



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

House Bill 1392

**House Government and Veterans Affairs Committee
February 18, 2021**

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in opposition of House Bill 1392.

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, 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.

The Department's Surface Management Division manages more than 706,000 surface acres owned by the various trust funds under the Board's control. The major source of income from these lands comes from agricultural leases (grassland, crop and hay land uses), with significant revenue generated from rights-of-way, surface damage agreements, and construction aggregate mining. The objective of the Surface Management Division is to obtain a "fair market" return from the trust lands while maintaining or improving the condition of the land.

The trust lands have been leased by generations of North Dakotans for agricultural purposes. The land is leased in a series of auctions held each fall and spring. All auctions are open to the public and the lease goes to the highest bidder. The minimum bid is set by the Commissioner based upon the Board's Fair Market Value Minimum Rent Policy. The Department currently manages approximately 4,800 active surface land leases. Leasing interest continues to be high with over 99 percent of the tracts offered being successfully leased. The Department generated \$17.4 million in rental income during the previous biennium through the surface lease program, an increase of \$1.5 million over the prior biennium.

The Department is appearing in opposition to this bill for the following reason:

On page 1, lines 20-22, the bill states:

Notwithstanding subsection 2, if the governor declares a state of emergency under chapter 37-17.1 which impacts the ability of the commissioner to hold a live auction under section 15-04-10, a lease under this section may extend beyond five years.

This amendment cannot be enacted because it would violate Article IX, Section 8 of the North Dakota Constitution which states:

The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years.

The North Dakota Constitution has had this exact language since 1889. At no point in time in this great state's history has the Board ever leased a tract of land for longer than five years.

As the bill would violate the Constitution as written, the Board is recommending a Do Not Pass on HB 1392. I would be happy to answer any questions.