PERFORMANCE AUDIT REPORT

Department of Trust Lands
Energy Infrastructure and Impact Office

Report No. 3036(a)
(Report 1 of 3)
November 6, 2015

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November 6, 2015

Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

Lance Gaebe, Commissioner, Department of Trust Lands

We are pleased to submit this performance audit report on aspects of the Department of Trust Lands. Specifically, this report contains the results of our review to determine whether Energy Infrastructure and Impact Office grants are effectively administered. The report is the first of three reports to be issued by our office in conjunction with the performance audit of the Department of Trust Lands.

The audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. We conducted this audit under the authority granted within North Dakota Century Code Chapter 54-10. Included in the report are the objectives, scope, recommendations, and management responses.

Sincerely,

Robert R. Peterson
State Auditor

OFFICE OF THE STATE AUDITOR

Performance Audit – Energy Infrastructure and Impact Office
Report Highlights

Purpose
Determine whether the Department of Trust Lands is effectively administering Energy Infrastructure and Impact Office grants.

Audit Conclusion
We determined aspects of grant administration were operating ineffectively.

Audit Recommendations
Our audit resulted in 13 formal recommendations related to grants. The Department agreed with 8 of the 13 recommendations. The recommendations and management agreement/disagreement are identified in Appendix A of the report. There are 5 Office of the State Auditor concluding remarks in this report.

Background
The Board of University and School Lands (Land Board) has authority to award and distribute energy infrastructure and impact grants from moneys deposited in the Oil and Gas Impact Grant Fund. The Energy Infrastructure and Impact Office (EIIO) is the division within the Department of Trust Lands (Department) responsible for administering grants. The EIIO Director is appointed by the Land Board. The powers and duties of the EIIO Director include:

- Establishing procedures and providing proper forms to political subdivisions for use in making applications for impact assistance.
- Receiving and reviewing applications for impact assistance.
- Making recommendations to the Land Board on grants to political subdivisions for impact assistance.
- Making grant disbursements for grants awarded by the Land Board.

Summary Information

- The Department did not make all political subdivisions aware of grant funds set aside by the Land Board for emergency funding requests. (page 2)
- Improvements to the screening process of grant applications are needed to increase transparency and to ensure applications are treated in a fair and equitable manner. (page 3)
- The Department made grant recommendations for projects not appearing to meet the legislative intent of oil and gas impact grants. (page 5)
- $30 million was appropriated to the Department requiring priority be given to grants relating to emergency services. We identified 47% of the appropriated amount was awarded for other purposes when unmet needs relating to emergency services still existed. (page 10)
- A legislative limit on annual grant awards was exceeded. (page 13)
- Improvements are needed with grant reimbursements. For example, the Department reimbursed requests when the expenditures did not appear to meet the intent of the grant applications. (page 15)
- The Department provided a county a $1.25 million distribution based upon the determination of the Director of the Department of Mineral Resources. However, the county may not have met the legislative requirements to be eligible to receive the distribution. In addition, a county appearing to meet the eligibility requirements did not receive a $1.25 million distribution. The Director of the Department of Mineral Resources did not determine the county met the requirements. (page 18)

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Abbreviations

Board of University and School Lands	Land Board
Department of Trust Lands	Department
Energy Infrastructure and Impact Office	EIIO
North Dakota Century Code	NDCC

Energy Infrastructure and Impact Office

Introduction

An objective of this performance audit was to answer the following question:

> "Are Energy Infrastructure and Impact Office grants effectively administered?"

We determined aspects of grant administration were operating ineffectively. Significant improvements for the administration of grants are included in this chapter. Improvements of less significance were communicated in a separate letter to management of the Department of Trust Lands. To conduct a review of grants, we:

- Reviewed applicable laws and policies.
- Reviewed Land Board minutes.
- Reviewed a selection of grant applications approved and not approved.
- Reviewed a selection of grant payments.
- Reviewed the monitoring processes performed by the Department of Trust Lands for a selection of grants.
- Interviewed selected personnel.

Background Information

The Board of University and School Lands (Land Board) has authority to award and distribute energy infrastructure and impact grants from moneys deposited in the Oil and Gas Impact Grant Fund. These grants have been commonly referred to as oil and gas impact grants. The Land Board may create an advisory committee to assist in making grant award decisions. The Land Board approved approximately $124 million of impact grants for the 2011-13 biennium and $240 million for the 2013-15 biennium.

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trusts Lands. The EIIO Director is appointed by the Land Board. During the 2011-13 and 2013-15 biennia, the EIIO Director position was filled by the Commissioner of the Department of Trust Lands (also appointed by the Land Board). The powers and duties of the EIIO Director include:

- Developing 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.
- Establishing procedures and providing proper forms to political subdivisions for use in making applications for impact assistance.
- Receiving and reviewing applications for impact assistance.
- Making recommendations to the Land Board on grants to political subdivisions in oil and gas development impact areas based on identified needs and other sources of revenue available to the political subdivision.
- Making grant disbursements for grants awarded by the Land Board.

State law includes legislative intent and guidelines related to oil and gas impact grants. North Dakota Century Code Section 57-62-06 states:

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

See Appendix B for legislative history, appropriation amounts, and additional information related to grants.

Ensuring Applicants are Aware of Funding

Grant rounds have been announced by the Department of Trust Lands (Department) through direct mailings, e-mails, and information on the Department's website. The grant rounds are typically for specified purposes and the Land Board designates dollar amounts available for the grant round. In addition to grant rounds, the Land Board at any meeting could approve requests for oil and impact grants using contingency funds for unanticipated emergencies. Contingency funds set aside by the Land Board for the 2011-13 biennium were approximately $6.2 million and $16.3 million for the 2013-15 biennium.

Political subdivisions were not adequately informed of the contingency funds set aside for emergency funding requests.

The information distributed by the Department for grant rounds provided a means for political subdivisions to be aware of funding available. However, we identified the Department had not formally communicated to political subdivisions the emergency and/or contingency funds available. The Department had no formal application process for political subdivisions to use to apply for funds set aside for emergencies and/or contingencies. State law requires procedures to be established and proper applications be provided to political subdivisions for use in making an application for impact assistance. Certain political subdivisions may not have been aware of the additional emergency and/or contingency funds available.

Recommendation 1-1

We recommend the Department of Trust Lands:

a) Establish procedures for political subdivisions to use in making applications for energy infrastructure and impact grant funds set aside for emergencies/contingencies.
b) Ensure the procedures are effectively communicated.

Management's Response

The Department disagrees with this recommendation. The Land Board established a number of targeted grant rounds for political subdivisions to seek energy impact funds. But the Board was also aware of the significant unexpected impacts and set aside money for contingency for

previously unplanned grant rounds and emergency applications. The Board used these funds to respond to unanticipated needs. In all cases, flexibility and responsiveness has been the intent of the Land Board for these contingency funds.

State Auditor's Concluding Remarks

The Department's response is irrelevant. The Department's response attempts to justify the plan adopted by the Land Board. The recommendation is not related to the Land Board's plan. The recommendation is related to effectively communicating to all political subdivisions the fact impact grant funds have been set aside for emergencies/contingencies and are available to be applied for outside of scheduled grant rounds.

Improving the Screening of Applications

Grant applications submitted for energy infrastructure and impact grants were screened and assigned points in various categories. Our review of the screening process identified a number of areas for improvement to increase transparency and to ensure applications are treated in a fair and equitable manner. Areas identified include:

- Grant applications were being scored even though certain applications or projects did not appear to meet eligibility requirements for the grant round. Rather than scoring only properly completed applications, there were points subjectively awarded for a category termed "complete application." In a typical grant program, incomplete applications and applications not meeting eligibility requirements would not be scored.
- Grant round announcements stated certain projects would receive priority and certain projects would receive lower priority. However, the scoring process included no priority points.
- Certain application scoring criteria require improvements. For example, financial need was a category used to objectively assign points based on a political subdivision's balance. A balance amount was computed by taking a political subdivision's cash balance, adding outstanding grants, and subtracting debt of the political subdivision. This formula does not take into account various factors such as size of the political subdivision (larger subdivisions are likely to have larger cash balances), the fact cash balances may differ greatly from month to month, or the fact a political subdivision may have a large budget surplus. In addition, the grants awarded and not awarded in an emergency medical services grant round raised questions regarding the appropriateness of criteria to score applications. We identified a county requesting funding to replace an ambulance had an increase of 1,835 calls (18.58%) over four years. The county did not receive a grant. We identified an ambulance district requesting funding for a new ambulance had an increase in calls from 25 to 57 over four years. The ambulance district received a grant of $100,000 (requested $240,000). The same ambulance district had also been awarded a grant for $96,000 for a different, new ambulance in a prior grant round.

The screening process should be improved to increase transparency and ensure applications are treated in a fair and equitable manner.

- Application screening criteria included both objective and subjective scoring. We identified subjective scoring criteria was lacking adequate guidance resulting in similar projects being scored differently. For example, the instructions for a subjective category identified 0 to 5 points were to be awarded based on the merits of the application. The grant round guidelines stated "Project meets the legislative intent as outlined in state law. Project also meets the focus of the current grant round and the guidelines established by the Energy Infrastructure and Impact Advisory Committee." No additional information was provided as to how to award the five points available (such as 2 points for meeting legislative intent and 3 points for project meeting the focus of the grant round). We identified evaluators were inconsistent in how points were assigned in this category for ambulance grant applications.
- We identified the Department was not maintaining documentation related to all screening processes. For example, the Department was unable to locate support for the final scores provided to an advisory committee. Two evaluators' scores were not available for review.

Recommendation 1-2

We recommend the Department of Trust Lands ensure the application screening process for energy infrastructure and impact grants is transparent and provides for fair and equitable treatment of all applications. At a minimum, the Department should:

a) Establish a grant application screening process to identify completed applications meeting the eligibility requirements.
b) Score only completed applications meeting the eligibility requirements.
c) Reevaluate the grant application scoring criteria to ensure criteria are reasonable, provide a method for awarding priority points, and separate compound criteria.
d) Define the point scale to be used for scoring.
e) Ensure the screening process is documented.

Management's Response

The Department agrees in part and disagrees in part with these recommendations.

a) The Department agrees with this recommendation, and it will begin to implement the recommendation.
b) The Department disagrees with this recommendation and will continue to provide assistance to applicants to ensure complete applications. It will then evaluate the applications.
c) The Department agrees with this recommendation and will reevaluate the scoring criteria.
d) The Department agrees with this recommendation and will further define the weighted point scale.
e) The Department agrees with this recommendation and will work to enhance the extensive application records and review files.

State Auditor's Concluding Remarks

The Department's response to part b is misleading. The recommendation does not relate to the Department providing assistance to applicants. Rather, if applicants do not meet eligibility requirements or are unable to provide required information, the application should not be scored. Scoring applications not eligible to receive funding is an inefficient use of the Department's resources.

Improving Award Recommendations to the Land Board

After grant applications have been screened and scored, a list of applications from highest to lowest was generated. Various funding scenarios were prepared for the advisory committees to consider. For example, a scenario may list the grant award amounts for all scored applications if each was funded at 80% of cost. A second scenario may add a cap of a certain dollar amount for each application funded at 80%. Rankings of applications and scenarios were used as tools to determine applications to recommend for approval and at what amounts. A review of recommendations provided to the Land Board identified areas in need of improvement.

Ensuring Eligibility Requirements are Met

State law requires all applications and presentations to EIIO be made by an appointed or elected governmental official. State law also requires the EIIO Director to make recommendations to the Land Board on grants to counties, cities, school districts, and other political subdivisions in oil and gas development impact areas. We identified EIIO recommended the Land Board award grants to five entities who were not political subdivisions when no exemption had been granted by the Legislature.

Grant recommendations were made to the Land Board for projects not appearing to meet the legislative intent of oil impact grants.

The Legislative Assembly's intended use of grants, as identified in state law, was for grantees to meet initial impacts affecting basic governmental services and directly necessitated by coal development and oil and gas development impact. The intent was not for grants to be used for services or facilities to meet secondary impacts. Our review identified the majority of grant funds awarded related to large projects for infrastructure and appeared to comply with legislative intent. However, we identified certain recommendations made to the Land Board (and approved by the Land Board) were for projects not appearing to meet the legislative intent and guidelines established in state law. Examples of these recommended projects include:

- Updating/modifying correctional facilities. One application related to replacing control room equipment in a correction center. The application identified changing demographics and the diverse population brought upon by oil impact caused the correctional center to have an increase in the number of inmates being housed. Another application related to renovating the correctional facility in order to increase the number of beds/cell space.
- Renovation/addition to a university's residence hall. According to the application, the university had three residence halls built in the 1960's, none had any substantial renovation/modernization other

than routine maintenance, and the proposal was to renovate one with apartment and suite style living configurations.

- Upgrading heating and adding air conditioning. The public school district's application stated "With an aging building the need for an upgraded HVAC system is in order. The boiler system is 40+ years old and the parts for repairs are becoming obsolete." The school did not have air conditioning at the time of application.
- Replacing locks on doors. According to the public school district's application, all interior doors were 1950's vintage and locking mechanisms were not functioning properly.
- Relocation of baseball fields to a different side of a highway. Two applications identified safety concerns related to children crossing existing highways.
- Relocation of a fire department's training ground. The application identified the relocation was necessary due to an airport terminal expansion project.
- Renovation of a bathroom. The public school district's application identified the bathroom in the school was not meeting ADA code.
- Replacing ambulances, fire trucks, law enforcement vehicles, and equipment at or near the end of their useful lives due to age and condition. Such replacements needed to be made by the political subdivisions regardless of being impacted by oil and gas development. For example, a recommendation was made to the Land Board to provide 50% funding for turn-out gear. The application stated "Our current gear was purchased in 1991 and is in violation of National Fire Protection Association (NFPA) 1851, which states that equipment with a manufacture date of 10+ years must be retired."
- Purchase of a cot lifter to be used in an ambulance. The application stated "The cot lifter was seen at the conference and looked like a back saver to the crew."
- Purchases of safety equipment for schools. Safety equipment included fences around schools and/or playgrounds, video monitoring equipment, door access systems, etc.
- Construction of a new snow removal equipment building.
- Replacing a police vehicle lost in an electrical fire.

Grant recommendations for modifying correctional facilities, renovating a university's residence hall, etc. do not appear to comply with the intent of meeting initial impacts of oil development.

We identified certain recommendations made to the Land Board were for projects not appearing to meet the requirements established for the grant round. For example:

- A grant round announcement for temporary portable classrooms for schools stated enrollment projections needed to exceed capacity of permanent and temporary classroom space. The announcement also required the school to meet a rapid enrollment threshold defined as 25 students and a 7% increase in enrollment. A school district's application identifying an anticipated enrollment growth of 17 students (or 16%) was recommended for a grant award.
- A grant round for pilot daycare projects included eligibility requirements related to the types of projects allowed. For example,

political subdivisions could use moneys to create new openings for childcare by establishing a new community owned modular childcare facility for lease by a for-profit or nonprofit entity. A city was recommended for a $125,000 grant even though none of the 10 applications submitted by the city met the eligibility requirements. The grant award letter instructed the city to provide a project meeting the eligibility requirements.

Recommendation 1-3

We recommend the Department of Trust Lands ensure recommendations of energy infrastructure and impact grants to the Land Board comply with eligibility requirements.

Management's Response

The Department agrees with this recommendation. The Department will continue to work to ensure that recommendations for grants comply with eligibility requirements outlined in Century Code and with guidelines approved by the Land Board.

Ensuring All Eligible Applications are Given Consideration

On March 26, 2012, the Department received an application from a school district requesting over $3 million for temporary portable classrooms (80% of the project cost). At the time, no grant announcement or grant round was in effect for such a project. At the March 29, 2012 Land Board meeting, the EIIO Director brought the application to the Board's attention. The Director initially recommended a maximum of $5 million from contingency funds be used to support a limited grant program for portable classrooms. However, the Director modified the recommendation to have the Land Board authorize a limited grant program making $5 million available from contingency funds to support the acquisition of temporary classrooms and to approve the request from the school district for the full $3 million requested. The Land Board passed a motion to approve the recommendation.

A grant award was made prior to the grant round being announced.

A week after the March 2012 Land Board meeting, the Department issued a grant announcement for temporary portable classrooms. The announcement included information related to eligibility, stated the Land Board had set aside $5 million for the limited grant round, and allowed applications to be received for 18 days.

Based on our review of information, we identified the following related to the portable classroom grant round:

- A recommendation for approval of a grant application from a school district was made (and approved) prior to a grant round announcement being made. Thus, other school districts were notified and given an opportunity to compete for the funds set aside for the grant round after one school district received the full amount requested.
- While the announcement of the grant round stated $5 million had been set aside by the Land Board, we conclude only $2 million was available for schools due to $3 million already being approved.

- While the $3 million application request was funded at 100%, other funded applications received less than 100% of what was requested. We identified other funded applicants received 25%, 33%, 35%, 67% and 78% of the amount requested.

Recommendation 1-4

We recommend the Department of Trust Lands ensure all eligible applications for a grant round are given consideration before making recommendations to the Land Board.

Management's Response

The Department agrees with this recommendation. The Department will continue to strive to give fair and impartial consideration to all applicants during each grant round.

Ensuring Recommended Projects are Achievable

We conclude awards made in certain grant rounds were based on the general premise to fund as many projects as possible. As a result, requested amounts were funded at various percentages. Application requests funded at relatively low percentages increase the risk the project will not be completed as planned. For example:

- In one grant round, grant awards ranged from $6,000 to $300,000. The Land Board had placed a maximum amount of $300,000 for awards. For the grant applications funded at the maximum amount, we identified requested amounts were funded from 15% up to 100%. The lowest funded percentage of amount requested (3%) related to a road project. A county requested $1.1 million for road maintenance and received a grant for $30,400.
- In one grant round, 66 grant awards were approved by the Land Board. There were 27 grant awards funding 100% of the requested amount. There were 22 grant awards funding between 50% and 91% of the requested amount. We identified 6 grant awards funding between 1% and 20% of the requested amount.

The achievability of certain projects appears to have been diminished due to grant award amounts.

We question the effectiveness of grants being awarded to fund projects at a small percentage when it was apparent other funding sources may not be available to the political subdivision. Receiving a small percentage of a requested amount could have required the political subdivision to delay the start of the project, make a change to the scope of the project (thus, having a larger percentage of a project funded by a grant award than originally approved), or make other changes impacting the effectiveness of the project.

We identified political subdivisions were awarded grants for less than what was requested. Certain political subdivisions made additional requests to the Land Board for the same project. It appears political subdivisions were "banking" grants and/or were unable to start projects until additional grant applications were approved. Examples in this area include:

- A city requested $1,025,300 for water, sewer, and pavement improvements and was awarded $296,217. In a subsequent grant round, the city submitted another grant application for the same

project and identified the cost was now over $1.5 million. The Land Board awarded an additional grant of $684,271. Thus, the Land Board originally funded approximately 30% of the project and ultimately funded approximately 65% of the project.

- A township requested $1.5 million to construct and surface an existing road in poor condition to bypass the city and was awarded $100,000. In a subsequent grant round, the township submitted another grant application for the same project requesting $1.4 million. The township received a grant for $2,600. In yet another grant round, the township submitted a third application requesting funds to fix the road rather than reconstructing the road to have a viable bypass road. The application stated "This is an earlier project included in bypass road which now is in "dreamland" status with no apparent available funds elsewhere." The township requested $230,000 and received a grant for $200,000. The achievability of the township's project appears to have been diminished by the small amounts awarded in the first and second requests. This was evident based on the third application request.
- A city requested $466,000 for an ambulance garage and was awarded the full amount requested (total cost of the project was $1 million). In a subsequent grant round, the city submitted another application for the project and identified the cost was now estimated at $1.6 million. The city requested approximately $1 million and received a grant for $14,869. The amount of the grant would appear to have little, to no impact, on the project being able to be accomplished.
- A city requested $500,000 to construct an emergency service building and was awarded $100,000. In a subsequent grant round, the city submitted another grant application for the project requesting $600,000 (total project cost of $1 million). The Land Board awarded an additional grant of $250,000. The original grant amount appears to have impacted the achievability of the project considering the city had to submit another grant application for the same project. The second grant amount being significantly higher is also an indication the project was not achievable with the first grant award.

In a grant round related to township roads and transportation, the recommendation to the Land Board was for funding 32 applications, providing awards of 80% of the total project amount for the 32 applications, and having the award not exceed $100,000 or the requested amount. The Land Board approved the recommendation. In addition, a recommendation was made to award to all other applying townships an equal share to assist with common requests for maintenance (gravel, road grading, etc.). The Land Board approved the recommendation. This resulted in 143 applicants each being awarded a grant of $2,600. While 143 applicants received a minimal amount for maintenance costs, we identified an applicant received the full amount requested ($50,000) to stock pile gravel.

Recommendation 1-5

We recommend the Department of Trust Lands ensure projects recommended to the Land Board are achievable at the proposed funding levels.

Management's Response

The Department agrees with this recommendation. The Department will work to improve current practices and attempt to evaluate the appropriate level of funding necessary for applicants' project success.

Ensuring Priorities are Adequately Addressed

Included within the 2011 Special Session Laws was a contingent appropriation for oil and gas impact grants. The Department received $30 million for providing such grants. The Session Law required the Department to give priority to grants relating to emergency services, including licensed emergency medical services operations, fire districts and departments, sheriff offices, and police departments providing services in an area affected by oil and gas development.

The Department had two grant rounds in the biennium specific to emergency services. The grant announcements contained similar information relating to funds being available to improve readiness and responsiveness of emergency response services. We identified approximately $16 million was awarded for emergency services. The minutes of the Land Board meetings relating to the awards for the two emergency services grant rounds identified the following:

47% of the appropriated amount was awarded for other purposes when unmet needs still existed for emergency services.

- First emergency service grant round (March 2012): There were 163 grant applications with total requests of over $40 million. The Land Board approved grant awards of approximately $12 million related to 106 requests. The EIIO Director stated there would be "some who will be disappointed here, a lot of them are certainly needs that are real but a lot of them were on the external fringes, if you will, of the oil patch and also there were some convenience things."
- Second emergency service grant round (September 2012): There were 137 grant applications with total requested funds of approximately $24.6 million. The Land Board approved grant awards of approximately $4 million related to 65 requests. The EIIO Director stated applications were "all good, all legitimate viable requests." The Director also stated there would be "some disappointed folks" and the standard was to cover half the request for turn out gear recognizing the need was there "but couldn't fill all the requests." In addition, the Director stated "I would say on their behalf they would be disappointed if I say they endorsed this recommendation list and are thrilled with it, but they have reviewed it and acknowledge this is the best effort."

We identified denied requests in the two emergency services grant rounds were subsequently approved by the Land Board and paid using the following biennium appropriated moneys. For example, a county applied for a law enforcement vehicle in September 2011 (grant round for townships) and also in September 2012 (second grant round specific to emergency services). The requests were not approved. However, in

the subsequent biennium, the county was awarded a grant for the same vehicle included in the previous requests. Also, a rural fire department applied for a new truck to replace an existing truck in the second emergency services grant round. The request was not approved. However, in the subsequent biennium, the rural fire department was awarded a grant to replace an existing truck.

While no requirement existed for the full $30 million to be used for emergency services, approximately 53% of the funds provided were awarded in the priority area identified by the Legislature. The remaining 47% was used to fund application requests for other purposes in subsequent grant rounds. There appeared to be unmet needs relating to emergency services following the two emergency services grant rounds. With unmet needs still existing, we conclude there was apparent noncompliance with the intent of providing priority for grants relating to emergency services.

Recommendation 1-6

We recommend the Department of Trust Lands ensure the needs of entities provided priority in law are adequately addressed before consideration is given to other eligible political subdivisions.

Management's Response

The Department disagrees with this recommendation. Section 24 of Senate Bill 2371, as adopted by the 2011 Legislature, regarding the $30 million says in part, *"….the commissioner shall give priority to grants relating to emergency services, including licensed emergency medical services operations, fire districts and departments, sheriff offices, and police departments providing service in an area affected by oil and gas development….."*

Of the $100 million appropriated for grants at the start of the 2011-2013 Biennium, the Land Board set aside $4 million for emergency response. Subsequent to November 2011 Special Session's $30 million appropriation, the targeted amount was quadrupled and nearly $16.1 million was awarded for emergency response. Thus, the priority emphasized in this law was accomplished. The Department will continue to interpret and implement legislative priorities and intent.

State Auditor's Concluding Remarks

The Department's response related to the "the targeted amount was quadrupled" is irrelevant. The Legislature clearly identified a priority was to be provided to emergency services in November 2011. Attempting to justify and use a grant round scheduled by the Land Board prior to the Legislature establishing a priority is not relevant and attempts to distort what the Legislature established. We also question the Department's statement of $4 million being set aside by the Land Board. According to the December 2011 Land Board minutes and the grant round announcement in January 2012, the amount was $2 million.

Establishing Contingencies for Large Projects

When grant applications were submitted by political subdivisions, the project costs may have been based on the best estimate at the time of submission. Estimates could be based on information from an architect/engineer or on bids already obtained by the political subdivision.

We identified estimates differed once bids were received by the political subdivision. This may have resulted in a significant increase in project cost and required the political subdivision to request additional grant funds. Also, we identified instances of estimates being higher than the bids received. Examples include:

- A city submitted a grant application for a project to add onto an existing fire/ambulance hall. The city requested $320,000 (total cost of the project was $400,000). The request appeared to be based on estimates and not bids. The Land Board approved a grant award of $288,000. In a subsequent grant round, the city requested an additional $312,000 for the project citing an increase cost of construction in the area as well as only receiving partial funding in the prior grant round. The Land Board approved a grant award of $100,000.
- A city submitted a grant application for a water and wastewater infrastructure expansion project. The city requested approximately $10.5 million. The request appeared to be based on estimates and not bids. The Land Board approved $5 million for the project. The city subsequently requested reallocating $500,000 of the award yet to be spent citing good prices in the area left an open balance. The Land Board approved the reallocation.

Since the majority of projects are only partially funded with grants, a reduction in the project cost results in a greater percentage of the project being funded. If an award was based on only funding a certain percentage of the total costs, political subdivisions may be receiving more or less than what was intended.

Recommendation 1-7

We recommend the Department of Trust Lands include contingencies in the recommendations made to the Land Board when grant application project costs for large projects are based on estimates rather than actual bids.

Management's Response

The Department disagrees with this recommendation. Rapid project cost inflation was occurring during critical infrastructure expansion, and it would have been very challenging for the applicants, the Department or the Board to anticipate the dramatic fluctuations that occurred during the rapid buildup. Project budgets are given serious consideration by Department staff, industry professionals and focused advisory committees during review of applications. Accordingly, this professional review is incorporated into the recommended award amounts. This examination of project estimates helps to avoid the significant costs of monitoring and administering numerous contingency conditions.

State Auditor's Concluding Remarks

As we discussed with Department management, the recommendation is not intended to be applicable to every single grant award. The recommendation, if properly implemented, should not result in a significant increase in costs.

Complying with Annual Award Limits

Grant awards exceeded the state law limit by $2.1 million in fiscal year 2012 (without consideration of "pledged" amounts).

State law authorizes the Land Board to award energy infrastructure and impact grants. According to state law, grants awarded annually may not exceed 60% of the biennial appropriation for energy infrastructure and impact grants. For fiscal year 2012, the 60% limit would have been approximately $74.7 million. We conclude the limit was exceeded as approximately $76.8 million was awarded. The Department had correctly calculated the 60% limit amount at the start of the biennium. However, when the appropriated amounts changed due to the Special Session of the Legislature, the 60% limit calculation was incorrect. Awards were made based on the incorrect limit calculation.

For the grant rounds at the end of both fiscal years 2012 and 2014 (first year of each biennium), the EIIO Director recommended the Land Board pledge grant amounts rather than recommending an amount to award. The EIIO Director informed the Land Board the formal awarding of the committed grants would be approved by the Land Board in the next fiscal year. The "pledging" of a grant amount was done in an attempt to stay below the 60% annual award limit. A pledge letter from 2012 stated the grant "will be formally approved by the Land Board" at the July meeting. A pledge letter from 2014 stated the applicant was "receiving a pledge commitment at this time due to the statutory limitation of awarding no more than 60% of the funds in a single fiscal year."

"Pledging" of grant amounts was done in an attempt to stay below the mandated 60% annual limit.

Shortly after the end of fiscal years 2012 and 2014, the Department sent formal award letters to political subdivisions receiving a pledged amount. The grant award amounts were the same as the amounts pledged. Based on our review of information and discussions with our legal counsel, we conclude the pledged amounts were, in effect, awards and would be included in determining compliance with the 60% limit requirement. The table on the following page identifies awarded and pledged amounts:

Table 1
Awarded and Pledged Amounts
(rounded to nearest thousand)

	2011-13 Biennium	2013-15 Biennium
Energy Infrastructure and Impact Grant Appropriation	$124,428,000	$239,299,000
60% Limit	$74,657,000	$143,580,000
	1st Year of Biennium	1st Year of Biennium
Formally Awarded	$76,805,000	$142,416,000
Pledged	$37,606,000	$45,334,000
Total	$114,411,000	$187,750,000
Percent of Appropriation	92%	78%

Recommendation 1-8

We recommend the Department of Trust Lands ensure energy infrastructure and impact grants awarded annually do not exceed the state law maximum.

Management's Response

The Department agrees with the recommendation. The Department believes that it has complied with the statute that limits the grants that the Land Board may annually award to 60% of the biennial appropriation. The Department and Board have complied with those limits. The calculation that was made in 2011:

2011 Appropriation (HB 1013) for grants	$99,778,269
2011 Special Session Appropriation (SB 2371)	$30,000,000
Total for Grants	$129,778,269
	60%
60% Fiscal Year Grant Limit (NDCC 15-01-02) =	$77,866,961

The $76,804,652 million awarded during FY 2012 is under the 60% limit. The amounts pledged for subsequent fiscal year awards to cities and other entities were not considered obligated as grants and were not included in this 2011 calculation.

State Auditor's Concluding Remarks

The Department's response is misleading. The Department omits the fact the 60% limit is of the biennial appropriation "for energy infrastructure and impact grants." The Department attempts to use the grant line item included in Session Law as the amount to base the 60% limit. This is an incorrect amount to use. Included in the grant line amount was $5 million directly appropriated to the Superintendent of Public Instruction and $350,000 to the Upper Great Plains Transportation Institute (Chapters 147 and 53 of the 2011 Session

Laws). This $5.35 million resulted in less funding being available for energy infrastructure and impact grants.

Approving Scope Changes

The Land Board has not delegated authority allowing the Department to approve project changes on awarded grants.

Once the Land Board approved a grant, changes may occur impacting the scope of the project. For example, we identified a public school submitted a grant application for a project entitled "Teacher Housing." The narrative description listed the legal description, physical address, and amount of a house intended to be purchased. The public school wrote a letter to the Department and Land Board requesting the grant funds be used to purchase two mobile homes and two lots (the house had sold prior to the grant award). The Department provided approval for this change. We identified no information related to the Land Board approving the change for the use of the grant funds.

State law authorizes the Land Board to award and distribute grants. We identified the Land Board had not formally granted authority to the Department for approving project changes on awarded grants. Department representatives stated scope changes were only taken to the Land Board for approval if the change differed from the general intent of the grant application.

Recommendation 1-9

We recommend the Department of Trust Lands:

a) Request the Land Board to pass a motion outlining the authority granted to the Department related to scope changes of Land Board awards.
b) Ensure all required scope changes are taken to the Land Board for approval.

Management's Response

The Department agrees with this recommendation. In December 2015, the Land Board authorized the Department to approve minor scope changes within grants which do not change the overall project goals for which the energy impact funds were awarded.

Making Improvements with Grant Payments

Grant reimbursements were made when the expenditures did not appear to comply with the intent of the grant application or special conditions of the grant award.

Political subdivisions received moneys from grants awarded by the Land Board on a reimbursement basis (unless grants were specifically earmarked or identified in Session Law). We selected 30 grant awards to review information related to payments made to political subdivisions. Since multiple payments can be made for one grant award, our review included a total of 97 grant payments (totaling approximately $42 million). We identified over $1.7 million was reimbursed when the expenditure did not appear to comply with the intent of the grant application or special conditions of the grant award. Areas identified in the review included:

- Grant applications identified the general intent of the requests of political subdivisions. Two grant awards reviewed included reimbursements for expenditures not appearing to comply with the general intent as identified in the grant application. For example, a public school district submitted a grant application with the project

title of "Temporary Portable Classrooms." The description of the project requested funding for the lease, construction, and necessary classroom equipment for up to 32 portable classrooms. The notice letter stated over $3 million was awarded based on the application submitted for assistance with temporary portable classrooms. The letter also identified allowable expenses were to include one year lease agreements, infrastructure for land preparation, and basic equipment expenses for modular classrooms (desks, furniture, etc.). The public school district used grant funds to pay costs associated with connecting the modular classrooms to the main school building. This would be considered outside the general intent of the grant award. The school district also used grant funds for other costs not within the general intent of the grant award (such as upgrading fire alarms in the main school building, electrical costs in the kitchen of the main school building, adding outlets for a pop machine in the concession stand, etc.).

- Grant applications identified specific intent for the use of grant fund moneys if awarded. In addition, certain grant award letters included special conditions for the use of grant moneys. The review of payments identified 12 grant awards reimbursed expenditures not appearing to comply with the specific intent or special conditions. For example:
  - A fire protection district submitted a grant application related to personal protection gear. The application identified equipment (estimated at $95,000) and building an addition to the fire house (estimated at $70,000). The notice letter stated $134,400 was awarded based on the application submitted. The fire protection district used the entire grant amount on purchases of equipment. None of the grant funds were used for the fire house addition even though the addition accounted for approximately 42% of the project cost.
  - A public school district submitted a grant application related to teacher housing. The application identified the building of a 12-plex housing unit and land acquisition estimated at $1.7 million. The award letter stated the award was for 12-plex housing and the Land Board approved a $750,000 grant based on the recent application submitted. The public school district used the grant funds to purchase 5 houses at a total cost of $988,000 (costs of houses ranged from $93,000 to $335,000).
- Reimbursement requests were to include documentation supporting the request. For two of the grant awards reviewed, we identified adequate support was not included with the reimbursement request. We also identified two grant awards had the same expenditure reimbursed twice.
- Certain grant awards required a local match percentage based on the total cost of the project. We identified the Department did not adequately monitor projects to ensure the local match requirement was met.

Recommendation 1-10

We recommend the Department of Trust Lands ensure:

a) Grant payments are limited to the reimbursement of expenditures for projects/items outlined in the grant application.
b) Local match requirements and special conditions of the grant award are met.
c) Requests for reimbursement are adequately supported.
d) Expenditures claimed for reimbursement are not reimbursed twice.

Management's Response

The Department agrees with this recommendation. Additional processes have been implemented to assist with ensuring local match requirements are met, if they were stipulated in the grant. The Department will continue to try to monitor and reject the second of duplicate invoices submitted as part of grant reimbursement requests. Additional steps have been, and will be implemented to help verify that grant payments are limited to awarded items and are satisfactorily documented.

Improving Grant Monitoring

An aspect of proper grant administration is to perform effective grant monitoring. While we identified the Department had performed on-site grant monitoring, we identified improvements were needed to increase the effectiveness of the grant monitoring process. Areas identified included:

Grant monitoring improvements could lead to a more efficient and effective process.

- Site visits were performed by the Department for grant awards yet to have a request for reimbursement submitted. Rather than conducting on-site visits for projects not started or with minimal work performed, the Department could be provided updates with status reports or by making contacts by telephone.
- In selecting grants to conduct site visits for monitoring purposes, it appears consideration of higher risk projects was not given. Instead, the Department attempted to achieve adequate monitoring coverage based on the total amount of grants awarded. This led to site monitoring visits being conducted on projects the Department had already sufficiently monitored. The Department required invoices to support amounts requested for reimbursements. For example, the Department had received adequate supporting documentation for grants related to vehicles or equipment. Conducting a monitoring site visit for vehicles and certain equipment appeared to be unnecessary.
- Our review of the documentation of the site visits identified improvements were needed. For example, certain site visit documentation was not clearly identifiable by grant award and documentation did not indicate whether projects were completed as intended.

Recommendation 1-11

We recommend the Department of Trust Lands:

a) Obtain status updates for grants with outstanding balances in a more cost effective manner by requiring status reports or via phone discussions.
b) Conduct site visits for grant awards based on risk of political subdivision and/or project.
c) Ensure site visit documentation clearly identifies the grant award being monitored and the status of the project in relation to the intent of the grant application.

Management's Response

The Department agrees with this recommendation and it will implement the suggested steps.

Identifying Distribution Eligibility

According to Chapter 471 of the 2013 Session Law:

> "As determined by the director of the department of mineral resources, a county is eligible for a distribution under this subsection if the county produced fewer than 100,000 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."

A county receiving a $1.25 million distribution may not have met the legislative eligibility requirements.

One county was provided a distribution of $1.25 million. The Department of Trust Lands received information from the Department of Mineral Resources stating the requirements for eligibility had been met. However, in our initial review of information from the Department of Mineral Resources and information downloaded from the Oil and Gas Division's website, it appeared the county did not meet the eligibility requirements for the distribution. While the county produced fewer than 100,000 barrels of oil for November 2012, we originally concluded the county did not have more than four active oil rigs. Additional information provided by the Department of Mineral Resources identified surface casing rigs were potentially used to start the drilling process for three wells. The surface casing rigs were counted as an active oil rig and were counted as three unique drilling rigs. Whether the surface casing rig should have been counted as an active oil rig appears to be an issue to be determined by legal counsel (no consistent process for classifying or counting surface casing rigs was established at the time). Also, we are unable to determine whether the three unique casing rigs counted were, in fact, unique and not the same casing rig moving to various wells.

A county appearing to meet the legislative eligibility requirements did not receive a $1.25 million distribution.

In review of Oil and Gas Division data, we identified an additional county who appeared to meet the eligibility requirements. The Department was not notified of this county and as such, the county was not provided a $1.25 million distribution. Information provided by the Department of

Mineral Resources identified the county produced fewer than 100,000 barrels of oil for November 2012 and had more than four active oil rigs in August 2014. The Director of the Department of Mineral Resources was basing the determination on whether the number of active oil rigs operating in the county exceeded four rigs on a daily basis rather than in any one month. Since the Session Law clearly states the number of active oil rigs operating in the county in any one month exceeds four rigs, we do not agree with a daily count of rigs being used.

Recommendation 1-12

We recommend the Department of Trust Lands obtain a legal interpretation of the 2013 Session Law relating to distributions to counties experiencing new oil and gas development activities to determine whether:

a) Other counties were eligible for a distribution.
b) The county provided a distribution was eligible.

Management's Response

The Department agrees to seek legal review of the distributions.

Complying with Open Meeting Laws

The Land Board is authorized by state law to award grants. State law allows the Land Board to create an advisory committee to assist in making grant award determinations. In May 2011, the Land Board provided guidance related to advisory committees. The guidance provided stated advisory committees were subject to open meeting laws. State law requires minutes to be kept of all open meetings. We identified a lack of minutes being maintained for certain advisory committees. Department representatives acknowledged other advisory committees were also not keeping minutes of meetings.

Recommendation 1-13

We recommend the Department of Trust Lands ensure advisory committees/subcommittees assisting the Land Board with grant determinations comply with open meeting laws.

Management's Response

The Department agrees with this recommendation. The Department will record and retain minutes which summarize advisory committee meetings.

Audit and Background Information

Purpose and Authority of the Audit

The performance audit of the Department of Trust Lands was conducted by the Office of the State Auditor pursuant to a motion passed by the Legislative Audit and Fiscal Review Committee. The performance audit was conducted pursuant to authority within North Dakota Century Code Chapter 54-10.

Performance audits are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so management and those charged with governance and oversight can use the information to improve performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The purpose of this report is to provide our analysis, findings, and recommendations regarding our limited review of whether Energy Infrastructure and Impact Office grants are effectively administered.

Background Information

In 1889, Congress passed the Enabling Act which provided land grants to the State of North Dakota for the support of the common schools as well as colleges, universities, the state capitol, and other public institutions. To manage the assets, Article IX of the North Dakota Constitution created the Board of University and School Lands, more commonly referred to as the Land Board. The Land Board is comprised of the Superintendent of Public Instruction, Governor, Attorney General, Secretary of State, and State Treasurer.

The Department of Trust Lands serves as the administrative agency of the Land Board. The primary responsibility of the Department is to manage the permanent educational trust funds and assets under the Land Board's control as outlined in the North Dakota Constitution. State law also gives the Department the responsibility for managing the Unclaimed Property Division and the Energy Infrastructure and Impact Office, as well as overseeing sovereign mineral acres and several other statutory funds. See Appendix B for legislative history, appropriation amounts, and additional information related to grants.

Objective of the Audit

Three objectives were established for this performance audit. A separate audit report is being issued for each of the audit objectives. The objectives of this performance audit were:

> "Is unclaimed property effectively administered?"
>
> "Are Energy Infrastructure and Impact Office grants effectively administered?"

"Is the Department of Trust Lands obtaining, accounting for, and using resources efficiently and effectively?"

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Audit field work related to grants was conducted from the beginning of June 2015 to the beginning of November 2015. The audit time period was July 1, 2011 to June 30, 2015. In certain instances, additional information was reviewed. This was done, in part, to review information discussed at Land Board meetings prior to the audit time period. Also, information related to grant awards prior to July 1, 2011 was reviewed.

As part of this audit, we evaluated controls surrounding compliance with significant laws, policies, and procedures. We gained an understanding of internal controls surrounding these areas. Deficiencies identified with internal controls determined to be significant are addressed in Chapter 1 of this audit report. Deficiencies of less significance were communicated in a separate letter to management of the Department of Trust Lands.

As part of completing the grants objective, we reviewed:

- State laws and the 2011, 2013, and 2015 Session Laws, including Special Session Laws.
- Legislative history, including testimony and meeting minutes, related to the legislative intent and guidelines on impact grants.
- Policies, procedures, plans, and priorities for grants and grant rounds related to grant awards from moneys appropriated during the 2011-13 biennium and 2013-15 biennium. This review included obtaining access to the EIIO directory to review information by grant round, such as: grant round announcements, applications, scoring criteria, award letters, etc. and reviewing Land Board meeting minutes from May 2011 to June 2015.
- The application screening process for three grant rounds judgmentally selected.
- A judgmental selection of grant payments related to 30 grant awards. Payments were selected from expenditures accounted for in fiscal years 2012 through 2015 (total of approximately $276 million). The selection included a review of 97 grant payments totaling $42,064,118.
- Grant monitoring information related to on-site visits conducted by EIIO representatives during the audit time period.

List of Recommendations and Management Responses

The following information identifies each recommendation and our conclusion as to whether the Department agreed or disagreed with the recommendation. Due to apparent contradictory information in certain management responses, we made a determination as to whether management agreed or disagreed with recommendations taking into consideration the entirety of the response.

	Recommendation	Agree	Not Agree	Mixed
1-1	We recommend the Department of Trust Lands: a) Establish procedures for political subdivisions to use in making applications for energy infrastructure and impact grant funds set aside for emergencies/contingencies. b) Ensure the procedures are effectively communicated.		X	
1-2	We recommend the Department of Trust Lands ensure the application screening process for energy infrastructure and impact grants is transparent and provides for fair and equitable treatment of all applications. At a minimum, the Department should: a) Establish a grant application screening process to identify completed applications meeting the eligibility requirements. b) Score only completed applications meeting the eligibility requirements. c) Reevaluate the grant application scoring criteria to ensure criteria are reasonable, provide a method for awarding priority points, and separate compound criteria. d) Define the point scale to be used for scoring. e) Ensure the screening process is documented.			X
1-3	We recommend the Department of Trust Lands ensure recommendations of energy infrastructure and impact grants to the Land Board comply with eligibility requirements.	X		
1-4	We recommend the Department of Trust Lands ensure all eligible applications for a grant round are given consideration before making recommendations to the Land Board.	X		
1-5	We recommend the Department of Trust Lands ensure projects recommended to the Land Board are achievable at the proposed funding levels.	X		
1-6	We recommend the Department of Trust Lands ensure the needs of entities provided priority in law are adequately addressed before consideration is given to other eligible political subdivisions.		X	
1-7	We recommend the Department of Trust Lands include contingencies in the recommendations made to the Land Board when grant application project costs for large projects are based on estimates rather than actual bids.		X	

	Recommendation	Agree	Not Agree	Mixed
1-8	We recommend the Department of Trust Lands ensure energy infrastructure and impact grants awarded annually do not exceed the state law maximum.		X	
1-9	We recommend the Department of Trust Lands: a) Request the Land Board to pass a motion outlining the authority granted to the Department related to scope changes of Land Board awards. b) Ensure all required scope changes are taken to the Land Board for approval.	X		
1-10	We recommend the Department of Trust Lands ensure: a) Grant payments are limited to the reimbursement of expenditures for projects/items outlined in the grant application. b) Local match requirements and special conditions of the grant award are met. c) Requests for reimbursement are adequately supported. d) Expenditures claimed for reimbursement are not reimbursed twice.	X		
1-11	We recommend the Department of Trust Lands: a) Obtain status updates for grants with outstanding balances in a more cost effective manner by requiring status reports or via phone discussions. b) Conduct site visits for grants awards based on risk of political subdivision and/or project. c) Ensure site visit documentation clearly identifies the grant award being monitored and the status of the project in relation to the intent of the grant application.	X		
1-12	We recommend the Department of Trust Lands obtain a legal interpretation of the 2013 Session Law relating to distributions to counties experiencing new oil and gas development activities to determine whether: a) Other counties were eligible for a distribution. b) The county provided a distribution was eligible.	X		
1-13	We recommend the Department of Trust Lands ensure advisory committees/subcommittees assisting the Land Board with grant determinations comply with open meeting laws.	X		
	Total	**8**	**4**	**1**

Energy Infrastructure and Impact Office Information

Introduction

State law defines certain terms related to energy infrastructure and impact grants, establishes the Oil and Gas Impact Grant Fund, creates an Energy Infrastructure and Impact Office (EIIO), outlines the powers and duties of the EIIO Director, authority of the Land Board, and legislative intent and guidelines on impact grants.

North Dakota Century Code (NDCC) Section 57-62-01 defines:

- Impacted city, county, and school district as a city, county, or public school district "which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto."
- Oil and gas development as "the exploration for and production of oil and gas and industries directly relating to the refining or processing of the oil or gas."
- Taxing district as any political subdivision, other than a city, county, or school district, "empowered by law to levy taxes."

NDCC Section 57-62-03.1 establishes the Oil and Gas Impact Grant Fund. The moneys accumulated in the Oil and Gas Impact Grant Fund must be allocated as provided by law and as appropriated by the Legislative Assembly for distribution through grants by the EIIO to oil and gas development-impacted cities, counties, school districts, and other taxing districts or for Industrial Commission enforcement of laws and rules relating to geophysical exploration in this state.

NDCC Section 57-62-04 creates an Energy Infrastructure and Impact Office; a division within the Department of Trust Lands. The EIIO Director must be appointed by, and serve at the pleasure of, the Land Board. The EIIO Director is required to have knowledge of state and local governments and have experience or training in the fields of taxation and accounting. The EIIO Director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose.

NDCC Section 57-62-06 provides the following legislative intent and guidelines on oil and gas impact grants:

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

The section outlining the legislative intent and guidelines on impact grants was enacted in the 1979 Session Laws. The section was amended in 1981 and 2011 to add oil and gas development impacts and to change the name of the office. While the section defines what are not considered basic governmental services, no definition exists indicating what are considered services or facilities to meet secondary impacts. A review of related testimony and meeting minutes from the 1979 Legislative Session identified no clear legislative intent or additional information regarding basic governmental services or secondary impacts.

2011-13 Biennium

Prior to the 2011 Legislative Session, the EIIO Director was authorized to approve grants while the Land Board served as an appeals board to reconsider grant applications denied by the EIIO Director. The 2011 Session Laws provided the authority to award grants to the Land Board, amended the powers and duties of the EIIO Director, and changed the name from Energy Development Impact Office to Energy Infrastructure and Impact Office.

NDCC Subsection 15-01-02(6) provides the Land Board authority to award and distribute energy infrastructure and impact grants from moneys deposited in the Oil and Gas Impact Grant Fund, except that grants awarded annually may not exceed 60% of the biennial appropriation for energy infrastructure and impact grants. The Land Board may create an advisory committee to assist in making grant award decisions.

NDCC Section 57-62-05 outlines the powers and duties of the EIIO Director. The EIIO Director is to:

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 Land Board pursuant to NDCC 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, 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.
4. Receive and review applications for impact assistance pursuant to this chapter.
5. Make recommendations, not less than once each calendar quarter, to the Land Board 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 Land Board providing for the distribution of 35% of the moneys available in the Oil and Gas Impact Grant Fund to incorporated cities with a population of 10,000 or more, based on the most recent official decennial federal census, that are impacted by oil and gas development. The EIIO Director may not recommend an incorporated city receive more than 60% of the funds available under this subsection.
7. Make recommendations to the Land Board providing for the distribution of 65% of moneys available in the Oil and Gas Impact Grant Fund to cities not otherwise eligible for funding under this section, counties, school districts, and other political subdivisions impacted by oil and gas development.

Original Appropriations

Chapter 13 of the 2011 Session Laws appropriated $99,778,269 from the Oil and Gas Impact Grant Fund to the Department of Trust Lands for grants. The following chapters also appropriated moneys in the Oil and Gas Impact Grant Fund for other purposes resulting in less funding being available for energy infrastructure and impact grants:

- Chapter 53 of the 2011 Session Law appropriated $350,000 to the Upper Great Plains Transportation Institute for the purpose of updating and maintaining reports for transportation infrastructure needs for all county and township roads in the state.
- Chapter 147 of the 2011 Session Laws appropriated $5 million to the Superintendent of Public Instruction for the purpose of providing a grant to any school district that can demonstrate rapid enrollment growth.

Supplemental Appropriations

Chapter 579 of the 2011 Special Session Laws provided a contingent appropriation to the Department of Trust Lands for oil and gas impact grants, which the Department received. According to Chapter 579, if the Office of Management and Budget transfers $30 million from the general fund to the Oil and Gas Impact Grant Fund in accordance with provisions of Section 23 of this Act, there is appropriated out of any moneys in the Oil and Gas Impact Grant Fund the sum of $30 million to Department of Trust Lands for providing oil and gas impact grants in accordance with NDCC Sections 57-62-03.1 and 57-62-05. In determining grant awards with the funds appropriated in this section, the Department of Trust Lands is to give priority to grants relating to emergency services, including licensed emergency medical services operations, fire districts and departments, sheriff offices, and police departments providing service in an area affected by oil and gas development. Any amounts made available for emergency services grants under this section are not to be considered in making grant recommendations under NDCC Section 57-62-05.

Chapter 579 of the 2011 Special Session Laws appropriated $5 million from the Oil and Gas Impact Grant Fund to the Department of Trust Lands for the purpose of providing distributions to eligible counties experiencing

new oil and gas development activities. No counties met the eligibility requirements. As a result, the appropriation expired.

Oil and Gas Impact Grants Awarded

According to the *60th Biennial Report of the Board of University and School Lands and Commissioner of University and School Lands for July 1, 2011 to June 30, 2013*, $124,295,269 was awarded for Oil and Gas Impact Grants in the 2011-2013 Biennium as follows (no audit work performed on the accuracy of the category breakouts):

- $91,130,691 to cities
- $16,090,892 for emergency services
- $4,999,244 to schools for temporary classrooms
- $4,501,116 for township roads
- $625,000 for childcare facilities
- $6,794,309 in open grant rounds (primarily to other eligible political subdivisions other than cities, townships, and emergency services)

Flood-Impacted Political Subdivision Infrastructure Development Grants

Chapter 579 of the 2011 Special Session Laws appropriated $30 million in general funds to the Department of Trust Lands for the purpose of providing infrastructure development grants to flood-impacted political subdivisions. Up to $110,000 was allowed to be used for salaries and operating expenses relating to the administration of this grant program.

Chapter 579 of the 2011 Special Session Laws provided the criteria for the distribution of flood-impacted political subdivision infrastructure development grants as follows:

1. The EIIO Director is to:
   a) Develop a plan for providing infrastructure development grants to eligible political subdivisions and establish procedures and forms to be used for making applications for funds.
   b) Receive and review applications for infrastructure development grants pursuant to this section.
   c) Make recommendations to the Land Board on grants to eligible political subdivisions pursuant to this section.
2. The Land Board is to award and distribute infrastructure development grants to eligible political subdivisions based on identified needs.
3. Eligible political subdivisions include counties, as well as cities, school districts, and other political subdivisions located within such counties, which have received an individual assistance designation by the federal emergency management agency relating to a flood event that occurred during 2011.
4. Grants received by eligible political subdivisions may be used to offset up to 50% of the costs not otherwise reimbursed through federal or other state funds to:
   a) Develop new community infrastructure, the need for which is directly related to the displacement of residents due to flooding. For the purposes of this Act, infrastructure includes community-owned waterlines, sewer, curb, and gutter.
   b) Evaluate the extent of damage to community-owned infrastructure.

c) Restore or repair flood-related damage to community-owned infrastructure.
d) Expand landfill capacity or reimburse flood-related waste disposal costs.
e) Raise roads or develop flood control structures.
f) Acquire property needed for floodway development or levy construction.
g) Acquire homes damaged by levy construction.
h) Provide reimbursement for other flood-related expenses.

Flood-Impacted Political Subdivision Infrastructure Development Grants Awarded

According to the *60th Biennial Report of the Board of University and School Lands and Commissioner of University and School Lands for July 1, 2011 to June 30, 2013*, $29,895,080 was awarded for Flood Impacted Political Subdivision Infrastructure Development Grants in the 2011-2013 Biennium as follows by county (no audit work performed on the accuracy of the county breakouts):

- $21,208,448 to Ward
- $2,685,606 to Burleigh
- $1,079,749 to Morton
- $1,027,547 to McHenry
- $1,000,000 to Benson
- $1,000,000 to Ramsey
- $893,682 to Renville
- $500,048 to Richland
- $500,000 to Barnes

2013 -15 Biennium

The 2013 Session Laws eliminated NDCC Section 57-62-05, Subsections 6 and 7, defined a hub city in NDCC Section 57-51-01, and appropriated $239,299,174 for oil and gas impact grants. The legislative assembly earmarked $103,500,000 of the amount appropriated with the remaining $135,799,174 left to the discretion of the Land Board.

Original Appropriations

Chapter 471 of the 2013 Session Laws appropriated $239,299,174 from the Oil and Gas Impact Grant Fund to the Land Board for the purpose of oil and gas impact grants. The section also required the EIIO Director to include in recommendations to the Land Board on grants to eligible entities in oil and gas development impact areas:

1. $5 million for the purpose of providing distributions to eligible counties experiencing new oil and gas development activities. "As determined by the director of the department of mineral resources, a county is eligible for a distribution under this subsection if the county produced fewer than 100,000 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."

2. $60 million for grants to airports impacted by oil and gas development. The EIIO Director is required to adopt grant procedures and requirements necessary for distribution of grants under this subsection, which must include cost-share requirements. Cost-share requirements must consider the availability of local funds to support the project. Grant funds must be distributed giving priority to projects that have been awarded or are eligible to receive federal funding.
3. $4 million for grants to public institutions of higher education impacted by oil and gas development. "Notwithstanding the provisions of chapter 57-62, public institutions of higher education are eligible to receive oil and gas impact grants under this subsection." The EIIO Director may develop grant procedures and requirements necessary for distribution of grants under this subsection.
4. $3 million for grants of $1 million each to three counties in oil-impacted areas for a pilot project for dust control. The county commission from each county awarded a grant is to file a report with the EIIO Director by January 1, 2014, regarding any product used to control dust and the success or failure of the product in controlling dust. The EIIO Director may develop grant procedures and requirements necessary for distribution of grants under this section. The EIIO Director is required to consult with the state Department of Health and the Industrial Commission relating to the use of oilfield-produced saltwater and products previously tested for dust control.
5. $7 million for grants to counties for the benefit of county sheriff's departments to offset oil and gas development impact causing a need for increased sheriff's department services, staff, funding, equipment, coverage, and personnel training.
6. $7 million for grants to emergency medical services providers for an extraordinary expenditure that would mitigate negative effects of oil development impact affecting emergency medical services providers providing service in oil-producing counties, including need for increased emergency medical services providers services, staff, funding, equipment, coverage, and personnel training. The EIIO Director may develop grant procedures and requirements necessary for distribution of grants under this subsection.
7. $3.5 million for grants to fire protection districts for an extraordinary expenditure that would mitigate negative effects of oil development impact affecting fire protection districts providing service in oil-producing counties, including need for increased fire protection district services, staff, funding, equipment, coverage, and personnel training.
8. $14 million for grants to hub cities. A hub city as defined in NDCC Section 57-51-01 is eligible to receive grants from the Oil and Gas Impact Grant Fund only to the extent provided for under this subsection. "Of the funding allocation provided for in this subsection, $2,000,000 is available for grants to the hub city receiving the greatest percentage of allocations to hub cities under subdivision a of subsection 1 of section 57-51-15, $7,000,000 is available for grants to

the hub city receiving the second greatest percentage of allocations to hub cities under subdivision a of subsection 1 of section 57-51-15, and $5,000,000 is available for grants to the hub city receiving the third greatest percentage of allocations to hub cities under subdivision a of subsection 1 of section 57-51-15."

Chapter 44 of the 2013 Session Laws provided the Land Board authority to approve up to $3 million of additional oil and gas impact grants to counties for dust control if the dust control pilot project is deemed effective by the EIIO Director.

Chapter 44 of the 2013 Session Laws provided the EIIO Director the authority to include within recommendations to the Land Board for oil and gas impact grants up to $5 million of the funds designated for counties experiencing oil and gas development outlined above, to any eligible political subdivision if, by January 1, 2015, the funds have not been committed to counties meeting the eligibility requirements for this funding.

Oil and Gas Impact Grants Awarded

According to the *61st Biennial Report of the Board of University and School Lands and Commissioner of University and School Lands for July 1, 2013 to June 30, 2015*, $239,689,725 was awarded for Oil and Gas Impact Grants in the 2013-2015 Biennium. Included in the amount is $390,551 related to re-awards from cancellations. The report listed the following rounded award amounts for the biennium (no audit work performed on the accuracy of the category breakouts):

- $102,150,000 to cities
- $60,000,000 to airports
- $25,410,000 to K-12 schools
- $14,900,000 to townships
- $9,460,000 to fire protection districts
- $7,680,000 to emergency medical services providers
- $7,000,000 to sheriff's offices
- $5,450,000 to counties
- $4,000,000 to higher education
- $3,000,000 for dust control
- $300,000 to park districts