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Testimony of Doug Goehring
Agriculture Commissioner
House Energy and Natural Resources
Coteau AB Room
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Chairman Porter and members of the House Energy and Natural Resources Committee, I am Agriculture Commissioner Doug Goehring. I am here today in support of HB 1400, which provides for the ability to acquire interest on money in environmental impact mitigation fund and the ability to enter into easements or leaseholds to carry out the intent and purpose of the mitigation program under 4.1-01-21.1.

HB 1400 allows me, in my position, to enter into conservation agreements with landowners that are necessary to fulfill statutory requirements enacted last session related to environmental mitigation. The bill also provides the ability to obtain interest on the dollars deposited in the environmental impact mitigation fund.

Chairman Porter and committee members, I have been approached to offer a few amendments to the bill, which I will walk through. The first was an oversight during drafting, I would like to invest funds through the treasurer office not state investment board. I would like to only collect simple interest on the two funds. The second amendment is to change language for transmission facilities to a may participate in the mitigation program. This would allow them to gain some leverage during the sitting process. Finally,

an emergency clause is added so that these changes can be made to the sitting law for projects that may be looking to start in near future.

Chairman Porter and committee members, thank you for your time. I urge a do pass on HB 1400. I would be happy to answer any questions you may have.

PROPOSED AMENDMENTS TO
HOUSE BILL NO. 1400

Introduced by

1 A BILL for an ACT to create and enact a new section to chapter 4.1 of the North Dakota Century
2 Code, relating conservation easements and leaseholds; and to amend and reenact sections 4.1-
3 01-21, ~~and 4.1-01-21.1, and 49-22-09.2~~ of the North Dakota Century Code, relating to the federal
4 environmental law impact review fund and the environmental impact mitigation fund; and to
5 declare an emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 4.1-01-21 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4.1-01-21. Federal environmental law impact review fund – Continuing appropriation**
10 **- Investments.**

- 11 1. The federal environmental law impact review fund consists of:
- 12 a. Any moneys appropriated or transferred for the purposes set forth in
13 section 4.1-01-19; and
- 14 b. Any gifts, grants, and donations forwarded to the commissioner for the
15 purposes set forth in section 4.1-01-19.
- 16 2. All moneys in the federal environmental law impact review fund are appropriated
17 to the commissioner on a continuing basis for the purposes set forth in section
18 4.1-01-19. ~~The commissioner may invest money in the fund under the supervision~~
19 ~~of the state investment board pursuant to chapter 21-10.~~ The state treasurer shall
20 invest available moneys in the fund in accordance with section 21-10-07 and in
21 cooperation with the commissioner shall deposit any income earned through the
22 investments into the fund. The fund and earnings of the fund are appropriated to
23 the commissioner on a continuing basis to be used exclusively to carry out the

1 intent and purpose of this chapter.

2 **SECTION 2. AMENDMENT.** Section 4.1-01-21.1 of the North Dakota Century Code is
3 amended and reenacted as follows:

4 **4.1-01-21.1. Environmental impact mitigation fund – report to legislative**
5 **management – Continuing appropriation – Investments.**

- 6 1. There is created in the state treasury the environmental impact mitigation fund.
7 The fund consists of all moneys deposited in the fund under section 49-22-09.2.
8 All moneys in the fund are appropriated to the commissioner on a continuing basis
9 for disbursement by the commissioner in accordance with this section. The
10 commissioner may invest moneys in the fund under the supervision of the
11 state investment board pursuant to chapter 21-10. The state treasurer shall
12 invest available moneys in the fund in accordance with section 21-10-07 and in
13 cooperation with the commissioner shall deposit any income earned through the
14 investment into the fund. The fund and earnings of the fund are appropriated to
15 the commissioner on a continuing basis to be used exclusively to carry out the
16 intent and purpose of this chapter.
- 17 2. Money in the fund may be used only for:
- 18 a. Consultation with environmental scientists or engineers, industry
19 specialists, or others for relevant services to analyze or implement
20 mitigation required from the impact of development, and
- 21 b. Creation, restoration, or mitigation of similar habitat affected by the
22 construction or operation of an energy conversion or transmission facility.
23 Mitigation of adverse impacts from development under this section shall be
24 conducted in the following order of priority:
- 25 (1) The area immediately impacted by the development;
26 (2) The county impacted by the development;
27 (3) The region impacted by the development; and

1 (4) Other areas within the state; and

2 c. Purchasing and maintaining easements or leaseholds.

3 3. The commissioner is not subject to chapter 54-44.4 when contracting for services
4 under this chapter.

5 4. In consultation with the federal environmental law impact review committee, the
6 commissioner shall adopt rules pursuant to chapter 28-32 to implement the
7 provisions of this section.

8 5. Easements or leaseholds purchased by a person to mitigate adverse
9 environmental effects of the construction or operation of an energy conversion or
10 transmission facility under chapter 49-22 must be limited to the operational life of
11 the facility as defined under chapter 49-22. Any payment made to mitigate adverse
12 environmental effects of the construction or operation of an energy conversion or
13 transmission facility under chapter 49-22 must be made to the commissioner who
14 shall deposit the payment into the environmental impact mitigation fund. Prior to
15 the public service commission issuing a permit or certificate to an applicant under
16 chapter 49-22, the commissioner shall notify the public service commission of
17 mitigation efforts under this section to create, restore, or mitigate similar habitat
18 affected by the construction or operation of an energy conversion or transmission
19 facility.

20 6. The commissioner shall provide a biennial report of environmental impact
21 mitigation fund disbursements to the legislative management.

22 7. For purposes of this section, the environmental impact mitigation fund is not
23 subject to subsection 2 of section 4.1-01-18.

24 **SECTION 3.** A new section to chapter 4.1-01 of the North Dakota Century Code is created
25 and enacted as follows:

26 **Conservation easement or leasehold.**

27 The commissioner may purchase and hold an easement or leasehold in the name of the

1 state to administer this title. The commissioner shall terminate any easement or leasehold if the
2 easement or leasehold is no longer necessary.

3 **SECTION 4. AMENDMENT.** Section 49-22-09.2 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 49-22-09.2. Mitigating environmental impacts of wind energy. If an applicant elects to
6 provide a payment to mitigate the environmental impact of the construction or operation of ~~an a~~
7 wind energy conversion ~~or transmission facility~~, the payment must be made to the agriculture
8 commissioner who shall deposit the payment into the environmental impact mitigation fund under
9 section 4.1-01-21.1. ~~Nothing in this section shall be construed to limit an applicant from~~
10 ~~conducting mitigation activities.~~

11 If an applicant elects to provide a payment to mitigate the environmental impact of the
12 construction or operation of an energy conversion facility other than a wind energy conversion
13 facility, the payment may be made to the agriculture commissioner who shall deposit the payment
14 into the environmental impact mitigation fund under section 4.1-01-21.1.

15 If an applicant elects to provide a payment to mitigate the environmental impact of the
16 construction or operation of transmission facility, the payment may be made to the agriculture
17 commissioner who shall deposit the payment into the environmental impact mitigation fund under
18 section 4.1-01-21.1.

19 Nothing in this section shall be construed to limit an applicant from conducting mitigation
20 activities.

21 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.