



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

Senate Bill 2065

House Energy and Natural Resources Committee

March 4, 2021

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on Senate Bill 2065.

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 title of SB 2065, as amended, provides:

A BILL for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

SB 2065 includes an authorization for the Board to lease for underground storage of oil or gas. Lines 9 through 13 of SB 2065 (21.8029.02000) state:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.
The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

The Board can already establish an encumbrance, by entering into an easement agreement, for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons. The authority to issue easements has always been a part of the Board's governing law. N.D. Const. art. IX, § 3; N.D.C.C. § 15-01-02(1); *Fuller v. Bd. of Univ. & Sch. Lands*, 129 N.W. 1029 (N.D. 1911).

The North Dakota Constitution limits the leasing of trust land.

Article IX, Section 5 of the North Dakota Constitution states:

In all sales of lands subject to the provisions of this article all minerals therein, including but not limited to oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ores, or colloidal or other clays, shall be reserved and excepted to the state of North Dakota, **except that leases may be executed for the extraction and sale of such materials in such manner and upon such terms as the legislative assembly may provide.**

Article IX, Section 8 of the North Dakota Constitution states:

The legislative assembly shall have authority to provide by law for the leasing and 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. **Said lands shall only be leased for pasturage and meadow purposes and at a public auction** after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance. . .

The concern is that the Board can lease the surface estate, which includes the pore space, **only** for pasture and meadow purposes and **not** for oil and gas storage. However, the Board can enter into an encumbrance for storage.

We feel the addition of the proposed N.D.C.C. § 15-05-09.1, even in its permissive state, is unnecessary and could potentially cause future issues as the Board already has the authority to enter into an encumbrance by issuing easement agreements for storage.

We are respectfully requesting the following language, Lines 9 through 13 of SB 2065 (21.8029.02000), be deleted:

15-05-09.1. Authorization to lease for the underground storage of oil or gas.
The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

We look forward to working with the Committee on these issues and would be happy to answer any questions.