

**SECOND ENGROSSMENT
with Senate Amendments
REENGROSSED HOUSE BILL NO. 1358**

Introduced by

Representatives Skarphol, Brandenburg, Froseth, Rust, Steiner, Glassheim, J. Kelsh
Senators Andrist, Wanzek, Wardner, Murphy, Triplett

1 A BILL for an Act to create and enact two new subsections to section 57-51-01 of the North
2 Dakota Century Code, relating to definitions under the oil and gas gross production tax; to
3 amend and reenact paragraph 1 of subdivision f of subsection 1 of section 15.1-27-04.1 of the
4 North Dakota Century Code, as created by House Bill No. 1319, as approved by the sixty-third
5 legislative assembly, and sections 57-51-15 and 57-62-05 of the North Dakota Century Code,
6 relating to oil and gas gross production tax allocation and the impact aid program; to provide
7 appropriations; and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Paragraph 1 of subdivision f of subsection 1 of section
10 15.1-27-04.1 of the North Dakota Century Code, as created by House Bill No. 1319, as
11 approved by the sixty-third legislative assembly, is amended and reenacted as follows:

12 (1) Seventy-five percent of all revenue received by the school district and
13 reported under code 2000 of the North Dakota school district financial
14 accounting and reporting manual, as developed by the superintendent of
15 public instruction in accordance with section 15.1-02-08 and mineral
16 revenue received by the school district by direct allocation from the state
17 treasurer and not reported under code 2000 of the North Dakota school
18 district financial accounting and reporting manual;

19 **SECTION 2.** Two new subsections to section 57-51-01 of the North Dakota Century Code
20 are created and enacted as follows:

21 "Hub city" means a city with a population of twelve thousand five hundred or more,
22 according to the last official decennial federal census, which has more than one
23 percent of its private covered employment engaged in the mining industry, according
24 to data compiled by job service North Dakota.

1 "Hub city school district" means the school district with the highest student enrollment
2 within the city limits of a hub city.

3 **SECTION 3. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-51-15. Gross production tax allocation.**

6 The gross production tax must be allocated monthly as follows:

7 1. First the tax revenue collected under this chapter equal to one percent of the gross
8 value at the well of the oil and one-fifth of the tax on gas must be deposited with the
9 state treasurer who shall:

10 a. Allocate to each hub city a monthly amount that will provide a total allocation of
11 fivethree hundred seventy-five thousand dollars per fiscal year to each city in an
12 oil-producing county which has a population of seven thousand five hundred or
13 more and more than two percent of its private covered employment engaged in
14 the mining industry, according to data compiled by job service North Dakota. The
15 allocation under this subdivision must be doubled if the city has more than seven
16 and one-half percent for each full or partial percentage point of its private covered
17 employment engaged in the mining industry, according to data compiled by job
18 service North Dakota;

19 b. Allocate to each hub city school district a monthly amount that will provide a total
20 allocation of one hundred twenty-five thousand dollars per fiscal year for each full
21 or partial percentage point of the hub city's private covered employment engaged
22 in the mining industry, according to data compiled by job service North Dakota;

23 c. Credit revenues to the oil and gas impact grant fund, but not in an amount
24 exceeding ~~one~~two hundred ~~fifty~~ million dollars per biennium; and

25 e.d. Allocate the remaining revenues under subsection 3.

26 2. After deduction of the amount provided in subsection 1, annual revenue collected
27 under this chapter from oil and gas produced in each county must be allocated as
28 follows:

29 a. The first ~~two~~five million dollars is allocated to the county.

- 1 b. ~~Of the next oneall annual revenue exceeding five million dollars,~~
2 ~~seventy-fivetwenty-five percent is allocated to the county.~~
- 3 e. ~~Of the next one million dollars, fifty percent is allocated to the county.~~
- 4 d. ~~Of the next fourteen million dollars, twenty-five percent is allocated to the county.~~
- 5 e. ~~Of all annual revenue exceeding eighteen million dollars, ten percent is allocated~~
6 ~~to the county.~~
- 7 3. After the allocations under subsections 1 and 2, the amount remaining is allocated first
8 to provide for deposit of thirty percent of all revenue collected under this chapter in the
9 legacy fund as provided in section 26 of article X of the Constitution of North Dakota
10 and the remainder must be allocated to the state general fund. If the amount available
11 for a monthly allocation under this subsection is insufficient to deposit thirty percent of
12 all revenue collected under this chapter in the legacy fund, the state treasurer shall
13 transfer the amount of the shortfall from the state general fund share of oil extraction
14 tax collections and deposit that amount in the legacy fund.
- 15 4. ~~The amount to which each county is entitled under subsection 2 must be allocated~~
16 ~~within the county so the first five million three hundred fifty thousand dollars is~~
17 ~~allocated under subsection 5 for each fiscal year and any amount received by a county~~
18 ~~exceeding five million three hundred fifty thousand dollars is credited by the county~~
19 ~~treasurer to the county infrastructure fund and allocated under subsection 6.~~
- 20 5. For a county that received five million dollars or more of allocations under subsection 2
21 in the most recently completed state fiscal year, revenues allocated to that county
22 under subsections 1 and 2 must be distributed by the state treasurer as follows:
- 23 a. ~~Forty-fiveSixty-five percent of all revenues allocated to any county for allocation~~
24 ~~under this subsection must be credited by the county treasurer to the county~~
25 general fund. However, the allocation to a county under this subdivision must be
26 credited to the state general fund if ~~during that fiscal year~~ in a taxable year after
27 2012 ~~the county does not levy~~ is not levying a total of at least ten mills for
28 combined levies for county road and bridge, farm-to-market and federal aid road,
29 and county road purposes.
- 30 b. ~~Thirty five percent of all revenues allocated to any county for allocation under this~~
31 ~~subsection must be apportioned by the county treasurer no less than quarterly to~~

1 school districts within the county on the average daily attendance distribution
2 basis, as certified to the county treasurer by the county superintendent of
3 schools. However, no school district may receive in any single academic year an
4 amount under this subsection greater than the county average per student cost
5 multiplied by seventy percent, then multiplied by the number of students in
6 average daily attendance or the number of children of school age in the school
7 census for the county, whichever is greater. Provided, however, that in any county
8 in which the average daily attendance or the school census, whichever is greater,
9 is fewer than four hundred, the county is entitled to one hundred twenty percent
10 of the county average per student cost multiplied by the number of students in
11 average daily attendance or the number of children of school age in the school
12 census for the county, whichever is greater. Once this level has been reached
13 through distributions under this subsection, all excess funds to which the school
14 district would be entitled as part of its thirty-five percent share must be deposited
15 instead in the county general fund. The county superintendent of schools of each
16 oil-producing county shall certify to the county treasurer by July first of each year
17 the amount to which each school district is limited pursuant to this subsection. As
18 used in this subsection, "average daily attendance" means the average daily
19 attendance for the school year immediately preceding the certification by the
20 county superintendent of schools required by this subsection.

21 The countywide allocation to school districts under this subdivision is subject
22 to the following:

- 23 (1) The first three hundred fifty thousand dollars is apportioned entirely among
24 school districts in the county.
- 25 (2) The next three hundred fifty thousand dollars is apportioned seventy-five
26 percent among school districts in the county and twenty-five percent to the
27 county infrastructure fund.
- 28 (3) The next two hundred sixty-two thousand five hundred dollars is
29 apportioned two-thirds among school districts in the county and one-third to
30 the county infrastructure fund.

- 1 (4) ~~The next one hundred seventy-five thousand dollars is apportioned fifty-~~
2 ~~percent among school districts in the county and fifty percent to the county-~~
3 ~~infrastructure fund.~~
- 4 (5) ~~Any remaining amount is apportioned to the county infrastructure fund-~~
5 ~~except from that remaining amount the following amounts are apportioned-~~
6 ~~among school districts in the county:~~
- 7 (a) ~~Four hundred ninety thousand dollars, for counties having a-~~
8 ~~population of three thousand or fewer.~~
- 9 (b) ~~Five hundred sixty thousand dollars, for counties having a population-~~
10 ~~of more than three thousand and fewer than six thousand.~~
- 11 (c) ~~Seven hundred thirty-five thousand dollars, for counties having a-~~
12 ~~population of six thousand or more.~~
- 13 e. ~~Twenty~~Fifteen percent of all revenues allocated to any county for allocation under
14 this subsection must be apportioned no less than quarterly by the state treasurer
15 to the incorporated cities of the county. A hub city must be omitted from
16 apportionment under this subdivision. Apportionment among cities under this
17 subsection must be based upon the population of each incorporated city
18 according to the last official decennial federal census. In determining the
19 population of any city in which total employment increases by more than two
20 hundred percent seasonally due to tourism, the population of that city for
21 purposes of this subdivision must be increased by eight hundred percent. ~~If a city-~~
22 ~~receives a direct allocation under subsection 1, the allocation to that city under-~~
23 ~~this subsection is limited to sixty percent of the amount otherwise determined for-~~
24 ~~that city under this subsection and the amount exceeding this limitation must be-~~
25 ~~reallocated among the other cities in the county.~~
- 26 c. Two and one-half percent plus any amount allocated to school districts of the
27 county under subdivision f of subsection 1 must be apportioned no less than
28 quarterly by the state treasurer to the school districts of the county on the
29 average daily attendance distribution basis for kindergarten through grade twelve
30 students residing within the county, as certified to the state treasurer by the

1 county superintendent of schools. However, a hub city school district must be
2 omitted from apportionment under this subdivision.

3 d. Seven and one-half percent to the county treasurer for subsequent allocation to
4 the organized and unorganized townships of the county in the proportion that
5 township road miles in the township bears to the total township road miles in the
6 county, with the board of county commissioners retaining and using the funds
7 available for the maintenance and improvement of roads in unorganized
8 townships. An organized township is not eligible for an allocation, and must be
9 excluded from the calculation of township road miles, if that township in a taxable
10 year after 2012 is not levying at least ten mills for township purposes.

11 e. Ten percent must be deposited in the oil and gas impact grant fund in the state
12 treasury.

13 5. For a county that did not reach a level of five million dollars of allocations under
14 subsection 2 in the most recently completed state fiscal year, revenues allocated to
15 that county must be distributed by the state treasurer as follows:

16 a. Forty-five percent must be credited by the county treasurer to the county general
17 fund. However, the allocation to a county under this subdivision must be credited
18 to the state general fund if in a taxable year after 2012 the county is not levying a
19 total of at least ten mills for combined levies for county road and bridge,
20 farm-to-market and federal aid road, and county road purposes.

21 b. Thirty-five percent must be apportioned by the state treasurer no less than
22 quarterly to school districts within the county on the average daily attendance
23 distribution basis for kindergarten through grade twelve students residing within
24 the county, as certified to the state treasurer by the county superintendent of
25 schools. However, a hub city school district must be omitted from apportionment
26 under this subdivision. The total annual apportionment among school districts in
27 the county under this subsection is limited to one million five hundred thousand
28 dollars.

29 c. Twenty percent must be apportioned no less than quarterly by the state treasurer
30 to the incorporated cities of the county. A hub city must be omitted from
31 apportionment under this subdivision. Apportionment among cities under this

1 subsection must be based upon the population of each incorporated city
2 according to the last official decennial federal census. In determining the
3 population of any city in which total employment increases by more than two
4 hundred percent seasonally due to tourism, the population of that city for
5 purposes of this subdivision must be increased by eight hundred percent.

- 6 6. a. ~~Forty-five percent of all revenues allocated to a county infrastructure fund under~~
7 ~~subsections 4 and 5 must be credited by the county treasurer to the county~~
8 ~~general fund. However, the allocation to a county under this subdivision must be~~
9 ~~credited to the state general fund if during that fiscal year the county does not~~
10 ~~levy a total of at least ten mills for combined levies for county road and bridge,~~
11 ~~farm-to-market and federal aid road, and county road purposes.~~
- 12 b. ~~Thirty-five percent of all revenues allocated to the county infrastructure fund~~
13 ~~under subsections 4 and 5 must be allocated by the board of county~~
14 ~~commissioners to or for the benefit of townships in the county on the basis of~~
15 ~~applications by townships for funding to offset oil and gas development impact to~~
16 ~~township roads or other infrastructure needs or applications by school districts for~~
17 ~~repair or replacement of school district vehicles necessitated by damage or~~
18 ~~deterioration attributable to travel on oil and gas development impacted roads. An~~
19 ~~organized township is not eligible for an allocation of funds under this subdivision~~
20 ~~unless during that fiscal year that township levies at least ten mills for township~~
21 ~~purposes. For unorganized townships within the county, the board of county~~
22 ~~commissioners may expend an appropriate portion of revenues under this~~
23 ~~subdivision to offset oil and gas development impact to township roads or other~~
24 ~~infrastructure needs in those townships. The amount deposited during each~~
25 ~~calendar year in the county infrastructure fund which is designated for allocation~~
26 ~~under this subdivision and which is unexpended and unobligated at the end of~~
27 ~~the calendar year must be transferred by the county treasurer to the county road~~
28 ~~and bridge fund for use on county road and bridge projects.~~
- 29 e. ~~Twenty percent of all revenues allocated to any county infrastructure fund under~~
30 ~~subsections 4 and 5 must be allocated by the county treasurer no less than~~
31 ~~quarterly to the incorporated cities of the county. Apportionment among cities~~

~~under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.~~

7.6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:

- a. The county's statement of revenues and expenditures; and
- b. ~~The amount available in the county infrastructure fund for allocation~~allocated to or for the benefit of townships ~~or school districts~~, the amount allocated to each organized township ~~or school district~~ and the amount expended from each such allocation by that township ~~or school district~~, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships ~~or school districts~~ which remained unexpended at the end of the fiscal year.

Within fifteen days after the time when reports under this subsection were due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

SECTION 4. AMENDMENT. Section 57-62-05 of the North Dakota Century Code is amended and reenacted as follows:

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.

- 1 3. Make grants disbursements to counties, cities, school districts, and other taxing
2 districts for grants awarded by the board of university and school lands pursuant to
3 chapter 15-01, as provided in this chapter and within the appropriations made for such
4 purposes. In determining the amount of impact grants for which political subdivisions
5 are eligible, the consideration must be given to the amount of revenue to which such
6 political subdivisions will be entitled from taxes upon the real property of coal and oil
7 and gas development plants and from other tax or fund distribution formulas provided
8 by law must be considered.
- 9 4. Receive and review applications for impact assistance pursuant to this chapter.
- 10 5. Make recommendations, not less than once each calendar quarter, to the board of
11 university and school lands on grants to counties, cities, school districts, and other
12 political subdivisions in oil and gas development impact areas based on identified
13 needs, and other sources of revenue available to the political subdivision.
- 14 ~~6. Make recommendations to the board of university and school lands providing for the~~
15 ~~distribution of thirty five percent of moneys available in the oil and gas impact fund to~~
16 ~~incorporated cities with a population of ten thousand or more, based on the most~~
17 ~~recent official decennial federal census, that are impacted by oil and gas development.~~
18 ~~The director may not recommend that an incorporated city receive more than sixty~~
19 ~~percent of the funds available under this subsection.~~
- 20 ~~7. Make recommendations to the board of university and school lands providing for the~~
21 ~~distribution of sixty five percent of moneys available in the oil and gas impact fund to~~
22 ~~cities not otherwise eligible for funding under this section, counties, school districts,~~
23 ~~and other political subdivisions impacted by oil and gas development.~~

24 **SECTION 5. APPROPRIATION - JOB SERVICE NORTH DAKOTA.** There is appropriated
25 out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum
26 of \$120,000, or so much of the sum as may be necessary, to job service North Dakota for the
27 purpose of upgrading collection and use of employment data to correctly identify all employees
28 who should be included for statistical purposes in oil and gas-related employment, including
29 employees of refineries and gas plants and oil and gas transportation services, for the biennium
30 beginning July 1, 2013, and ending June 30, 2015.

1 **SECTION 6. APPROPRIATION - DEPARTMENT OF TRANSPORTATION -**

2 **OIL-PRODUCING COUNTIES INFRASTRUCTURE ENHANCEMENT FUND.** There is
3 appropriated out of any moneys in the oil-producing counties infrastructure enhancement fund
4 in the state treasury, not otherwise appropriated, the sum of \$60,000,000, or so much of the
5 sum as may be necessary, to the department of transportation for the purpose of allocation as
6 provided in this section among oil-producing counties that received \$5,000,000 or more of
7 allocations under subsection 2 of section 57-51-15 in the state fiscal year ending June 30, 2012,
8 for the biennium beginning July 1, 2013, and ending June 30, 2015.

9 1. The sum appropriated in this section must be used to rehabilitate or reconstruct county
10 paved and unpaved roads needed to support oil and gas production and distribution in
11 North Dakota.

12 a. Funding allocations to counties are to be made by the department of
13 transportation based on data supplied by the upper great plains transportation
14 institute.

15 b. Counties identified in the data supplied by the upper great plains transportation
16 institute which received \$5,000,000 or more of allocations under subsection 2 of
17 section 57-51-15 for the state fiscal year ending June 30, 2012, are eligible for
18 this funding.

19 2. Each county requesting funding under this section for county roads shall submit the
20 request in accordance with criteria developed by the department of transportation.

21 a. The request must include a proposed plan for funding projects that rehabilitate or
22 reconstruct paved and unpaved roads within the county.

23 b. The plan must be based on data supplied by the upper great plains transportation
24 institute, actual road conditions, and integration with state highway and other
25 county road projects.

26 c. Projects funded under this section must comply with the American association of
27 state highway transportation officials (AASHTO) pavement design procedures
28 and the department of transportation local government requirements. Upon
29 completion of major reconstruction projects, the roadway segment must be
30 posted at a legal load limit of 105,500 pounds [47853.993 kilograms].

31 d. Funds may not be used for routine maintenance.

- 1 3. The department of transportation, in consultation with the county, may approve the
2 plan or approve the plan with amendments.
- 3 4. The funding appropriated in this section may be used for:
 - 4 a. Ninety percent of the cost of the approved roadway projects not to exceed the
5 funding available for that county.
 - 6 b. Funding may be used for construction, engineering, and plan development costs.
- 7 5. Upon approval of the plan, the department of transportation shall transfer to the county
8 the approved funding for engineering and plan development costs.
- 9 6. Upon execution of a construction contract by the county, the department of
10 transportation shall transfer to the county the approved funding to be distributed for
11 county and township road rehabilitation and reconstruction projects.
- 12 7. The recipient counties shall report to the department of transportation upon awarding
13 of each contract and upon completion of each project in a manner prescribed by the
14 department.
- 15 8. The funding under this section may be applied to engineering, design, and
16 construction costs incurred on related projects as of January 1, 2013.
- 17 9. Section 54-44.1-11 does not apply to funding under this section. Any funds not spent
18 by June 30, 2015, must be continued into the biennium beginning July 1, 2015, and
19 ending June 30, 2017, and may be expended only for purposes authorized by this
20 section.

21 **SECTION 7. APPROPRIATION - STATE TREASURER.** There is appropriated out of any
22 moneys in the general fund in the state treasury, not otherwise appropriated, the sum of
23 \$8,760,000, or so much of the sum as may be necessary, to the state treasurer for allocation to
24 counties for allocation to or for the benefit of townships in oil-producing counties, for the
25 biennium beginning July 1, 2013, and ending June 30, 2015. The funding provided in this
26 section must be distributed in equal amounts in July 2013 and May 2014. The state treasurer
27 shall distribute the funds provided under this section as soon as possible to counties and the
28 county treasurer shall allocate the funds to or for the benefit of townships in oil-producing
29 counties through a distribution of \$15,000 each year to each organized township and a
30 distribution of \$15,000 each year for each unorganized township to the county in which the
31 unorganized township is located. If any funds remain after the distributions provided under this

1 section, the state treasurer shall distribute eighty percent of the remaining funds to counties and
2 cities in oil-producing counties pursuant to the method provided in subsection 4 of section
3 54-27-19 and shall distribute twenty percent of the remaining funds to counties and townships in
4 oil-producing counties pursuant to the method provided in section 54-27-19.1. An organized
5 township is not eligible for an allocation of funds under this subdivision if in a taxable year after
6 2012 that township is not levying at least ten mills for township purposes. For unorganized
7 townships within the county, the board of county commissioners may expend an appropriate
8 portion of revenues under this subdivision for township roads or other infrastructure needs in
9 those townships. A township is not eligible for an allocation of funds under this section if the
10 township does not maintain any township roads. For the purposes of this section, an "oil-
11 producing county" means a county that received an allocation of funding under section 57-51-15
12 of more than \$500,000 but less than \$5,000,000 during the preceding state fiscal year.

13 **SECTION 8. APPROPRIATION - COMMISSIONER OF UNIVERSITY AND SCHOOL**
14 **LANDS - OIL AND GAS IMPACT GRANT FUND.** There is appropriated out of any moneys in
15 the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of
16 \$5,000,000, or so much of the sum as may be necessary, to the commissioner of university and
17 school lands for the purpose of providing distributions to eligible counties experiencing new oil
18 and gas development activities, for the biennium beginning July 1, 2013, and ending June 30,
19 2015. As determined by the director of the department of mineral resources, a county is eligible
20 for a distribution under this section if the county produced fewer than one hundred thousand
21 barrels of oil for the month of November 2012 and after November 2012 the number of active oil
22 rigs operating in the county in any one month exceeds four rigs. Upon the determination by the
23 director of the department of mineral resources that a county is eligible for a distribution under
24 this section, the commissioner of university and school lands shall provide \$1,250,000 to the
25 county for defraying expenses associated with oil and gas development impacts in the county.
26 The county, in determining the use of the funds received, shall consider and, to the extent
27 possible, address the needs of other political subdivisions in the county resulting from the
28 impact of oil and gas development.

29 **SECTION 9. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable
30 events occurring after June 30, 2013.