

Energy Infrastructure and Impact Office

Presentation to The Energy Development and Transmission Committee

- A Division within the Office of the Commissioner of University and School Lands
- Board of University and School Lands (Land Board) has authority to award and distribute infrastructure and impact grants from the Oil and Gas Impact Grant Fund (OGIGF)
- Land Board is made up of:
 - Governor
 - Secretary of State
 - State Treasurer
 - Attorney General
 - Superintendent of Public Instruction
- Mission – to assist local political subdivisions hosting energy activity as they deal with the impacts being realized
- Coal Development Impact Loans
 - Board is authorized to make loans to coal development impacted political subdivisions
 - Loan is from the Coal Development Trust Fund
- Grant program for oil and gas impacted political subdivisions (cities, counties, school districts, other taxing districts) and non-political subdivisions with exemptions to NDCC 57-62
- Impacted means actual or anticipated extraordinary expenditures caused by energy development and associated growth
- Powers and duties of energy infrastructure and impact office director
 - Develop a plan to assistance counties, cities, school districts, and other political subdivisions in oil and gas development areas through grants
 - Establish procedures and forms for political subdivisions to apply for impact grants
 - Reimburse counties, cities, school districts, and other taxing districts for the costs related to the grants awarded by the Land Board
 - Consider other sources of revenue that the entities receive when determining grants
- Funding is from 1% of the 5% of Gross Production Tax Collections
- \$139.3 million was appropriated for energy impact grants 2015-2017 biennium, although revised forecasts indicate much less will be available
- Annual total grants limited to 60% of appropriation

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- Legislative allocations and amounts awarded to HB 1176 grant categories

Allocation Focus	HB 1176 Allocation Amount	Sub-Allocation Provided by SB 2199 & SB 2284	Amount Awarded	When Awarded	Canceled or Reductions	Remaining of Allocations	Notes
Airports	\$48,000,000		\$3,531,497	July 2015, Oct 2015	\$530,722	\$44,999,225	Hub City Allocations identified in SB 2015. Williston-\$39 Million, Dickinson-\$5.8 Million, No Local Match. Collaboration with ND Aeronautics Commission.
K-12 Schools	\$30,000,000		\$15,000,193	July 2015	\$19	\$14,999,826	Half awarded July 2015
Law Enforcement Agencies	\$10,000,000		\$7,842,580	July 2015	\$54,000	\$1,211,420	Remaining Reduced by Human Trafficking and Sexual Assault Examiner Required Allocation. Collaboration with Bureau of Criminal Investigation.
Human Trafficking		\$750,000	\$750,000	Jan 2016, Apr 2016		\$0	Required. From Law Enforcement \$10 Million, Fully Awarded
Sexual Assault Examiner		\$250,000	\$247,767	Jan 2016		\$2,233	Required. From Law Enforcement \$10 Million
Critical Access Hospitals	\$10,000,000		\$5,000,000	Dec 2015		\$5,000,000	Jan 2017 Required Distribution. Collaboration with Dept. of Human Services
Bowman & Divide Counties	\$8,000,000					\$8,000,000	
EMS	\$6,000,000		\$3,696,195	July 2015	\$6,642	\$2,310,447	
Eligible 7 Counties: Golden Valley, Slope, Mercer, McLean, Ward, McHenry & Renville	\$5,000,000					\$5,000,000	Applications accepted, grant round placed on hold due to results of Feb 2016 revised revenue forecast
Nursing Homes, Basic Care	\$4,000,000					\$4,000,000	
Fire Districts	\$3,000,000		\$3,000,000	Oct 2015	\$9,001	\$9,001	Fully Awarded.
Providers to the Developmentally Disabled	\$2,000,000		\$1,000,000	Dec 2015		\$1,000,000	Jan 2017 Required Distribution. Collaboration with Dept. of Human Services
Domestic Violence	\$2,000,000					\$2,000,000	Grant Round Completed, Awards Held due to Results of Feb 2016 Revised Revenue Forecast. Collaboration with Dept. of Commerce.
Local District Health Units	\$2,000,000		\$2,000,000	Oct 2015		\$0	Fully Awarded. Collaboration with Dept. of Health
City of Stanley	\$1,700,000					\$1,700,000	
City of Kenmare	\$500,000					\$500,000	
City of Berthold	\$200,000					\$200,000	
City of Burlington	\$100,000					\$100,000	
Un-Allocated	\$6,800,000		\$500,000	Oct 2015		\$6,300,000	Emergency Request, Missouri Ridge Twp
Appropriated for Grants	\$139,300,000		\$42,568,232		\$600,384	\$97,332,152	

On Advice of Counsel, Required to be Awarded

Awarded \$42,568,232 - Cancellations \$600,384 = \$41,967,848 Current Obligations

Current Obligations \$41,967,848 + Required Future Awards \$6,002,233 = \$47,970,081 Total Program Obligations

Suspended grants have not been removed from Awarded or Obligations as the commitment still exists

- Plans and schedules were developed and grant rounds started July 1, 2015. Grants totaling \$42.6 million were approved early in the biennium
- The revised revenue forecast release in February 2016 indicated that the grant fund was to receive \$28.6 million vs. \$140 million appropriated
- With total of awarded exceeding projected revenue, Land Board stopped grant round activity and suspended \$7.3 million in grants on projects not started and without contract commitments

Energy Infrastructure and Impact Office

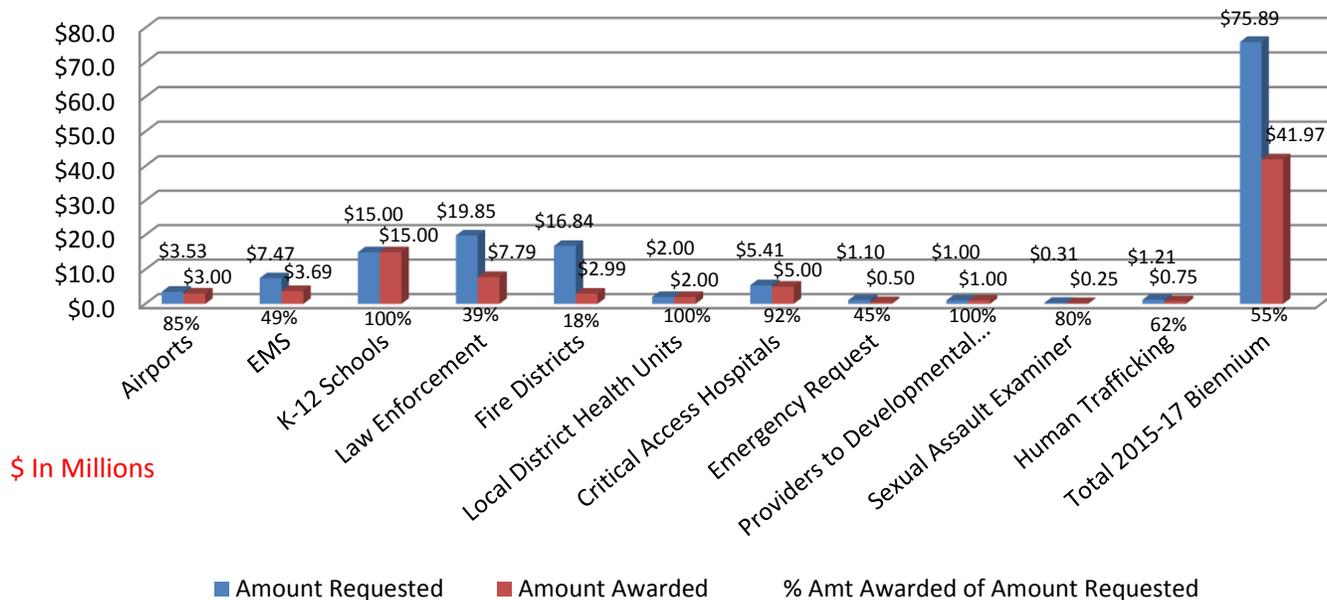
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- The Department's legal counsel has identified allocations for Human Trafficking, Sexual Assault Examiner, Critical Access Hospitals and Service Providers to Developmentally Disabled as required
 - Required Future Awards:
 - \$2,233 - Sexual Assault Examiner Programs
 - \$5 million - Critical Access Hospitals, January 2017 Distribution
 - \$1 million - Providers serving Developmental Disabilities, January 2017 Distribution
 - Current obligations \$41,967,848 plus required future awards \$6,002,233 equal total program obligations of \$47,970,081
 - July 2016 updated state revenue forecast projected the fund to receive \$73.4 million
 - Funding received through August 2016 - \$34,861,265.93
 - Amount received compared to the July 2016 updated revenue projection:
 - July projection \$2.15 million, actual \$3.15 million
 - August projection \$2.47 million, actual \$4.1 million
 - **Funding received is \$13.1 million short of total program obligations**
 - Oil and Gas Impact Grant Funds available August 19, 2016 \$36.5 million:
 - \$30.9 million past biennium
 - \$5.6 million current biennium (admin costs through June 2016 removed)
 - Once current biennium funding received meets total program obligations, the \$7.3 million of grant suspensions are expected to be lifted
 - Once it appears that tax collections received will exceed total program obligations, staff will begin to evaluate allocating funds to areas that have not received funding or are short of the Legislative funding allocations
 - Domestic Violence Shelter Grants were next to receive grants at the time grant rounds were stopped in February 2016
 - Grant projects addressing safety issues is expected to be a primary focus for funds the program may receive beyond total program obligations
- Web address: www.nd.gov/energyimpact
- E-mail address: energyimpact@nd.gov

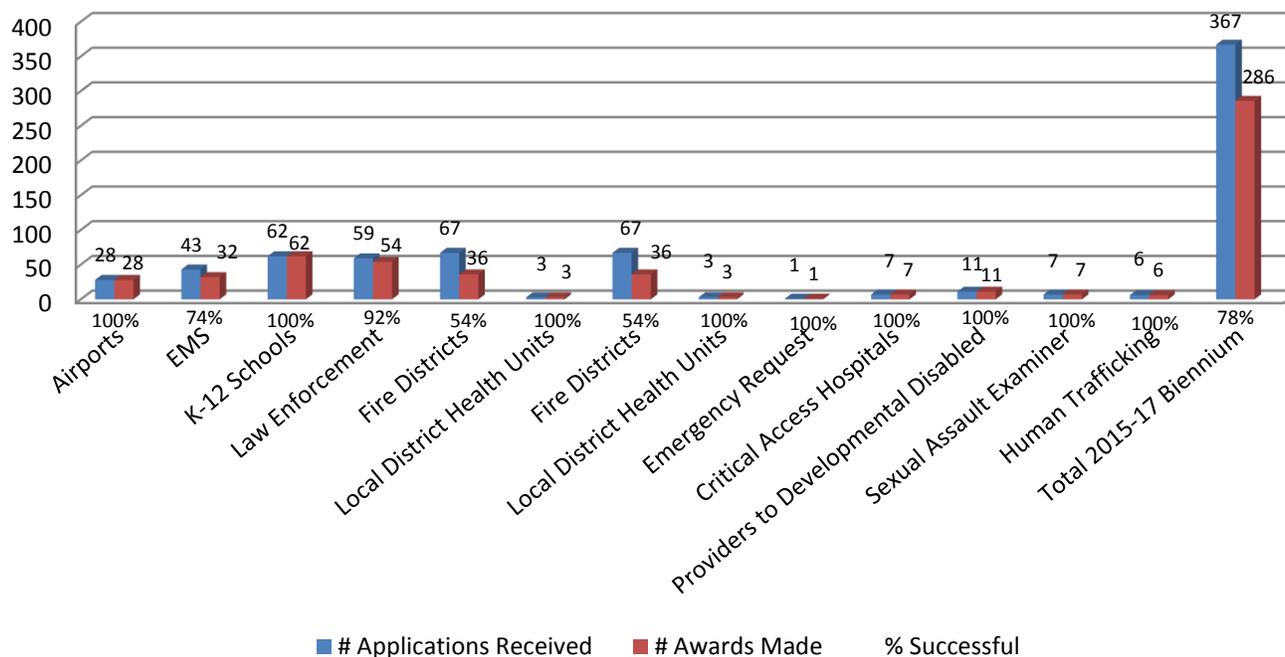
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Amount Requested vs Amount Awarded Oil and Gas Impact Grant Fund - 2015-17 Biennium



Applications Received vs Awards Made Oil and Gas Impact Grant Fund - 2015-17 Biennium



MEMORANDUM

**TO: Lance Gaebe, Land Commissioner
Gerry Fisher, Asst. Director of Energy Infrastructure & Impact Office**

FROM: Hope Hogan



DATED: July 20, 2016

RE: Carryover of Energy Impact Grants

In 2015, HB 1176 was passed which provided an appropriation of \$139.3 million to the Board of University and School Lands for oil and gas impact grants in the biennium July 1, 2015 to June 30, 2017. Approximately \$41.9 million in grant commitments have been provided by the Board through the Energy Infrastructure and Impact Office (EIIO). On February 1, 2016, the state revenue forecast projected that only \$28.6 million of the \$139.3 million will be received into the Oil and Gas Impact Grant Fund from its allocation of gross production tax collections, thus resulting in a current deficit of approximately \$20.72¹. I have been asked to address whether the grant commitments for which funding is not available carry forward to the next biennium.

An appropriation is “the setting apart of a definite sum for a specific object in such a way that the public officials can use the amount appropriated, and no more than the amount appropriated.” *City of Fargo, Cass Cty. v. State*, 260 N.W.2d 333, 337 (N.D. 1977). HB 1176 exempted the appropriation from N.D.C.C. § 54-44.1-11 which provides in part:

Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations

¹ The current projected deficit reflects administrative costs and approximately \$6.1 million of additional grants designated to critical access hospitals, providers serving individual with developmental disabilities, human trafficking and sexual assault examiner programs that must be awarded during the 2015-2017 biennium to satisfy the requirements of HB 1176.

after the expiration of the biennial period during which they became available under the law.

This exemption allows unexpended appropriations to carry forward to the next biennium. The rules of statutory interpretation must be applied to determine whether this exemption is applicable to the outstanding grant commitments.

The purpose of statutory interpretation is to ascertain the intent of the legislature. *Little v. Tracy*, 497 N.W.2d 700, 705 (N.D. 1993). The language of the statute is given its plain and ordinary meaning. N.D.C.C. § 1-02-02. "When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05. The courts defer to the interpretation of a statute by the agency responsible for enforcing it. *Turnbow v. Job Service North Dakota*, 479 N.W.2d 827, 830 (N.D. 1992). It must be presumed the legislature said what it meant.

It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the "court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it."

City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653, 657 (1940) (citations omitted). However, it must also be presumed that "the legislature did not intend an absurd or ludicrous result or unjust consequences, and we construe statutes in a practical manner, giving consideration to the context of the statutes and the purpose for which they were enacted." *Little v. Tracy*, 497 N.W.2d 700, 704 (N.D. 1993).

N.D.C.C. section 54-44.1-11 only addresses the appropriation of funds, i.e., the allocation of money for these grants. It does not mention grant commitments potentially created as part of an appropriation in either section 54-44.1-11 or HB 1176. The only rationale that the exemption in section 54-44.1-11 would apply equally to grant commitments is that find that such an interpretation

is necessary to avoid an absurd result or lead to unjust consequences. Some examples of absurd or unjust results include an interpretation of a criminal statute that nullifies its punitive provision, *State v. Jelliff*, 251 N.W.2d 1, 7 (N.D. 1977); an interpretation of a unemployment compensation benefits calculation statute that first requires certain items to be deducted and then excepts those same items from deduction, *Matter of Olson*, 319 N.W.2d 147, 149 (N.D. 1982); a statutory interpretation that would require a petitioner to apply for an extension of a protection order as soon as the original protection order is signed, *Frisk v. Frisk*, 2006 ND 165 ¶12, 719 N.W.2d 332; and an interpretation that would allow state administrative agencies to consult with legal counsel regarding administrative appeals of employment decisions but deny that same right to county governing bodies, *Edinger v. Governing Auth. of Stutsman Cty. Corr. Ctr. & Law Enft Ctr.*, 2005 ND 79, ¶ 18, 695 N.W.2d 447.

The Board, as the agency designated to award the grants, has discretion in how it interprets HB 1176 because the courts defer interpretation of a statute to the agency responsible for enforcing it. *Turnbow v. Job Service North Dakota*, 479 N.W.2d 827, 830 (N.D. 1992). “If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute, that is whether the agency’s construction is rational and consistent with the statute.” *Delorme v. N.D. Dep’t of Human Servs.*, 492 N.W.2d 585, 588 (N.D. 1992) (citation omitted). The agency is allowed a “range of reasonableness” in exercising its power which is not to be interfered with by the judiciary. *State v. Hagerty*, 1998 ND 122 ¶ 26, 580 N.W.2d 139; *Cass County Elec. Coop. Inc. v. Northern States Power Co.*, 518 N.W.2d 216, 220 (N.D. 1994).

Interpreting HB 1176 in a manner which precludes grant commitments by the EIO office to carry over into the next biennium is not an absurd or unjust result. The Board, through the EIO, merely grants funds to qualifying entities. It does not create any type of contractual obligations with the grant awardees. Even if it did, it is commonplace for contracts with state agencies to be conditioned on funding. The standard contracting language recommended by

the Office of Attorney General includes the following as grounds for terminating a contract:

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

Unlike the examples provided above, such an interpretation does not offend the purpose of the legislation. It's likely the present situation was not contemplated by the legislature when drafting HB 1176. Given the subject matter of this appropriation, it seems prudent to request that the legislature address the outstanding grants commitments in the next legislative session.