 2015 -	$4,284,044.85
January 2016 -	$3,751,702.50
Total	$21,026,996.23

Monthly average is $4.2 million

With the down trend, the Land Board requested legal guidance on which Legislative directives are mandatory and which are not required

As of January 29, 2016

Energy Infrastructure And Impact Grants Program

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Wayne Stenehjem
ATTORNEY GENERAL

MEMORANDUM

TO: Gerry Fisher, Energy Infrastructure and Impact Office

FROM: W. Christopher Harvey, Assistant Attorney General

DATE: January 22, 2016

RE: Construction of H.B. No. 1176 Grant Designations

Thank you for your inquiry regarding interpretation of section 5 of H.B. No. 1176. Section 5 includes sixteen subsections designating the intended distribution of funds in the Oil and Gas Impact Grant Fund (Fund). You asked whether any of these designations have special priority to grant funds, given that fund revenues have fallen short of expectations. While some of the designations have ambiguous language that could be interpreted to give a higher priority, that interpretation is not persuasive when the bill is considered as a whole. In my opinion none of the designations in section 5 have priority over the others, save for two specific grants addressed by other bills.

The "Legislature's intent must be sought initially from the statutory language."[1] "If a statute's language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute."[2] A statute should also "be construed as a whole to determine the legislative intent, and if possible, the entire statute must be given meaning because the law neither does nor requires idle acts."[3]

The Fund gets its appropriation from section 3 of H.B. No. 1176, codified at N.D.C.C. §57-51-15. That section allocates revenues from the gross production tax (GPT) into three subsections. Subsection 1 parts (a) through (d) allocate specific dollar amounts to counties, cities, and school districts according to a formula. Parts (f) and (g) each allocate a specific percentage of the GPT to the North Dakota Outdoor Heritage Fund and the well plugging and site reclamation funds, respectively. The allocation to the Fund in part (e), however, is not a mandated dollar amount or percentage, but simply states:

> Credit revenues to the [Fund], but not in an amount exceeding one hundred forty million dollars per biennium for the 2015-17 biennium, and not in an amount exceeding one hundred million dollars per biennium thereafter;

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[1] Cnty. Of Stutsman v. State Historical Soc'y, 371 N.W.2d 321 (N.D. 1985).
[2] N. X-Ray Co., Inc. v. Hanson, 542 N.W.2d 733, 735 (N.D. 1996).
[3] State ex rel. Kusler v. Sinner, 491 N.W.2d 382, 385 (N.D. 1992), citing Cnty. Of Stutsman v. State Historical Soc'y, 371 N.W.2d 321 (N.D. 1985)

Energy Infrastructure And Impact Grants Program

GPT revenues are appropriated to the Fund, but only to the extent available after satisfying the obligations in parts (a) through (d), (f), and (g). The Legislature did not appropriate exactly $140 million, but revenues "not in an amount exceeding" $140 million. The appropriation to the fund is contingent on funds being available, which is significant when interpreting the various designations the Legislature attached to the Fund in section 5.

The first paragraph in section 5 also indicates that the designations which follow are subject to availability of funding and subject to approval by the Board of University and School Lands. The first sentence states that funding for the designation "is appropriated out of any moneys in the [Fund],... the sum of $139,300,000... for the purpose of oil and gas impact grants...." The use of the word "any" reflects the possibility that there may not be moneys in the Fund. Further, when introducing the sixteen enumerated designations, section 5 states:

> During the biennium beginning July 1, 2015, and ending June 30, 2017, the energy infrastructure and impact office director shall include in recommendations to the board of university and school lands on grants to eligible entities in oil and gas development impact areas....

The administration of the Fund and the award of grant monies are subject to the discretion of the Energy Infrastructure and Impact Office and the Board of University and School Lands, up to the amount of each designation.

With that background we can consider the sixteen individual designations that the Legislature attached to the Fund in section 5. The dollar amounts for the designations range from $48,000,000 for grants to airports impacted by oil and gas development to $100,000 for grants to eligible cities impacted by oil and gas development.

The bill does not specify a priority among the designations; however, several designations have language that could potentially be interpreted that way. Subsections 4 and 10 are for grants to critical access hospitals and providers that serve individuals with developmental disabilities, respectively. Subsection 4 states that "[o]ne-half of the grant funding must be distributed in January of each year of the biennium." Subsection 10 similarly states "grants must be distributed in January of each year of the biennium." Subsection 5 designates grant funds to two eligible counties and states "grants must be distributed in equal amounts to each eligible county.

The use of the word "must" in these designations creates an ambiguity. We could read subsection 5 as saying this particular grant "must be distributed," even at the expense of other designations that don't have a similar clause. Alternatively, we could interpret that clause as saying that *if* a grant is made to that designation, *then* it must be distributed equally between the two counties.

Energy Infrastructure And Impact Grants Program

In my opinion the latter interpretation is more consistent with the entirety of the bill. The Legislature already indicated in section 3, and earlier in section 5, that none of the designated grant amounts are guaranteed to receive funding. They are subject to the GPT supplying adequate revenues to the Fund and then subject to recommendation and approval by the Board of University and School Lands. It would be incongruous for the Legislature to mandate an action, i.e. distribution of grant funds, in the context of this conditional appropriation.

In my view the individual designations should be interpreted in light of the conditional nature of the grant program. If the Fund receives revenues from the GPT, and if a grant is made to a particular designation, then the "must" clauses dictate when or how that grant is allocated. It should be noted then that if a grant is made pursuant to subsections 4 or 10 in January 2016, funds should be reserved to award the other half of the funding in January 2017.

If the Legislature had intended for some designations to have priority over others, it easily could have said so in section 5. Recall this is what the Legislature did in section 3, with a waterfall style allocation of GPT funds to certain described purposes, then to others, and then to others. The fact that section 3 creates a priority schedule among funding recipients and section 5 merely lists designations of grant funds is another factor indicating that there is no priority among section 5 designations. There is nothing in the legislative history that indicates any of the section 5 designations were intended to receive priority over the others.

In addition to the language in section 5, there are three other bills from the 2015 legislative session that addressed designations within the Fund. Section 39 of Senate Bill No. 2015 states that:

> It is the intent of the sixty-fourth legislative assembly that of the funding designated for grants to airports impacted by oil and gas development included in subsection 1 of section 5 of House Bill No. 1176, as approved by the sixty-fourth legislative assembly, a grant award of at least $39,000,000 be awarded to the airport in the hub city as defined under section 57-51-01 that received the highest total allocation under subsection 1 of section 57-51-15 for the period beginning September 1, 2013, and ending August 31, 2014, and a grant award of at least $5,800,000 be awarded to the airport in the hub city as defined under section 57-51-01 that received the second highest total allocation under subsection 1 of section 57-51-15 for the period beginning September 1, 2013, and ending August 31, 2014. It is also the intent of the sixty-fourth legislative assembly that the grant awards designated under this section must be awarded without a local matching requirement.

Energy Infrastructure And Impact Grants Program

Like the language in the various subsections of section 5 of H.B. No. 1176, this language does not change the conditional nature of the grants made out of the Fund. S.B. No. 2015 breaks up the designation for grants to airports into smaller pieces, but does not assign a priority to those grants in a way that distinguishes them from the other subsections of section 5 of H.B. No. 1176.

In contrast, S.B. Nos. 2199 and 2284 specifically direct the Board to award grants of $750,000 and $250,000 out of the $10 million that H.B. No. 1176 designates for law enforcement. S.B. No. 2199 states:

> The board of university and school lands funds, from funds designated in House Bill No. 1176 as approved by the sixty-fourth legislative assembly, for grants to law enforcement agencies impacted by oil and gas development, shall make available $750,000 for grants to organizations involved in providing prevention and treatment services related to human trafficking victims.... The board of university and school lands shall award the grants as directed by the attorney general..."

S.B. No. 2284 uses similar language in directing the Board to make a $250,000 grant through the domestic violence and rape crisis program. In my opinion this language unambiguously requires the Board to award these grants and gives them priority to any available moneys in the Fund.

The only items with priority to moneys in the Fund are the grants the Board is required to make under S.B. Nos. 2199 and 2284. Further distribution of grant funds is within the discretion Board of University and School Lands, up to the amounts designated in section 5.

Energy Infrastructure And Impact Grants Program

Oil and Gas Impact Grant Fund						
2015-17 Biennium Designations/Awarded/Remaining Required/Uncertain						
HB 1176, Section 5, Subsection	Designation	Legislative Designated Amount	Already Awarded FY16	Remaining Required on Counsel Advice	Counsel Advice	Uncertain Based on Funding Availability
1	Airports	$48,000,000	$3,518,820			$44,481,180
2	K-12 Schools	$30,000,000	$15,000,193			$14,999,807
3	Law Enforcement	$10,000,000	$8,691,771	$96,809	SB 2199 Human Trafficking $750,000, SB 2284 Sexual Assault Examiner Programs $250,000 Required	$1,211,420
4	Critical Access Hospitals	$10,000,000	$5,000,000	$5,000,000	1/2 required each January of the Biennium	$0
5	Bowman & Divide Counties (equal)	$8,000,000				$8,000,000
6	EMS	$6,000,000	$3,696,195			$2,303,805
7	Eligible Political Subs, 7 low producing counties	$5,000,000				$5,000,000
8	Nursing Homes/Basic Care/Home Health & Hospice	$4,000,000				$4,000,000
9	Fire Protection Districts	$3,000,000	$3,000,000			$0
10	Providers Serving Developmentally Disabled	$2,000,000	$1,000,000	$1,000,000	1/2 required each January of the Biennium	$0

DEPARTMENT OF ND TRUST LANDS
INVESTING FOR EDUCATION

Energy Infrastructure And Impact Grants Program

Oil and Gas Impact Grant Fund						
2015-17 Biennium Designations/Awarded/Remaining Required/Uncertain						
HB 1176, Section 5, Subsection	Designation	Legislative Designated Amount	Already Awarded FY16	Remaining Required on Counsel Advice	Counsel Advice	Uncertain Based on Funding Availability
11	Domestic Violence Sexual Assault Organizations	$2,000,000				$2,000,000
12	Local District Health Units	$2,000,000	$2,000,000			$0
13	City of Stanley	$1,700,000				$1,700,000
14	City of Kenmare	$500,000				$500,000
15	City of Berthold	$200,000				$200,000
16	City of Burlington	$100,000				$100,000
	Un-Designated Discretionary	$6,800,000	$500,000			$6,300,000
		$139,300,000	$42,406,979	$6,096,809		$90,796,212

DEPARTMENT OF ND TRUST LANDS
INVESTING FOR EDUCATION

The 2015-2017 Biennium

Oil and Gas Impact Grant Fund To-Date-Reimbursements

Reimbursed/Disbursed on Grants Provided to-date: $18,616,107.55

Balance Remaining $2,410,888.68

As of January 29, 2016

2015-17 BIENNIUM OIL REVENUES

Distributions from Gross Production and Extraction Taxes

Revised January 2016

Comparison to 2015 Legislative Forecast

TAX TYPE	2015 Legislative Forecast	January 2016 Revised Forecast [1]	Increase (Decrease) from 2015 Forecast
Political subdivisions	$630,487,015	$478,072,790	($152,414,225)
Three Affiliated Tribes	265,075,756	188,328,172	(76,747,584)
Legacy fund	950,597,208	683,387,883	(267,209,325)
Foundation aid stabilization fund	134,229,638	106,682,653	(27,546,985)
Common schools trust fund	134,229,638	106,682,653	(27,546,985)
Resources trust fund	264,259,277	209,298,480	(54,960,797)
Renewable energy development fund	3,000,000	3,000,000	
Energy conservation grant fund	1,200,000	1,066,827	(133,173)
Oil and gas research fund	10,000,000	10,000,000	
Oil and gas impact fund	140,000,000	28,619,538	(111,380,462)
North Dakota outdoor heritage fund	27,015,471	13,398,878	(13,616,593)
Abandoned well and site reclamation fund	10,000,000	7,024,545	(2,975,455)
General fund	300,000,000	300,000,000	
Tax relief fund	300,000,000	300,000,000	
State disaster relief fund	16,422,400		(16,422,400)
Political subdivision allocation fund	44,165,014		(44,165,014)
Strategic investment and improvements fund	203,051,700	30,725,900	(172,325,800)
TOTAL REVENUES	**$3,433,733,116**	**$2,466,288,319**	**($967,444,797)**

[1] The January 2016 revised forecast reflects actual revenue collections through January 31, 2016.

	Previous Biennia Unreimbursed Amounts	Current Biennium Unreimbursed Amounts
Cities	$ 29,942,474.27	
Airports	$ 20,831,780.56	$ 2,682,510.52
EMS	$ 1,053,795.38	$ 2,874,078.88
K-12 Schools	$ 2,422,933.82	$ 5,793,326.89
Law Enforcement	$ 698,965.87	$ 7,357,423.05
Fire Districts	$ 634,808.13	$ 2,195,714.17
Missouri Ridge Twp		$ 500,000.00
Local District Health Units		$ 1,484,627.29
Sexual Assault Nurse Examiner		$ 247,767.00
Human Trafficking		$ 655,424.00
Townships and County Roads	$ 9,959,116.56	
Dickinson State University	$ 800,000.00	
	$ 66,343,874.58	$ 23,790,871.80

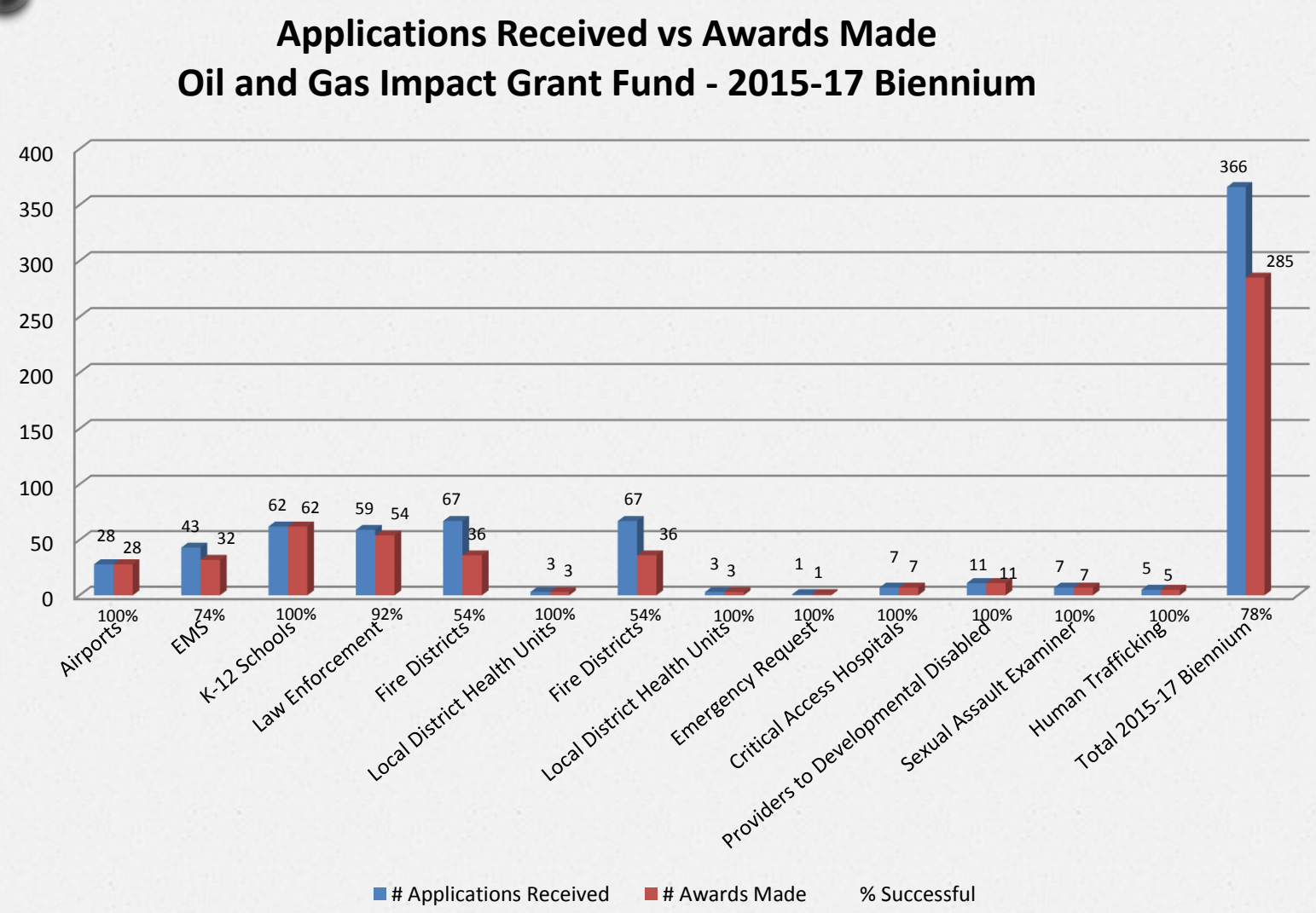
REVIEW OF GRANTS AWARDED TO DATE

Energy Infrastructure and Impact Office Grants Program Overview

PRESENTED BY: Lance Gaebe, Director
Energy Infrastructure and Impact Office

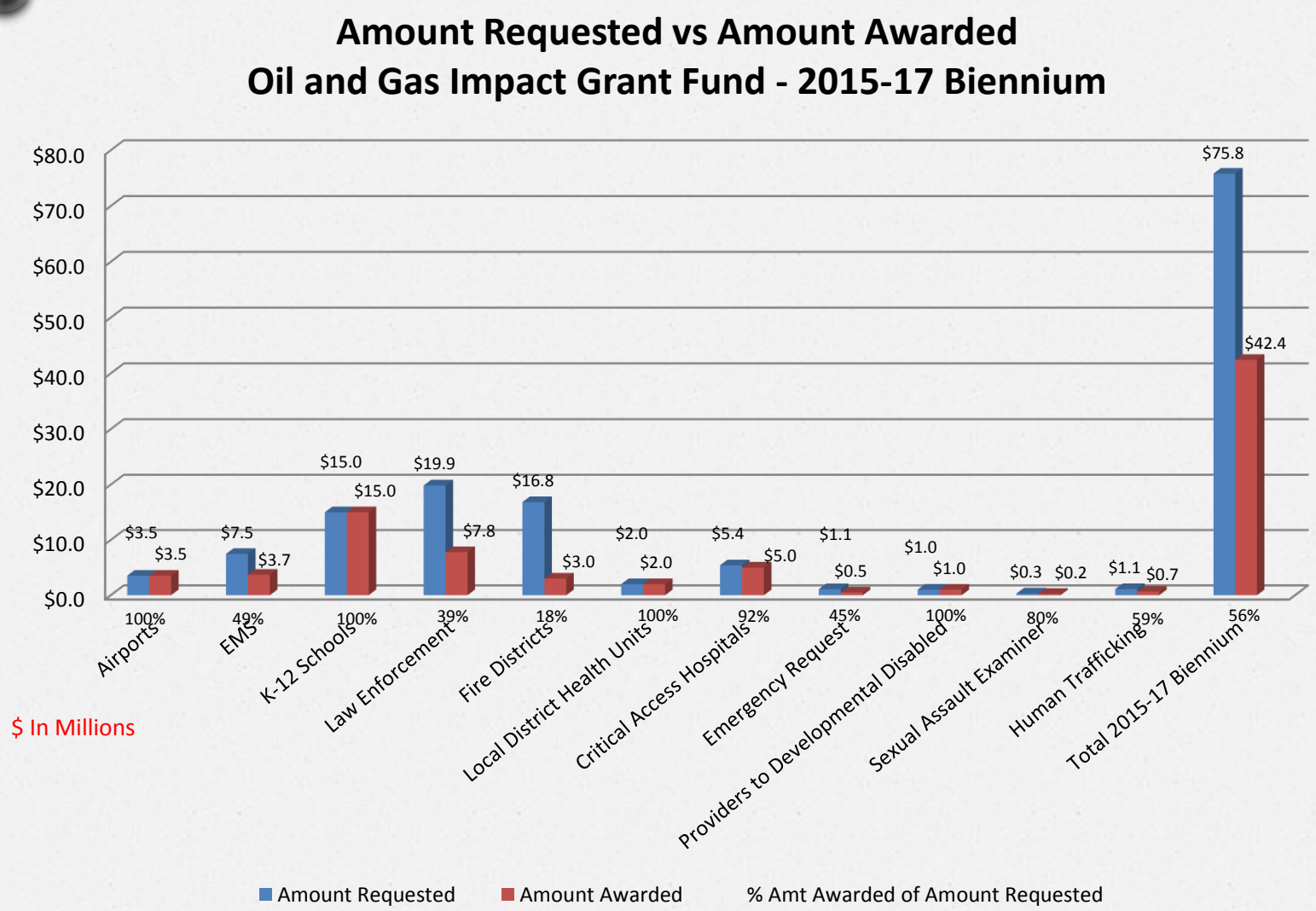
Department of Trust Lands
February 3, 2016

Energy Infrastructure And Impact Grants Program



DEPARTMENT OF ND TRUST LANDS
INVESTING FOR EDUCATION

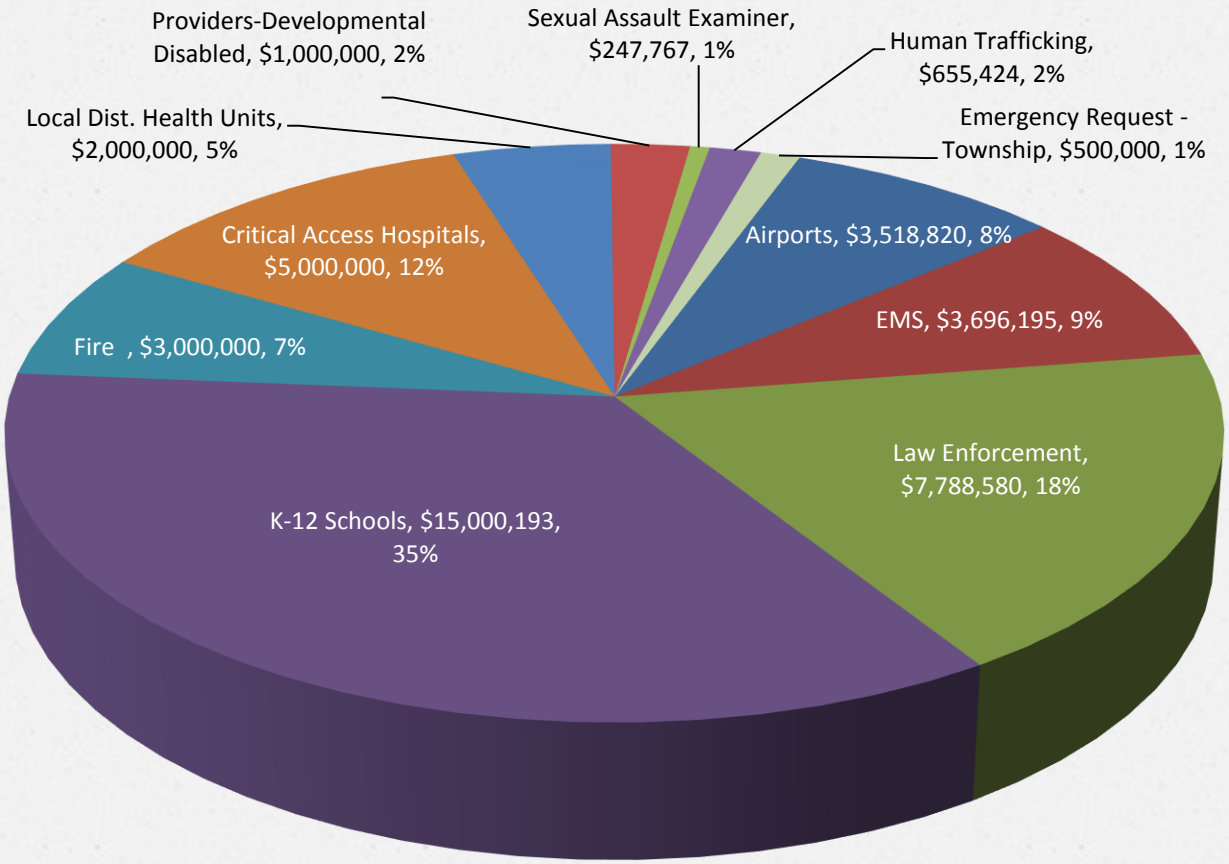
Energy Infrastructure And Impact Grants Program



DEPARTMENT OF ND TRUST LANDS INVESTING FOR EDUCATION

Energy Infrastructure And Impact Grants Program

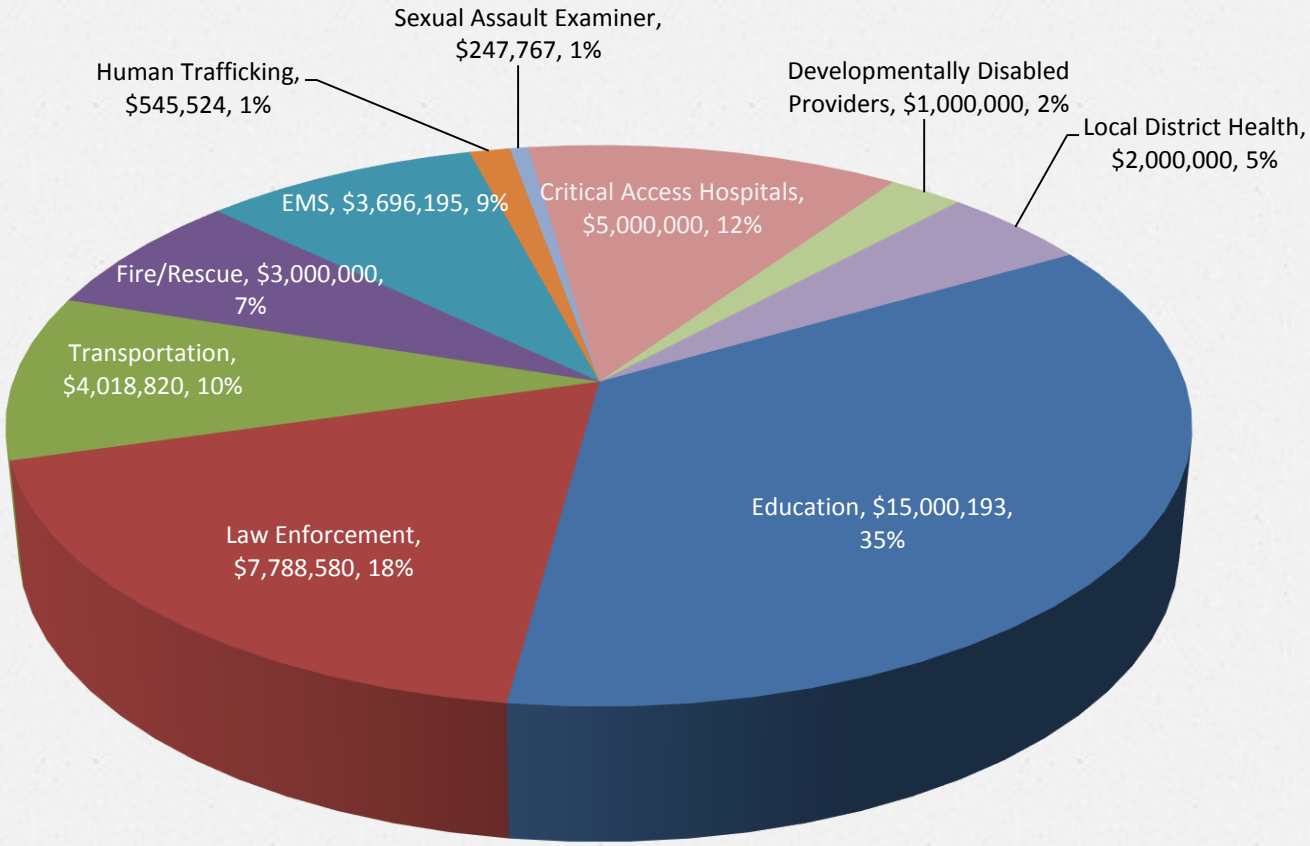
2015-2017 Biennium - Amounts Awarded



DEPARTMENT OF ND TRUST LANDS INVESTING FOR EDUCATION

Energy Infrastructure And Impact Grants Program

2015 - 2017 Biennium
Award Amounts By Function from the Oil and Gas Impact Grant Fund



DEPARTMENT OF ND TRUST LANDS
INVESTING FOR EDUCATION

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