



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

**Senate Bill 2317**

**House Energy and Natural Resources Committee  
March 11, 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 in support of Senate Bill 2317.

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.

In 1908, Land Commissioner Hegge wrote:

Nature has bountifully supplied North Dakota with lignite coal, and much of the state land is underlaid with this valuable fuel. The constitution provides that the coal lands of the state shall never be sold, but that such lands may be leased for coal mining purposes.

The legislative assembly has provided for the leasing of such lands at a minimum price of tens cents per ton for coal mined thereon, the manner of leasing being at public auction, and on application the same as grazing lands are leased. The industry, however, is yet in its infancy and very little state land is leased for this purpose.

In a report of the State written in 1922 by J.M. Devine, \$7,200,000 was the value of tons of coal sold in North Dakota. This reports states:

North Dakota has 690,000,000,000 tons of high grade lignite coal. The greatest deposit of a continuous stretch of coal in any one locality in the world. Enough coal to warm every home, turn every wheel in every factory in this country for 200 years and still barely scratch the surface of this special gift of God to the people of North Dakota. The day cannot be far distant when this coal, long patiently awaiting the magic touch of organized capital, will produce the cheapest electricity the world knows and shoot it hundreds of miles away for light and heat.

For 112 years, coal has benefited our trusts; in the past decade, \$35 Million in revenue has benefited the trusts and the SIIF. While this may not appear to be significant to some, it impacts every trust that receives revenue from coal. It is important that this trust revenue stream exist for as long as possible. Over the years, the Legislative Assembly has amended the law to allow the Board to continue to create value from our bountiful supply of coal. Through SB 2317, the Legislative Assembly will provide relief to the State's coal industry to maintain the economic base for the state and its citizens.

The purpose of SB 2317, as amended, is to establish a coal mine reclamation trust and create a framework through the Board to utilize private assets pledged as collateral to fulfill performance bond obligations under N.D.C.C. § 38-14.1-16 and N.D. Admin. Code ch. 69-05.2-12.

The Board would propose the following amendments to version 21.1057.02000:

Page 1, line 20, after the period insert:

"Any expenses incurred by the board or the public service commission under this section must be reimbursed by the permit applicant or qualified third party."

Page 2, line 5, before "The" insert:

"The board of university and school lands must be reimbursed from trust proceeds for all reasonable costs and expenses in managing assets and investing trust proceeds. Such reimbursements are to be placed in the trust fund account from which the expenses were incurred."

Page 2, line 13, after the period insert:

**15-72-05. Continuing appropriation.**

There is appropriated annually the amounts necessary to pay expenses for assets held in trust under this chapter and managed by the board of university and school lands, including survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, in lieu of tax payments, or expenses determined by the board as necessary to manage, preserve, and enhance the value of the trust asset. Each payment must be made from the trust fund account for which the asset is held. Upon completion of all reclamation activities and obligations, all and any remaining assets held

by the coal mine reclamation trust shall be transferred to the common schools trust fund.

Renumber accordingly

The coal mine reclamation trust is modeled after N.D.C.C. ch. 15-68, the Indian Cultural Education Trust, which was created in 2003 to generate income to benefit Indian culture. Present assets are managed for the benefit of the Mandan, Hidatsa, and Arikara Nation Cultural Education Foundation.

Under SB 2317, the Board would rely on the Public Service Commission (PSC) to ensure the bond issued to the coal company not only covers the cost of reclamation of the mine, but it is over-collateralized. If the PSC determines that the collateral offered is insufficient to cover the potential reclamation costs, then the PSC can require additional bonding through cash or a surety bond. The coal companies are required to renew bonding permits with the PSC every five years with a mid-term review every two and a half years; additionally, the PSC has the authority to review the bonding permits anytime within those five years. Ultimately, the coal company, the PSC, and the Board will all need to agree the bonding is sufficient to protect the state and the Board.

The coal mine reclamation trust assets will be used for reclamation purposes at the direction of the PSC. The coal company would propose land, buildings, and heavy equipment as collateral; the Department is well positioned to partner with the PSC as the agency manages land and reclamation projects in our day-to-day activities. Through our partnership with the PSC, the Board will ensure there is an escrow agreement and a security interest agreement to ensure the coal mine reclamation trust has a first priority interest in all bonded collateral in the event of a default.

The Board is in support of SB 2317 with the proposed amendments. We look forward to working with the Committee on this bill and would be happy to answer any questions.