



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2327

**Senate Education Committee
February 3, 2021**

Chairman Schaible and members of the Senate Education Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in a neutral position on Senate Bill 2327.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages five additional funds: the Strategic Investment and Improvements Fund (SIIF), the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

HISTORY

In 1889, Congress passed the Enabling Act "to provide for the division of Dakota [Territory] into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Act of February 22, 1889, Ch. 180, 25 Statutes at Large 676.

Section 10 of this Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases where portions of sections 16 and 36 had been sold prior to statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled more than 2.5 million acres.

Under sections 12, 14, 16 and 17 of the Enabling Act (and other acts referred to therein), Congress provided further land grants to the state of North Dakota for the support of colleges, universities, the state capitol, and other public institutions. These additional grants totaled approximately 668,000 acres; thus the total of Enabling Act land grants was nearly 3.2 million acres.

PERMANENT TRUST FUNDS

The land grant at statehood and the State Constitution both provide that the Board manage the trust land and minerals and their proceeds, for the exclusive benefit of supporting the common schools (primary education) and the institutions for which the lands were granted. In accordance with Article IX of the North Dakota Constitution, the trust funds must be managed to preserve purchasing power and to maintain stable distributions to trust beneficiaries. The Board is a constitutional board charged with, among other things, the duty of directing the investment of funds derived from the other sources, including the sale of lands granted by the United States to the state of North Dakota for the support of the common schools and from other sources. It is vested with discretion in the performance of its duties commensurate with the importance of the confidence reposed in the Board. The great and primary duty of the Board is to safeguard the Permanent Trust Funds (PTFs) under its control and direct the investment thereof to the best advantage.

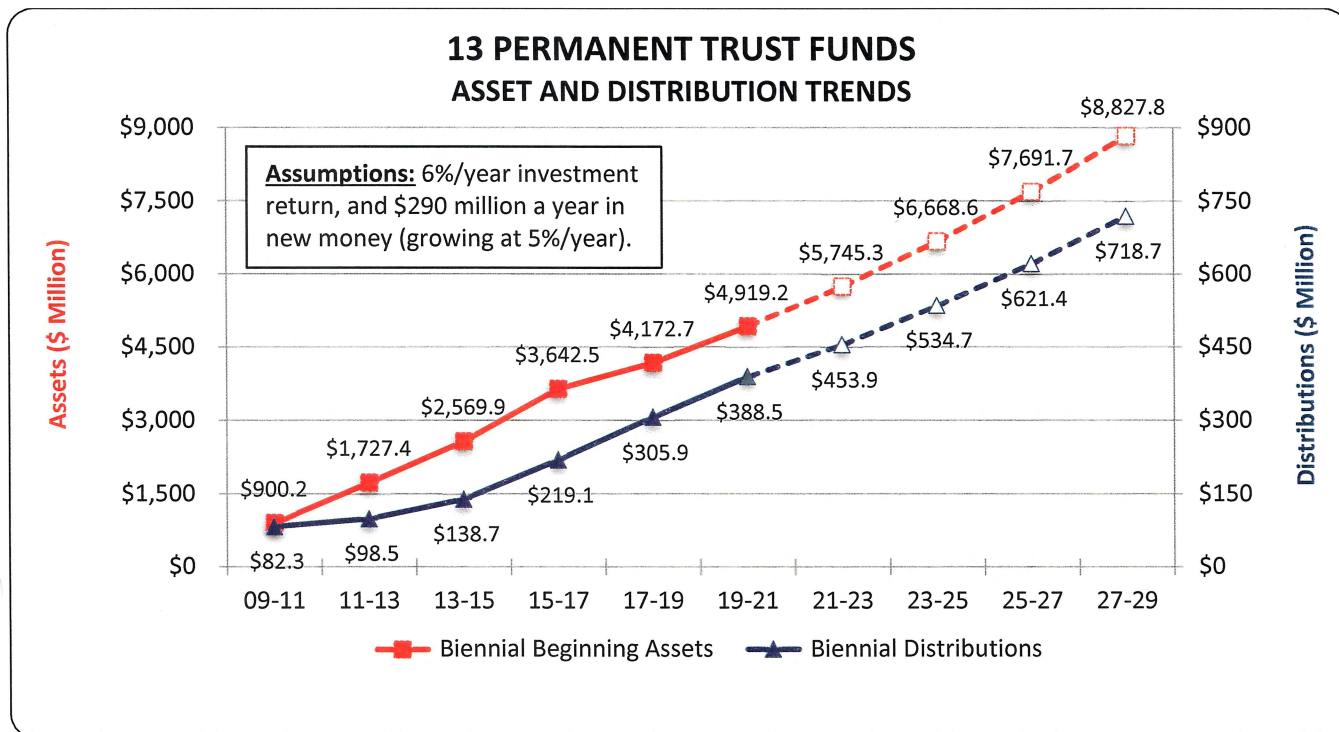
REVENUE AND DISTRIBUTION HISTORY

Article IX, Section 2 of North Dakota Constitution provides:

Distributions from the common schools trust fund, together with the net proceeds of all fines for violation of state laws and all other sums which may be added by law, must be faithfully used and applied each year for the benefit of the common schools of the state and no part of the fund must ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of common schools as provided by law. Distributions from an educational or charitable institution's trust fund must be faithfully used and applied each year for the benefit of the institution and no part of the fund may ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of the institution, as provided by law.

For the biennium during which this amendment takes effect, distributions from the perpetual trust funds must be the greater of the amount distributed in the preceding biennium or ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. Thereafter, biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.

Educational and institutional trust distributions are based on the growth in value of the trusts' financial assets over time, rather than on the amount of interest and income earned by each trust during the year. Biennial distributions from the PTFs must be 10 percent of the five-year average value of trust assets, excluding the value of lands and minerals. Equal amounts are distributed during each year of the biennium. With the substantial growth in trust assets over the past 10 years, distributions to beneficiaries have significantly increased.



Oil and gas lease bonus and royalty revenues resulted in substantial growth in the CSTF, increasing by 300% over eight years. Strong investment markets have also driven growth since the 2008-2009 recession.

In the 2021-2023 biennium, distributions by the CSTF will increase by \$54,264,000 which is a 14.8% increase.

School Year	Amount Distributed	CS % of Cost of Education	CS \$/Pupil Distribution	Biennial Figures	
FY 2010	\$ 38,589,000	4.1%	\$ 404.04	\$ 400.96	
FY 2011	\$ 38,589,000	3.9%	\$ 397.88	4.0%	
FY 2012	\$ 46,257,000	4.6%	\$ 468.50	\$ 461.33	
FY 2013	\$ 46,257,000	4.3%	\$ 454.16	4.46%	
FY 2014	\$ 65,163,000	6.2%	\$ 651.13	\$ 643.27	
FY 2015	\$ 65,163,000	5.9%	\$ 635.40	6.0%	
FY 2016	\$ 103,067,000	8.8%	\$ 979.74	\$ 971.69	
FY 2017	\$ 103,067,000	8.4%	\$ 963.64	8.6%	
FY 2018	\$ 144,132,000	11.6%	\$ 1,334.22	\$ 1,320.90	
FY 2019	\$ 144,132,000	11.4%	\$ 1,307.59	11.5%	
FY 2020	\$ 183,378,000	14.0%	\$ 1,634.88	\$ 1,620.19	
FY 2021	\$ 183,378,000	13.4%	\$ 1,605.49	13.7%	Actual
FY 2022	\$ 210,510,000	15.4%	\$ 1,847.97	\$ 1,829.31	Estimate/Projection
FY 2023	\$ 210,510,000	15.2%	\$ 1,810.66	15.3%	Estimate/Projection

The table below is another look at the CSTF's impact on education. With the inclusion of the 2021-23 contribution, the CSTF will have supplied over \$1.4 billion to the schools in the past ten years.

Biennium	Formula Payment	Common Schools	Percentage of Formula	Common Schools Increase
2013-15	\$ 2,165,690,363	\$ 130,326,000	6.0%	\$ 37,812,000
2015-17	\$ 2,398,962,382	\$ 206,134,000	8.6%	\$ 75,808,000
2017-19	\$ 2,512,392,039	\$ 288,264,000	11.5%	\$ 82,130,000
2019-21	\$ 2,679,595,449	\$ 366,756,000	13.7%	\$ 78,492,000
2021-23	\$ 2,751,285,781	\$ 421,020,000	15.3%	\$ 54,264,000

The Board manages other funds for the State and other beneficiaries, including:

Indian Cultural Education Trust

The Indian Cultural Education Trust was created in 2003 to generate income to benefit Indian culture (N.D.C.C. ch. 15-68). Present assets are managed for the benefit of the Mandan, Hidatsa, and Arikara Nation Cultural Education Foundation. This trust's assets are managed, and distributions are determined, in the same manner as the PTFs.

Capitol Building Fund

The Capitol Building Fund was established in N.D.C.C. § 48-10-02 pursuant to Article IX of the North Dakota Constitution. Section 12 of the Enabling Act of 1889 authorized the land grant for "public buildings at the capital of said states". N.D.C.C. § 48-10-02 defines the fund, outlines its purposes, and assigns management of the land and the fund's investment to the Board. Unlike the PTFs created under Article IX, this fund is fully expendable and is subject to legislative appropriation each biennium.

Strategic Investment and Improvements Fund

The SIIF is a fund financed by the revenues earned from sovereign mineral acres, including those formerly owned by the Bank of North Dakota and State Treasurer and minerals located under navigable rivers and lakes (N.D.C.C. ch. 15-08.1 and § 61-33-07). The SIIF also receives a portion of the oil and gas production and extraction taxes (N.D.C.C. § 57-51.1-07.5). This fund may be appropriated by the legislature for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of state government (N.D.C.C. § 15-08.1-08).

Coal Development Trust Fund

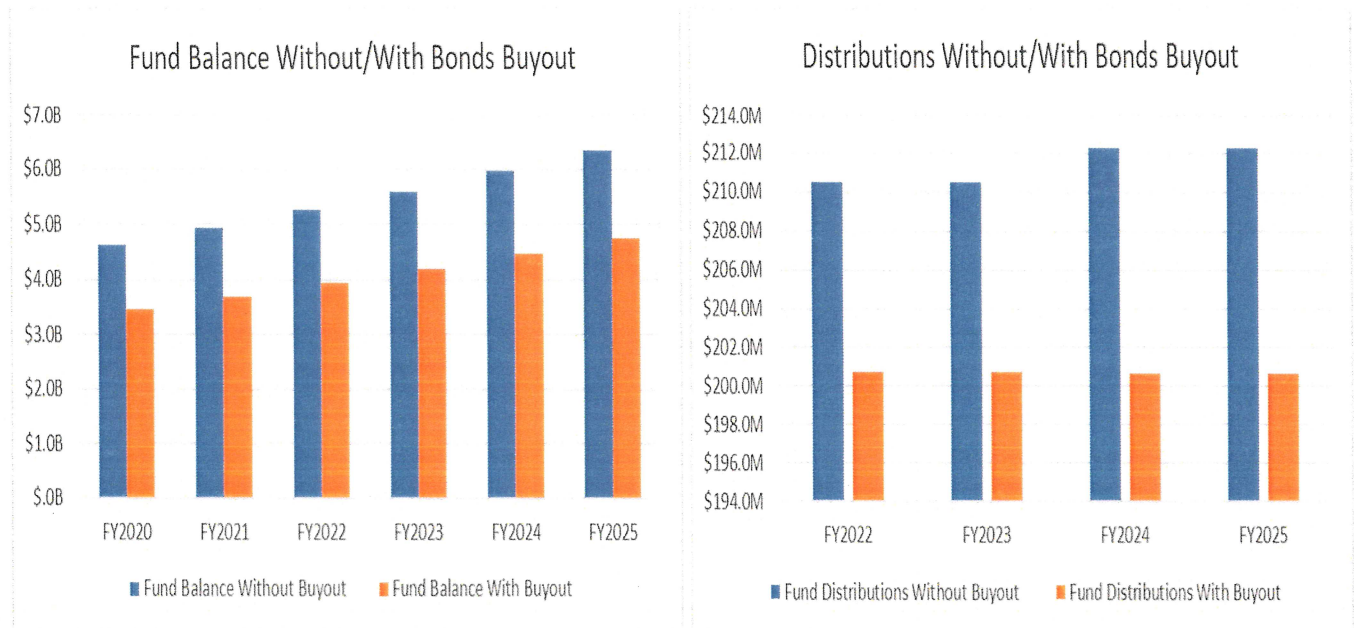
The Coal Development Trust Fund is established by N.D.C.C. ch. 57-62, pursuant to Article X, Section 21 of the North Dakota Constitution. The Fund receives 30 percent of the coal severance tax. This fund is held in trust and is administered by the Board for loans to coal impacted counties, cities, and school districts as provided by N.D.C.C. § 57-62-03 and for loans to school districts pursuant to N.D.C.C. ch. 15.1-36. Any balance not loaned is invested according to the policies of the Board. The income earned by this fund is transferred to the State General Fund each year.

Theodore Roosevelt Presidential Library and Museum Endowment Fund

The Theodore Roosevelt Presidential Library and Museum Endowment Fund (TR Fund) was created to generate income to be used for the operation and maintenance of the library and museum, after the Theodore Roosevelt Presidential Library Foundation raised or secured binding pledges of \$100 million. The TR Fund is managed through an agreement between the Office of the North Dakota Governor and the Board. In May of 2019 the first deposit, totaling \$15 million, was made to the Board for the Theodore Roosevelt Presidential Library and Museum Endowment.

ADDITIONAL CONSIDERATION

According to the Department of Public Instruction, there is approximately \$1.16 Billion in school bonds and other debt outstanding for 2020. If the CSTF is used to pay off school debt, it would reduce the investment returns by about 25% or \$75 Million per year (assuming a 6.5% average annual return.) It would also reduce the CSTF investment balance by nearly 25%, which would affect the constitutionally mandated 10% biennial calculation, and would reduce for annual distributions to the public schools going forward. Based upon a deferred production report submitted to the Board in September 2020, it is anticipated the PTF's will collect \$209 Million per year with oil at \$50 per barrel and 0% deferred production. This does not meet the Board's distribution obligations for all of the trusts, let alone the CSTF. The long-term outlook for the CSTF without paying off bonding and supporting on-going maintenance already results in the Board having to use the principal to meet the distribution obligations.



***Chart Assumptions: 6.5% annual investment returns.

The State of Wyoming has a School Facilities Division (SFD) which assists school districts in the assessing, planning, financing, construction, and maintenance of educational facilities across the state. Working under the direction of the School Facilities Commission (SFC), the SFD is responsible for: implementing policies, guidelines, and standards adopted by the SFC; helping districts develop comprehensive, long range facility plans; maintaining a school facilities database comprised of building and facility specific information; and many other duties as outlined in Wis. Stat. § 21-15-123.

The SFD reports spending \$106 Million on routine maintenance and operations during the 2020-21 year, and allocated \$153 Million for major maintenance and \$78 Million for capital construction. Thus, for the biennium they would have collectively spent \$443 Million. Based upon the North Dakota Department of Public Instruction's financial statements, the North Dakota public schools have averaged \$265 Million per year in capital projects over the past two years. If the CSTF is expected to fund the ongoing maintenance and operations, major maintenance and capital construction this would be an additional drawdown in the overall distributions that would be made biennially. It will shift the distributions out of the CSTF for the next biennium from \$420 Million to \$398 Million. Furthermore, in the 2023-205 biennium, this distribution would shift from an estimate \$475.5 Million to \$387.7 Million This variance continues to grow as the continued maintenance costs grow.

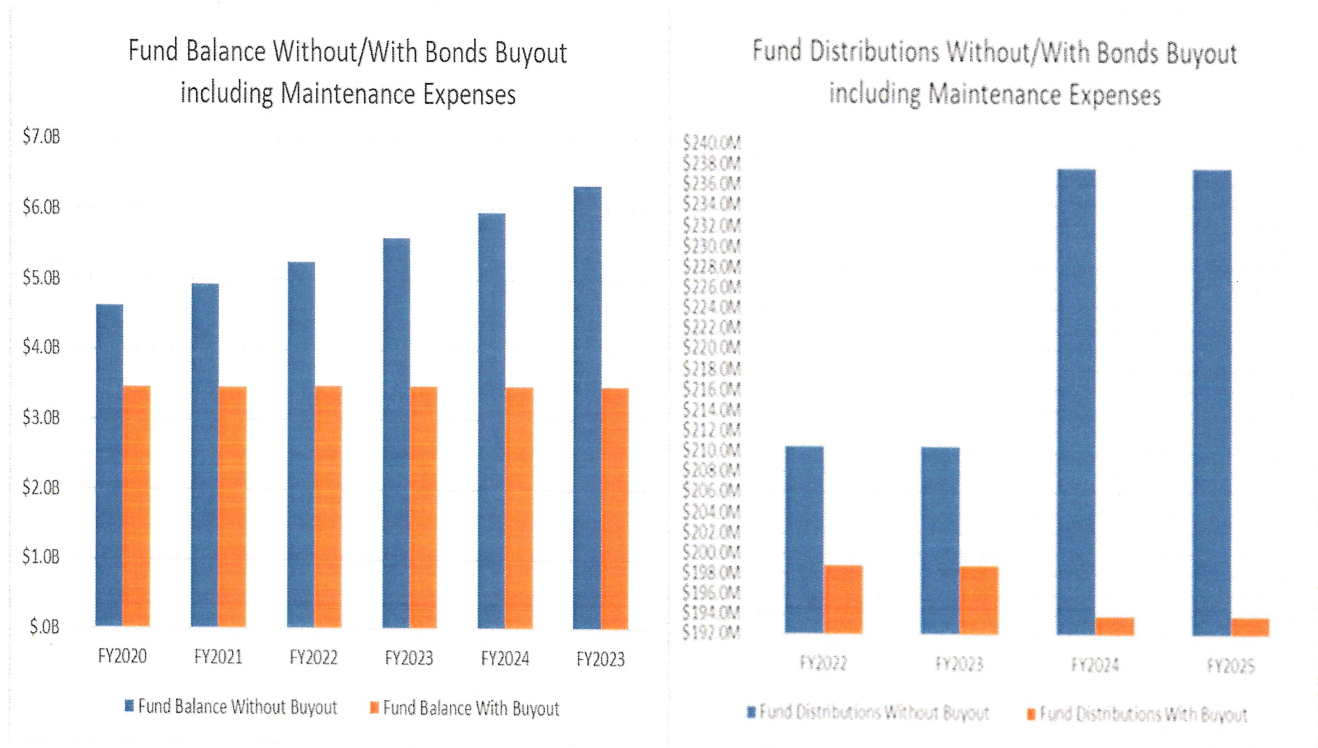


Chart Assumptions:

1. 6.5% annual investment returns.
2. Assumed \$221.5 Million annual expenses associated with school buildings (i.e. maintenance, insurance, etc.).

I look forward to working with the committee on this issue and would be happy to answer any questions.