

## **CHAPTER 57-62 IMPACT AID PROGRAM**

### **57-62-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Coal development" means the mining of coal and industries directly related to the processing of coal, including the generation of electricity from coal or coal products, coal gasification, coal liquefaction, and the manufacture of fertilizer from coal.
2. "Impacted city" means a city which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.
3. "Impacted county" means a county which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.
4. "Impacted school district" means a public school district which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.
5. "Impacted taxing district" means a taxing district as defined in subsection 7 which demonstrates actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto.
6. "Oil and gas development" means the exploration for and production of oil and gas and industries directly relating to the refining or processing of the oil or gas.
7. "Taxing district" means any political subdivision, other than those included in subsections 2 through 4, empowered by law to levy taxes.

### **57-62-02. Allocation of moneys in coal development fund.**

Moneys deposited in the coal development fund shall be apportioned monthly by the state treasurer as follows:

1. Fifteen percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal-impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15.1-36. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the general fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15.1-36.
2. Fifteen percent must be deposited in the lignite research fund for the purpose of developing advanced energy technology.
3. Seventy percent must be allocated to the coal-producing counties and must be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such monthly period. Allocations under subdivisions a and b must be apportioned by the state treasurer as follows:
  - a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision must be allocated as follows:

- (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
  - (2) Forty percent must be paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.
  - (3) Thirty percent must be apportioned by the state treasurer to school districts within the county on the average daily membership basis, as certified to the state treasurer by the county superintendent of schools.
- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million four hundred thousand tons [3084428.12 metric tons] through calendar year 2017 and three million tons [2721554.22 metric tons] after calendar year 2017. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:
- (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
  - (2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.
  - (3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based

upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.

- (4) For the purposes of this subdivision:
  - (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
  - (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.
  - (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
  - (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
  - (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.
- (5) The state treasurer shall allocate funds provided by legislative appropriation to cities, the county general fund, and school districts within a coal-producing county according to the allocation method provided in subdivision a in an amount to offset fifty percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county under this subdivision in the previous calendar year for the payments through calendar year 2018 and to offset thirty percent of the loss of that county's share of coal severance tax revenue allocated to a non-coal-producing county under this subdivision in the previous calendar year for payments after calendar year 2018. The state treasurer shall make the allocation and distribute the funds, within the limits of legislative appropriations, under this paragraph during the first month of each calendar year. The state treasurer shall include in each biennial budget request the amounts estimated to be necessary for the biennium for purposes of this paragraph, based on the allocations under this subdivision in the most recent calendar years.

#### **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 made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the energy infrastructure and impact office. 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.

#### **57-62-03.1. 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 energy infrastructure and impact office 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.

#### **57-62-04. Energy infrastructure and impact office - Appointment of director.**

There is hereby created an energy infrastructure and impact office, to be a division within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the board of university and school lands. The director shall have knowledge of state and local government and shall have experience or training in the fields of taxation and accounting. The salary of the director must be set by the commissioner of university and school lands within the limits of legislative appropriations. The director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose. The board of university and school lands shall fill any vacancy in the position of director in the same manner as listed above. All action by the board of university and school lands, including appointment of a director, must be by majority vote.

#### **57-62-05. Powers and duties of energy infrastructure and impact office director.**

The energy infrastructure and impact office director shall:

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 board of university and school lands pursuant to 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 to the board of university and school lands 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.

**57-62-06. Legislative intent and guidelines on 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.