

2009 HOUSE NATURAL RESOURCES

HB 1466

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1466

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 1-30-09

Recorder Job Number: 8268

Committee Clerk Signature	<i>Nancy L. Gerhardt</i>
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Minutes:

Chairman Porter – Open the hearing on HB 1466.

Rep. Bob Skarphol – HB 1466 attempts to accomplish 2 things. First sect. 2 – remove the caps on oil impact funds. Under current law there are currently 6 million in appropriated oil

impact funds to be distributed by the oil impact office. We don't have enough resources to take care of the costs that are being incurred by our political subdivisions. This is one of the mechanisms that could divide those funds. Whether or not section 2 is adopted I believe section 1 is a good tool if there is an increase in the amount of money going to oil impact.

There are numerous bills out there. To increase the level the gooney has recommended an increase of 14 million dollars in oil impact money. I believe the current oil impact offices are doing an adequate job of distributing what dollars they had available. I think it is important there be more local input how those dollars are spent. More local control on how they are spent. This would create oil & gas impact remediation commission comprised of 8 members. 1 member of the senate , 2 members of the house, 1 representative of the oil & gas industry, 1 representative of the county governments in oil producing county, 1 from schools, 1 from townships, and 1 from cities, all in the oil producing country. The purpose of that commission is to put into place, what I believe, the proper mechanism for ensuring the local issues are

adequately addressed. This commission would have the ability to develop regions in the state – up to 6 regions – that would prioritize the needs of their region. If properly done regional type configurations would require cooperation between counties. When oil development happens it doesn't all happen in one county. The neighboring counties are affected by the flow through them. Regional councils could go in and prioritize their needs and given an opportunity available money. If each of the regions have done their jobs and they received 10% of the new money that is going to be delivered, they would have for whatever they needed in their region. That would leave 40% of the new money in the hands of the commission. The commission would then have the obligation to address the issues between those regions. If the developer changes from one area to another and it do, it would provide some flexibility, more local input on how this is done. One of the other things I incorporated into this bill is it talks about the assistance of the oil and gas. The utilization of the field inspectors for oil and gas is something that has been underutilized. They are the folks out there from state. They are the folks addressing the issues in regard to insuring things are done properly in regards to safe regulations on building and completion. They see the trends. The commission could ask for their help. They could use them as a tool. Questions

Chairman Porter – Further testimony in support of HB 1466?

Vickie Steiner – ND Association of oil and gas producing counties. We support HB 1466. This improves the communication. Has more local people involved with that decision. We think this could work very well. We don't have a position to take the cap off or just add additional support.

Robert Harms – Northern Alliance of Independent Producers – We also support the bill. We have a couple suggestions and comments. The overriding purpose of the bill. What we like about the bill is it creates a pile of money for the remediation board to be the decision maker

as to how to allocate that money. In section 1 subsection 1 which is to include 1 member of the senate, 2 members of the house, - if I had my old job I would draw to that as a potential separation of powers issue. I think that is a legislative branch function that's beginning to go into the executive branch arena. I hate to see this bill get into trouble because of a separation of powers issue. We don't do that very often, but that is one concern. On paragraph "b" on that same page lines 21 & 22 this goes to giving the governor as much authority and discursion as can be given to in terms of the appointment process. I would eliminate the hoop the governor's office would have to go through in terms of having a nominee submitted by the association of the oil & gas producing counties. On page 2 lines 9 through 15, that is the 6 region structure. The issue I have with that is the regions will begin to take ownership that they have an expectation they get 1/6th of the pie, and we don't get the moneys or the info structure needs. I would much rather have the remediation commission make that decision without any kind of deference or obligation to sprinkle money to each of the regions. The last comment would be section 2 page 3 of the bill and that is the 6 million dollars administered by the land dept. and the balance of those funds administered by the remediation board. I don't know if that really makes sense. I guess as a matter of public policy I would prefer those funds be brought together in one decision making body. Questions?

Rep. Keiser – What would your position be if you opposed the bill?

Mr. Harms – I think the structure – the concept is very good. There is a few details need changing.

Chairman Porter – Further support of HB 1466? Opposition?

Jeff Engleson - Energy Development Impact Office – See **Attachment # 1**. Questions?

Rep. Keiser – Did I hear you correctly that if production goes up more money gets distributed back to the political subdivisions ?

House Natural Resources Committee

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Mr. Engleson – It depends, there is a cap on the amount of money that goes to the counties via the gross production. There has been a lot o discussion about eliminating those caps and all that, but for the smaller counties that had not reached those caps when the price went up ?????????????? even some of the bigger counties that had not met their cap before 2008.

Rep. Keiser – It seems to me as their revenues goes up it results in revenue increases and you said there isn't enough money. If their production goes up and they get more money so does the need for the assistance for the problems that are occurring.

Mr. Engleson – Yes. That is why we are addressing getting more money to these ????

Rep. Keiser = If we talked to the people -- inaudible

Mr. Engleson – I'm not sure, there's never been enough funding in it to really address a lot of the bigger concerns out there. I think as a general rule they have been happy with what we've done. We don't have enough money to answer the program – answer their questions or fix their problems right now.

Rep. Keiser – They may see some priorities that you don't concur with.

Mr. Engleson – That is very true.

Chairman Porter – On those you have turned down, you had mentioned the appeals process back to the land. On those you have turned down, how many have appealed back to the boards?

Mr. Engleson – I recall maybe 2 or 3.

Chairman Porter – They are also aware there is a process in place to appeal the decisions of your office.

Mr. Engleson – Yes.

Chairman Porter – Further opposition to HB 1466? We will close the hearing on 1466.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1466

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 2-5-09

Recorder Job Number: 8834

Committee Clerk Signature	<i>Nancy L. Gerhardt</i>
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Minutes:

Chairman Porter – We will take up HB 1466. Rep. Skarphol has brought an amendment forward.

Rep. Skarphol – After having discussions with some of the other folks working on this

particular issue the conclusion was drawn that we should have only one entity distributing the oil impact funds in the state of ND. This amendment would in fact eliminate the energy impact office and have the commission created in 1466 distribute all of the funds going to oil impact.

It also sets the impact dollars at 20 million dollars as reflected in the governor's budget. It gives the authority to administering this commission to the ND Oil & Gas Association. What I did not include in this amendment and probably should have and we still could do it is to put 2 more members on the commission. 1 representing the ND Association of Independent Oil Producers and the other from the Petroleum Council. I did not get that accomplished in this amendment. I think the more local distribution of the dollars the better. For a long time I have resented the fact the political subdivisions had to beg for money from some entity in our capital for the dollars they are collecting for the state, and I think it is appropriate some measure of it

be sent back to the local subdivisions go negotiate the priorities in their regions and to distribute those dollars accordingly. Questions

Chairman Porter – On page 3 section 2 this bill is still removing the cap the way it is worded.

Rep. Skarphol – On page 3 line 10 replaces the 6 million with 20 million. In sec... 3 are primarily germane to the duties of the energy impact office in regarding to the coal industry.

Chairman Porter – The repeal is all of the wording relating to the impact office.

Rep. Skarphol – I believe so.

Chairman Porter - Any other questions for Rep. Skarhol? Seeing none – thank you. Rep.

DeKrey

Rep. DeKrey – Move the amendment 0101.

Chairman Porter – I have a motion for Rep. DeKrey to move the amendment 0101 – is there a 2nd?

Rep. Hofstad – 2nd

Chairman Porter – 2nd from Rep. Hofstad – discussion?

Rep. Myxter – What are we eliminating?

Chairman Porter – There is a part-time connection to a full-time position in the land dept. that distributes the current 6 million dollars of the impact money back to the oil and gas producing counties. That position under this amendment would be eliminated and the funds would go to a regional committee that would distribute the funds with each county getting a % and then out of the remaining revenues they could apply for additional grants or their particular county could do impacts in oil. It would basically remove the oversight of the land dept. from that process.

Rep. Myxter – The 14 million, where wouldn't that be going?

Chairman Porter – The first dollar amounts would be evenly divided the remaining money in the governor's budget, which in this case would be 20 million, would be in this pool that

affected counties could apply for a grant from the commission that is set up inside of this and ask for impact money for their specific area or county.

Rep. Nottestad – Where will the funds come from that will fund this new county distribution office?

Chairman Porter – There isn't a new county

Rep. Nottestad – The office that is going to distribute the funds.

Chairman Porter – That is a committee that is appointed. It's not an office.

Rep. Nottestad – We're saying we are giving 20 million dollars to a committee?

Chairman Porter – There isn't a mechanism to pay anybody to administrate this committee.

Rep. Nottestad – No bonding or anything?

Chairman Porter – No Other discussion on the proposed amendment? Seeing none the clerk will take the roll on the proposed amendment.

Yes 8 No 4 Absent 1 Motion carries 8 yes, 4 no, and 1 absent

We have an amended bill in front of us. Point of clarification the other members Rep. Skarphol addressed are not addressed in that amendment. The ND Association of Independent Oil Producers and ND Petroleum Council as members of the council. We have an amended bill in front of us.

Rep. Drovdal – On page 1 it says 1 representative of the oil and gas industry, 1 representative of county governments in oil-producing counties, 1 representative of city governments in oil-producing counties, 1 representative of school districts in oil-producing counties, and 1 representative of townships in oil-producing counties wouldn't that include ??????????????

Chairman Porter – No The specific members Rep. Skarphol is asking for were from the Petroleum Council and ND Association of Independent Oil Producers.

Rep. Pinkerton – We saw a lot of bills, but I believe the Tax & Finance passed out a bill to fund this yesterday. I thought we passed out a bill that funded that Mountrail Co. money.

Rep. Drovdal – You are somewhat correct, we passed out a bill yesterday with the intent of doing that, It raised the impact grant fund from 6 to 9 million dollars and it put in a 1 time funding of 20 million dollars with the intent of if 10 million dollars go out the first year, 10 million dollars go out the second year to give relief to those counties with a large impact based on the number of rigs. Which would have been Montreal and Dunn Counties? The cap was there. It had 20 million plus 9 million – 14 1/2 million each year with a 2 year biennium impact.

Rep. Pinkerton – Which portion am I wrong in?

Rep. Drovdal – You were basically correct. You didn't specify Montreal Co., they were the ones most damaged.

Rep. Hunskor – Apparently there are some concerns and are we out of time to address those concerns? If those concerns are small enough they could be taken care of?

Chairman Porter – We would certainly be willing to listen to your concerns.

Rep. Hunskor – I don't have the answer and we didn't get a unanimous vote on this and I was wondering if those who didn't like it if there is something that can be jerked around a little bit that would make it better.

Chairman Porter – I doubt that.

Rep. Keiser – The amendment will make one of the largest political opportunities for inviting that could possibly exist in the state, next to the board of higher education.

Rep. DeKrey – I move Do Not Pass.

Chairman Porter – A motion from Rep. DeKrey for a Do Not Pass

Rep. Keiser – 2nd

Chairman Porter – 2nd from Rep. Keiser – discussion? Seeing none the clerk will call the roll on a Do Not Pass.

Yes 9 No 3 Absent 1 Carrier Rep. Keiser

FISCAL NOTE
Requested by Legislative Council
02/09/2009

Amendment to: HB 1466

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engrossed HB 1466 creates an oil and gas impact remediation commission and allocates a larger portion of the oil and gas gross production tax revenue to the impact grant fund. Engrossed HB 1466 also eliminates the energy development impact office.

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

Section 2 of engrossed HB 1466 allocates thirty-three and one-third percent of one percent of the oil and gas gross production tax revenue up to \$20 million per biennium, to the oil and gas impact fund. Due to this provision, the impact fund is expected to receive an additional \$14 million during the 2009-11 biennium. Revenues to the permanent oil tax trust fund will decrease by the same amount (these are both "other funds" and cancel each other out and are, therefore, not shown in 1A above).

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

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

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

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

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/09/2009

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: HB 1466

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations				\$26,802,000		

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1466 creates an oil and gas impact remediation commission and allocates a portion of the oil and gas gross production tax revenue to a special fund for impact remediation.

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

Section 2 of HB 1466 allocates thirty-three and one-third percent of one percent of the oil and gas gross production tax revenue (the portion that is in excess of \$6 million) to the oil and gas impact remediation commission fund. This fund is expected to receive an estimated \$26.802 million during the 2009-11 biennium. Revenues to the permanent oil tax trust fund will decrease by the same amount (these are both "other funds" and cancel each other out and are, therefore, not shown in 1A above).

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

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

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

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

Section 1 of HB 1466 appropriates the money allocated to the oil and gas impact remediation commission fund.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/28/2009

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2/5/09
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1466

Page 1, line 3, after "57-51-15" insert "and section 57-62-03"

Page 1, line 4, after "remediation" insert "and elimination of the energy development impact office; to repeal sections 57-62-03.1, 57-62-04, 57-62-05, and 57-62-06 of the North Dakota Century Code, relating to elimination of the energy development impact office"

Page 2, line 7, replace "energy development impact office" with "North Dakota association of oil-producing counties"

Page 2, line 23, replace "remediation commisslon" with "grant"

Page 2, line 24, replace "remediation" with "grant"

Page 2, line 25, remove the first "commission"

Page 2, line 29, replace "remediation commission" with "grant"

Page 3, line 10, replace "six" with "twenty" and after "dollars" insert "per biennium"

Page 3, line 13, remove "and deposit the remaining revenues in the oil and gas"

Page 3, line 14, remove "impact remediation commission fund", overstrike the comma, and remove "sixty-six"

Page 3, line 15, remove "and two-thirds percent of the"

Page 3, after line 16, insert:

"SECTION 3. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03. Loans - Terms and conditions - Repayment. The board of university and school lands is authorized to make loans to coal development-impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant ~~may be~~ could have been made pursuant to this chapter, ~~but before making any loan the board of university and school lands shall receive the recommendation of the energy development impact office before~~ August 1, 2009. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in

advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 4. REPEAL. Sections 57-62-03.1, 57-62-04, 57-62-05, and 57-62-06 of the North Dakota Century Code are repealed."

Renumber accordingly

Date: 2-5-09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1466

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended Amendment

Motion Made By DeKrey Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen			Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh		✓
Rep DeKrey	✓		Rep Myxter		✓
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser		✓			
Rep Nottestad		✓			

Total (Yes) 8 No 4

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-5-09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1426

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By DeKrey Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter		✓	Rep Hanson	✓	
Vice Chairman Damschen			Rep Hunskor		✓
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal		✓	Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 9 No 3

Absent 1

Floor Assignment Keiser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE
HB 1466: Natural Resources Committee (Rep. Porter, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS**
(9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1466 was placed on the Sixth
order on the calendar.

Page 1, line 3, after "57-51-15" insert "and section 57-62-03"

Page 1, line 4, after "remediation" insert "and elimination of the energy development impact
office; to repeal sections 57-62-03.1, 57-62-04, 57-62-05, and 57-62-06 of the North
Dakota Century Code, relating to elimination of the energy development impact office"

Page 2, line 7, replace "energy development impact office" with "North Dakota association of
oil-producing counties"

Page 2, line 23, replace "remediation commission" with "grant"

Page 2, line 24, replace "remediation" with "grant"

Page 2, line 25, remove the first "commission"

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Page 3, line 10, replace "six" with "twenty" and after "dollars" insert "per biennium"

Page 3, line 13, remove "and deposit the remaining revenues in the oil and gas"

Page 3, line 14, remove "impact remediation commission fund", overstrike the comma, and
remove "sixty-six"

Page 3, line 15, remove "and two-thirds percent of the"

Page 3, after line 16, insert:

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Code is amended and reenacted as follows:

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university and school lands is authorized to make loans to coal development-impacted
counties, cities, and school districts before or after the beginning of actual coal mining
from moneys deposited in the coal development trust fund established by subsection 2
of section 57-62-02. Loans made prior to actual mining must be preceded by site
permitting and by beginning actual construction of the mine or its mine mouth facility.
Loans may be made for any purpose for which a grant ~~may be could have been~~ made
pursuant to this chapter, ~~but before making any loan the board of university and school
lands shall receive the recommendation of the energy development impact office~~
before August 1, 2009. The board of university and school lands shall prescribe the
terms and conditions of such loans within the provisions of this chapter and shall
require a warrant executed by the governing body of the county, city, or school district
as evidence of such loan. The warrants must bear interest at a rate not to exceed six
percent. The warrants shall be payable only from the allocations of moneys from the
coal development fund to the borrowing county, city, or school district and shall not
constitute a general obligation of the county, city, or school district nor may such loans
be considered as indebtedness of the county, city, or school district. Loans made in
advance of actual coal mining must provide that repayment is to begin when the
borrowing county, city, or school district receives allocations from the coal development
fund. The terms of the loan must provide that not less than ten percent of each

allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 4. REPEAL. Sections 57-62-03.1, 57-62-04, 57-62-05, and 57-62-06 of the North Dakota Century Code are repealed."

Renumber accordingly

2009 TESTIMONY

HB 1466

TESTIMONY OF JEFF ENGLESON
Director, Energy Development Impact Office
North Dakota State Land Department

IN OPPOSITION OF HOUSE BILL NO. 1466

**House Natural Resources Committee
January 30, 2009**

PURPOSE

The mission of the Energy Development Impact Office (EDIO) is to provide financial assistance to local units of government that are affected by energy activity in the state. Over the years, the EDIO has helped counties, cities, schools districts and other local units of government (organized townships, fire and ambulance districts, etc.) deal with both the booms and the busts associated with energy development in North Dakota. The EDIO became a part of the Land Department in 1989.

Since 1991, the EDIO has made grants only for impacts related to oil and gas development. Funding for these grants is appropriated by the State Legislature from a portion of the 5% Oil & Gas Gross Production Tax. For the 2007-09 biennium, the amount available to this program is capped at \$6.0 million; prior to the current biennium, the cap was \$5.0 million per biennium.

The Director of the EDIO is responsible for making all decisions related to the oil impact grant program. The Board of University and School Lands is the appellate body for applicants dissatisfied with the decisions made by the director. Over time, very few appeals have been made.

CURRENT PROGRAM

The EDIO is managed under NDCC Chapter 57-62. NDCC 57-62-05 and 57-62-06 provide the following guidance to the EDIO Director:

- Grants should be used "to meet initial impacts affecting basic government services, and directly necessitated" by oil and gas development impact. Basic government services does not mean marriage or guidance counseling, programs to alleviate other sociological impacts or programs to meet secondary impacts.
- The amount of tax an entity is entitled to from real property and from other tax or fund distribution formulas provided by law must be considered when determining grants.

The following award criteria are used when making grants to political subdivisions:

- A grantee must demonstrate the negative impact caused by oil and gas development in the area.
- A grantee must demonstrate its tax effort and financial need.
- The funds granted must be used to alleviate the hardship caused by oil and gas development.

Under current state law, a portion of the gross production taxes collected by the state flow back to counties, cities and school districts. There are others here today that can better explain the details of the formula used to distribute these funds, so I will not address that issue. However, organized townships, fire and ambulance districts, and many other political subdivisions do not share in any of the gross production taxes collected by the state even though those entities can be greatly impacted by oil and gas development in a given area.

HISTORIC INFORMATION

One of the great things about this program is that the EDIO Director has always had flexibility in administering the oil and gas impact grant program. This has allowed the program to adapt to changing needs as drilling activity has moved from one area of the state to another, and as oil and gas development has gone through both boom and bust cycles. The attached tables provide a breakdown of grants requested and awarded over the past 5 biennia by political subdivision type, by county, and by function.

These tables contain a lot of information; however, there are a few specific things I'd like to point out:

- The amount of grant requests has increased substantially over the past nine years, from a total of \$22.7 million for the 1999-01 biennium to \$29.1 million in fiscal year 2008 alone.
- The amount of grants awarded to counties has decreased over the past nine years, while the amount awarded to organized townships has increased. This is partly a result of the fact that the amount of tax revenue going to many counties has increased in recent years as both production and oil prices have risen. It is also partly a result of the program recognizing that organized townships have major, direct impacts from oil and gas development, but do not receive any share of the production tax revenues collected by the state.
- The amount of grants awarded to political subdivisions in Bowman County had decreased, while the amount of grants awarded to entities in Mountrail and Dunn counties has increased. This is the result of the focus of development activity moving from the Cedar Hills area in Bowman County in the late 1990s and early part of this decade to the Bakken play in the Mountrail and Dunn County areas in more recent years.
- The one thing that hasn't really changed much over the years is the fact that the vast majority of the grants awarded (85%-90%) have been for transportation related projects/functions and for fire and ambulance related equipment and services. This reflects the program's recognition that these government services are probably the services most directly impacted by oil development.

As these tables show, the flexibility of the EDIO program has allowed the EDIO Director to try to balance the needs of the various political subdivisions at any given point in time with the resources available. The tables also show that this program allows the EDIO Director to address the fact that there are many political subdivisions which are directly impacted by oil and gas development, but which do not receive an adequate amount of tax revenues to help defray the cost of reducing those impacts.

PROPOSED CHANGES

HB 1466 creates both an oil and gas impact remediation commission and an oil and gas impact remediation commission fund. The impact remediation fund would be funded by a portion of the gross production tax revenues received by the state. The commission would be responsible for allocating the monies in the impact remediation fund to both regional impact advisory councils and directly to oil and gas development or production-impacted political subdivisions.

As I understand HB 1466, the EDIO would continue to receive \$6 million of funding each biennium and would make grants to various political subdivisions, much like in the past. This program would continue to be managed by the EDIO Director under the supervision of the Land Board, at whose pleasure the director serves (NDCC 57-62-04). As stated previously, the Land Board is also the appellate body for applicants dissatisfied with the decisions made by the director. What would change for the EDIO is that under HB 1466, in addition to its responsibilities to the Land Board, the EDIO would also report to and provide staff services for the separate impact remediation commission.

At its meeting yesterday, the Land Board discussed HB 1466 and the various members concerns about HB 1466. Among the concerns expressed by Land Board members were:

- HB 1466 would create two new levels of government that work with oil and gas impact issues. If HB 1466 becomes law, not only would the Land Board be involved with this issue, but also the new regional impact advisory councils and the new impact remediation commission. It seems to make more sense to have one state agency or organization involved in resolving impact issues than multiple entities.
- If HB 1466 passes as is, the EDIO would work directly for two different governmental entities. The Land Board would have responsibility for hiring and firing the EDIO Director, but the EDIO Director would work for both the Land Board and the new impact remediation commission. This could lead to conflicts if the two organizations do not agree on how the program should be run or who should run it.
- The Land Board is a body of 5 publicly elected officials who are accountable to the electorate for their actions. The new councils and commission created by HB 1466 would not necessarily be made up of elected officials, and thus would have less direct accountability to the public.

It is clear to me, as the EDIO Director, that there is a serious need for additional funding to address the impacts of oil and gas development in the state. The questions are, how much funding is needed and how will those funds go back to those areas that need them?

In closing, I would like to make a couple comments about this bill and how the proposed changes could impact the way that the EDIO oil impact grant program is administered.

- The amount of funding needed for this program is directly related to the amount of gross production taxes that flow to counties, cities and schools under NDCC 57-51-15(2). If the legislature provides more funding directly to political subdivisions under NDCC 57-51-15(2), then there would be less need for grants for these entities from either the oil impact grant fund or a newly created impact remediation commission fund.
- The EDIO has historically focused on "filling in the gaps" for those entities that receive no funding or inadequate funding under the gross production tax distribution formula. The flexibility of this program over time has been one of its key benefits. Raising the amount of oil and gas impact funds to \$30 million or more per biennium and adding two additional levels of government to administer those funds would change the nature of the program and would make the EDIO an integral part of financing transportation infrastructure in western North Dakota.
- The current budget for the EDIO is \$6.0 million per biennium. Of that amount, \$5,888,100 is used to provide grants to political subdivisions and \$111,900 covers the cost of administering the program. The Land Department currently dedicates about 25% of one FTE to perform the functions of the EDIO, although the actual time involved in administering the program is probably somewhat more. If the dollar amount allocated to this program increases substantially, there would be a need for at least one full-time FTE and additional operating funds to administer the program. The Land Departments budget bill (SB 2013), addresses this need by adding one FTE to the department and an additional \$110,341 in expenses to administer the program. These figures are based on the Executive budget recommendation to increase funding for this program to \$20 million per biennium. However, if a new impact remediation commission is formed and total grants increase to over \$30 million per biennium, \$222,241 in total operating costs will not be adequate to fund the operations of these programs.

With those explanations, I would be happy to answer any questions you may have.

ENERGY DEVELOPMENT IMPACT OFFICE
Grant Requests/Awards By Political Subdivision and County
1999-01 Biennium Through Fiscal Year 2008

(all dollar amounts shown are in millions)

Breakdown By Political Subdivision Class

Class	1999-01 Biennium Requested	1999-01 Biennium Awarded	%	2001-03 Biennium Requested	2001-03 Biennium Awarded	%	2003-05 Biennium Requested	2003-05 Biennium Awarded	%	2005-07 Biennium Requested	2005-07 Biennium Awarded	%	Fiscal Year 2008 Requested	Fiscal Year 2008 Awarded	%
County	\$ 3,412	\$ 2,063	42.1%	\$ 8,929	\$ 1,978	39.0%	\$ 9,092	\$ 1,388	28.3%	\$ 4,353	\$ 1,191	24.0%	\$ 10,573	\$ 0,540	18.0%
School	1,317	0,248	5.1%	2,164	0,352	6.9%	3,394	0,376	7.7%	3,499	0,255	5.1%	0,902	0,093	3.1%
City	7,813	0,891	18.2%	7,942	0,868	17.1%	12,018	0,850	17.3%	12,508	0,674	13.6%	9,823	0,497	16.6%
Park District	0,120	0,003	0.1%	0,077	-	0.0%	0,244	-	0.0%	0,351	-	0.0%	0,193	-	0.0%
Airport Auth.	0,733	0,046	0.9%	0,249	0,029	0.6%	0,502	0,038	0.8%	0,337	0,042	0.8%	0,138	0,005	0.2%
Township	2,577	1,217	24.8%	2,559	1,271	25.0%	3,652	1,593	30.7%	8,117	2,239	45.0%	5,654	1,492	49.7%
Fire District	1,777	0,432	8.8%	2,141	0,577	11.4%	2,804	0,745	15.2%	3,616	0,570	11.5%	1,856	0,373	12.4%
TOTAL	\$ 22,749	\$ 4,900	100%	\$ 24,061	\$ 5,075	100%	\$ 31,706	\$ 4,900	100%	\$ 72,781	\$ 4,971	100%	\$ 29,139	\$ 3,000	100%

Breakdown By County

County	1999-01 Biennium Requested	1999-01 Biennium Awarded	%	2001-03 Biennium Requested	2001-03 Biennium Awarded	%	2003-05 Biennium Requested	2003-05 Biennium Awarded	%	2005-07 Biennium Requested	2005-07 Biennium Awarded	%	Fiscal Year 2008 Requested	Fiscal Year 2008 Awarded	%
Billings	\$ 1,404	\$ 0,030	0.6%	\$ -	\$ -	0.0%	\$ 0,081	\$ 0,005	0.1%	\$ 0,073	\$ 0,005	0.1%	\$ 0,007	\$ -	0.0%
Bottineau	0,891	0,399	8.1%	1,741	0,433	8.5%	1,365	0,491	10.0%	1,481	0,415	8.3%	0,838	0,164	5.5%
Bowman	5,739	1,000	20.4%	6,125	1,056	20.8%	7,004	0,610	12.4%	8,740	0,390	7.8%	5,012	0,333	4.4%
Burke	0,744	0,366	7.5%	0,837	0,396	7.8%	0,932	0,400	8.2%	1,683	0,493	9.9%	0,924	0,203	6.8%
Divide	0,586	0,306	6.2%	0,507	0,250	4.9%	0,610	0,296	6.0%	1,630	0,505	10.1%	3,259	0,228	7.6%
Dunn	1,066	0,192	3.9%	0,683	0,202	4.0%	0,753	0,234	4.8%	2,742	0,251	5.0%	5,044	0,440	4.7%
G. Valley	0,814	0,304	6.2%	0,716	0,278	5.5%	1,221	0,366	7.5%	1,789	0,370	7.4%	0,872	0,156	5.2%
Hettinger	-	-	0.0%	-	-	0.0%	0,005	-	0.0%	-	-	0.0%	-	-	0.0%
McHenry	-	-	0.0%	0,067	0,035	0.7%	0,070	0,050	1.0%	0,070	0,040	0.8%	0,030	-	0.0%
McKenzie	0,647	0,112	2.3%	1,513	0,201	4.0%	1,545	0,215	4.4%	3,141	0,184	3.7%	0,734	0,118	3.9%
McLean	0,024	0,015	0.3%	0,005	0,003	0.1%	0,010	0,007	0.1%	0,005	0,002	0.0%	0,003	0,001	0.0%
Mercer	0,274	0,018	0.4%	0,012	-	0.0%	0,032	0,012	0.2%	0,035	0,009	0.2%	0,018	0,002	0.1%
Mountain	0,756	0,370	7.5%	0,892	0,276	5.4%	1,143	0,295	6.0%	3,769	0,641	12.9%	4,390	0,796	26.5%
Renville	1,117	0,366	7.5%	1,694	0,398	7.8%	1,920	0,441	9.0%	1,676	0,402	8.1%	0,862	0,177	5.9%
Slope	0,754	0,171	3.5%	0,517	0,183	3.6%	0,646	0,151	3.1%	0,826	0,154	3.1%	0,364	0,073	2.4%
Stark	2,904	0,389	7.9%	2,618	0,432	8.5%	3,270	0,385	7.9%	4,272	0,239	4.8%	1,501	0,090	3.0%
Ward	0,107	0,046	0.9%	0,064	0,030	0.6%	0,185	0,048	1.0%	0,180	0,042	0.8%	0,092	0,025	0.8%
Williams	4,904	0,818	16.7%	6,072	0,904	17.8%	10,914	0,896	18.3%	40,700	0,831	16.7%	5,189	0,394	13.1%
TOTAL	\$ 22,749	\$ 4,900	100%	\$ 24,061	\$ 5,075	100%	\$ 31,706	\$ 4,900	100%	\$ 72,781	\$ 4,971	100%	\$ 29,139	\$ 3,000	100%

