

FISCAL NOTE
Requested by Legislative Council
02/20/2015

Amendment to: SB 2189

- 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				\$500		\$500
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).*

An increase in compensation for the 4 non ex-officio members of the board to \$125.00 per day (from the current \$62.50 per day).

- 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.*

An increase in compensation for the 4 non ex-officio members of the board of \$62.50 per meeting times two meetings per biennium equals the anticipated fiscal impact of an additional \$500 from the board funds which are derived from testing and licensure fees paid by the members.

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.*

Board funds are derived from testing and licensure fees paid by the members.

Name: Jon Patch

Agency: ND Board of Water Well Contractors

Telephone: 701-328-3440

Date Prepared: 02/20/2015

FISCAL NOTE
Requested by Legislative Council
02/20/2015

Amendment to: SB 2189

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	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$500		\$500
Appropriations						

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Cities			
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Board funds are derived from testing and licensure fees paid by the members.

Name: Jon Patch

Agency: ND Board of Water Well Contractors

Telephone: 701-328-3440

Date Prepared: 02/20/2015

FISCAL NOTE
Requested by Legislative Council
01/12/2015

Bill/Resolution No.: SB 2189

- 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				\$1,500		\$1,500
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).*

The Board of Water Well Contractors is a licensing and regulatory board for Water, Monitoring, and Geothermal Well Contractors, as well as Pump and Pitless Unit Installers. The budget for the operations of the board is entirely funded by the license and testing fees.

- 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 3 changes the potential per diem paid to board members.

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.*

Section 3 of the bill increases the maximum per diem to \$250.00 per day from the current \$62.50 per diem. Four non ex-officio members may be paid up to \$250.00 twice per biennium. This equates to an increase of \$1500.00 per biennium.

- 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.*

Name: Jon Patch

Agency: Office of the State Engineer

Telephone: 328-3440

Date Prepared: 01/19/2015

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2189

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

SB 2189
1/22/2015
Job # 22379

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 43-35-05, 43-35-06, 43-35-07, 43-35-14, and 43-35-22 of the North Dakota Century Code, relating to the board of water well contractors; and to provide a penalty.

Minutes:

Attachments 1

Chairman Dever: Opened the hearing on SB 2189.

Senator Klein, District 14: Testified as sponsor of the bill. It was brought to my attention that the rules for water well contractors have not been looked at since 1971 and they got a little bit behind. Today they bring forth a few changes that they would like to propose. I will defer to the water well contractors for the details.

(1:45) Loren DeWitz, President, Water Well Contractors: See Attachment #1 for testimony in support of the bill and to explain the bill. It was suggested that the contractors should be bonded instead of just the individuals.

(5:50) Chairman Dever: \$250 is a little generous compared to other boards.

Loren DeWitz: It is for me if I am coming 8 miles, but for some it is a lot further and they often shut down their business for the day, I do not think that it is.

Chairman Dever: For those that have to travel a long distance, do they come the evening before and they would be paid half a day? So for a one day committee meeting they would get paid for 1 ½ days and you would get paid for 1 day.

Loren DeWitz: We meet during the summer and it is a busy time of year for these people. They don't want to be away for that long. They want to set the meeting so they can come in the morning of and go home that night. If it was in the winter time, I think it would be a different situation.

Chairman Dever: The question really is then if they should be paid for a full or half day? It seems to me that they should be able to do that now.

Senator Marcellais: Could this meeting be held with a conference call instead of them traveling?

Loren DeWitz: Yes to some extent. I would hate to do every meeting with a conference call. I think if someone cannot be at the meeting then they should be included by a conference call, but I am one that likes to sit down and have at least one annual meeting in person. I think there is a lot better communication that way.

Chairman Dever: So an infraction is \$1000? I thought it was \$500 but maybe it has changed.

Loren DeWitz: We looked it up on the internet and that is what we found. It is not much of a penalty.

John Patch, Member, Secretary/Treasurer, Board of Water Well Contractors: Testified in support of the bill and to explain section 5 of the bill. I handle a lot of the day to day activity of board business. My position is the Director of Water Appropriations for the Office of the State Engineer. Section 5 has to do with civil authority by the board and it is mainly as a result of a lot of the work I do in my position. We have found that having civil authority works really well when you need to get something resolved out there. Our intent is not have a big fining ability and to be able to collect the money. Our responsibility as the board is to make sure that the job gets done correctly by the contract members. We use the method of applying the civil authority lever to come up with a consent agreement usually with the violating party. We do not have a set of rules currently in statute. This language is patterned after a lot of the existing language that is in Century Code in 61-04 and 61-03. Our intent is to not have more fining abilities but to have leverage. We want violations corrected. When I looked into the compensation for board members, it ranged from \$25 to \$300. Where professionals are required on the board it appeared to be on the higher end. We do require the water well contractors to be on our board. This \$250 is not the highest amount out there. It would be not a set amount for all, but it would be the maximum.

(12:42) Chairman Dever: How often do you meet and how many members do you have?

John Patch: We only have one mandatory meeting per year and it is in July. We have 6 members of the board, 2 are ex officio (myself and the environmental division director for the health department), and then we have two water well contractors; one pump and pit less unit installer, and one member at large. We represent the geothermal but there is not a representative required for the board.

Chairman Dever: The provision for changing the penalty from an infraction to a class B misdemeanor is in the same section that you have the civil penalty and the infraction is for operating without a license, so you would be able to extend the civil penalty to people who are not governed by the board?

John Patch: Right now we do have that capability. It states that they are guilty of an infraction and that is a criminal penalty. So those that are working without a license are guilty of an infraction under our current statutes.

Chairman Dever: But you would be able to extend civil penalties to them to.

John Patch: I think if they would be violating a provision of the chapter, then yes.

Chairman Dever: Is that done by the courts or by administrative hearing?

John Patch: It would be a court process either through the district court or through the Office of Administrative Hearings. However, as I mentioned, it is not our intention to start invoking a lot of that, it would be having it as a lever or as a last resort if they are not going to be negotiating through a consent agreement method.

Chairman Dever: Closed the hearing on SB 2189.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

SB 2189
1/22/2015
Job # 22410

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

No Attachments

Chairman Dever: Opened SB 2189 for committee discussion.

Chairman Dever: I was not comfortable with the compensation and other than that I am not sure. We had some discussion about civil penalty.

Senator Cook: The \$250 caught my attention as well. Section 5 seems to be a good thing. It seems to me you have a board that has a right to charge or threat to charge a civil penalty and there is language in sub-section 3 where the board can take it to district court. I assume that somewhere there is the right for the individual who is being accused to get to court himself.

Chairman Dever: I wonder if other boards have the ability to assess a civil penalty. It does say the board or the district court. This is pretty powerful and maybe we need to look into it.

Senator Nelson: Referring to section 3, the last line that they put in states that the board shall establish the compensation rate, and the previous 4 lines talk about what the rate is going to be. To me that is kind of repetitive.

Chairman Dever: I think their real interest is having some flexibility.

Senator Nelson: I don't really care what they pay those people. It is their board and they are professionals and why are we setting everyone's fees anyway. If they have the money and they want to pay them, then let them. If they don't have the money then they are all volunteers.

Senator Marcellais: I have a note here regarding doing more research on the bonding.

Chairman Dever: They said the cost of drilling a well is \$15,000.

Committee: The committee proceeded to comment on various parts of the bill that the committee had an issue with. The idea of changing the meeting out of July was suggested,

and if that was necessary to make it easier for them to meet in a less busy time. Continuing education was also mentioned.

(7:30)Committee: The committee went through the bill and discussed what changes that they wanted to make to the bill and who they needed to talk to about them. The discussion focused on the compensation amount.

Senator Flakoll: Moved to amend Page 2, Line 2, to change \$250 to \$125.

Senator Poolman: Seconded.

Senator Flakoll: I think if we take the recommendation of the bill as it came in, I think it puts it in jeopardy that it does not need to be in.

Chairman Dever: I would agree with that.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Passed.

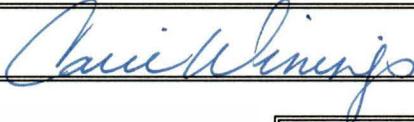
Chairman Dever: Had the committee go through the rest of the bill and discuss what else needed to be looked at. Senator Cook mentioned that the language of "individual" vs. "company/contractor" needed to be clarified and the committee briefly discussed that issue. It was decided to get the questions they needed answered from legislative council before voting on the bill and **closed the discussion on SB 2189.**

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2189
2/19/2015
Job # 24112

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Minutes:

No Attachments

Chairman Dever: Opened SB 2189 for committee discussion and the committee reviewed what the bill was about and that it was amended in a prior meeting to change \$250 to \$125. The committee briefly discussed if they needed to change the date of the meeting and it was decided that it was not necessary. The duplicated language on the printed copy is not on the original copy of the bill.

Senator Poolman: Moved a Do Pass As Amended.

Senator Flakoll: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Poolman will carry the bill.

15.0526.01001
Title.02000

Adopted by the Government and Veterans
Affairs Committee
February 19, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2189

Page 2, line 2, replace "two hundred and fifty" with "one hundred twenty-five"

Renumber accordingly

TD
2/19/15

Date: 1/22
 Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2189**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: pg 2 line 2 \$250 to upper limit "up to \$125"

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Motion Made By Flakoll Seconded By Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

motion passed

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2189: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2189 was placed
on the Sixth order on the calendar.

Page 2, line 2, replace "two hundred and fifty" with "one hundred twenty-five"

Renumber accordingly

2015 HOUSE POLITICAL SUBDIVISIONS

SB 2189

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

SB 2189
3/19/2015
25108

- Subcommittee
 Conference Committee

Amanda Muscia

Explanation or reason for introduction of bill/resolution:

Relating to the board of water well contractors; and to provide a penalty

Minutes:

Testimony 1, 2

Chairman Klemin: Opened hearing on SB 2189

Senator Klien: This is the regulation of water well contractors and the fact that they haven't looked at their rules and that they have decided that there are some major changes that need to be made. There were changes to board reimbursement and then also to some violations pursuing to the water well driller violating their contract and law. I am here for questions but there are more behind me.

Loren DeWitz: Testimony 1

Representative Beadle: How many licensed water well contractors are there?

Someone in the Crowd: (answered but didn't get caught on the mic)

Representative Beadle: and what are the revenues versus expenses for the board?

Loren: To become a new driller is 100 dollar fee and the certification is 200 a year. Our balance in our account is around 40,000 which does vary on our expenses. Certifications come in the first part of the year and it goes up then and then gradually lowers. It is not a big money making group. The board- the people they work with assess the fee and they won't go in and spend much. They do a good job of governing themselves.

Chairman Klemin: On the new language in section 5 is the civil penalty for violating the provisions of this chapter or any rule adopted by the board. Do you have the rules?

Loren: This was taken from what the water commission is using now and it was patterned after what they are doing. Someone else could answer this better.

Chairman Klemin: Is your intention to adopt the administrative rules that would apply in addition to what is in the chapter?

Loren: Yes

Chairman Klemin: This allows the civil penalty to be decided by the district court or by the executive officer who is the secretary treasurer of the board. The executive officer could levy a penalty of 5000 a day on a contractor? Is that authorized by that section? Is that the intention?

Loren: My intention is that he would have to go before the board for approval to do that type of stuff. If it came to that and he came to me and said we need to assess a penalty I would call a meeting and I would hope that is how future presidents would run the board. It is not my intention to give that man the authority alone to do that.

Chairman Klemin: It goes on to say that he can do that at the end of the page through an administrative hearing under chapter 28-32 which is the administrative agency that practices that.

Loren: I would like to defer that to someone who knows better.

Chairman Klemin: We will get to that if you don't know. On page three, if the person doesn't pay after the administrative hearing within 30 days, it says the board pay pursue a judgment from the district court. How do you envision that process? I am not sure why you have to go to the district to get a judgment if you already have the authority to levy the penalty

Loren: I don't understand enough on how the water commission works right now and the people behind me can answer these questions better like I said.

Chairman Klemin: Do you know on line four notwithstanding section 57-22 is?

Loren: I would like to defer that to the other people.

Representative Koppelman: \$5,000 a day seems like a lot. Have you had many of these violations? How long does it take to correct them?

Loren: That is substantial. My concern is if someone comes out and drills a well, there is always the problem of contamination. If the guy does a lousy job and we have no authority the well will sit there. I don't want to see it sit there for 30 days. I don't see this being used a lot but if you are doing something to harm an aquifer we need to do something to get your attention

Representative Klein: What is the average cost of drilling a well?

Loren: It depends on the type of well. I have several irrigation wells and the last some the well driller pulled my yard I offered him 25,000 up front. He said it wouldn't cost that much but when he left it was closer to 45,000 for an irrigation well. Domestic wells are much less. It depends on what they run into one they start.

Representative Klein: What about when you drill for geothermal?

Loren: I haven't dealt with geothermal.

Rodger Schmid: Testimony 2

Representative Beadle: What process did you go through with discussing the licensees the changes you are proposing? The bond change threshold is a substantial increase. What kind of feedback have you had back from people?

Rodger: We had our annual water well meeting with the people and there was no heartburn on that. This is the second increase in 40 some years.

Representative Zubke: Section five deals with unlicensed well contractors that haven't been certified in this chapter?

Rodger: That is the main thing but it also includes the licensed contractors.

Representative Zubke: It does go on in that sentence to say ' or drill a geothermal system for another without being certified in accordance with this chapter'. It appears to me that section 5 is directed at people who are operating without a license or certification.

Rodger: We have pulled people's licenses and it happens for six months. That is a pretty good hammer and it seems to me that there was a license that was just pulled. I wasn't on the board at the time and I don't follow that.

Chairman Klemin: It seems to me that the existing language talks about a person contracting to drill a well without being certified. Then in the new language in subsection 2 applies to any person who violates any provision of the chapter or any rule of the board. That's your understanding?

Rodger: Yes, but I know when we were talking about it at the board meeting last summer and it was the unlicensed that we were looking at. We feel that we have done a good job on the licensed drillers.

Representative Koppelman: Are you the guy we hold the questions for?

Rodger: Next man is probably better.

Bill Shew: I am representing the state health officer and the state engineer which are both on the board of water well contractors. I am here on John Patches' behalf because he is somewhere else. The purpose of the board of water well contractors is to serve the people of the state by assuring a high level of ethics in the profession and to be sure there is redress for parties that have been damaged in proper well construction. You have had many questions. First of all that 250 dollars, I don't think that 65 has changed in 30 years and even this isn't very much money for a professional well driller to take a day of and come and serve. The assuredly of bond on 15,000 dollars (I know someone who just put in an extraction well for 65,000). When you invest in a water well it can get very expensive. If the job is done sloppy you will need a redress, so 2,000 on a bond is nothing. \$15,000 is starting to get in the ball park for domestic wells and some small industrial wells. The cost gets much much higher. Section 5 is the power part and you asked about the \$5000 a day. The part about pulling- it looked like it only applied to licensed water well drillers- that is in section 1 which refers to only the pulling of the licenses. That would refer only to people who have licenses. The civil penalty that they are asking for- first of all- it looks like the

executive officer would just have the ability to go and level this. It is not the officer; it is the board that they are asking to have the power. The executive officer has always served as that- has been the designee of the state engineer. The chairman in the appropriations division is the one who is serving as the executive officer. The board has been frustrated over the years with unlicensed drillers that don't have a handle on it. The courts don't want much to do with infractions and they have been pretty powerless. This also would pertain to bad actors in the profession. The purpose to that 5,000 was patterned after the oil field legislation and the state water commission had put in. It is there to put a club behind it so you can get redress. It is not there to pull in big fines. When we ran into the oil field situation with water appropriation, all of a sudden we had maybe 5,000 and when someone can make millions of dollars pumping for a few days that comes into the business model. The legislature then took the fine up to 25,000 a day which then gives them what they are able to- which is go out there and say we can come after you with this. They then set an agreement so cease and to sis but to agree to the terms of the state engineer governing them; and also to pay back to the state the money that they made illegally. It is a big club to induce them to the right thing, but the purpose is not to use it. I don't think they have ever used that 25,000 fine. It is there to back it up. Let's say someone puts in a poor well for you, a field officer would check it out and take it to the executive officer and the water commission and they would take it to the board for a decision. He may then say they have a period of time to fix the well and if they don't do that then they could level a 5000 a day fine to put the muscle behind what the real goal is. They would then go to the board with it where it would make a decision. It would not be an individual decision. At that point they have to go through an intuitive and administrative hearing under the rules of chapter 28-32. Even the board at this point has to go to the district court to force this kind of fine. This is the purpose. I also want to point out- you asked if we had a law that requires administrative rules- yes we do. Article 33, title 9 of the administrative code 'state board of water well contractors, general administration and operations' have been long established under administrative rules and then previous to that the actual standards that are enacted by the board under title 33 'water well contractors for the department of health' and they are the ones that normally set the standards for monitoring wells and pipe installations.

Chairman Klemin: Are you saying there are existing rules that have been adopted by the department of health for water well contractors?

Bill: They determine how the well is supposed to be constructed. Their rules are with respect to the safety of the ground water. It is the health department- there are other rules of the profession that just have to deal with proper well construction for the mechanics of the well, proper delivery of the water and so on. The health department has authority and has set the standards of water well contractors, the construction, what types of pumps and wells you have to have, back flow devices, and things of this nature so you don't have back flow of chemical into the aquifer. From the standpoint of public health the rules under this are which they help administer.

Chairman Klemin: Does the board itself have separate rules besides the ones adopted by the department of health?

Bill: They follow when it comes to the construction the health department of rules.

Representative Koppelman: In section 5, the subsection one that you referred to talks about licensure and then the language says 'any person that willfully violates in order of the board' and this is the section that imposes a criminal penalty, a class B misdemeanor. So what you're saying is that current law says if they drill a well without being certified they are guilty of an infraction. This change would say if they do that or if the board issues and they violate the order, they are guilty of a class B misdemeanor.

Bill: Yes

Representative Koppelman: Is it the intent then to grant cart launch authority to meet out criminal penalties whatever the board might decide without any written violation or any indication of what they are doing wrong? If the board says do this and they don't perhaps unknowingly?

Bill: We should have our attorney here for that because that is a good question. When you say they are guilty of a class B misdemeanor, the board does not have the authority to arrest anyone. You still have to have the police and courts. What that does is set a standard for the court but it would still have to undergo the judgment of a court in determining whether or not the board was acting reasonably. If they would come in with a defense attorney and say look.

Representative Koppelman: I am not sure reasonability is a standard here because it just says if anyone willfully violates any order of the board. It doesn't say any reasonable order or any order the court deems reasonable.

Bill: That language would have to assume that they would be acting in that manner but you're saying it is not obvious in the language of it.

Representative Koppelman: In subsection 2 it says the board or the district court may assess a civil penalty against a person. So, the board is assessing the penalty and then later in that subsection it says the penalty can be for a violation of any provision of this chapter or any rule adopted by the board under this chapter. I think we established in addition to the health department rules that you referenced that there are apparently rules that the board has promulgated. Are those part of the administrative code? Are those simply policy?

Bill: There was policy on the part of the board rulings. The health department and the administrative code related the board of water well contractors is under the state administrative code.

Representative Koppelman: I understand that the health department rules are.

Bill: And the administration of the state board of water well contractors is under the administrative code (title 9)

Representative Koppelman: In the language you seek to add here says 'or any rule adopted by the board under this chapter'. I don't know of anything in 43-35 that would give 43-35-22 that details rule making authority. That is in chapter 28-32, which is the administrative agencies practices act. The authority for agencies of government to adopt administrative rules is housed there and not in this chapter. I think we have a problem with

wording there as well. In the last sentence it says the civil penalty may be adjudicated by the district court or by the executive officer on behalf of the board through an administrative hearing under chapter 28-32 and I think someone said this language was lifted from somewhere. If it was I am concerned where that is too because on one hand it says that it is the executive officer/board is administering the penalty and adjudicating the process. It seems to me that an administrative hearing officer would be the adjudicator if it is an administrative hearing not the executive officer.

Bill: This is saying that it will be adjudicated under the hearing rules of the administrative rules hearings and what you're saying is that the language of this would indicate that the hearing officer is the executive officer where as your saying it should be the rule of the hearing judge.

Representative Koppelman: I think the intent is understood but the problem is in the writing.

Representative Klein: Your office, before a well can be drilled has to provide the approval for that, and then your rules meshed with the rules of the water well boards so that your rules override theirs.

Bill: The state engineer and the state water commission does not govern the construction of wells per say. We appropriate the water and also if there are dams or things of that nature that is under the state engineers jurisdiction. The actual construction of the wells and the administrative code for well construction is under the health department's jurisdiction. They have to follow the health department's rules on that and then as far as the construction of the well is concerned, the integrity of the well construction process as far as the customer is concerned- the health department would still regulate if they are violating health rules with the health department which would still be stepping in on that. The duty of the board of water well contractors is a professional board to assure the competence of the profession and the redress of the grieved parties of construction.

Chairman Klemin: What is the board going to do then with the money then if it levies penalties?

Bill: It specifies that the cost of the adjudication and enforcement would go to the board and there is no statement about the rest of it but the intention is that it would go back to the general fund.

Chairman Klemin: It doesn't say that but under the constitution, fines go to the common school trust fund and that's probably why this isn't referred to as a fine- instead it is referred to as a civil penalty which doesn't go to the common school trust fund. It doesn't say explicitly where it does go.

Bill: If that is a risk I think we should change

Chairman Klemin: On page three it does say that 'a violator shall pay to the board all interest and penalties- unless there is some other section that provides for that

Bill: Any civil penalty assessed under this order is an addition to any cost. The worry over something like that would be a speech wrap.

Chairman Klemin: The board may have some expenses for court

Bill: Expenses and projects and that language is problematic. The intent is that it should go to the state general fund. Only the part that dealt with the adjudicating would remain with the board but you are all aware that the intent can get lost in the language

Chairman Klemin: I think I should appoint a subcommittee for this one. Representative Koppelman will you chair this one. You will also have Representative Klein and Representative Oversen.-- closed the hearing on SB 2189

Minutes of the

(HOUSE) SENATE BILL NO. 2189 SUBCOMMITTEE OF THE
Political Subdivisions STANDING COMMITTEE

Meeting location: Prairie Room

Date of meeting: 3-20-15

Time meeting called to order: 11:10 AM

Members present: Reps. Koppelman, Klein, and Oversen.

Others present (may attach attendance sheet):

John Walstad (NDLC), Tessa Vargen - PS Committee
Intern, Loren Dewitz (by phone).

Topics discussed:

Needed changes to the bill, in order to comply with current
and other laws and practice, and to accomplish the
objectives of the board of water well contractors, while
protecting property and public safety. After this bill's
first four sections were corrected, as per the motion passed,
it was agreed that the Committee will need to meet again
the afternoon of March 26, to review staff work and further
amend the bill.

Motion and vote:

To amend section 1, changing president to chairman and vice president to
vice chairman; Section 2, changing secretary-treasurer to chairman,
section 3, adding "by rule" at the end of the new language; and
Section 4, adding "minimum" after "The" on line 14 and "the board may
establish bond amounts and specifications by rule." at the end of
line 16.

Motion by Rep. Klein, seconded by Rep. Oversen, passed unanimously.

Time of adjournment: 12:05 pm

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

SB 2189
3/27/2015
25553

- Subcommittee
 Conference Committee

Annanda Muschia

Explanation or reason for introduction of bill/resolution:

Relating to the board of well contractors; and to provide a penalty.

Minutes:

attachment 1

Chairman Klemin: Opened discussion on SB 2189

Representative Koppelman: Explains the amendments (attachment 1)

Representative Oversen: On line 20 there are two 'thes', I think we need to remove one.

Representative Koppelman: Correct. Continues to explain the amendments (attachment 1)

Representative Kelsh: You have the chairman and then an executive officer. What are the differences between the two?

Representative Koppelman: A lot of these boards and commissions are late people that are appointed to serve and that are the case here. When I say late people, they have expertise but they are not elected officials or full time employees of something. Often times they will hire. If they are a bigger board they will hire an executive director and they carry on that role. In this case it is called an executive officer and he is a member of the board (the current officer). Continues to explain the amendments (attachment 1)

Chairman Klemin: This section four amendment that is all highlighted- why is it highlighted?

Representative Koppelman: Legislative council added that because we changed president and vice president to chairman and vice chairman. Continues to explain the amendments (attachment 1) I move the amendments.

Representative Hatlestad: Second

Representative Kretschmar: Why do they have the emergency clause on section 3 only?

Representative Koppelman: I did not catch that. We didn't ask for that but I think they did that because section three is the area where they wanted to hurry up and make rules for the pay. My assumption was that it would just be the whole bill. We could change that.

Representative Kelsh: It must be transferred to the state treasury for deposit in the general fund. Did you discuss the possibility of being appropriated and going into a fund that would later repair anything in the aquifer that was not taken care of?

Representative Koppelman: We didn't discuss that and their indication was they don't want they money because they want it to go to the general fund. There won't be much there because it is only if they have to assess the find and their intention is really to never do it.

Chairman Klemin: On the emergency clause- why is it an emergency?

Representative Koppelman: The board came back to Mr.Walstad after our last hearing and said 'oh-by the way- if we do this by rule in terms of increasing the pay we meet in July, and if we have to make rules after the bill becomes effective we don't have time to do that because the bill has become effective mid-summer, can you make this an emergency so we can make a rule before our meetings so we can pay people"

A Voice Vote Was Taken: Motion carries

Representative Koppelman: Unless someone wants the emergency to apply to the whole bill it is not necessary because it was only for the rule making.

Chairman Klemin: Seems to me they have a few things to do rather than worrying about pay.

Representative Koppelman: I would move that if that is want we have to do.

Chairman Klemin: I don't think it would be necessary to apply it to the whole bill.

Representative Koppelman: I move a do pass as amended

Representative Maragos: Second

A Roll Call Vote Was Taken: Yes 14, No 0, Absent 0

Motion carries

Representative Koppelman will carry the bill

LSH
3-27-15
10/2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2189

- Page 1, line 1, after the third comma insert "43-35-09,"
- Page 1, line 2, remove "and"
- Page 1, line 3, after "penalty" insert "; and to declare an emergency"
- Page 1, line 9, overstrike "president"
- Page 1, line 10, after "to" insert "chairman"
- Page 1, line 11, overstrike "president, vice president" and insert immediately thereafter "chairman, vice chairman"
- Page 1, line 11, overstrike "The secretary-treasurer need not be a"
- Page 1, line 12, overstrike "member of the board."
- Page 1, line 12, overstrike "and"
- Page 1, line 13, overstrike "regulations"
- Page 1, line 20, replace "secretary-treasurer shall" with "board shall appoint one of its members to"
- Page 2, line 6, after "rate" insert "by rule"
- Page 2, after line 6, insert:
- "SECTION 4. AMENDMENT.** Section 43-35-09 of the North Dakota Century Code is amended and reenacted as follows:
- 43-35-09. Deposit of fees - Use and appropriation of funds.**
- All fees received by the treasurer under this chapter must be deposited to the credit of the board in the Bank of North Dakota and disbursed only on order of the ~~president~~chairman and secretary-treasurer. Funds collected for certifying and inspections may be expended in such manner as the board deems necessary to best carry out the provisions of this chapter. All funds accruing to the credit of the state board of water well contractors are hereby permanently appropriated to the board for the purpose of this chapter."
- Page 2, line 20, overstrike the second "drill" and insert immediately thereafter "install"
- Page 2, line 22, remove "; any person that willfully violates an order of the board;"
- Page 2, line 26, after "assess" insert "the cost to repair any damage caused by the violation, any costs incurred by the board in the action, and"
- Page 2, line 27, remove "under this chapter"
- Page 2, line 28, replace "five thousand dollars for each day the violation occurred and continues to occur" with "ten thousand dollars"
- Page 2, line 29, remove "by the executive officer on"

2 of 2

Page 2, line 30, remove "behalf of the board"

Page 3, line 1, remove "by the executive officer"

Page 3, line 2, after "pay" insert "or appeal"

Page 3, line 3, after the underscored comma insert "interest begins to accrue on the unpaid amount of the civil penalty at the rate of twelve percent per annum and"

Page 3, line 5, remove "Any civil penalty assessed under this section is in addition to any costs"

Page 3, replace line 6 with "The proceeds of any civil penalty or interest received by the board, after retention of any costs incurred by the board in the action, must be transferred to the state treasurer for deposit in the state general fund."

SECTION 7. EMERGENCY. Section 3 of this Act is declared to be an emergency measure."

Renumber accordingly

Date: 3-27-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2189

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: sub committee amendments 15.0526.02002

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

Motion Made By Hoppelman Seconded By Hatlestad

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

voice vote
motion carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2189

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 Koppelman Seconded By Maragos

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) 14 No 0

Absent 0

Floor Assignment Koppelman

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

motion carries

REPORT OF STANDING COMMITTEE

SB 2189, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2189 was placed on the Sixth order on the calendar.

Page 1, line 1, after the third comma insert "43-35-09,"

Page 1, line 2, remove "and"

Page 1, line 3, after "penalty" insert "; and to declare an emergency"

Page 1, line 9, overstrike "president"

Page 1, line 10, after "te" insert "chairman"

Page 1, line 11, overstrike "president, vice president" and insert immediately thereafter "chairman, vice chairman"

Page 1, line 11, overstrike "The secretary-treasurer need not be a"

Page 1, line 12, overstrike "member of the board."

Page 1, line 12, overstrike "and"

Page 1, line 13, overstrike "regulations"

Page 1, line 20, replace "secretary-treasurer shall" with "board shall appoint one of its members to"

Page 2, line 6, after "rate" insert "by rule"

Page 2, after line 6, insert:

"SECTION 4. AMENDMENT. Section 43-35-09 of the North Dakota Century Code is amended and reenacted as follows:

43-35-09. Deposit of fees - Use and appropriation of funds.

All fees received by the treasurer under this chapter must be deposited to the credit of the board in the Bank of North Dakota and disbursed only on order of the ~~president~~chairman and secretary-treasurer. Funds collected for certifying and inspections may be expended in such manner as the board deems necessary to best carry out the provisions of this chapter. All funds accruing to the credit of the state board of water well contractors are hereby permanently appropriated to the board for the purpose of this chapter."

Page 2, line 20, overstrike the second "drill" and insert immediately thereafter "install"

Page 2, line 22, remove "; any person that willfully violates an order of the board:"

Page 2, line 26, after "assess" insert "the cost to repair any damage caused by the violation, any costs incurred by the board in the action, and"

Page 2, line 27, remove "under this chapter"

Page 2, line 28, replace "five thousand dollars for each day the violation occurred and continues to occur" with "ten thousand dollars"

Page 2, line 29, remove "by the executive officer on"

Page 2, line 30, remove "behalf of the board"

Page 3, line 1, remove "by the executive officer"

Page 3, line 2, after "pay" insert "or appeal"

Page 3, line 3, after the underscored comma insert "interest begins to accrue on the unpaid amount of the civil penalty at the rate of twelve percent per annum and"

Page 3, line 5, remove "Any civil penalty assessed under this section is in addition to any costs"

Page 3, replace line 6 with "The proceeds of any civil penalty or interest received by the board, after retention of any costs incurred by the board in the action, must be transferred to the state treasurer for deposit in the state general fund."

SECTION 7. EMERGENCY. Section 3 of this Act is declared to be an emergency measure."

Renumber accordingly

2015 TESTIMONY

SB 2189

Senate Bill 2189
Senate Government & Veterans' Affairs Committee
January 22, 2015

Board of Water Well Contractors
Testimony of Loren DeWitz, President

The Board of Water Well Contractors requested Senator Jerry Klein to introduce SB2189, which updates the North Dakota Century Code relevant to the board that has been in place since the early 1970's.

Section 1.

The change in this section would give the board more flexibility in setting a date for the board's Annual Meeting, as it can be difficult to avoid conflicts for one specific date.

Section 2.

This section establishes the Secretary-Treasurer as the Executive Officer, which would then comply with the new language in Section Five.

Section 3.

The board would be allowed to set the rate of compensation up to a maximum of \$250 per day. Some board members have expressed a desire to retire from the board, but at the present rate of reimbursement, it is difficult to find replacement board members.

Section 4.

The surety bond for well drillers is now \$2000 and would be raise to \$15,000, which is more in line with the current cost of drilling wells.

Section 5.

The penalty for a violation would change from an infraction to a Class B Misdemeanor. It also adds the authority of the district court or the Board, through the Executive Officer, to assess a civil penalty.

Loren DeWitz
701-220-1788

SB 2189

3.19.15

1.1

Senate Bill 2189
House Political Subdivisions Committee
March 19, 2015

Board of Water Well Contractors
Testimony of Loren DeWitz, President

The Board of Water Well Contractors requested Senator Jerry Klein to introduce SB2189, which updates the North Dakota Century Code relevant to the board that has been in place since the early 1970's.

Section 1.

The change in this section would give the board more flexibility in setting a date for the board's Annual Meeting, as it can be difficult to avoid conflicts for one specific date.

Section 2.

This section establishes the Secretary-Treasurer as the Executive Officer, which would then comply with the new language in Section Five.

Section 3.

The board would be allowed to set the rate of compensation up to a maximum of \$125 per day. Some board members have expressed a desire to retire from the board, but at the present rate of reimbursement, it is difficult to find replacement board members.

Section 4.

The surety bond for well drillers is now \$2000 and would be raise to \$15,000, which is more in line with the current cost of drilling wells.

Section 5.

The penalty for a violation would change from an infraction to a Class B Misdemeanor. It also adds the authority of the district court or the Board, through the Executive Officer, to assess a civil penalty.

Loren DeWitz
701-220-1788

SB 2189
3.19.2015

2.1

Testimony on Senate Bill 2189

House Political Subdivisions Committee

Roger Schmid, Member of the Board of Water Well Contractors

09:30 a.m., March 19, 2015

Mr. Chairman and members of the House Political Subdivisions Committee, my name is Roger Schmid and I am a Member of the Board of Water Well Contractors

I have been involved in the water well industry since 1961, a licensed Water Well Contractor since 1976, and a member of the Board of Water Well Contractors since 1999. I am presently a consulting Hydrogeologist and an active member of the North Dakota Well Drillers' Association.

As a historical note the North Dakota Well Drillers' Association is the first drillers association formed in the United States. The first meeting was held in Grand Forks a hundred years ago this coming June. UND Geology Professor and State Water Geologist Howard E. Simpson and Grand Forks water well drillers A. L. Brown and E. W. Eaton initiated the formation of the North Dakota Well Drillers' Association in early April 1915 and the first meeting was held in Grand Forks on the 2nd and 3rd of June 1915 with 35 well drillers in attendance.

The Water Well Contractor license law was enacted in 1971, the pump and pitless unit installers were added in 1985, the monitoring well contractors were added in 1987, and the geothermal system drillers were added in 1997. There are presently 143 water well contractors, 56 monitoring well contractors, 25 pump and pitless unit installers, and 12 geothermal system drillers licensed to operate in North Dakota.

I am fully in favor of Senate Bill 2189 as it presently stands. Sections 4 and 5 are particular importance to the water well industry.

The demand for new domestic and industrial water wells, the cost of doing business and the prices charged have increased significantly. Section 4 of Senate Bill 2189 requires an increase of the surety bond for water well contractors reflecting that increase.

In the past any violation of the water well contractor law or rules and regulations was an infraction. The Board has temporarily suspended the license of a few contractors over the years in response to violations, but most of the time the threat of suspension is sufficient. Section 5 of Senate Bill 2189 will provide a means of dealing with unlicensed drillers as this will enable the Board to assess a fine or the violator can take the test and get a license and bond. I doubt if a fine will ever be assessed as the threat of a fine will be sufficient.

SB 2189
3-27-15
1.1

FIRST ENGROSSMENT

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2189

Introduced by

Senators Klein, Dotzenrod, Unruh

Representatives Laning, Zubke

1 A BILL for an Act to amend and reenact sections 43-35-05, 43-35-06, 43-35-07, 43-35-09,
2 43-35-14, and 43-35-22 of the North Dakota Century Code, relating to the board of water well
3 contractors; ~~and~~ to provide a penalty, and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 43-35-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-35-05. Officers - Office.**

8 The members of the board shall meet annually ~~on the second Monday~~ in July at a time and
9 place designated by the ~~president~~, except that the first meeting must be held in the office of the
10 state engineer at ten a.m., to chairman. The board shall select from their number the board's
11 membership a president, vice president, chairman, vice chairman, and a secretary-treasurer. ~~The~~
12 ~~secretary-treasurer need not be a member of the board.~~ Additional board meetings may be
13 provided for in the bylaws or rules ~~and regulations~~ adopted by the board.

14 **SECTION 2. AMENDMENT.** Section 43-35-06 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-35-06. Secretary-treasurer ~~bond~~ - Bond - Executive officer.**

17 Promptly upon assuming the office, the secretary-treasurer shall furnish a bond satisfactory
18 to the board for the faithful performance and discharge of the secretary-treasurer's duties in an
19 amount determined by the board, the premium for which is to be paid from board funds. The
20 ~~secretary-treasurer shall~~ the board shall appoint one of its members to serve as the executive
21 officer for the board.

22 **SECTION 3. AMENDMENT.** Section 43-35-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **43-35-07. Compensation and reimbursement of expenses.**

2 Each appointive member of the board is entitled to receive ~~sixty two dollars and fifty~~
3 ~~cents~~ up to one hundred twenty-five dollars compensation per day and ~~must be reimbursed~~ is
4 entitled to receive reimbursement for expenses in the same amounts as provided for in sections
5 44-08-04 and 54-06-09 while attending board meetings or otherwise engaged in the official
6 business of the board. The board shall establish the compensation rate by rule.

7 **SECTION 4. AMENDMENT.** Section 43-35-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **43-35-09. Deposit of fees - Use and appropriation of funds.**

10 All fees received by the treasurer under this chapter must be deposited to the credit of the
11 board in the Bank of North Dakota and disbursed only on order of the ~~president~~ chairman and
12 secretary-treasurer. Funds collected for certifying and inspections may be expended in such
13 manner as the board deems necessary to best carry out the provisions of this chapter. All funds
14 accruing to the credit of the state board of water well contractors are hereby permanently
15 appropriated to the board for the purpose of this chapter.

16 **SECTION 5. AMENDMENT.** Section 43-35-14 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **43-35-14. Bond required.**

19 Before receiving a certificate under this chapter, a qualified applicant shall execute and
20 deposit with the board a surety bond ~~in the amount of two thousand dollars~~ conditioned for the
21 faithful performance of all water well, monitoring well, pump and pitless unit, or geothermal
22 system installation contracts undertaken by the applicant and the strict compliance with this
23 chapter. The required amount of a surety bond is fifteen thousand dollars for a water well
24 contractor and is two thousand dollars for a monitoring well, pump and pitless unit, or
25 geothermal system installation contractor.

26 **SECTION 6. AMENDMENT.** Section 43-35-22 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **43-35-22. ~~Contracting without certification~~ Violation of chapter - Penalty.**

29 1. Any person contracting to drill a water well or monitoring well, ~~drill~~ install a pump or
30 pitless unit, or drill a geothermal system for another without being certified in
31 accordance with this chapter, ~~or, any person that willfully violates an order of the~~

- 1 ~~board;~~ or otherwise violating any person that willfully violates a provision of this
2 chapter, is guilty of an infraction a class B misdemeanor.
- 3 2. In addition to criminal sanctions that may be imposed, the board or the district court
4 may assess the cost to repair any damage caused by the violation, any costs incurred
5 by the board in the action, and a civil penalty against a person that violates any
6 provision of this chapter or any rule adopted by the board under this chapter. The civil
7 penalty may not exceed five thousand dollars for each day the violation occurred and
8 continues to occur ten thousand dollars. The civil penalty may be adjudicated by the
9 district court or ~~by the executive officer on behalf of the board~~ through an
10 administrative hearing under chapter 28-32.
- 11 3. If a person against which a civil penalty was assessed by the executive officer after an
12 administrative hearing does not pay or appeal the civil penalty within thirty days of
13 receiving notice of the order, interest begins to accrue on the unpaid amount of the
14 civil penalty at the rate of twelve percent per annum and the board may pursue a
15 judgment from the district court. Notwithstanding section 57-20-22, a violator shall pay
16 to the board all interest and penalties. Any civil penalty assessed under this section is
17 in addition to any costs incurred by the board for enforcement of the order. The
18 proceeds of any civil penalty or interest received by the board, after retention of any
19 costs incurred by the board in the action, must be transferred to the state treasurer for
20 deposit in the state general fund.

21 **SECTION 7. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.