

FISCAL NOTE
Requested by Legislative Council
01/13/2015

Bill/Resolution No.: HB 1270

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

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1270 will prohibit land that is not restored to its full agricultural productivity following extraction of certain minerals from being classified or assessed as agricultural property.

- 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.*

HB 1270, if enacted, may cause some shifting of property taxes among classes of property in certain jurisdictions. The overall level of property taxation will not change as a result of this bill.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

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Telephone: 328-3402

Date Prepared: 01/21/2015

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1270

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1270
1/23/2015
22467

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to when land that has undergone reclamation may be returned to agricultural assessment status; and provide an effective date

Minutes:

Representative Nelson Testimony #1

Chairman Klemin: Opened the hearing on HB 1270

Representative Nelson: Testimony #1

Representative Kelsh: Motioned to pass

Representative Becker: Seconded the motion

Representative Hatlestad: It was agriculture, now it is tax agriculture, it has been mined and now it is not for use, and can't be taxed?

Representative Kelsh: Not same quality, lower classification of taxes. They can do that to get the tax lower from recreational to commercial classifications, putting it back to agriculture after they have stopped reclamation if somebody went along with that it is a lower classification of taxes than commercial. This would make them finish the reclamation before it can go back to agriculture.

Representative Hatlestad: Now the bond has been released. Who is responsible for the continued reclamation in order to put it back to agriculture? Is the mining company?

Representative Kelsh: They have by classifying it as recreational say they got their bond released. They are no longer responsible for it. This makes it clearer that it can't go back to agriculture unless somebody totally reclaims it. Agriculture is a lower rate. It goes on the productivity formula where commercial doesn't have that. It goes by what it would be sold for. It keeps it not from being reclaimed; they got their bond released because they have a different classification and then somehow going back to agriculture which is a lower tax rate. That is the purpose.

Chairman Klemin: As I understand it the public service commission is not going to release the bond unless they include that the conditions for releasing the bond have been met. There are statutes relating to that.

Representative Kelsh: By getting a different classification then they could release the bond because if it is recreational the hills or spoil banks for game and fish you may want that for deer habitat. The reclamation was supposed to put it back to agriculture purposes if that is what it was. They can get a different classification. This just says if you do and get your bond released then it can't go back to agriculture because it is not agriculture land. Productivity has not been proven

Representative Hatlestad: Having just visited with a mining company I was under the understanding that they had to restore it to the condition it was in before it could be released. Now you're telling me the county commission could change that?

Chairman Klemin: The bond is not releasable by the county commission it would be the public service commission that releases the bond.

Representative Kelsh: If it was kept and now a loading station they then the bond could be released. With a railroad no point in having agriculture. If it has already been designated for something else public commission can release the bond.

Chairman Klemin: I am concerned no one came in and opposed this.

Representative Zubke: I agree with Kelsh. What this is trying to do is stop them from circumventing the process.

A Roll Call Vote was Taken: Yes 11, No 2, Absent 1 (Koppelman)

Do pass was accepted

Representative Kelsh will carry HB 1270

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1270

1/29/2015

22815

Subcommittee

Conference Committee

Amanda Musca

Explanation or reason for introduction of bill/resolution:

Relating to when land that has undergone reclamation may be returned to agricultural assessment status; and provide an effective date.

Minutes:

David Strayle Testimony #1

Chairman Klemin: Opened the hearing on HB 1170. Asking the committee if we would reconsider the action then we could hear from Mr. Strayle on his opposition on this bill.

Representative Maragos: Motioned to reconsider

Representative Zubke: Seconded the motion

A Roll Call Vote was Taken: Yes 11, No 3, Absent 0

The bill will be reconsidered.

David Strayle: Testimony #1

Representative Oversen: To the example you gave, that was dealing with recreational lands right?

David Strayle: Yes

Representative Oversen: How would this bill then dealing with classification of agriculture land would change that or prevent it from happening?

David Strayle: It doesn't deny us from doing that but you don't want to put another barrier in front of us.

Representative Oversen: We don't want to get in the way of those areas but this is referring to if you don't finish the reclamation on the land it can't then be reassessed as agricultural property mostly for tax purposes. I don't think prevents even a problem for that because you can still release the bond and allow it to be out into a wildlife or recreational area.

David Strayle: Technically yea. There may be situations where we have lands or other companies have land under bond that this could prevent. In our situation those were agricultural lands and there were 68 acers of the 729 that were donated. None of those lands were disturbed, mined, used for reclamation, and our argument to the supreme court this would probable allow them to sue us.

Representative Oversen: If this is just dealing with land that is undergoing reclamation, I don't see how this would apply if those lands you were talking about were not undergoing reclamation.

David Strayle: I can't envision a scenario where this would prevent a county commission from taking that action and still be a county commission. As I understand it, there has never been a scenario where this has happened.

Representative Kelsh: One of the possibilities that Nelson was concerned about was designate some of that land that is to reclaimed per commercial you get your bond released and when the commercial purpose is done like a loading station for a train then the county commission could redesign ate that land as agriculture had it never been reclaimed and it would go back at a lower tax rate because of the formula that agriculture land goes under compared to commercial. I think that is the main concern. Can you see that happening?

David Strayle: In my experience with our company I do not. When we put that land into zoned as commercial once our operations are done we intend to turn the land back over. We temporarily use it.

Representative Kelsh: In the mean time you would have your bond released. When it went to commercial you would have your bond released. It may not be totally reclaimed back to agriculture or the way it was before and then you turn it back but who do you turn it back to?

David Strayle: Our intention when we turn it back over is not necessarily to the original land owner. It is in a pool and we work with the local land owners, farmers, those who are interested in the land. Every scenario is different.

Chairman Klemin: If this bill said that it could not be eligible for classification or assessment of agricultural property until it is restored to agricultural productivity would you have the same objection?

David Strayle: Depending on that language, right now you should all know that the public service commission governs over every piece of our land so that it does meet the productivity. We meet certain productivities or we will not get it out of bond.

Chairman Klemin: Seems like the concern was that the land would be released out of bond for a particular use other than agricultural land and then that use for which it was released for bonds ceases and so the property owner would then seek to have it reclassified as agricultural property when it hasn't yet been reclaimed for agricultural productivity and I don't know what the objectivity would be if you want to have the land classified as agricultural then why shouldn't it be restored to agricultural productivity?

David Strayle: Perfect example would be Coal lake where there are 80 some acers within the 720 where it was never touch, mined, disturbed and we changed it into a recreation designation through a public service commission. It was approved through them and then put in the package for a better time frame in order to donate those lands. As far as acreages that could or wouldn't me productive I think you would be looking at a standard where we have never touched and it shouldn't be a problem.

Chairman Klemin: If you haven't touched it then there would be no requirement to restore it.

David Strayle: Given those scenarios all those things would go through the public service commission before we ever release it through the bond release package.

Chairman Klemin: If some property had this released for one purpose and at some point decide they didn't want to use it anymore and wanted to go back to a lower tax rate, it hadn't been restored then why should they be able to get the lower rate if it hadn't been restored?

David Strayle: Des raise a good point. One of your concerns is basically it could be an unnecessary hurdle for us.

Representative Becker: One of your concerns is that the entirety of this land certainly the 68 acers was never classified originally as anything other than agriculture and your bond which was utilized and retired and the outcome was that some of this land became part of a general partnership for recreational use but basically all the other land had never been classified as anything other than agricultural and you're concerned that someone may interpret that differently?

David Strayle: Yes it also gives another opportunity for objection when we believe with the three public hearings that have happened that we should be able to address all those issues not with the company or any individual causing any strong army to happen that that is the piece the we want to make sure we don't have it happen against us. We go through those whole public costs but unneeded.

Chairman Klemin: Closed the hearing on HB 1270

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

HB 1270
1/30/2015
22900

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to when land that has undergone reclamation may be returned to agricultural assessment status; and provide an effective date.

Minutes:

This hearing is inaudible

Chairman Klemin: Opened hearing on HB 1270

Representative Oversen: Made a motion to do pass and rerefer to appropriations

Representative Strinden: Seconded the motion

A Roll Call Vote Was Taken: Yes 6, No 7, Absent 1 (Klein)

The bill did not pass

Representative Zubke: Motioned for a do not pass

Representative Becker: Seconded the motion

A Roll Call Vote Was Taken: Yes 8, No 5, Absent 1 (Klein)

The bill succeeded with a do not pass

Representative Toman will carry the bill

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1270**

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Kelsh Seconded By Becker

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad		X	Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	----				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 11 No 2

Absent 1 (Koppelman)

Floor Assignment Representative Kelsh

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

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1270**

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Maragos Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	x		Rep. Pamela Anderson		X
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh		X
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden		x
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 11 No 3

Absent _____

Floor Assignment _____

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

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1270**

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Oversen Seconded By Strinden

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin		X	Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad		X	Rep. Jerry Kelsh	X	
Rep. Thomas Beadle		X	Rep. Kylie Oversen	X	
Rep. Rich S. Becker		X	Rep. Marie Strinden	X	
Rep. Matthew M. Klein	---				
Rep. Kim Koppelman		X			
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman		X			
Rep. Denton Zubke		X			

Total (Yes) 6 No 7

Absent 1 (Klein)

Floor Assignment _____

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

do pass vote failed

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1270**

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Zubke Seconded By Becker

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson		X
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh		X
Rep. Thomas Beadle	X		Rep. Kylie Oversen		X
Rep. Rich S. Becker	X		Rep. Marie Strinden		X
Rep. Matthew M. Klein	---				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar		X			
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 8 No 5

Absent 1 (Klein)

Floor Assignment Representative Toman

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

REPORT OF STANDING COMMITTEE

HB 1270: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1270 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HB 1270

HB1270

Good morning Chairman Klemin and members of the committee, I am Marvin Nelson Representative of District 9. I come to you today to close a potential loophole in our mine reclamation laws.

When land is to be mined, the land is mapped by a professional soil classifier at a higher than normal level of precision, after the mining, the land is returned to basically its previous topography and the topsoil is spread.

Then it undergoes a period of reclamation to return the land to its original productivity. This would be at least a 10 year process with yields taken 3 of those years to show the productivity has been returned.

It's not a cheap process. When the productivity is returned the process is complete and the reclamation bond can be released.

Sometimes there is another use for the land other than agricultural. For instance recently the zoning on one parcel of a mine was changed because they were putting in a train loading station and building a loop. Well it doesn't make sense to restore agricultural productivity and then build a railroad on it. It would be an unnecessary cost. So, when land is rezoned, the bond can be released on that land if it meets the reclamation standards for that land classification as laid out by the Public Service Commission.

One land classification that our Century Code is pretty much silent about is "Recreational" many counties don't even use that classification but some do.

Well, it came to my attention when reading the supreme court case of Dakota Resource Council vs. North Dakota Public Service Commission, case No. 20110226 that there was a potential problem. The case was about the Falkirk Mine giving land to the North Dakota Department of Transportation, the land is now managed by the North Dakota Game and Fish Department as Coal Lake Wildlife Management Area. The issue in the mmcase was there were some 86 acres that DRC said should remain agricultural because they were going to be used to grow crops for foodplots. The problem was if they remained agricultural, the mine did

not want to give them to someone else and yet retain the responsibility to reclaim. By zoning them recreational, the bond was released because the reclamation was sufficient for that use.

Agricultural land is taxed using the agricultural productivity formula based on soil type productivity along with adjustments which a county may use. All other land is taxed based on value, not production. Well it seems that there is a potential problem if a county is careless in thinking that recreational land is still agricultural since farming is an acceptable use in the rural counties with recreational zoning, but that could be fixed without this bill.

What this bill is doing is closing the potential loophole of rezoning the land to release the bond and then rezoning the land back to agricultural to get the benefit of using the agricultural productivity formula. To my knowledge, this has never happened, and I'd like to keep it that way.

It also secondarily reinforces that when land is rezoned and the bond released that there is no question of taxing it agriculturally.

I include a printout given to me by Jim Deutsch of the Public Service Commission showing the usage of that land.

Thank you, I stand for questions.

328-2251

Prepared by
Jim Deutsch

North Dakota Final Bond Releases for Lands Permitted or Re-permitted after July 1, 1979
(as of October 1, 2014)

Mine	Total Final Bond Release Acreage	Native Tame Wildlife/ Industrial/ Trees/ Ponds Residential									
		Undisturbed	Cropland	Hayland	Grassland	Grassland	Recreational	Roads	Woodland	Ponds	Residential
Beulah	655	50	266	-	1	-	-	337	-	1	-
Center	1,221	34	462	223	146	20	-	322	10	4	-
Falkirk	855	24	347	-	-	-	360	108	-	-	16
Freedom	3,584	838	1,241	313	375	-	397	393	23	4	-
Gascoyne	1,580	303	62	291	-	4	23	830	-	67	-
Glenharold**	7,274	2,798	86	442	2,848	-	123	672	256	49	-
IndianHead**	3,085	710	895	281	1,040	17	-	118	6	18	-
Larson**	1,060	410	514	6	-	58	-	53	1	18	-
New Leipzig**	35	10	-	25	-	-	-	-	-	-	-
Royal Oak-JK**	126	10	-	103	-	-	-	10	-	3	-
Royal Oak**	334	25	79	-	-	64	-	166	-	-	-
Velva**	802	415	94	-	277	-	-	-	14	2	-
American Colloid*	99	49	-	-	50	-	-	-	-	-	-
GeoResources* **	90	15	-	-	-	-	-	75	-	-	-
Totals	20,800	5,691	4,046	1,684	4,737	163	903	3,084	310	166	16

1.3
1/23/2015
HB 1270

Final Bond Release for Lands Permitted before July 1, 1979

Mine	Acreage
Beulah	518
Center	959
Falkirk	27
Freedom	21
Gascoyne	17
Glenharold**	2,159
IndianHead**	1,483
Larson**	748
Royal Oak**	63
Velva**	117
GeoResources* **	30
Bentonite* **	59
10 small mines**	22
Total	6,223

* Leonardite Mines
** Mines totally bond released

Current Acreage under Permit

Mine	Acreage
Beulah	8,464
Center	18,026
Coyote Creek	84
Falkirk	51,357
Freedom	46,397
Gascoyne	1,551
American Colloid*	507
Stony Creek*	126
Total	126,512 *

* Note: Less than one-half of the acreage currently under permit had been disturbed by mining as of October 1, 2014

Total "PERMITTED" Acreage that has received Final Bond Release - 27,023 acres

Total "MINING DISTURBED" Acreage that has received Final Bond Release - 21,332 acres

Thank you, Chairman Klemin and members of the House Political Subdivisions committee, my name is David Straley and I represent North American Coal Corp. and subsidiary companies and I am here today to oppose HB 1270.

I would like to share an example of a great partnership with private industry and local and state government where everyone wins. I have had the chance to visit with Rep. Nelson about his intentions, but I believe this bill could negatively affect companies like ours to enter into future "win-win" partnerships.

Now, about the Coal Lake Wildlife Management Area, which is located in McLean County, just about 1 mile east of Hwy 83 and about 3 miles south of Hwy 200. First it is important to know the history of what previous legislative assemblies were working on and their goal.

General No Mow Information:

- The 57th Legislative Assembly (2001) directed the NDDOT to prepare a plan to eliminate the No-Mow/Managed-Mow areas within the rights-of-way of the state highway system.
- The 58th Legislative Assembly (2003) approved the NDDOT's plan to eliminate the 8,200 acres of No-Mow/Managed-Mow areas and authorized the NDDOT to acquire approximately 4,800 acres of land to eliminate the No-Mow/Managed-Mow areas within the rights-of-way of the state highway system.

Coal Lake Wildlife Management Area:

- Falkirk and GRE donated 729.4 acres to NDDOT to help eliminate the No-Mow/Managed areas within rights-of-way of the state highway system in McLean Co.
- The PSC permitted a land use change to recreation allowing for this land to be donated to NDDOT.
- WMA contains 66.5 acres of reclaimed cropland.
- This land will be managed by the NDGF, in perpetuity, as a wildlife management area open for public access and hunting.
- NDGF will make an annual in lieu of taxes payment to McLean County.
- The WMA is now open to public access for limited hunting, fishing, hiking, kayaking, etc...

Given that background, I'm not sure the state would want to put in unnecessary burdens that may prevent private industry to work with local and state government and enter into partnerships that now serves to benefit all North Dakotans and our visitors. With that example, I urge the committee to support a "DO NOT PASS" motion on HB 1270.

Thank you for the opportunity, and I'd be happy to answer any questions.