



Western Dakota Energy Association
Final Legislative Report – May 1, 2019
[Geoff Simon](#), Executive Director



The 66th North Dakota Legislative Assembly adjourned April 26 on its 76th day, saving four days to return to consider executive vetoes or special business. Without question the highlight of the 2019 session was passage of Operation Prairie Dog ([HB 1066](#)) that revised the gross production tax distribution formula. The legislation helps fund the operational needs of Hub Cities, Hub City schools and other communities impacted by oil development in western North Dakota. It also provides \$230 million in infrastructure funding for non-oil cities, counties and townships, and \$20 million for airports. Senate Majority leader Rich Wardner, pictured at right, developed the funding package with the help of a few other legislators during the interim. The immensely popular plan was introduced and passed both houses early in the session, and was signed into law by Governor Burgum in a ceremony on March 20.

School funding – Many western ND districts have experienced substantial enrollment increases the past decade, and are struggling to come up with money to address the need for additional classroom space. Front and center was Williston District No. 1, which saw two school bond issues narrowly fail during the session, the first in January, the second in April. Western schools lobbied hard to overcome the mistaken impression that oil tax revenue they receive is sufficient to address construction needs. Schools in the west do receive a sizable allocation of funds from the gross production tax, but unfortunately current policy dictates that an amount equal to 75 percent of the school's GPT revenue is deducted from the per pupil payment through the state Foundation Aid formula. Legislation enacted this session will provide some relief. [SB 2265](#) contained several helpful provisions: 1) Allows districts that receive GPT revenue to keep 100% of the amount earmarked toward a sinking and interest fund; 2) Increases the per/pupil state aid payment by 2% each year of the biennium; 3) Provides \$3 million for rapid enrollment grants; 4) Moves toward "on-time" funding in the second year of the biennium; districts now receive Foundation Aid payments based on the previous year's enrollment; and 5) Delivers extra tuition dollars to Williston High School for students that come from outside the Williston #1 district. The downside is the legislation also contains a provision that requires districts to move toward a 60-mill property tax levy, effectively requiring districts to impose tax increases or lose funding formula revenue. Many western districts are lower than 60 mills because they've seen steep increases in new construction and higher valuations of existing property.

Bonding bills fail – Several bills that would have leveraged the state's cash flow by purchasing bonds to finance school and highway construction and local infrastructure projects were defeated. Chief among them was a bill Senator Wardner called Prairie Dog III. [SB 2275](#) would have used \$55 million in Legacy Fund earnings to buy bonds that would capitalize an expansion of a low-interest loan pool from which cities and counties can borrow for essential infrastructure projects. The bonding plan was opposed by House Appropriations Committee Chairman Jeff Delzer, and his House colleagues including Majority Leader Chet Pollert helped defeat Wardner's legislation. The loan pool could get some additional money. Section 16 of [HB 1014](#), provides for a \$40 million transfer from the Strategic Investment and Improvement Fund from any amount exceeding \$755 million in the current biennium. Another bonding proposal was in [SB 2268](#), known as the "Corridors of Commerce" bill that was intended to provide funding to improve heavily traveled two-lane highways (including Hwy 85 in western ND). The bill would have used Legacy earnings to service the debt on \$100 million from the state's public finance authority, but it too was opposed by House leadership. The legislature did pass the corridors concept, but without money to build roads. Despite receiving a unanimous 47-0 vote in the Senate, the House also rejected [SB 2214](#), which would have used money from the Foundation Aid Stabilization Fund to finance a \$250 million low-interest loan pool for school construction. In the end the bill passed, but with a plan to add \$75 million to the low-interest loan pool rather than the larger amount that would have been provided by bonding.

Legacy Earnings – The legislature enacted a mandatory interim study to examine potential uses for earnings from the state's Legacy Fund. Among possible uses, the committee will consider tax relief, reinvestment of earnings, research and technological advancements, and to promote workforce development and career and technical education. The Legacy Fund was established by voters in 2010 and receives 30 percent of extraction and production taxes on oil and gas produced in North Dakota. Its current balance is approaching \$6 billion. Earnings from the fund were required to be reinvested for the first seven years of its existence, but are now transferred to the state general fund. The legislature rejected [HCR 3055](#) that would have asked voters to change the constitution so earnings would once again be reinvested, and could only be spent with a two-thirds vote of the legislature. Financial [calculations](#) were presented that showed if all earnings were reinvested for the next 40 years, the Legacy Fund would grow to \$143 billion. Also rejected during the session was [HB 1530](#) which would have created the Income Tax Rate Reduction Fund. It would have used Legacy Fund earnings to reduce personal and corporate income taxes, possibly eliminating them altogether within 10 years.

Tribal Oil Tax Agreement – The legislature approved a new tribal oil tax sharing agreement that supporters say creates more certainty within the oil and gas industry, encouraging more investment into the oil resources found on reservation land. [SB 2312](#) changes the current 50-50 tax revenue split on the Fort Berthold Reservation so that 80 percent of the production and extraction tax revenue from new wells on tribal trust lands would go to the tribe and 20 percent would go to the state. On fee land, 80 percent of the revenue would go to the state and 20 percent to the tribe.

Pore Space Ownership – One of the more controversial energy issues of the 2019 session was [SB 2344](#), a bill intended to address questions about use of underground pore space. The primary purpose of the bill was to remove uncertainty created by a 2017 North Dakota Supreme Court decision that looked at separate sections of state law, and concluded they could be interpreted to require compensation for produced water injected back into a production unit. Disposal well operators feared the court’s interpretation could require they compensate adjoining landowners, rather than just the surface owner on whose property the well is located. The legislation also clarifies that companies planning to inject carbon dioxide into oil-bearing formations to stimulate additional production are not obligated to compensate the landowners for use of pore space. The provision is especially important to Bowman County, where Denbury Resources is developing an enhanced oil recovery project. The legislature also approved [HB 1439](#), which provides an extraction tax exemption for enhanced oil production using carbon dioxide from North Dakota lignite plants.

Energy Research – Several projects are specifically earmarked for funding in [HB 1014](#), the budget of the ND Industrial Commission. The bill provides \$6 million to investigate underground storage of produced natural gas, including one or more demonstration projects. The bill provides that \$300,000 from the Oil and Gas Research fund be used to study the recycling of water used in oil and gas operations to include "the relevant, objective economic, regulatory, scientific, technological, and feasibility considerations." The bill also provides \$4.5 million from the Lignite Research Fund for a lignite marketing feasibility study to preserve existing lignite jobs or create new ones. The bill also funds the continuing quest for a source of North Dakota frac sand, as well as the search for rare earth minerals in the state's coal deposits.

Infrastructure Tampering – A bill to deter tampering with pipelines and other critical infrastructure received strong support in both houses of the legislature. [SB 2044](#) defines penalties for not only those individuals found guilty of tampering, but also for any organizations that are found to be a conspirator with the individual. The language in the bill defines critical infrastructure ranging from petroleum refineries and electric power plants to natural gas compressor stations and underground pipelines. Opponents claimed the bill stifles free speech, despite language that would protect the “lawful assembly and peaceful and orderly petition for the redress of grievances.”

Workforce – An effort to address the state’s workforce shortage is found in [HB 1171](#). The original bill was intended to establish a skilled workforce student loan repayment program for high demand occupations. A separate bill would have implemented a skilled workforce scholarship fund to be administered by the state board of higher education. The final product provided \$6 million to support both ideas, a loan repayment program and a scholarship program.

Royalties and the High water mark – The rightful owners of minerals underlying Lake Sakakawea may finally get paid the royalties owed for oil and gas that has been produced from formations under the lake. The state owns the minerals under the original river bed, and minerals beyond the river's "highwater mark" generally belong to the adjoining property owner. [SB 2211](#) provides a clear definition along with the factors to be considered in determining the ordinary highwater mark. Once the Land Department finalizes the boundaries of the historic Missouri River channel, it can begin to distribute to the rightful private mineral owners the more than \$200 million in royalties that have been held in escrow. Lawmakers also approved [SCR 4010](#), a resolution that seeks a legislative study of post-production royalty deductions. Royalty deductions are typically associated with the cost of production, but recent deductions related to industry efforts to reduce flaring have raised new questions for mineral owners.

School Fund Payback - Land Commissioner Jodi Smith discovered that three state funds had been shorted their share of extraction taxes collected from oil produced on the Fort Berthold Reservation. The legislature approved [SB 2362](#), a bill intended to clarify where extraction tax dollars are to be deposited. It also directed repayment of about \$65 million owed to the Common Schools Trust Fund, and provided for repayment of funds owed to the Resources Trust Fund with a temporary increase in the share of the extraction tax going into the fund. The legislature opted not to reimburse the Foundation Aid Stabilization Fund because it is essentially a pass-through account.

School Safety Plans - Governor Doug Burgum signed [SB 2052](#) which grants school districts the authority to levy taxes to develop a school safety plan. The bill allows school district voters to approve up to five mills for up to five-year period to fund plans addressing the security of students. The legislature also approved [HB 1332](#), a bill that would allow a qualified individual to carry a concealed gun on school property. The bill gives each school district the option to participate. The definition of “bullying” was broadened by [SB 2181](#) to include communications over electronic devices which “places the student in actual and reasonable fear of harm or damage to property of the student.”

Blue Laws – The legislature approved repeal of the state’s longstanding ban on Sunday morning shopping. Gov. Doug Burgum signed the bill, which will take effect August 1, 2019. Opponents argued that the current law supported family values and religion. Those supporting repeal argued for free enterprise and noted non-Sunday church services.

Theodore Roosevelt Library – The legislature has given its blessing to a plan to provide state financial support toward the operation of the Theodore Roosevelt Presidential Library and Museum. The state will put \$50 million into an endowment fund, earnings from which would provide ongoing support for the library, which would be built near the entrance to the south unit of Theodore Roosevelt National Park. The \$50 million state contribution would never be spent, only its earnings could be used, and only if \$100 million in private capital is raised to build and equip the library.

Ethics legislation – The normal free-flow of communication between legislators, lobbyists and the general public was clouded by passage last fall of a misguided and confusing ethics measure. Oddest of the provisions in the constitutional measure is one that bans lobbyists from delivering campaign contributions, which is a customary part of a lobbyist’s job. Each house appointed special Ethics Committees to try to sort out the many ambiguous phrases in the measure such as “ultimate and true source of funds” and “influence state government action.” The legislature passed two bills: [HB 1521](#) attempts to add clarity to the confusing language and guarantees due process rights to anyone accused of an ethical violation. Also enacted was [SB 2148](#), which mandates an interim legislative study to clear up remaining uncertainty. It will be up to a five-member Ethics Commission to write rules to determine the parameters of a lobbyist gift ban.

Ballot Measure Reform – The legislature approved [HCR 4001](#) which asks voters to amend the constitutional to require legislative approval of any constitutional measure approved by voters. If the legislature didn’t approve, the measure would be placed on the ballot a second time and would become effective if approved again. The measure will appear on the November 2020 ballot. Defeated was another proposed constitutional amendment that would have required a ballot measure sponsoring committee to seek the state’s guidance in drafting the language in a proposed measure.

Seat Belts, Speed Limits and Fines - A bill to put more teeth into the state’s mandatory seat belt law was defeated in the ND House after passing the Senate by a single vote. The legislation would have allowed police officers to pull over drivers not wearing seat belts, and would have increased fines from \$20 to \$50. The legislature also defeated [HB 1264](#), which would have increased the speed limit to 75 mph on divided four lanes and 80 mph on interstates. Lawmakers approved [SB 2304](#) that gives cities and counties the ability to raise fines for local speed limit violations. Fines will still be limited to twice the state’s levels for speeding fines.

Emergency Responder Communications / SIRN 2020 – A bill that would begin development of a new statewide radio network for emergency responders received legislative approval. [HB 1435](#) provides a \$40 million appropriation and an \$80 million line of credit with the Bank of North Dakota to fund the state’s portion of the network and provide a \$1,500/radio stipend to local governments to help pay for multi-band radios. Total cost of the project is \$206 million. When the five-year planned buildout is completed, the network is expected to provide 95% statewide coverage, with 95% reliability for vehicular units, and 85% for responders with portable radios. The state will pay back any money it borrows with the \$5 million in annual revenue from a 50-cent phone fee approved by the 2017 Legislature in [HB 1178](#).

Miscellaneous items – A few of the other important enactments of the 2019 Legislature:

- 1) The Land Department secured the services of a full-time attorney in its budget bill ([HB 1013](#)). The office currently works with a lawyer in the Attorney General’s office, but wanted a full-timer because of its growing legal workload.
- 2) The Land Department budget contains a \$2 million appropriation for energy impact contingency grants. It’s another bucket that can be tapped by affected cities and counties for unexpected and unbudgeted expenses.
- 3) The Public Service Commission has been granted the authority in [SB 2100](#) to develop rules for decommissioning solar energy installations. The PSC already has authority to write rules that cover decommissioning of wind farms.
- 4) Thanks to passage of [HB 1268](#), counties with rural ambulance boards will have the authority to impose a higher mill levy to cover their costs of operation. The allowed levy was raised from 10 mills to 15 mills.
- 5) Non-oil townships will receive \$5,000 each based on Section 4 of [SB 2016](#), the budget bill of the office of the adjutant general. The \$8.1 million will come out of the state disaster relief fund to cover costs related to “extraordinary snowfall in 2019 in the eastern part of the state,” and “due to the excessive cost of road maintenance in the western part of the state.” The definition of non-oil counties includes those receiving less than \$5 million from oil taxes.
- 6) The Industrial Commission budget ([HB 1014](#)) will provide some relief for families affected by Yellowstone River flooding this spring. The bill will provide 1% loans of up to \$75,000/\$125,000 to make repairs or replace lost equipment.
- 7) [HB 1020](#) which funds the Extension Service, several ag research facilities and the Upper Great Plains Transportation Institute, includes \$875,000 to update UGPTI’s county and township road and bridge needs study. Information in the study is to be used to allocate county and township dollars in the Prairie Dog bill.
- 8) The Department of Corrections and Rehabilitation budget, [HB 1015](#), provides for an interim study of the preferable location of DOCR facilities, service needs of inmates, impact on families of inmates, and an assessment of facilities. Gone from the final bill was previous language that the legislature look into the feasibility of relocating female inmates from the Dakota women's prison at New England to another location.
- 9) [SB 2020](#), the State Water Commission budget, provides \$82.5 million for Mouse River flood control in Minot.
- 10) The budget of the Commerce Department, [HB 1018](#), provides \$75,000 in matching funds to help maintain sculptures on the Enchanted Highway between Gladstone and Regent.