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ROLL NUMBER

DESCRIPTION

1119

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Dennard G. Galt
Operator's Signature

10/2/03
Date

2003 HOUSE EDUCATION

HB 1119

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Doreen Hall
Operator's Signature

10/2/03
Date

**2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB 1119
House Education Committee**

☐ Conference Committee

Hearing Date January 27, 2003

Tape Number	Side A	Side B	Meter #
1	x		00-3014
Committee Clerk Signature			

Minutes: **Chairman Kelsch** opened hearing on HB 1119.

Gary Preszler, State Land Commissioner, and Secretary for the Board of University and School Lands, See Attached Testimony

Rep. Williams : Prior to now, how was this land managed?

Preszler: Coteau Properties, and they will explain to you how is was managed.

Dean Peterson, North American Coal Corporation., See Attached Testimony

Rep. Haas In a typical situation, a large track of land in that west mine area, how many acres would be put in this trust?

Peterson:. I would say this is a large mining permit, it is basically will give us the right to mine coverage for the Coteau properties, up to over 43,000 acres. Management of our cultural resources, it will vary subject to the different types of agreements, subject to the donor agreement, approx. 15-1700 acres that would be involved in the transfer to this trust. That would include some of the special sites.

Elgin Crows Breast, See Attached Testimony

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Operator's Signature

10/2/03
Date

Page 2
House Education Committee
Bill/Resolution Number HB1119
Hearing Date January 27, 2003

(1520) Rep. Herbel : What kinds of money do you anticipate generating from this trust?

Crows Breast: I depends how much is put into the trust, \$250,000.

Nelson: How many sites that we are talking about, are they unique or duplicated on the reservation, or once in a lifetime site.

Crows Breast: There are over 300 sites, and they are once n a lifetime sites. You can never put these back, they are hundred of years old and there are also burial sites.

Calvin Grinell: Health, Preservation and Resource Specialist

I ask for your support in this regard. We hope that some of this money will go towards education of our young college students. To have an interest in Archeology, Anthropology, where we might be able to educate a a young person that has our Indian background. So that issues are best understood and learn the knowledge that is contained in our tribe and pass it on to the next generation.

Merle Paaverud, State Historical Society of North Dakota, See Attached Testimony

(2100) Proposed amendments and reasons why.

Rep. Hawken: Is this language in other parts of the law that deal with other lands?

Paaverud: We do have this in statute the same language in 15.2 07, in the interests of resource management going through a process by which to protect those sites.

Rep. Mueller Do you not currently have this authority?

Paaverund: We do have this authority. But we want to make it very clear in the bill so that there is no misunderstanding. We want to be part of this process.

Page 3
House Education Committee
Bill/Resolution Number HB1119
Hearing Date January 27, 2003

Carol Two Eagles,

Cultural preservation is very close to me and other Indians. Preservation of our old ways because the young children do not know all of our ways. They don't know their cultural, language, they don't know how to speak it.

We follow the buffalo, just as you follow the stations of the cross, we needed to be in certain places at certain times, these places were used more than once. We had to be in certain places to do certain ceremonies. A lot of this has been lost. Having these sites preserved, preserves a piece of that. Similar to that of other cultures like the Germans from Russia, the Polish language, are important to preserve for that culture.

I encourage your support on this bill.

(2900) Dr. Ervin Wilson, 50 year relationship with the Three Affiliated Tribes

The chaos when they lose their heritage. The loss of these sites are very emotional to the Indian people. It is part of their beliefs and prayers and are sacred grounds to them.

OPPOSITION: none

Closed hearing, Chairman Kelsch appointed Rep. Sitte to work with Dean Peterson and Paaverud on the amendments and then bring back to the committee.

Danina Baller
Operator's Signature

1/21/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB 1119
House Education Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
1		x	1575-2000
Committee Clerk Signature <i>Linda Siechter</i>			

Minutes: Chairman Kelsch opened the committee work on 1119

Chairman Kelsch asked Gary Preszler to come forward.

Gary Preszler, Secretary to the Board of University and School Lands and Commissioner State Land Department, See Attached Testimony.

We reviewed the amendments after the hearing, we recognized the role of the state historical board and their approval for an archeology sites. We wanted to have written record of this intention.

Rep. Sitte motioned a DO PASS, Rep. Hawken second

Roll vote: 14-0-0, Rep. Sitte will carry the bill to the floor.

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Doreen Hall
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10/2/03
Date

FISCAL NOTE
Requested by Legislative Council
01/03/2003

Bill/Resolution No.: HB 1119

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$23,000	\$0	\$23,000
Expenditures	\$0	\$0	\$0	\$2,700	\$0	\$2,700
Appropriations	\$0	\$0	\$0	\$0	\$0	\$800

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

☒ This proposed bill will not have a fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenues have been estimated based upon information obtained from a pending coal mining permit application that precipitated the bill's introduction. Estimated revenue represents grazing lease income estimated at \$9.60 per acre and earnings from expected cash contributions.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department's 2001 land management administrative cost basis of 78 cents per acre and a county property tax average of \$2.00 per acre for rangeland for the in-lieu property taxes were used to calculate estimated initial expenditures.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The proposed legislation will not have an effect on the 2003-2005 biennium as the minimal expenses estimated can be absorbed within the proposed special fund budget and continuing appropriation request. In-lieu property taxes would be paid under a continuing appropriation.

Name: Gary D. Preszler	Agency: Land Department	
------------------------	-------------------------	--

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Operator's Signature

Date

Phone Number: 328-2800

Date Prepared: 01/10/2003

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Donna Hall
Operator's Signature

1/2/03
Date

Date: 1/28/03
Roll Call Vote #: (1)

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 1119 NO amend.

Action Taken DO Pass

Motion Made By Sitte Seconded By Hawken

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Sitte

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall
Operator's Signature

1/28/03
Date

REPORT OF STANDING COMMITTEE (410)
January 28, 2003 3:44 p.m.

Module No: HR-16-1228
Carrier: S116
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1119: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1119 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-16-1228

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Deanna G. H. H. H.
Operator's Signature

10/2/03
Date

2003 SENATE EDUCATION

HB 1119

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Deanna Holcomb
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1119

Senate Education Committee

☐ Conference Committee

Hearing Date 3-11-03

Tape Number	Side A	Side B	Meter #
1	x		0 - 27.7
1		x	33.0 - 34.4
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

CHAIRMAN FREBORG opened the hearing on HB 1119 which relates to establishing the Indian cultural education trust, and to provide a continuing appropriation

Testimony in support of HB 1119:

GARY PRESZLER, State Land Commissioner, presented testimony. (see attached)

SENATOR FLAKOLL asked if there is a period of divestiture. MR. PRESZLER stated no, the trust is forever. SENATOR FLAKOLL asked if the land is open for hunting. MR. PRESZLER stated it is treated as other land and would be open to hunting. The board has allowed only 1/2 of 1% of their land to be posted.

SENATOR CHRISTENSON asked if there is any cap on the % rates for administrative costs.

MR. PRESZLER stated the cap, as in the fiscal note of \$.78 per acre, is what the board has charged against other lands they manage. They have over 700,000 acres now that is owned and

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Doreen Ball
Operator's Signature

10/2/03
Date

Page 2
Senate Education Committee
Bill/Resolution Number HB 1119
Hearing Date 3-11-03

is leased for haying purposes. Part of the concern of Coteau properties was to get the boards input to find out if the costs were too great to defeat the trust.

SENATOR LEE asked why the different states were named in the bill. MR. PRESZLER stated there are beneficiaries of the trust that may live in the neighboring states. Tribes do not use state lines to differentiate their lands.

SENATOR TAYLOR asked what the process is for the state land dept. in terms of archeology and history. MR. PRESZLER stated the process is covered under code and before any of the land is disturbed, the Historical Bd. would have to give approval. SENATOR TAYLOR asked if this would be used mainly for haying and grazing thus leaving the sites relatively undisturbed.

MR. PRESZLER stated that would be correct. The tribes like the preservation aspect as opposed to private ownership.

DEAN PETERSON, NACCO, presented testimony. (see attached)

SENATOR TAYLOR asked about the permit for NACCO for 17,000, how many acres will be in this trust. MR. PETERSON answered that 1700 acres will be in the trust, subject to their acquisition through the approval process.

ELGIN CROWS BREAST, Cultural Preservation Officer, presented testimony. (see attached)
He addressed the repatriation of their ancestors. He further stated this plan came about in lieu of destroying burial and archeological sites through strip mining. A law was passed in 1988 dealing with the unmarked burials of Native Americans.

TOM DISSELHORST, attorney, presented testimony on behalf of TEX HALL, Three-Affiliated Tribes. (see attached). He stated the key to this bill is the donor agreement. The site and location of a site is important to the tribes, not necessarily for artifacts and objects, but for the

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Page 3
Senate Education Committee
Bill/Resolution Number HB 1119
Hearing Date 3-11-03

cultural purposes. The sites cannot be moved, and therefore this bill is a compromise. The other important part of this bill is the payment in lieu of taxes. This does not harm local jurisdiction and is a great concession of the tribes.

SENATOR TAYLOR as if MR. DISSELHORST sees this concept being used extensively in the future. He stated it should be available to all tribes to use in all parts of the state and with other properties. He doesn't feel this will create a huge trust because willing donors must be found.

There was no opposition to HB 1119.

The hearing on HB 1119 was closed.

Dean Peterson asked the committee to hold the bill because the parties involved had not see the amendments being proposed by Mr. Disselhorst.

Tape 1, side B, 33.0 - 34.4

DEAN PETERSON, NACCO, stated the parties involved in this bill met with Mr. Disselhorst and he will be sending the committee a letter withdrawing the proposed amendments and explaining why. He will also be meeting with Tex Hall to go over the revision.

Committee Adjourned.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1119

Senate Education Committee

☐ Conference Committee

Hearing Date 3-12-03

Tape Number	Side A	Side B	Meter #
2		x	17.2 - 28.2
Committee Clerk Signature <i>Sandra Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order with all members present.

DEAN PETERSON, NACCO, spoke to the committee and answered questions. He stated they had met with Thomas Disselhorst, council for the Three Affiliated Tribes, who represented Tex Hall. The essence of the letter he presented to the committee (see attached) is that Tex Hall is supportive of withdrawing the amendments that had been proposed.

SENATOR FREBORG asked if everyone involved is happy with HB 1119 as is and feels it should pass as is. MR. PETERSON stated that is correct. He further stated that any amendments to the legislation would have to go back to the state land board.

SENATOR COOK moved a DO PASS. Seconded by SENATOR CHRISTENSON.

Discussion: SENATOR FLAKOLL asked about the "hunting rights" on this land. SENATOR TAYLOR stated that any lands under the state school lands is open to public access. It can be posted if there are cattle on it. SENATOR FLAKOLL stated that in testimony they did say they post a small portion of their land for hunting.

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10/2/03
Date

Page 2

Senate Education Committee

Bill/Resolution Number HB 1119

Hearing Date 3-12-03

SENATOR COOK withdrew his motion. **SENATOR CHRISTENSON** withdrew her second.

SENATOR FLAKOLL moved an amendment that states "there would be open hunting on all lands in this legislation whenever possible". Seconded by **SENATOR LEE**.

Roll Call Vote: 3 YES. 3 NO. 0 Absent. Motion FAILS.

SENATOR TAYLOR feels the land department would only close the land if it was absolutely necessary, such as running cattle on it.

SENATOR COOK moved a DO PASS. Seconded by **SENATOR CHRISTENSON**.

Roll Call Vote: 5 YES. 1 NO. 0 Absent. Motion Carried.

Carrier: **SENATOR TAYLOR**

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Danina Ballin
Operator's Signature

10/2/03
Date

Date: 3/12/03

Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate EDUCATION

Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By Sen. Cook Seconded By Sen. Christensen

[illegible]

Total **(Yes)** _____ **No** _____

Absent _____

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Withdrawn

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Donner Hallbach
Operator's Signature

18/2/03
Date

Date: 3/12/03

Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate EDUCATION

Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By Sen. Flakoll Seconded By Sen. Lee

[illegible]

Total (Yes) 5 No 5

Absent _____

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

amendment allowing hunting when possible
on land

motion fails

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Operator's Signature

Date _____

Date: 3/12/03

Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate EDUCATION

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By

Seconded By

[illegible]**Total (Yes)**

No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

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Date _____

REPORT OF STANDING COMMITTEE (410)
March 12, 2003 3:51 p.m.

Module No: SR-44-4610
Carrier: Taylor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1119: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1119 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-44-4610

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10/2/03
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2003 TESTIMONY

HB 1119

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Deanna Bell
Operator's Signature

10/2/03
Date

1707 North 9th Street
PO Box 5523
Bismarck, ND 58506-5523
Phone: (701) 328-2800
Fax: (701) 328-3850

www.land.state.nd.us
www.discovernd.com



Gary D. Preszler, Commissioner

**TESTIMONY OF GARY D. PRESZLER
STATE LAND COMMISSIONER**

**HOUSE EDUCATION COMMITTEE
January 27, 2003**

IN SUPPORT OF HB1119

Madam Chairman Kelsch, members of the House Education Committee, I am Gary D. Preszler, Secretary for the Board of University and School Lands and Commissioner for the State Land Department.

House Bill No. 1119 establishes the creation of an Indian Cultural Education Trust to be administered for the purpose of generating income to benefit Native American cultural education. The Coteau Properties Company first approached the Board and the Land Department about the concept of establishing a trust for the donation of land and monies as a means to provide for the protection and preservation of significant historical and cultural sites and minimize the need to perform some archaeological excavation required for coal mining permits. House Bill No. 1119 was crafted after several meetings between Land Department, the Attorney General's office, and Coteau representatives. The Board reviewed and approved the final bill draft.

BOARD TRUST ADMINISTRATION RESPONSIBILITIES

The Board has sole discretion to accept any gift of land or money and may divest any trust assets at any time. Donated land can only be leased for grazing or haying purposes and must be leased in the same manner as other school or institution trust lands are leased. Trust lands are leased at public auction and leases are limited to no more than five years in duration.

Any gift of money would also be managed as with other trusts financial assets by co-mingling the investments according to the established investment policy asset allocations.

The donor agreement must designate the tribe to which distributions are paid and must specify the recipient of land or monies in the event of divestiture. Additionally, the Board would not have any responsibility to determine or manage cultural resource sites.

ADMINISTRATIVE COSTS

Board expenses would be charged against trust income for managing the land and money under the same procedures used to manage other trusts. This would include land administration expenses to cover office overhead and for other expenses such as to conduct field inspections and lease auctions. An administrative cost will also be assessed for investment expenses related to administrative time and resources and manager fees.

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Doreen G. Ball
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10/2/03
Date

Testimony of Gary D. Preszler
House Bill 1119 - Page 2
January 27, 2003

COUNTY PROPERTY TAXES

Any trust land would be subject to County property taxes the same as apply to private lands. A continuing appropriation authorizes the Board to pay the in-lieu tax from trust income.

FISCAL NOTE

The prepared Fiscal Note was completed using Coteau's planned land and money donation contemplated as part of the company's west mine area permit. The minimal expenses identified with this proposed donation could be performed with existing staff without any fiscal impact.

I urge the committee to grant favorable consideration and give HB 1119 a "do pass" recommendation.

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Deanna Baller
Operator's Signature

10/2/03
Date

**TESTIMONY BEFORE THE HOUSE EDUCATION
COMMITTEE**

Concerning HB1119

January 27, 2003

**Dean Peterson, THE NORTH AMERICAN COAL
CORPORATION**

Madam Chairman and members of the Committee, my name is Dean Peterson. I am here today representing The North American Coal Corporation – North Dakota's largest lignite producer. North American Coal has two subsidiaries, The Coteau Properties Company and The Falkirk Mining Company that collectively produce over 23 million tons of lignite each year for energy conversion facilities located in North Dakota.

We support the passage of HB1119 that establishes an Indian cultural education trust. The State Land Department has given you a good review of the content and purpose of this proposed legislation. I want to make just a few comments regarding our interest in HB1119.

In May of 2002, The Coteau Properties Company filed a mining permit application with the North Dakota Public Service Commission (PSC) that includes 17,051 acres of land in the West Mine Area. The PSC recently deemed the permit application complete for public review and comment. That process is now underway. Coteau expects approval of the permit application by the end of this year.

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Donna H. [Signature]
Operator's Signature

1/21/03
Date

Concurrent with the permit development and regulatory review process, Coteau is preparing a Cultural Resource Management Plan for the West Mine Area located in Mercer County. It is now in a 4th draft. Part of this management plan includes the establishment of an Indian Cultural Education Trust. As stated in Coteau's draft Cultural Resource Management Plan:

"The purpose of the Trust will be to hold the lands containing cultural resource sites for their protection and preservation and to provide funding for educational activities for Native Americans that advances knowledge about the previous inhabitants of the area. This includes education about past cultural and spiritual practices, folkways and customs that may otherwise be lost across the generations. In addition to physical site preservation, the Trust will serve to protect Native American heritage for the future, and allow free access by Native American tribes for traditional and spiritual activities and collection of traditional plants."

In summary, HB1119 will give Coteau and others entities an important tool in managing important cultural resource sites located in North Dakota. We would appreciate your do pass vote for this bill.

Technical persons attending this hearing with me today are:

Jim Melchior, Land Manager
The North American Coal Corporation

Brian Bjella, Legal Counsel
Fleck, Mather & Strutz Ltd

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Donna Hall
Operator's Signature

10/2/03
Date

TESTIMONY
presented by
Elgin Crows Breast
Cultural Preservation Officer
Three Affiliated Tribes
Fort Berthold Indian Reservation
404 Frontage Road
New Town, North Dakota 58763
for
House Bill 1119:
"Indian Cultural Education Trust Fund"

Date: January 27, 2003

Honorable Madam Chairwoman and distinguished Representatives of the Committee; I'm grateful for the opportunity to testify on House Bill 1119, establishing an "Indian Cultural Education Trust Fund." on behalf of the Three Affiliated Tribes. I will give a brief history of this project and then explain why we believe there is a need to establish such a fund.

About four (4) years ago, Coteau Freedom Mine sent letters to the Three Affiliated Tribes letting us know that cultural resources may be destroyed in a future mining area, known as the West Mine Area. Complying with federal law; the **National Historic Preservation Act (NHPA)** or the **Native American Graves Protection and Repatriation Act (NAGPRA)**, they discovered this through a required archaeological investigation or survey, which determined that historic and prehistoric sites were present in the mining area. The Section 106 process of the NHPA requires entities to consult with Indian tribes if cultural resources may be disturbed and have religious significance to a tribe where there is federal involvement or an undertaking on these lands. There are federal and private coal deposits in the West Mine Area. The Bureau of Land Management and other private landowners have coal minerals in the West Mine Area.

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The Three Affiliated Tribes Cultural Preservation Office met with the Coteau Mining Company on numerous occasions over the past 2 years , discussing the cultural resources inherent in these important sites and what they mean to the Tribes. we also discussed a Cultural Resources Management Plan. In the Plan document there is a section written, which explains the issues of concern that establishes the Indian Cultural Trust Fund.

Centuries ago, our Tribes roamed and lived in this area. The Three Affiliated Tribes, in particular, have long established ties to this part of the country. During times of hardship living on the prairie, certain tribal and individual religious ceremonies were performed to alleviate and heal hardships among the people. Buffalo calling ceremonies, rain ceremonies and other ceremonies were performed which had great meaning and sacrifice. To gain favor from their medicines, effigies and other rock alignments were made to the heavens; the stars, the sun, the moon and the Creator.

Today, a lot has changed. We no longer own the land but we still have our ceremonies and beliefs and our sacred rock alignments and prayer circles are still there. We visit them whenever we can, offering prayers in reverence for our old ways. Sometimes we are not given permission to enter on the land and get chased away by the present day landowners. The struggle to hold on to and keep what is sacred within our culture is getting very difficult to do, with many of our sacred things being destroyed for modern development.

There are still these stone features left, but they are disappearing quickly. Once gone, they will never return to their original meaning or place. We, as tribal people, need

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to record or be afforded the time to record these most sacred places; to teach our children about them; to educate them on what once was and their meanings, and how the very existence of our children is tied to these ritual markings of the land.

By establishing a Indian Cultural Education Trust Fund we can address and enhance secondary educational needs in the Social Sciences, Archaeology, Anthropology, as well as tribal history and culture, to include Creation stories of our Genesis, and stories that teach lessons in life in a tribal cultural curriculum. Our purpose is to spark an interest in these sciences; to ultimately bring them to know themselves, to respect themselves and have respect for others and their property. Thank you.

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HB 1119
House Education Committee
January 27, 2003

Testimony by Merl Paaverud, Director
State Historical Society of North Dakota

Chairperson and members of the Committee, my name is Merl Paaverud and I am the Director of the State Historical Society of North Dakota. It is a pleasure to be with you today.

The State Historical Society whole heartedly supports establishing an Indian cultural education trust. We request however, that House Bill 1119 be amended on Page 1 line 24 and Page 2 lines 1-2. Those lines state "The Board is not responsible for determining which lands have cultural resource significance or for any site preservation or maintenance measures deemed necessary by the donor or the affected tribe." In cases where land is donated, and particularly in those instances when this occurs as a mitigation measure for purposes of site preservation, we propose that the bill outlines that: Any historical or archaeological site that is found or located upon any land donated and which is, in the opinion of the director of the State Historical Society of North Dakota, significant in understanding and interpreting the history and prehistory of the state, may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board. The above would not prohibit the lands from grazing or haying as outlined in the bill but would require the SHSND be notified prior to any ground disturbing activity and that approval for such activity be secured.

This concludes my testimony. Thank you for your time and consideration.

HOUSE BILL NO. 1119
House Education Committee
January 27, 2003
Proposed Amendment

Prepared by Merl Paaverud, Director
State Historical Society of North Dakota

The proposed language to be used in House Bill No. 1119 on page 2 (line 4) please insert:

Any historical or archaeological site that is found or located upon any land donated and which is, in the opinion of the director of the State Historical Society of North Dakota, significant in understanding and interpreting the history and prehistory of the state, may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board.

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Operator's Signature

10/2/03
Date

1707 North 9th Street
PO Box 5523
Bismarck, ND 58506-5523
Phone: (701) 328-2800
Fax: (701) 328-3660

www.land.state.nd.us
www.discovernd.com

**ND STATE LAND
DEPARTMENT**

Helping to Fund Education

Gary D. Preszler, Commissioner

January 28, 2003

Representative Sitte
House Education Committee
State Capitol

RE: HB 1119 Proposed Amendments

Dear Representative Sitte:

I have reviewed the proposed amendments offered by State Historical Society (SHS) Director Paaverud. In my opinion the amendments are not necessary for the following reasons:

1. The first sentence is taken verbatim from § 55-02-07 N.D.C.C., and the second sentence is also unnecessary as the Board is fully aware of SHS Board approval before any sites are disturbed;
2. Having duplicate statutory language places a burden on future legislative assemblies to ensure that changes made to one are mirrored in the second statute; and,
3. HB 1119 does not in any way preempt the approval requirements under § 55-02-07 N.D.C.C.

The Board is fully aware of the requirements of § 55-02-07 N.D.C.C. and the SHS role in monitoring and protecting archaeological sites. HB 1119 does not in any way circumvent the Board of University and School Lands in working with the SHS Board.

Sincerely,



Gary Preszler
Secretary to the Board of University and School Lands, and
Commissioner State Land Department

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Date

1707 North 9th Street
PO Box 5523
Bismarck, ND 58506-5523
Phone: (701) 328-2800
Fax: (701) 328-3850

www.land.state.nd.us
www.discovernd.com



**TESTIMONY OF GARY D. PRESZLER
STATE LAND COMMISSIONER**

**SENATE EDUCATION COMMITTEE
March 11, 2003**

IN SUPPORT OF HB1119

Chairman Freborg, members of the Senate Education Committee, I am Gary D. Preszler, Secretary for the Board of University and School Lands and Commissioner for the State Land Department.

House Bill No. 1119 establishes the creation of an Indian Cultural Education Trust to be administered for the purpose of generating income to benefit Native American cultural education. The Coteau Properties Company first approached the Board and the Land Department about the concept of establishing a trust for the donation of land and monies as a means to provide for the protection and preservation of significant historical and cultural sites and minimize the need to perform some archaeological excavation required for coal mining permits. House Bill No. 1119 was crafted after several meetings between Land Department, the Attorney General's office, and Coteau representatives. The Board reviewed and approved the final bill draft.

BOARD TRUST ADMINISTRATION RESPONSIBILITIES

The Board has sole discretion to accept any gift of land or money and may divest any trust assets at any time. Donated land can only be leased for grazing or haying purposes and must be leased in the same manner as other school or institution trust lands are leased. Trust lands are leased at public auction and leases are limited to no more than five years in duration.

Any gift of money would also be managed as with other trusts financial assets by co-mingling the investments according to the established investment policy asset allocations.

*The donor agreement must designate the tribe to which distributions are paid and must specify the recipient of land or monies in the event of divestiture. Additionally, the Board would not have any responsibility to determine or manage cultural resource sites.

ADMINISTRATIVE COSTS

Board expenses would be charged against trust income for managing the land and money under the same procedures used to manage other trusts. This would include land administration expenses to cover office overhead and for other expenses such as to conduct field inspections and lease auctions. An administrative cost will also be assessed for investment expenses related to administrative time and resources and manager fees.

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Testimony of Gary D. Preszler
House Bill 1119 - Page 2
March 11, 2003

COUNTY PROPERTY TAXES

Any trust land would be subject to County property taxes the same as apply to private lands. A continuing appropriation authorizes the Board to pay the in-lieu tax from trust income.

STATE HISTORICAL SOCIETY

Section 55-02-07, N.D.C.C. requires that State Historical Board approval is needed on any state or political subdivision owned land before any historical or archaeological artifact or site is disturbed. HB 1119 does not in any way preempt or circumvent the Historical Board's or Director's responsibilities or approval requirements under § 55-02-07 N.D.C.C., or diminish in any way the Board of University and School Lands responsibility to cooperate with the Director in identifying and implementing reasonable alternatives.

FISCAL NOTE

The prepared Fiscal Note was completed using Coteau's planned land and money donation contemplated as part of the company's west mine area permit. The minimal expenses identified with this proposed donation could be performed with existing staff without any fiscal impact.

I urge the committee to grant favorable consideration and give HB 1119 a "do pass" recommendation.

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Deanna Hall
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**TESTIMONY BEFORE THE SENATE EDUCATION
COMMITTEE**

Concerning HB1119

March 11, 2003

**Dean Peterson, THE NORTH AMERICAN COAL
CORPORATION**

Mr. Chairman and members of the Committee, my name is Dean Peterson. I am here today representing The North American Coal Corporation – North Dakota's largest lignite producer. North American Coal has two subsidiaries, The Coteau Properties Company and The Falkirk Mining Company that collectively produce over 23 million tons of lignite each year for energy conversion facilities located in North Dakota.

We support the passage of HB1119 that establishes an Indian cultural education trust. The State Land Department has given you a good review of the content and purpose of this proposed legislation. I want to make just a few comments regarding our interest in HB1119.

In May of 2002, The Coteau Properties Company filed a mining permit application with the North Dakota Public Service Commission (PSC) that includes 17,051 acres of land in the West Mine Area. The PSC recently deemed the permit application complete for public review and comment. That process is now underway. Coteau expects approval of the permit application by the end of this year.

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Concurrent with the permit development and regulatory review process, Coteau is preparing a Cultural Resource Management Plan for the West Mine Area located in Mercer County. It is now in the preliminary final draft stage. Part of this management plan includes the establishment of an Indian Cultural Education Trust. As stated in Coteau's draft Cultural Resource Management Plan:

"The purpose of the Trust will be to hold the lands containing cultural resource sites for their protection and preservation and to provide funding for educational activities for Native Americans that advances knowledge about the previous inhabitants of the area. This includes education about past cultural and spiritual practices, folkways and customs that may otherwise be lost across the generations. In addition to physical site preservation, the Trust will serve to protect Native American heritage for the future, and allow free access by Native American tribes for traditional and spiritual activities and collection of traditional plants."

In summary, HB1119 will give Coteau and others entities an important tool in managing important cultural resource sites located in North Dakota. We would appreciate your do pass vote for this bill.

Technical persons attending this hearing with me today are:

Jim Melchior, Land Manager
The North American Coal Corporation

Brian Bjella, Legal Counsel
Fleck, Mather & Strutz Ltd

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TESTIMONY
presented by
Elgin Crows Breast
Cultural Preservation Officer
Three Affiliated Tribes
Fort Berthold Indian Reservation
404 Frontage Road
New Town, North Dakota 58763
for
House Bill 1119:
"Indian Cultural Education Trust Fund"

Date: March 11, 2003

Honorable Chairman Frebourg and distinguished Representatives of the Committee; I'm grateful for the opportunity to testify on House Bill 1119, establishing an "Indian Cultural Education Trust Fund." on behalf of the Three Affiliated Tribes. I will give a brief history of this project and then explain why we believe there is a need to establish such a fund.

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Danna Holbrook
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TRIBAL BUSINESS COUNCIL
(701) 627-4781
Fax (701) 627-3805

MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation
404 Frontage Road • New Town, North Dakota 58763-9402

58th Legislative Assembly
North Dakota State Legislature
Senate Education Committee

Testimony of Chairman Tex G. Hall
Mandan, Hidatsa and Arikara Nation
(The Three Affiliated Tribes)

Regarding HB 1119

March 11, 2003

Dosha! Mr. Chairman, members of the Committee. This testimony is being offered on behalf of the Three Affiliated Tribes by Chairman Tex G. Hall. I am sorry I cannot be present at the hearing in this matter today, but I am confident that our cultural preservation officer, Elgin Crows Breast, will be present to provide you background on why passage of HB 1119 is important to our Tribe.

Attached to this testimony are some amendments that we have developed with regard to this bill. We ask that you consider the amendments carefully, as they are intended to clarify the purpose of the establishment of the "Indian cultural trust" within the Board of University and School Lands.

As you have heard from Mr. Crows Breast's testimony, much activity on private lands affects the sites that have been sacred to our peoples for since ancient times. These sites are associated with a broad variety of activities. For example, sites often erroneously referred to as "tipi rings" are sites associated with a diverse number of ceremonies for such things as prayer, burials, fertility, or many other purposes that are within the wisdom of our elders. It is often the site itself that is sacred, not the objects on the site, so that simply moving artifacts a site from one location to another effectively means the site is destroyed.

The Indian cultural trust established by HB 1119 is intended to provide a mechanism, not now present in state law to preserve those sites. At the same time, as you will note, the tax base of the local jurisdiction in which land donated to the trust is preserved because the income from the trust must be used in part for payments in lieu of taxes for that site.

The Indian cultural trust is intended to be used by any Federally recognized tribe that wishes to use this mechanism to preserve their cultural sites and other lands that are of significance, but it can also be used to generate income for protection of sites identified in the future. We appreciate the work that the Coteau mining company has done to assist us in creating this legislation.

Again, I urge this Committee to pass the amendments provided and to provide a DO PASS recommendation for HB 1119.

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Suggested Amendments to H. 1119:

1. Number each separate paragraph which has a heading; i.e., **2. Trust establishment.**

2. Put in a findings paragraph which would read as follows:

1. **Findings.** The North Dakota legislature finds that –

a. For thousands of years, the area that comprises the state of North Dakota has been the home of indigenous peoples, who are now known as Native Americans or American Indians who developed a rich culture and for whom certain sites or areas within the state were of cultural or religious significance.

b. Private activities which disrupt the features of the land in North Dakota such as construction of buildings, roads and other construction projects; mining for coal; extraction of oil and other resources; private flooding of lands and other similar activities have an adverse effect on those sites which are of cultural or religious significance to the federally recognized Indian tribes that have lived or still live in the state.

c. No procedure or system has previously existed which can be used to mitigate the impact of these activities on the sites which are of cultural or religious significance to the Indian tribes.

d. Establishment of a trust will allow the Indian tribes in the state of North Dakota to work with private individuals and other private entities to seek ways to preserve the sites which are of cultural or religious significance to the Indian tribes, while at the same time provide for payments in lieu of taxes for such sites that become part of the trust..

~~3. Page 1, Line 9:~~

~~Prior to the words "The board" add the following. "Subject to subsection 4 of this section, it"~~

~~4. Page 1, after the section with the heading "Powers and duties of the board", add the following section:~~

~~**4. Trust Committee.** Unless otherwise provided in the donor agreement, upon acceptance of the first gift, grant, bequest, or devise of land into the Indian cultural trust established by this section the Board shall establish a Trust Committee composed of not less than three (3) adult persons who are members of a federally recognized Indian tribe that attaches significant cultural or religious importance to the land accepted by the Board and who are nominated by the affected Indian tribe. It shall be the duty of the Trust Committee to~~

provide recommendations to the Board concerning management of the land. accepted by the Board into the Indian cultural trust, which recommendations shall be followed by the Board unless contrary to state law or to this section. Management may include such things as surveying the land for cultural sites on the land or taking steps to protect cultural or religious sites contained on the land.

5. Page 2, Line 4, add the following sentence after the word "purposes.":

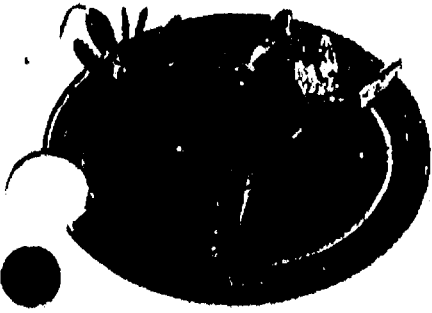
The donor agreement may contain provisions for: a) the management of the land, including how expenses involved in management of the land will be paid; b) use of the land by the affected Indian tribe; c) if the gift, grant bequest or devise is money or other assets are meant to generate income, for what purposes income from the assets are to be used; and d) other provisions that will permit the asset accepted by the Board to be used to preserve cultural or religious sites of significance to federally recognized Indian tribes on private land.

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404 Frontage Road • New Town, North Dakota 58763-9402

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(701) 627-4781
Fax (701) 627-3805

March 11, 2003

Hon. Layton Freborg
Chairman
Senate Education Committee
North Dakota State Senate
State Capitol Building
600 E. Boulevard Ave.
Bismarck, ND 58505

Re: HB 1119, Establishment of Indian Cultural Trust

Dear Senator Freborg:

Today several amendments to HB 1119 were submitted on behalf of the Three Affiliated Tribes. The purpose of the amendments was to clarify the reasons for the establishment of the "Indian cultural education trust" by HB 1119, and to clarify what should be included in the "donor agreement" regarding the property (land, funds, or other assets) that is being placed into the Indian cultural trust so that the relationship between the "donor agreement" and the Board of University and School Lands (the Board) relating to management of the trust is more easily understood.

However, in discussing these issues with Gary Preszler from the Board of University and School Lands, and other framers of the legislation, including those who testified at the hearing on HB 1119 today in your Senate Education Committee, I believe the concerns of the Tribe can be met in other ways than amending the legislation. Therefore, I do not believe it is necessary for the Committee to consider or adopt the proposed amendments I submitted at this time.

I do ask that this letter be made a part of the legislative record in this matter. Therefore, to clarify the testimony of Chairman Hall in support of the legislation, I want to reiterate the basic reasons HB 1119 is needed and to state for the record what the Three Affiliated Tribes believes the relationship should be between the Board of University and School Lands, the donor of property to the Indian cultural trust and the Tribe for whose benefit the property is being donated regarding the management of the Indian cultural trust created by HB 1119.

First, as to the reasons the bill has been introduced (this is a restatement of the findings in the proposed amendments) -

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For thousands of years, the area that comprises the state of North Dakota has been the home of indigenous peoples, who are now known as Native Americans or American Indians who developed a rich culture and for whom certain sites or areas within the state were of cultural or religious significance. As lands belonging to these indigenous peoples were taken by the United States and sold to private owners, activities on these lands take place and have taken place such as construction of buildings, roads and other construction projects; mining for coal; extraction of oil and other resources; private flooding of lands and other similar activities that have an adverse effect on those sites which are of cultural or religious significance to the federally recognized Indian tribes that have lived or still live in the state.

No procedure or system has previously existed which can be used effectively to mitigate the impact of these activities on the sites which are of cultural or religious significance to the Indian tribes, other than outright purchase of the lands in question by the affected Tribes, and purchase opportunities for such lands rarely arise. Establishment of an "Indian cultural trust" within the Board of University and School Lands will allow the Indian tribes in the state of North Dakota to work with private individuals and other private entities to seek ways to preserve the sites which are of cultural or religious significance to the Indian tribes, while at the same time provide for payments in lieu of taxes for such sites that become part of the trust.

To establish the Indian cultural trust with the Board of University and School Lands, HB 1119 permits the Board to accept property of any kind only if there has been put in place a "donor agreement" between a federally recognized Tribe and a donor of the property to be placed in the trust. The Board does not intend to manage the property with regard to protection of any sites of cultural or religious significance. Rather, the "donor agreement" is intended to make provisions for management of cultural or religious sites within a parcel of land that is donated that the Tribe wants protected.

HB 1119 provides that the "donor agreement" must designate the recipient of the land in the case of divestiture by the Board and must designate the recipient of distributions from the funds generated by the donation to the trust. In addition, the "donor agreement" may contain provisions for such things as: a) the management of the land, including protection of sites the Tribe considers important; b) what the mechanism for management of the land will be; c) how expenses involved in management of the land will be paid; d) use of the land by the affected Indian tribe; e) if the gift, grant bequest or devise is money or other assets are meant to generate income, for what purposes income from the assets are to be used; and f) other provisions that will permit the asset accepted by the Board to be used to preserve cultural or religious sites of significance to federally recognized Indian tribes on private land and to provide for cultural education.

The Board of University and School Lands, in return, will administer any property it accepts into the trust in accordance with the ordinary standards for property administration it presently employs. Lands donated will only be leased for grazing or haying purposes. The Board will charge an appropriate fee for the administration of the

lands and will make sure that the "payments in lieu of taxes" are made as provided in HB 1119.

This process should work for any Tribe that wishes to take advantage of the trust mechanism established by HB 1119. The Mandan, Hidatsa and Arikara Nation believes establishment of this trust mechanism is an important first step in preserving as many of its cultural and religious sites that are on private lands as possible.

Sincerely yours


Thomas M. Disselhorst
Attorney for the Three Affiliated Tribes

cc: Tribal Business Council
Elgin Crows Breast
Board of University and School Lands
North American Coal Corporation