

FISCAL NOTE
Requested by Legislative Council
03/24/2017

Amendment to: SB 2245

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0				
Expenditures	\$0	\$0				
Appropriations	\$0	\$0				

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

A BILL for an Act to provide for a legislative management study to examine the desirability and feasibility of creating a state wetlands bank.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Non Applicable

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.*
- 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.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Lance Gaebe

Agency: ND Department of Trust Lands

Telephone: 701-328-2800

Date Prepared: 03/24/2017

FISCAL NOTE
Requested by Legislative Council
02/10/2017

Amendment to: SB 2245

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0				
Expenditures	\$0	\$0				
Appropriations	\$0	\$0				

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires the creation of a list of state lands and private lands remediated by a state reclamation fund that may qualify for wetland mitigation by July 1, 2018. The fiscal impact of the bill cannot be determined.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Department of Trust Lands on behalf of the Board of University and School Lands, manages over 700,000 acres of surface, most of which were granted to the State to provide financial support for public schools. Most of those acres are located in the western part of the State. Outside of mineral development, trust land use is constitutionally limited to pasture and meadow purposes, thus much of this land is relatively undisturbed. Few tracts have previously drained wetlands that could be restored. It is unknown how many parcels have acreage suitable for creating or enhancing wetlands. Any wetland mitigation projects would need to be compatible with the purposes put forth in the State Constitution and would need to provide value or income to the trusts. The fiscal impact of the bill to the Board and the trust funds is unknown.

The Game and Fish Department Wildlife Management Areas consist of approximately 220,000 surface land acres. Approximately half of that acreage is State owned and half is leased by the Game and Fish Department. The fiscal impact of the bill to the Game and Fish program management is unknown.

There are an estimated 100 brine ponds on private lands in the north central portion of the state which require remediation of salt and any other contamination from the surrounding soil. The brine ponds are monitored by the Department of Mineral Resources. The fiscal impact of the bill to the DMR is unknown.

A list of school trust lands and the Game and Fish PLOTS Guide showing wildlife management areas a available on the Department of Trust Lands' web site: <https://land.nd.gov/surface/AerialPhotos.aspx>

For all Departments there would be costs associated with analyzing field data and conducting on-the-ground inspections to determine suitability of parcels once the eligibility criteria are established. The July 1, 2018 deadline would present challenges related to staff availability.

All school trust lands are inspected at least once every 5 years. Wetland mitigation reviews and the compilation of a

list of suitable tracts in accord with those inspections could reduce costs and the inefficiencies of completing separate inspections.

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.*

- 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.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Lance Gaebe

Agency: ND Department of Trust Lands

Telephone: 701-328-2800

Date Prepared: 02/10/2017

FISCAL NOTE
Requested by Legislative Council
01/16/2017

Bill/Resolution No.: SB 2245

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
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Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

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School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires the creation of a list of state lands that may qualify for use as wetlands mitigation by July 1, 2018. The fiscal impact of the bill cannot be determined because the eligibility criteria for determining suitable tracts is unknown.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Over 700,000 surface land acres, most of which were granted at statehood to provide financial support for public schools, are managed by the Department of Trust Lands on behalf of the Board of University and School Lands. Most of those acres are located in the western part of the State. Outside of mineral development, trust land use is constitutionally limited to pasture and meadow purposes, thus much of this land is relatively undisturbed. Few tracts have previously drained wetlands that could be restored. It is unknown how many parcels have acreage suitable for creating or enhancing wetlands. Any wetland mitigation projects would need to be compatible with the purposes put forth in the State Constitution and would need to provide value or income to the trusts. The fiscal impact of the bill to the Board and the trust funds is unknown.

The Game and Fish Department Wildlife Management Areas consist of approximately 220,000 surface land acres. Approximately half of that acreage is State owned and half is leased by the Game and Fish Department. The fiscal impact of the bill to the Game and Fish program management is unknown.

For both Departments there would be costs associated with analyzing field data and conducting on-the-ground inspections to determine suitability of parcels once the eligibility criteria are established.

A list of school trust lands and the Game and Fish PLOTS Guide showing wildlife management areas are available on the Department of Trust Lands' website: <https://land.nd.gov/surface/AerialPhotos.aspx>

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.*

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Name: Lance Gaebe

Agency: ND Department of Trust Lands

Telephone: 701-328-2800

Date Prepared: 01/20/2017

2017 SENATE AGRICULTURE

SB 2245

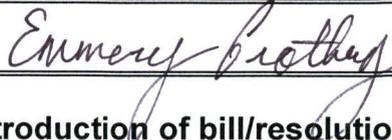
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2245
1/26/2017
Job # 27431

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to listing parcels under the control of certain state entities for use as wetlands mitigation

Minutes:

Attachments: #1-7d

Chairman Luick opened the hearing on SB 2245.

Senator Dotzenrod, District 26: Introduced SB 2245. This bill does not create a wetlands bank and it does not have any reference in it to a wetlands bank. It is just a short bill that asks that we try to a list of parcels of land in ND that could and may qualify for wetlands. There are two primary stake landholders that we saw in the state who control and have management responsibility for the larger number of acres that are state owned. The state trust lands division and the ND Game & Fish Department are responsible and has management over quite a few acres. The bill simply asks them in consultation with the NRCS to put together a list of parcels they have looked over the property they have responsibility for to put together a list of parcels, legal descriptions and parcels that may qualify for wetlands mitigation. The bill says the list is to be submitted to the Agriculture Commissioner no later than July 1st, 2018. This bill by itself does not create a wetlands bank but the thought was in preparing this bill was that if we could make that initial determination of how many acres and if there is enough there, the next step in the next session would be to look at what it would take to put in place a wetlands bank.

(5:16) **Scott Rising, ND Soybean Council:** Testified in Support of SB 2245. It is worthwhile to take a look at what the possibilities might be.

(5:48) **Dan Wogsland, ND Grain Growers:** Testified in Support of SB 2245 (See Attachment #1).

(6:50) **Carson Klosterman, ND Corn Growers:** Testified in Support of SB 2245 (See Attachments #2 and #3).

(8:17) **Mike Dwyer, ND Water Resource Districts:** Testified in Support of SB 2245.

Chairman Luick: Last session, we did put together a bank of some sorts. Do you have any reference to that?

Mike Dwyer: I do not.

(9:22) **Mike McEnroe, ND Wildlife Federation:** Testified in Opposition to SB 2245 (See Attachment #4).

(12:00) **Senator Larsen:** We had been discussing the amount of acres: the 706,820 acres that the state had. Do you know the total amount of the federal government's acres?

Mike McEnroe: I do not have those figures. I believe 706,820 acres is the acreage of the land in the state trust land department. Some of those agencies would have those numbers.

Senator Larsen: Won't this make it easier to find out the total amount of land that is out there?

Mike McEnroe: I believe it would be easier to find and I believe the idea of having a central repository of data is a good thing. Again, our concern is using public land and publically funded mitigation for private drainage.

(14:15) **David Dewald:** Testified in Opposition to SB 2245 (See Attachment #5).

(18:45) **Carmen Miller, Ducks Unlimited:** Testified in Opposition to SB 2245 (See Attachment #6).

(23:00) **Chairman Luick:** When a wetland it mitigated today, can you go through the process or identification of how the size of mitigated acres is comparable today? I know that there was a question years ago about places where wetlands were doubled and tripled in size.

Carmen Miller: I may have get back to you with numbers. Basically the Corps of Engineers standards and requirements are rigorous for wetland mitigation. It is a complicated process and it depends on the size and nature of the wetland that is impacted and that is something that is determined by a federal system.

Chairman Luick: Do you know the approximate expenses that go along with mitigating these acres?

Carmen Miller: It varies per acre depending upon the location impacted and the nature of the wetland impacted and the watershed. It depends on the nature of the project and what the circumstances are.

Chairman Luick: Do you know how many acres you mitigated in the last two years?

Carmen Miller: I will have to let you know. The system says if someone purchases the credits for us, we have three years to satisfy the obligation. So the system is relatively new. I know two sessions ago, I testified and mentioned this system and it was very new then. I can look into that and get back to you.

Chairman Luick: Have you mitigated any agricultural wetlands?

Carmen Miller: No we have not, but not for any particular reason. We are an equal opportunity credit seller and would sell to anyone who was interested. I think there have been some inquiries and things haven't happened yet.

Jack Formo, Farmer, Barnes County: Testified Neutral to SB 2245. Mr. Formo said farmers do need regulations but wetlands can damage soil.

(29:45) **Senator Dotzenrod:** There was reference to the highest and best use of the land. If you look at the revenue the state generates on state owned land and compare that to the revenue that would be potentially available if you could do some mitigation, most of these mitigated acres are selling from \$5,000 - \$10,000 an acre. In most cases, the value of wetlands is double what the best farmland in the state is worth. There is an opportunity to generate a lot of revenue. I didn't mention that earlier when I was up here because I think this is about trying to accommodate a legal requirement that is imposed on agriculture and everyone else to find the wetlands and we are looking for a solution to that. In terms of the highest and best use, it seems to me that if you could do some wetlands mitigating you would be generating a lot of revenue. Also there was reference that on state owned land the wetlands universe was limited to restoring drained wetlands and I may not understand how the rules would work on state owned land but in private owned land, we have a lot of wetlands that are created on land where there is no prior drainage or restored wetlands.

We do have some wetland banks in the state but the acres that are available are low and most of these are sold to the high bidder and in most cases, it is the highway department or a road construction contractor and agriculture has to bid against that limited volume that is available under the current situation without expand the universe of available wetlands. All of the costs would be paid by those seeking the wetlands; there would be no public cost here. The state director for the NRCS is here and is available to answer any questions you may have about the NRCS. In order to make this work, you would have to have the NRCS involved because they would set the criteria about what would be acceptable. I think we would also enhance the public use opportunities for people in the state because a lot of these would be on public land, not private land. I can't help but think it would be a wetland that does not get tilled every year would be much better for wildlife use than the current wetlands that tilled in the spring and the fall.

Michael Humann, Surface Division Manager, ND Department of Trust Lands: Testified Neutral to SB 2245 (See attachments #7a-#7d).

Chairman Luick closed the hearing SB 2245.

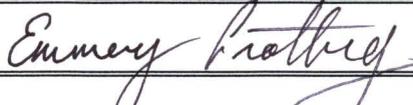
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2245
2/2/2017
Job # 27807

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to listing parcels under the control of certain state entities for use as wetlands mitigation

Minutes:

Attachment: #1-2

Chairman Luick opened the discussion on SB 2245.

Matt Linneman, Program Manager in the Environmental & Transportation Services Division, NDDOT: Testified Neutral on SB 2245 (See Attachments #1-2).

Senator Klein: Ducks Unlimited holds most of the mitigated acres now?

Matt Linneman: Correct. They are the only approved in lieu program in ND. They have the annual fee program and I think they are having success with their program. We have not participated in that program at the DOT because we have banking program where we can provide onsite mitigation.

Senator Klein: Mitigation costs the state a lot of money, correct?

Matt Linneman: Yes. It is much more economical at a bank because we can get a lot of credits out of one site. We can do a project alongside the road but that costs us a lot more money.

Senator Klein: I know there was a highway project that was put on hold because they didn't have the mitigated acres; mitigation is costing us a lot of money.

Matt Linneman: There are some nuances we have if there is an emergency situation. We do have the ability to go in and we have an agreement in place that to provide us with forgiveness for those impacts in emergency situations. When we come back with the full road reconstruction, we are required to provide mitigation.

Senator Klein: The bill before us would hope to provide mitigation. Would that be helpful?

Matt Linneman: The DOT is not making a determination on this bill

Senator Larsen: In making this land bank, are we excluding the national parks and the state parks or is it just private owned property that is going into this bank?

Matt Linneman: Do you mean the banks the DOT is developing? Or in relation to the list?

Senator Larsen: The list in general.

Matt Linneman: The way the bill reads now, the list is specifically for lands under the jurisdiction of the state land department and the ND Game & Fish.

Chairman Luick: Can you see any reason why we couldn't include federal land or Corps of Engineer land into this bill to sweeten it up?

Matt Linneman: There would be more restrictions with federal land and it would depend on what you were looking for as well. In our case, when we are looking for mitigation we have to provide some uplift to a resource to get any credit out of it. In the federal lands, they are already managing from those perspectives so it might be a lot harder to find anything that would be of a lot of value from our perspective under the rules we deal with. Conservation and mitigation banking under NRCS for agriculture production purposes is a little different and I am not familiar with all of that.

Senator Larsen: There could be possibilities with the BIA.

Senator Klein: The jurisdiction issue is when it gets difficult especially on the federal level.

Chairman Luick: Do you have any dealings with the federal government on any type of mitigation?

Matt Linneman: We do work with them. We have talked with certain agencies to see if we have any potential for mitigation.

Senator Larsen: Would you think the BIA would be open to some mitigation?

Matt Linneman: I think there is always a potential to make something work and they might be open to that but it adds another layer of complication to get a bank approved.

Senator Klein: Because of all the environmental rules and restrictions, you have a full time job.

Matt Linneman: Yes. We have a team of environmental scientists who work at the DOT and we work with them on every project. We try to invest time into banking because it provides us the best value from a dollar and ecological standpoint.

Chairman Luick: Would you explain the differences between credits and acres?

Matt Linneman: For wetland mitigation banking, there is a ND interagency guidance document on doing wetland mitigation banking. There is a ND interagency review team which includes the NRCS, federal highway, Army Corps of Engineers, US Fish & Wildlife, and ND Game & Fish. We get credit for providing uplift to the system. If there is a drained wetland, we can restore that its full function as before but we can typically get a one to one credit for that. So for every acre of restoration, we get one credit. If there is a wetland that is fully functioning on the landscape and we are going to preserve it in its current state, preservation only gives us ten to one. So for every ten acres, we only get one credit. So when we put a bank together, we have to identify all the wetlands and put a composite together. We get credits if we create anything with the bank but the think with creation is you get a two to one ratio but it is the most expensive.

Committee Discussion: The committee and Mr. Linneman continued to discuss credits and wetlands.

Lynn Helms, Director, Department of Mineral Resources: Testified Neutral on SB 2245. SB 2245 shares a sponsor with HB 1347. It would be helpful for industrial commission if you broadened this bill so the list of sources could be expanded as well as the list of users to make sure the list of users was extended to the DOT or infrastructure projects. The bill lists possible sources as the Game & Fish and Department of Trust lands.

Mr. Helms gave the committee an example of a reclamation process the DOT was working on. The House committee had given direction to build into one of the reclamation projects a wetland restoration project. He said if the senate expanded the list of possible sources to include the abandoned oil and gas well plugging and site restoration fund, it has the potential to bring another 1,400 or 1,500 acres of brand new wetlands into the wetland bank.

(27:25) **Senator Osland:** How are these developed?

Lynn Helms: In the 60s and 70s, it was common practice to dig a pit and put the produced water in the pit and hope that it would be evaporated. That worked in OK and TX but not in ND. So all of those pits were drained and buried. The problem is the brine that soaked into the glacial till is still there and in the wet dry cycles it tends to expand and contaminate more farm land around it to where the average site is 12 acres. So the concept we want to work with is to create a central pond and turn these into true wetland mitigation acres.

Senator Osland: What kind of water?

Lynn Helms: It was produced water from oil and gas formations. It rangers from salinity 3 to 10 times as salty as ocean water.

Senator Osland: Where did the salt water come from?

Lynn Helms: When the water was separated from the oil and gas formations. We are working on a potentially new source of brand-new wetland acres and we should expand the list in SB 2245 to include lands restored under the abandoned well plugging and site restoration fund.

Senator Piepkorn: When you say we are going to this plot, who is going to do it?

Lynn Helms: It would be my department. The fund is under the control of the Department of Mineral resources. If HB 1347 passes, we will be authorized to fund this research through the Department of Mineral Resources.

Senator Larsen: What is the deepest test well or location?

Lynn Helms: Part of the research is to determine what has happened since 1982 when the last set of ponds were closed. We believe that the one that we tested is the worst case. In 1984, when NDSU and the state geologist studied the 121 sites, the average was 20 to 40 feet.

Senator Larsen: Is there well testing if that has gotten in the ground water?

Lynn Helms: It absolutely is. So our recommendation is just to make sure the bill is more inclusive and if you would allow for lands restored or reclaimed under the fund and allow for lots of entities to use the mitigation acres.

Senator Piepkorn: So this depends on the success of the HB 1347.

Lynn Helms: Yes; as well as a successful research project and NRCS agrees to it. Admittedly, there's some risk associated with that; however, when we have talked about different ways of reclaiming these brine ponds, this is the one that gets people the most excited because it will use natural processes. There is no risk associated with adding it to the list of potential sources for wetland acres.

Committee Discussion: The committee continued to discuss with Mr. Helms the reclamation project and the disposal of salt water.

Lynn Helms: I would be happy to work with you on language that would expand the bill so we don't leave out sources of mitigation acreage.

Senator Klein: One of the things we heard in opposition was using public property for private use. We can work both of those things in here to alleviate those fears?

Chairman Luick: We need to look at any opportunity we have to make this collectively beneficial across the state.

Committee Discussion: The committee discussed with Mr. Linneman the possibility of working with the BIA for mitigated acres.

Chairman Luick: Closed the discussion on SB 2245.

2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2245
2/9/2017
Job # 28092

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmery Pottery

Explanation or reason for introduction of bill/resolution:

Relating to listing parcels under the control of certain state entities for use as wetlands mitigation

Minutes:

Attachments: #1 - 2

Chairman Luick: Opened the discussion on SB 2245. He provided the committee with a copy of amendment 17.0904.01001 (See Attachment #1).

(2:00) **Chairman Luick:** The intent of the bill is to make a list of possible areas in the state that are public lands and to use those lands as wetland mitigation areas. Discussing this bill with different individuals, I have found that the Army Corps of Engineers also has a tremendous amount of property in ND that may be added to this list and would improve this bill so I had this amendment crafted to include them in this. This bill is a public effort to make sure we have these wetlands in place. Since it is a public desire, the public need to understand that it should go back to the public lands instead of private.

Senator Klein: Lynn Helms suggested we add the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund. Did you look into that?

Chairman Luick: I may have an email with that amendment.

Senator Larsen: I also talked to Scott Davis about the tribes being a part of that pool as well. I told him we were going to have this discussion today. I am in full support of adopting Lynn Helms amendment. I don't know where we will go with the tribes but the opportunity is always open even if we miss out on the opportunity with this legislation.

(7:25) **Chairman Luick:** Provided the committee with amendment 17.0904.01000 (See Attachment #2).

The committee discussed the amendments and voting on the combined amendments.

Senator Klein: Moved to Adopt Amendments 17.0904.01000 and 17.0904.01001.

Senator Larsen: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Senator Klein: Moved Do Pass As Amended.

Senator Osland: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Senator Piepkorn will carry the bill.

CR
2/9/17

February 9, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2245

Page 1, line 8, replace "national" with "natural"

Page 1, line 9, after "service" insert "and United States army corps of engineers"

Page 1, line 11, after "lands" insert ", and on lands remediated by the department of mineral resources through the abandoned oil and gas well plugging and site reclamation fund"

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2245**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 17.0904.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2245

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Osland

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Piepkorn

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

REPORT OF STANDING COMMITTEE

SB 2245: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2245 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "national" with "natural"

Page 1, line 9, after "service" insert "and United States army corps of engineers"

Page 1, line 11, after "lands" insert ", and on lands remediated by the department of mineral resources through the abandoned oil and gas well plugging and site reclamation fund"

Renumber accordingly

2017 HOUSE AGRICULTURE

SB 2245

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2245
3/17/2017
Job #29402

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to listing parcels under the control of certain state entities for use as wetlands mitigation

Minutes:

Attachments 1-7

Senator Dotzenrod, Sponsor: This bill asks departments of state government that manage state land would provide a list of parcels to the Agriculture Commissioner that would be suitable for wetlands mitigation. This isn't creating a requirement for a wetlands bank. It is just asking for a list of parcels. There is a demand for wetlands for mitigation. Some is from road improvements and real estate developers along with agriculture. There is a market for wetlands. North Dakota has private wetlands banks in the state. They are putting them up for sale. In most cases farmers are being outbid.

Where can these be obtained? Does the state have some acres that could be put to a higher use? Many of the state acres are rented out for pasture land with low rent. Wetlands sell for \$5,000 to \$10,000 an acre. When there is mitigation, those wetlands are not purchased. The person isn't buying the new site. There is a lease agreement. There are NRCS resources available. Any wetland that is developed has to be under the guidance of the NRCS. They will design the wetland. New wetlands have to be 2 for 1. Example, 6 acres of wetlands moved to a new manmade wetland will be 12 acres. Naturally occurring that can be converted back, it is 1 to 1.

The language about the Army Corp of Engineers was added. They have some land to use. Department of Mineral Resources has 1400 acres of land and was added into the bill. The purpose is to see if the potential is there. Once the information is available, then the next step can be taken. There is no state money involved. There is still more demand than what we can find.

Representative Headland: Who has determined what is a wetland. Have the wetlands on state land been certified? If they haven't, who determines if it is a wetland?

Senator Dotzernrod: Line 8 says "in consultation with NRCS." The state has no authority to make a determination of what is a wetland. If there are manmade wetlands, they will be

designed and naturally shaped. Some farmers have done it with their own equipment. It takes about two days with two scrapers. They are moving about eight inches of dirt.

Representative Headland: Are we creating wetlands on state land or is it existing property that could be determined.

Senator Dotzenrod: We would use resources provided by NRCS to look at parcels across the state. We would look for land that had been prior converted and sites to construct manmade wetlands. If you create a wetland on pastureland, you don't own the wetland. It doesn't give you title but it is a substitute for the one you switched. The easement is lifted on the exchange if the first wetland returns to its original state.

Representative Hogan: Have any other states done this?

Senator Dotzenrod: The NRCS State Director thought there was a lot of potential. Some states have very few wetlands.

Representative Hogan: Because of the definition issues and the number of organizations, it sounds like a huge undertaking. Collecting the inventory will be a major process.

Senator Dotzenrod: The people who want to move the wetlands are going to have to pay for this. The Department of Trust Lands thought we don't even need a bill.

Vice Chair Trottier: Is there a minimum depth of water?

Senator Dotzenrod: I don't know that. The general rule is they want them shallow. The NRCS would determine that.

Representative Magrum: Would you be able to graze this land before July 15?

Senator Dotzenrod: This is a list. This process may take a number of years. There are a lot of questions about how much of an investment it would take. They are buying them for \$5,000-20,000 per acre.

Representative Magrum: Would that be a perpetual payment?

Senator Dotzenrod: It is a one-time fee. It is a lease payment to a landowner which would be the state. The NRCS uses the term "credit." When you mitigate, you don't get ownership.

Representative Magrum: Perpetual easements go forever?

Senator Dotzenrod: It is not forever. If the original wetland returns to a wetland, that lifts the easement on the other site.

Representative McWilliams: To summarize: If a farmer has a low spot, he can't drain it unless he mitigates it. Unless has some other land that he can convert at a ratio of 2 to 1

he can't move that wetland. We are looking at a bank of land from the state that the farmer can pay to convert and mitigate the wetland on his property with wetland that the state has.

Senator Dotzenrod: That is correct.

Representative Headland: Are we as a state allowing land that is not currently a wetland to be converted and then are we devaluing our property? Once it is a wetland it is not used for anything else.

Senator Dotzenrod: You can graze it.

Representative Headland: Cattle generally don't graze cattails.

Senator Dotzenrod: Generally these wetlands are usually not cattails and are farmed. It has created problems with the government imposing requirements. With cattails that is valuable wildlife resources and shouldn't be farmed.

I think it is a win for the state.

This bill doesn't create a wetlands bank. It is a list.

Chairman Dennis Johnson: If the state had an option between two quarters, they would take the good quarter and make wetlands out of it to mitigate acres.

Senator Dotzenrod: I don't know if the state has ever created manmade wetlands.

Chairman Dennis Johnson: With this bill they would be able to. It will take away land from farmers that are renting state land.

Senator Dotzenrod: That will be a question for the people looking at the list

Chairman Dennis Johnson: Who is taking care of the noxious weeds on the wetland?

Senator Dotzenrod: When the wetlands credit is purchased, the seller has to meet the requirements of maintenance. Every fifth year it has to be inspected. The large payment is supposed to provide enough revenue to take care of it.

Chairman Dennis Johnson: Forever?

Senator Dotzenrod: Yes. These are not large costs. It is someone going out to look and say it is okay.

Chairman Dennis Johnson: It has to be okay if they can't afford to spray it.

Senator Dotzenrod: The owner of the land is free to rent out the land.

Representative Skroch: Are farmers looking for certified wetland determination where it didn't exist before?

Senator Dotzenrod: People has always been free to farm those wetlands. The first imposition was in 1985. When the maps came out, you were free to farm those. They are not large spots. When tiling they want us to stay away 500 feet. That makes 1,000 feet across.

Representative Skroch: After certified, you can't go through those areas with drain tile. Now that piece of land may work for this program?

Senator Dotzenrod: Many farmers are not interested in going through the certification. When it is certified, then you can start the mitigation.

Representative Skroch: None of that type of land would be considered for the land you are creating wetlands out of?

Senator Dotzenrod: None of the state land is certified.

Representative Headland: Why would the state have an interest in converting? I would like this if we were talking about existing wetlands.

Senator Dotzenrod: The interest of the state is highest and best use. Do you want to have state owned land that has some public use benefit? If you have pasture land, you will enhance nesting opportunities and hunting. The state would look at higher revenue, preserving the current revenue, making it more friendly to wildlife, preserving ability to rent for pasture.

A tillable piece would be different. The state has many options. I don't think we want to create wetlands on tillable acres.

Chairman Dennis Johnson: We have lost 150,000 acres of tillable and pasture land in Ramsey and Benson County. Cash rent on land is very high because of the competition.

Senator Dotzenrod: There has been pressure to make wetlands a priority. This bill is about let's take a look and see what we have.

Representative McWilliams: If you mitigate on to state land and you paid \$5,000 an acre, does that give you the right to hunt?

Senator Dotzenrod: I don't think so. It still belongs to the original owner.

Mike Clemens, North Dakota Corn Growers Board, Wimbledon: This is a proactive approach to look at the inventory. Then the decision will be made after the deadline.

At our farm it was prohibitive to tile due to the numerous potholes. We worked with NRCS to move to other areas of my property mostly to the outside. Then we could tile the main piece of the field.

Wetland determination can be done by a hydrologist. The government still has to certify it.

The wetlands I moved I can put in grass. If it dries out I can farm those areas. This is to look at the revenue for the State of North Dakota.

(44:40)

Dan Wogslund, Executive Director, North Dakota Grain Growers Association:
(Attachment #1)

Scott Rising, North Dakota Soybean Growers Association: This bill is simply asking for an inventory of potential wetland mitigation options.

(46:45)

Cody VanderBusch, Reclamation Specialist, Oil and Gas Division, Department of Mineral Resources, North Dakota Industrial Commission: (Attachment #2)

Chairman Dennis Johnson: Would these areas qualify for wetlands if they have salts? Or do they have to be cleaned up first?

Cody VanderBusch: It would be part of the process. It would be creating a wetland and bringing out those salts. Many water plants are tolerable to salts.

Representative Headland: Why would you need this bill to do that?

Cody VanderBusch: We thought there would be more of a benefit if they could do that.

Opposition:

Chair transferred to **Vice Chair Trottier:**

(52:45)

Michael Humann, Surface Division Manager, North Dakota Department of Trust Lands: (Attachment #3)

The cost cannot be determined. We do know there will be costs. We inspect our lands once every five years. The list could be done over the course of a five-year period.

Representative Magrum: Your department is studying now. Would we have information by the next session?

Michael Humann: Included in attachment 3 is a map showing the distribution of our properties. Most of our land is in the western 2/3rds of North Dakota. We don't have a lot of land in the eastern third and that is where a lot of the drainage occurs. If there is trading, it would have to occur in that region. We could determine areas available for mitigation in a five-year period.

Representative Magrum: So most of these wouldn't even qualify west of the Missouri River?

Michael Humann: That is difficult to answer without an inventory. We might have a wetland drained by a county or township years ago without our knowledge.

Representative Headland: If there is farmland to mitigate in the Red River basin, the farmer can't go outside of the area to get acres?

Michael Humann: Correct.

Vice Chair Trottier: Does the NRCS have input for wetlands on trust lands?

Michael Humann: On our lease lands, if someone is in the farm program they would have to sign a form for wetlands annually.

(1:04)

Mike McEnroe, North Dakota Wildlife Federation: (Attachment #4)

The director of the state agencies could discuss wetland mitigation on state properties with the State Agriculture Commissioner and NRCS without a Century Code requirement to make a list.

(1:07)

David Dewald, Private Citizen, Retired NRCS Employee: (Attachment #5)

Representative Skroch: You said North Dakota taxpayers would be required to maintain and monitor restored or created wetlands. Does that relate to private lands? Senator Dotzenrod said they would be maintained by the property owner.

David Dewald: If this turns into a bank, the landowner would drain a wetland and buy a credit through a process. The landowner that drains the wetland has no responsibility. The owner of that bank has to maintain it. The State of North Dakota becomes a banker or a private bank.

Representative Kiefert: The existing wetlands wouldn't be eligible?

David Dewald: Existing wetlands usually are not eligible. NRCS wants created or restored wetlands. State school lands that are all in grassland that are continued to be grazed probably would not be eligible.

Representative Kiefert: I have heard some credits are sold at \$17,000 an acre.

David Dewald: And higher,

Vice Chair Trottier: The bill is just a collection of data.

David Dewald: Correct. There is no reason to do an inventory if there is no potential to move forward as a bank. It could be done with another state agency that needs mitigation credits. Then it could be kept as a public mitigation bank for infrastructure projects.

Representative Headland: This doesn't allow enough time. If we move the date, would that be more acceptable?

David Dewald: I can't say what the time would be to inventory 7,000 acres of State School Land. It couldn't be done in less than 3 or 4 years.

(1:15)

Terry Steinwand, Director, North Dakota Game and Fish Department: (Attachment #6)
We don't have people on staff with soils expertise. We would have to contract that out to follow the intent of this bill. We also do not have engineers on staff which would be contracted out.

If this type of wetlands, form and function wise, are required on state managed lands by Game and Fish, we already have them out there. To do anything different for another purpose would be considered diversion of funds and we could lose millions of dollars in revenue from the Pitman-Robertson Fund in a year. That is why we are opposed.

Representative Magrum: The study is to figure out which ones are available. If that happens these could be exempted anyway. Correct?

Terry Steinwand: It could be exempted. But just the fact that we would go out and inventory those areas, it could potentially be a diversion of funds.

Representative McWilliams: Can you take a wetlands map and overlay it with state-owned land and calculate what we have?

Terry Steinwand: If we are managing the property for public access for fish and wildlife related activities, if it is a restorable wetland we have already restored it. If it is a created wetland, we have already created it. We don't have the people on staff to determine the soils. We would have to determine if it would be a diversion of funds for Game and Fish.

Eric Lindstrom, Ducks Unlimited, Inc.: (Attachment #7)

You can't mitigate a wetland in different areas/counties. It has to be a like type of wetland to be mitigated.

This bill places undue staffing and financial burdens on state agencies during difficult budget times. There are no monies appropriated in this bill for the inventory.

(1:23)

Ducks Unlimited doesn't mitigate public land for private use. The cost of the credit is driven by the cost of the land.

I am not aware of any mitigation sites that have been lifted. If producers are in the federal farm program, they have requirements. They can opt out of the farm program.

These wetlands are not newly created. Sometimes they go dry but they are still a wetland.

Representative Schreiber-Beck: What is the per acre price?
What is the maintenance required? What is the cost per acre for maintenance?

Eric Lindstrom: The price per acre varies per site from \$2,000 up to \$50,000. It is a market driven system.

For the maintenance you have to insure the functions and values reach those replacements. The monitoring is every five years in perpetuity. The annual costs are significant. You don't just mitigate and walk away. Ducks Unlimited has the easement on the bank sites and we have worked with other partners to maintain the easement.

Representative Schreiber-Beck: Are you making money?

Eric Lindstrom: Ducks Unlimited has operated three mitigation banks in North Dakota. We have two in-lieu fee programs. We have one FEMA bank in the Devils Lake basin. It is expensive. It is not a huge revenue generator for us. Our policy is to break even.

Vice Chair Trottier: Do NRCS and FSA police this?

Eric Lindstrom: The Corp of Engineers banking for wetland mitigation is established. The NRCS Ag. bank has yet to be established. They would finalize the rules with public input. This puts the cart before the horse.

Vice Chair Trottier: Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2245—Committee Work
3/23/2017
Job #29612

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to listing parcels under the control of certain state entities for use as wetlands mitigation

Minutes:

Chairman Dennis Johnson: The bill sponsor would like to have this go to a study. Legislative management decides what studies are done. Since the agriculture interim committees are done with the rewrites there is a good chance this one will be studied.

Representative Magrum: Moved to adopt amendment #17.0904.02003

Representative Boschee: Seconded the motion

Voice vote. Motion passed.

Representative Boschee: Moved Do Pass as amended

Representative Magrum: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 2.

Do Pass as amended carries.

Representative Magrum will carry the bill.

3/23/17 DA

17.0904.02003
Title.03000

Prepared by the Legislative Council staff for
Senator Dotzenrod

March 23, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study to examine the desirability and feasibility of creating a state wetlands bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE WETLANDS BANK. During the 2017-18 interim, the legislative management shall consider studying the desirability and feasibility of creating a state wetlands bank. The study must include consultation with stakeholders to examine land parcels under the control and management of the state which are suitable for wetlands mitigation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2245**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: #17.0904.02003

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Magrum Seconded By Rep. Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman Wayne Trottier			Rep. Kathy Hogan		
Rep. Jake Blum					
Rep. Craig Headland					
Rep. Michael Howe					
Rep. Dwight Kiefert					
Rep. Jeffery Magrum					
Rep. Aaron McWilliams					
Rep. Bill Oliver					
Rep. Bernie Satrom					
Rep. Cynthia Schreiber Beck					
Rep. Kathy Skroch					

*Voice Vote
passed*

Total **Yes** _____ **No** _____

Absent _____

Floor Assignment Rep. _____

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

REPORT OF STANDING COMMITTEE

SB 2245, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2245 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study to examine the desirability and feasibility of creating a state wetlands bank.

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Renumber accordingly

2017 TESTIMONY

SB 2245



Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on SB 2245
Senate Agriculture Committee
January 26, 2017**

Chairman Luick, members of the Senate Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council NDGGA engages in domestic policy on behalf of wheat and barley farmers on the state and national levels. NDGGA appears before you today in support of SB 2245.

Chairman Luick, members of the Senate Agriculture Committee, you are keenly aware of the need for orderly water management in North Dakota. In the coming legislative days you will hear a number of times from our Association regarding this critical component of North Dakota agriculture. One “piece of the puzzle” if you will regarding orderly water management has been the lack of mitigation acres and mitigation banks available in the state to facilitate the completion of water management projects. SB 2245 is the right step in the mitigation process; it directs the Director and Board of University and School Lands to identify possible mitigation acres on Department of Trust Lands as well as lands under the control of North Dakota Game and Fish.

Mitigation in North Dakota needs to “begin at home” meaning state lands should be a starting point in the promotion of mitigation and mitigation banking in our state. However before that can happen those state-owned acres must be assessed as to their suitability. With the modern assessment technologies available today, accomplishing the task outlined in SB 2245 should be a reasonable request.

Therefore, Chairman Luick, members of the Senate Agriculture Committee, the North Dakota Grain Growers Association requests your Do Pass recommendation on SB 2245.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.



**ND Corn Growers Association
Wetlands Mitigation Management Program
January 2017**

Issue:

North Dakota land owners and farm operators continue their effort to improve the productivity of their land which in turn enhances production and revenue. Water management, in many locations in North Dakota, has become a key area where land productivity can be enhanced, understanding that current rules and regulations must be met. However, to meet rules and regulations, state and federal officials and landowners need to be willing participants in this process.

Objective:

To create wetland banks on state-owned property program, allowing North Dakota landowners to purchase mitigation acres from this state-land wetland bank. This program allows for a landowner to make a payment to the State of North Dakota to create and manage a wetland of comparable size on State owned land. The landowner's one-time payment to the State of North Dakota to create the wetland, relieves the landowner of any other liability of said wetlands on State land or their previously determined wetlands, and allows the landowner to remove wetlands from their property on a 1 for 1 basis. This state-owned wetland mitigation program can be referred to as the North Dakota Wetland Mitigation Management Program.

State and Federal Agencies:

ND Department of Trust Lands manages State Owned Land. Lance Gaabe is the current commissioner. According to Mr. Gaabe, the issue of using state trust land for mitigation has recently been discussed for coal, oil and commercial mitigation uses, but not as a wetland mitigation project.

NRCS of North Dakota is the federal agency that would be partnered with. Mary Podoll, State Conservationist, has been contacted about current wetland mitigation programs. She indicated that NRCS has been working on a wetland bank concept for five years and therefore would be interested in participating in discussions. They mentioned there is grant in SD working on this for our state right now.

Dakota Wetlands Partners is a sponsor for a mitigation bank in South Dakota that is awaiting grant money from NRCS (national office). They are interested in working on a similar program in North Dakota. The goal is to create a mitigation bank exchange whereby current landowners with eligible nonwetlands could create wetlands (credits) that would become available for sale to landowners who are moving wetlands off of their property. NRCS would work to approve wetland mitigation banks/credit sites. One survey completed by Dakota Wetlands Partnership

Regarding the value of a purchased wetland mitigation acre would fetch ranged from 112% to 150% of the current value of cropland acres in their area, for example.

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Dakota Wetlands Partnership has contacted the major commodity organizations to hold further discussions on this concept for North Dakota.

State Land Holdings in North Dakota

In 1889, The Enabling Act, allowed for states to retain ownership of two sections (sections 16 and 36) in each township in the state for use for public education funding. With various changes of that law and sales and foreclosures of state land, the State of North Dakota currently manages 706,820 acres of surface acres in the state.

The goal of the North Dakota Wetland Mitigation Management Program if realized is to utilize state-owned land as an accessible wetland mitigation bank option.

State Land as Wetland Mitigation Bank Acres

The following are issues and concerns prior to proceeding with this concept:

- Has this concept been researched before?
- Legally, can the State of North Dakota accept payment to create wetlands on state-owned land?
- Are other commodity organizations interested in the concept?
- What are the next steps to pursue this concept with the State of North Dakota or does it require legislative action?

Here is the link to the ND Dept. of Land website:

<https://land.nd.gov/>

**SURFACE ACRES BY COUNTY
As of June 30, 2015**

County	Acres	County	Acres	County	Acres
Adams	17,097.52	Golden Valley	28,983.55	Ramsey	2,056.50
Barnes	2,803.32	Grant	33,517.76	Ransom	1,120.00
Benson	11,999.60	Griggs	1,741.24	Renville	1,910.12
Billings	30,927.06	Hettinger	9,889.95	Richland	513.68
Bottineau	3,271.94	Kidder	28,643.79	Rolette	6,226.08
Bowman	29,310.48	LaMoure	1,435.72	Sargent	1,128.17
Burke	16,137.16	Logan	9,404.92	Sheridan	25,826.44
Burleigh	27,906.66	McHenry	22,720.56	Sioux	23,411.56
Cass	40.00	McIntosh	6,209.87	Slope	23,605.98
Cavalier	556.47	McKenzie	64,578.70	Stark	6,150.13
Dickey	3,981.51	McLean	20,890.99	Stutsman	15,627.81
Divide	20,791.24	Mercer	15,129.38	Towner	8,076.00
Dunn	25,673.31	Morton	18,101.82	Walsh	160.00
Eddy	10,292.81	Mountrail	32,445.59	Ward	11,038.98
Emmons	13,533.97	Nelson	2,694.45	Wells	5,251.89
Foster	3,111.51	Oliver	7,588.41	Williams	38,368.46
Grand Forks	1,274.77	Pierce	13,660.93	Total	706,818.76

1411 32nd St S, Suite 2 • Fargo, ND 58103

Testimony in Support of SB 2245 – Listing of Parcels of State Owned Land for Mitigation.

Carson Klosterman, on behalf of the North Dakota Corn Growers Association

Good Morning Chairman (Larry) Luick and members of the Senate Agricultural Committee. For the record my name is Carson Klosterman. I farm in Richland County near Wyndmere, ND, with my wife Haley, dad and family. We raise corn, soybeans and sugar beets in our farming operation. I currently serve as the President of the North Dakota Corn Growers Association. I also serve on the National Corn Grower Association Production and Stewardship team and the chair the same team for the North Dakota Corn Growers. The North Dakota Corn Growers support SB 2245, to create a listing of parcels of state owned land for use in the mitigation efforts by North Dakota landowners.

The support of this bill is to find more avenues for landowners improve their properties along with having the State of North Dakota as a partner, using State owned land to improve wetlands and wildlife habitat.

North Dakota land owners and farm operators continue their effort to improve the productivity of their land which in turn enhances production and revenue. Water management, in many locations in North Dakota, has become a key area where land productivity can be enhanced, understanding that current rules and regulations must be met. However, to meet rules and regulations, state and federal officials and landowners need to be willing participants in this process.

The objective of this provision is to create wetland banks on state-owned property program, allowing North Dakota landowners to purchase mitigation acres from this state-land wetland bank. In theory this program would allow for a landowner to make a payment to the State of North Dakota to create and manage a wetland of comparable size on State owned land. The landowner's one-time payment to the State of North Dakota to create the wetland, relieves the landowner of any other liability of said wetlands on State land or their previously determined wetlands, and allows the landowner to remove wetlands from their property on a 1 for 1 basis.

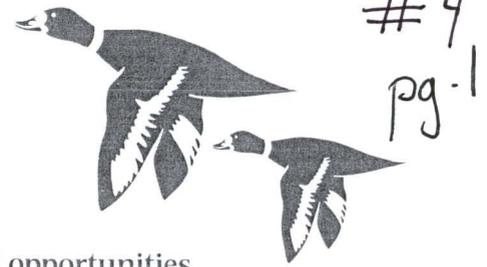
In 1889, The Enabling Act, allowed for states to retain ownership of two sections (sections 16 and 36) in each township in the state for use for public education funding. With various changes of that law and sales and foreclosures of state land, the State of North Dakota currently manages 706,820 acres of surface acres in the state. The goal of this provision, if realized, is to utilize state-owned land as an accessible wetland mitigation bank option.

Landowners and/or farm operators are limited to land access in our state. As a young farmer, I am trying to find ways to improve the value and productivity of the land I currently own or rent. This mitigation program option allows us improve the land we own or rent, while working with the State of North Dakota to enhance their property for wildlife purposes. As stated earlier, I am also aware that as famers we must continue to show that we are good stewards of the land and farm in a sustainable way - - but still need to be mindful of the need to have a positive bottom line.

Thank you and I would be happy to answer any questions.

North Dakota Wildlife Federation

Ensuring abundant wildlife, wildlife habitat, and access to wildlife recreational opportunities



**TESTIMONY OF MICHAEL McENROE
NORTH DAKOTA WILDLIFE FEDERATION
SENATE BILL 2245
SENATE AGRICULTURE COMMITTEE
JANUARY 26, 2017**

Chairman Luick and Members of the Senate Agriculture Committee:

For the record, I am Mike McEnroe and I am representing the North Dakota Wildlife Federation. The Federation has 1,400 members in eighteen affiliated clubs and organizations across the State of North Dakota. The Federation is the largest sportsmen's club in the State.

The North Dakota Wildlife Federation opposes SB 2245 as it is written. We do not oppose the concept of wetland mitigation banks or credits.

SB 2245 calls for providing a list of parcels, presumably by tract name or legal description that may qualify for wetlands mitigation. We believe it would be only the restored wetland or wetland acreage that would be eligible for mitigation, not the parcel or the tract.

For the past 31 years, since 1986, the North Dakota Game and Fish Department has been developing and restoring wetlands on Wildlife Management Areas with their Federal, State, and NGO partners. I would venture to say there is little to no wetland restoration left to do on Game and Fish Department properties.



In addition, almost all Game and Fish Wildlife Management Areas have been acquired with Pittman-Robertson federal aid funds or are located on U.S. Army Corps of Engineers or Bureau of Reclamation land and may not be eligible for Natural Resource Conservation Service mitigation.

Restoration of drained wetlands on State School lands may decrease their agricultural rental value and not be permissible under laws directly the Trust Land department to receive the highest income from school lands.

Additionally, while we support the State using wetland mitigation banks on State lands for Department of Transportation, State Water Commission, or other State agency projects, we would oppose using publicly funded wetland banks or credits on public lands for private agricultural drainage.

I would stand for any questions the Committee may have.

TESTIMONY OF DAVID DEWALD
SENATE BILL 2245
SENATE AGRICULTURAL COMMITTEE
JANUARY 26, 2017

Chairman Luick and Members of the Senate Agricultural Committee:

For the record, my name is David Dewald. I am here today as a private citizen. I am not representing anyone, except myself. I have past work experience relative to wetland mitigation and wetland mitigation banking. I retired from the Natural Resources Conservation Service in 2011 and then worked for the North Dakota Department of Transportation for 4 years as wetland mitigation specialist. I currently work in private industry completing wetland delineations and obtaining baseline data for wetland mitigation bank sites.

SB 2245, as written, provides for the inventory of wetlands that may qualify for wetland mitigation under the jurisdiction of the Board of University and School Land and the North Dakota Game and Fish Department. Wetlands qualifying for mitigation are usually previously drained wetlands. These extremely difficult to find drained wetlands can be restored to provide credits in a wetland mitigation bank.

This bill specifically instructs the director and the Board of University and School Land to consult with the National Resources Conservation Service, which I assume is the Natural Resources Conservation Service, to report to the Agricultural Commissioner no later than July 2018. Since this bill addresses a federal and a state agency dealing with ag related issues and concerns, one can only conclude that this effort to inventory these lands is for the sole purpose of making wetland mitigation credits available to ag producers of the state.

This bill provides the avenue for the use of public property for private gain. Wetland mitigation banks deal in wetland credits as the commodity. Wetland mitigation bank credits are made available to potential users for a monetary fee. This bill assumes that the North Dakota Department of Trust Lands conducts this inventory process in order to determine if the State of North Dakota can subsidize agricultural wetland drainage at taxpayers' expense.

Public entities across this state also have a need for wetland mitigation credits. County road departments need to mitigate wetland impacts incurred during the

road construction or rehab. The NDDOT needs to offset wetland impacts from their road construction program. Airports need to mitigate wetlands drained or filled during construction or to mitigate the potential for bird strikes by draining adjacent wetlands. These are just a few of public entities that may need wetland mitigation credits in the future. Drained wetlands inventoried on University and School Lands should be used to develop wetland mitigation banks to offset the needs of these type of public entities keeping wetland mitigation credits available for public use not selling them exclusively to the ag sector.

Wetland mitigation comes with a short term acquisition and restoration cost and a long term monitoring cost. The State of North Dakota should reserve the potential for developing wetland mitigation and the costs associated with those banks for the public good.

The State of North Dakota, through the NDDOT, has developed the protocol to develop and maintain wetland mitigation on private and public lands. The NDDOT has the experience and the staff to work with the University of School Lands to determine wetland mitigation credit potential on these lands. They have the expertise and experience to develop and get wetland banks approved by the United States Army Corps of Engineers. They have the expertise and experience to fulfil the 5 year monitoring requirement on these wetlands after restoration.

This expertise should be used to inventory University of School Lands for potential wetland mitigation to be used for public infrastructure projects, not be sold to the private ag sector. By doing this, the costs wetland mitigation for needed public infrastructure projects can be lowered. The State of North Dakota needs to keep these wetland mitigation credits for public use, not give them away for private gain.

I ask for a Do Not Pass on SB 2245 unless this bill is amended to keep potential wetland mitigation credits on state lands for public infrastructure projects.

Thank you. I would stand for any questions the Committee may have.

**Ducks Unlimited**

To: ND Senate Agriculture Committee Members
From: Carmen Miller, Director of Public Policy, Ducks Unlimited
RE: Testimony on Senate Bill 2245
Date: January 26, 2017

Good morning, Chairman Luick, and distinguished members of the committee. My name is Carmen Miller and I live in Bismarck. I'm here today representing Ducks Unlimited, and our more than 6,000 members across the great state of North Dakota, and I'd like to point out some issues and concerns for the Committee to consider regarding SB 2245.

First, the bill proposes to identify public lands which may be available for wetland mitigation in consultation with the Natural Resource Conservation Service (NRCS), apparently limiting those sites to only agricultural mitigation. Ducks Unlimited has partnered with NRCS for many years on a wide range of agricultural and conservation issues, and respects their expertise. However, the NRCS agricultural mitigation system is still in its infancy, lacking guidelines, an inter-agency review team, approved banking instrument, and has still not undergone public comment. Also, limiting the public lands mitigation sites for agricultural use favors only one sector of the economy, despite North Dakota's industrial, commercial, and municipal mitigation needs. Creating a special, separate market for agricultural wetland mitigation on subsidized public lands is not exactly the free market at work.

The bill proposes to create an "inventory," but an inventory of what? The bill as written does not include any framework or guidelines for mitigation eligibility, or under what circumstances land parcels "may qualify" for mitigation – in a nutshell, with no specifics as to what qualifies for "mitigation," this is a very vague directive. For example, it is unclear whether certain Game and Fish lands, depending on how they were acquired, can be used for mitigation under federal law. Federal mitigation requirements are very restrictive, and without factoring in these issues, you could end up with a list that has serious limitations.

As a sportsmen's organization, DU also has serious concerns about using wetlands and wildlife management areas that were acquired or developed with sportsmen's dollars, including licensing fees and excise taxes on hunting equipment, for private mitigation. This was never the intended use of those sportsmen's dollars.

Ducks Unlimited has experience with wetland mitigation, and for the past few years has been the sole provider of In-Lieu Fee (ILF) mitigation credits. Under this program, developers required to mitigate wetlands are able to purchase credits from Ducks Unlimited, which then assumes the responsibility for delivering the mitigation project. The program, while still relatively new, has been very popular in a time of rapid development across the state. Purchasers of ILF mitigation credits include BNSF, Canadian Pacific, XTO Energy, Conoco Phillips, Ward, Benson and Eddy Counties, and the Cities of Bismarck, Williston, and Watford City.

Our experience with the In-Lieu-Fee program has shown us that wetlands mitigation is highly technical, and not just a matter of identifying lands on a map. Engineers and biologists with technical expertise are required to make on-the-ground determinations, and while I certainly can't speak for the agencies charged with the task in this bill, it could be an expensive proposition in times of budget restraints.

Thank you for your time, consideration and service to the people of ND. I'd be happy to entertain any questions if time allows.

**TESTIMONY OF MICHAEL HUMANN
Surface Division Manager
North Dakota Department of Trust Lands**

NEUTRAL ON SENATE BILL NO. 2245

**Senate Agriculture Committee
January 26, 2017**

By and through the Department of Trust Lands, the North Dakota Board of University and School Lands manages thousands of acres of trust lands that were granted by the federal government to North Dakota at statehood. These permanent trust lands were provided solely for the purpose of providing financial support to public schools and institutions in North Dakota. In order to provide this support, these lands are managed to generate income and are leased to farmers and ranchers at public auction at least once every 5 years.

The Fiscal Note prepared by the Department of Trust Lands shows that there is 0 cost. That ultimately may not be the case, but at this point in time, we do not know what the costs might be.

- Trust lands are managed as an asset for the benefit of schools and institutions.
- Wetland Mitigation would have to provide a direct benefit to the trusts – not be a burden to the trusts.
- There is limited trust land acreage in the areas of need (see map).
- Credits for wetland loss must be purchased within the same Regional Service Area (see map).
- The land uses established by the constitution could prohibit participation.
- Research has indicated Wetland Mitigation requires an easement to assure the mitigated wetlands are protected.
- The easement would require legal review to assure mitigation would not encumber the ability to lease the surface and mineral estate and develop minerals.
- Wetland Mitigation participation would require Board approval.

Wetland mitigation requires the mitigation bank sponsor to have:

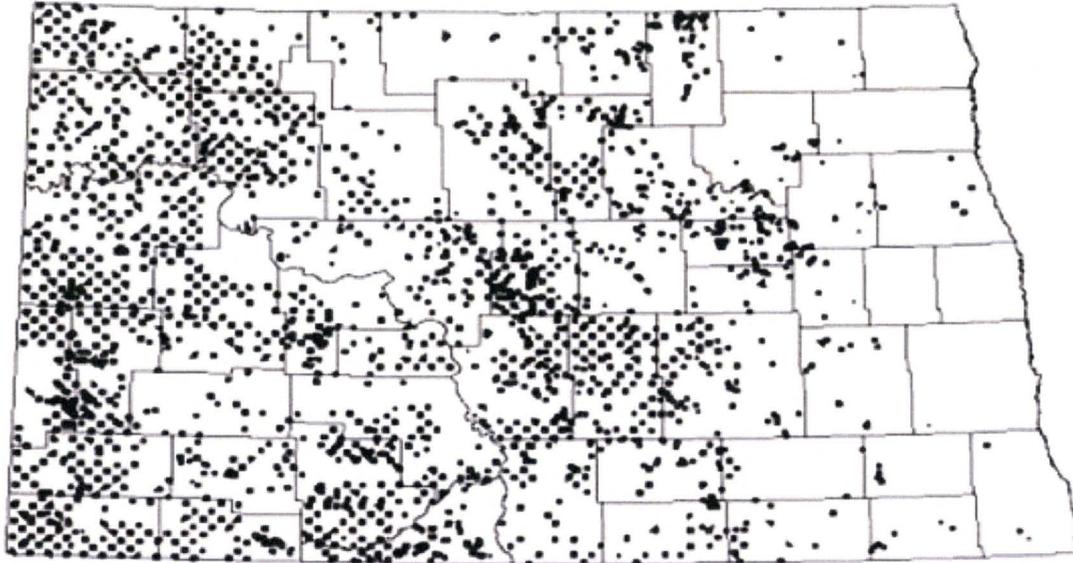
- A technical staff with a wetland and soils background (a least 2)
- A mitigation banking instrument (agreement) with the USACE or the NRCS for mitigation banking – (which can take 18 months to develop).
- Field surveys – soils, plants and topography
- Technical engineering designs
- Construction
- Detailed annual field monitoring and reports for no less than 5 years after construction (until wetland success criteria are met and have been approved by the USACE or NRCS).
- In-perpetuity maintenance and remedial actions to maintain wetland functions.
- In-perpetuity data and asset management
- In-perpetuity 5-year status reports

1/26/17

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Relating to Comments by Michael Humann
Senate Bill 2245 - Senate Agriculture Committee
January 26, 2017

School Trust Surface Distribution



Wetland Mitigation Bank Regional Service Areas

Map obtained from ND Interagency Review Team Publication



A regional service area is a geographic area in the State where banked credits can be used to compensate for project losses.

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North Dakota Legislative Council

View Ready To Submit Fiscal Note

Fiscal Notes

Details

Bill Number: SB 2245 **Amendment:** **Engrossment:**
Original: 17.0904.01000 **In Context:**
Fiscal Note: 17.0904.01000
Requested: 01/16/2017 05:14 PM
Revision Requested:
Next Hearing: 01/26/2017 09:00 AM
Engrossment Status:
Assigned To/Due:
Agency Comments:

Fiscal Note

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.

	2015-2017		2017-2019		2019-2021	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2015-2017	2017-2019	2019-2021
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

2A. Bill and fiscal impact summary: Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

The bill requires the creation of a list of state parcels for use as wetlands mitigation, by July 1, 2018. The Department of Trust Lands is unable to determine fiscal impact as the eligibility criteria for determining suitable parcels is unknown.

2B. Fiscal impact sections: Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Over 700,000 surface land acres, most of which were granted by Congress at statehood to provide financial support for elementary and secondary schools, are managed by the Department of Trust Lands on behalf of the Board of University and School Lands. Most of those acres are located in the western part of the State. Outside of mineral development, trust land use is constitutionally limited to pasture and meadow purposes, thus much of this land is relatively undisturbed. Few tracts have previously drained wetlands that might be restored, it is unknown how many tracts may have acreage suitable for creating or enhancing wetlands. Any wetland mitigation projects would need to be compatible with the purposes put forth in the State Constitution, and would need to provide value or income to the trusts. The fiscal impact of the bill to the Board is unknown.

The Game and Fish Department Wildlife Management Areas consist of approximately 220,000 surface land acres. Approximately half of that acreage is State owned and half is leased by the Game and Fish Department. Fiscal impact of this bill to the Game and Fish program management is unknown.

For both Departments there would be costs associated with analyzing field data and conducting on-the-ground inspections to determine suitability of parcels once the eligibility criteria are established.

A list of school trust lands and the Game and Fish PLOTS Guide showing wildlife management areas are located on the North Dakota Department of Trust Lands' website: <https://land.nd.gov/surface/AerialPhotos.aspx>

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.

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.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.

Return

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Minerals Management

The Department is responsible for the management of 1.7 million acres of trust minerals and 800,000 of sovereign, non-trust minerals.

Oil and gas public lease auctions are held and leases are awarded to the company or individual offering the highest up-front payment or "bonus" for the lease. Lease terms are for five years (or as long as there is commercial production if a well is drilled); and provide for a 1/6th or 3/16 royalty on oil and gas produced.

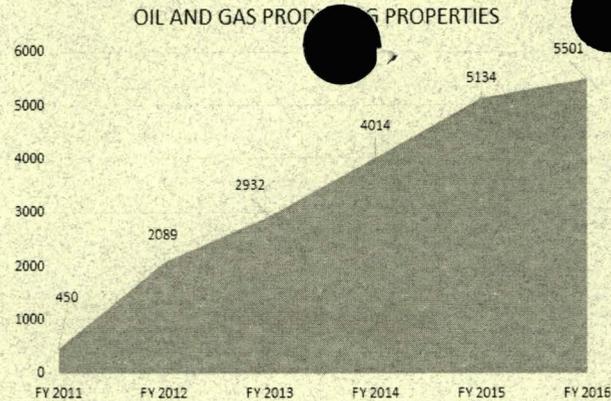
The Department also issues coal leases. It monitors mining and reclamation activity, ensures lease compliance, and works to ensure that mineral development on trust land proceeds in an environmentally sound manner.

MINERAL LEASING

- Lease oil and gas mineral tracts (714 new leases in FY16).
- Manage leases (9,567 active leases FY16).
- Approve assignments of oil and gas leases and pooling agreements.
- Enforce shut-in well policy and offset well policy.
- Monitor drilling activity to track production on state-owned minerals.
- Monitor activities of other governmental agencies to determine effect on state-owned and trust minerals.

Revenue Compliance

- Process all incoming payments.
- Manage mineral receipts.
 - * FY16 oil and gas royalties totaled \$192.2 million on 5500 producing properties. The Department manages minerals in 42% of all active and producing oil wells in North Dakota.
 - * FY16 oil and gas bonus totaled \$12.4 million.
- Manage escrowed royalties.
- Conduct producer compliance audits.



Producing Wells & Units Managed

Energy Infrastructure and Impact Office

Objective: To mitigate financial hardship to local political subdivisions adversely affected by energy development and exploration.

Grant Source: A portion of the Oil & Gas Gross Production Tax (with a maximum amount prescribed by the legislature each biennium.)

Past Funding Levels:

2007-2009:	\$6 million
2009-2011	\$8 million
2011-2013	\$165 million
2013-2015	\$240 million
2015-2017	\$140 million

Criteria for Grants:

- The political subdivision requesting funds must demonstrate a financial hardship resulting from energy development activity.
- The project must reduce that impact.
- The applicant must demonstrate financial need.

In consideration of specified grant criteria, legislative mandates and input from a variety of industry-specific advisory committees, grant awards are recommended by the EIIO Director and approved by the Board of University and School Lands. Grant payments are distributed via a reimbursement process.

Coal Development Impact: The Office also issues low interest loans to coal development impacted political subdivisions.



Managing Agency For The
**ND Board of University
 and School Lands**

January 2016

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SUPERINTENDENT OF PUBLIC INSTRUCTION

Kirsten Baesler

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Department History

The Board of University and School Lands manages the Common Schools Trust Fund and 12 other permanent educational trust funds that are governed by Article IX of the North Dakota Constitution. The trust funds were established at statehood when the Federal Government granted the state 3.2 million acres of land "for the support of common schools" and other public institutions.

Over time, much of this land was sold. However, the 13 educational trust funds still own 707,000 surface acres, 1.7 million mineral acres and \$3.9 billion in financial assets. The Common Schools Trust Fund, which benefits K-12 education, is the largest trust with total financial assets of over \$3.7 billion on December 31, 2016.

Revenues are generated through the prudent management of trust assets. Surface acres are leased to ranchers and farmers and mineral acres are leased for oil, gas, coal, gravel and scoria exploration and development. Revenues are invested in a diverse portfolio of financial assets, including stocks, bonds, farm loans and other securities.

In addition to its responsibility for the land, minerals, and financial assets of the trusts; the Department also manages the Unclaimed Property Division, and the Energy Infrastructure and Impact Office.

Unclaimed Property Division

North Dakota's unclaimed property law has been in effect since 1975. "Property" in this case does not mean land but consists of uncashed checks, unused bank accounts, and securities not claimed by the owner. In some cases the property was missed in the probate of an estate, while in others it has simply been lost or forgotten. The Division receives these unclaimed funds from banks, insurance companies, hospitals, utilities, retailers, and other entities.

Once the money is reported, the Division works to "reunite" the property with its owner by promoting free internet searches, publishing statewide newspaper ads, conducting media interviews, preparing direct mailings, distributing mass e-mails and providing electronic claim reminders.

Nearly \$9 million was returned to owners in FY15 & FY16.

Funds held by the Division may be claimed at any time by the owner or the owners' heirs. Money that is not claimed is invested in the Common Schools Trust Fund to benefit local public school districts. Approximately \$67 million of reported unclaimed property remains unclaimed.

Investments Management

The ND Department of Trust Lands is responsible for directing, implementing, coordinating and monitoring the Board's financial investments.

The 13 educational trust funds are permanent and were established to provide funding for education for present and future generations. The Indian Cultural Education trust is similar in nature to the 13 permanent educational trusts and is in an investment pool with those trusts. The long range investment goals are to have trust assets and distributions increase at a rate equal to or greater than the rate of inflation. The Board has developed an investment allocation plan that includes a well diversified portfolio of stocks, bonds and other financial assets.

- The total fund balance of the 13 permanent trust funds grew by \$78.2 million during FY16 to \$3.72 billion; total financial assets have increased by more than \$1.99 billion over the past 5 fiscal years.
- The permanent trusts' investment portfolio posted a total return loss of -0.6% during fiscal year 2016, made up of an income yield of 1.9% and a net capital loss of -2.5%. The permanent trusts' portfolio 5.2% annualized, net of fees, over the past 5 years and 8.2% annualized over the past 7 years.

Permanent Trust Distributions for the 2017-2019 Biennium

During the 2017-2019 biennium, the 13 educational trust funds will distribute nearly \$306 million to beneficiaries, an increase of nearly 40 percent over the 2015-2017 biennium.

The Common Schools Trust Fund will contribute \$144.1 million to K-12 education each year of the biennium, or approximately \$1,282 per pupil per year. Biennial distributions for the permanent trusts are shown below.

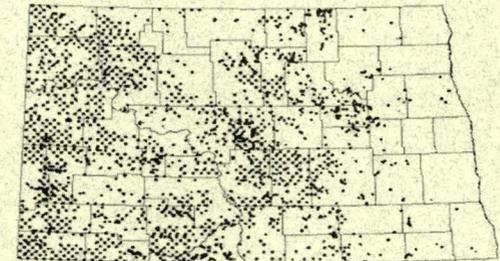
Beneficiary	2017-2019 Distribution
Common Schools (K-12)	\$288,264,000
ND State University	4,738,000
School for the Blind	654,000
School for the Deaf	1,598,000
State Hospital	1,184,000
Ellendale	1,304,000
Valley City	808,000
Mayville	542,000
Industrial School	1,422,000
School of Science	1,260,000
School of Mines	1,444,000
Veteran's Home	436,000
University of ND	2,218,000
Total	\$305,872,000

Surface Management

From 1889 to 1970s, grant land was sold when an application was made; total sales reduced grant land from 3.2 million acres at statehood to 656,000 acres (grant land) today. Land acquired through mortgage foreclosure (most in 1920s and 30s) is 51,000 acres, for total land managed of approximately 707,000 acres.

Trust lands are managed as an asset for the benefit of the schools and institutions. Each tract is classified as to its productivity, income potential and cash value. School trust lands, concentrated in the state's livestock producing regions as shown on the following map, produced over \$12.8 million in surface revenue in FY16.

School Trust Surface Distribution



Lease Marketing and Maintenance

- Public lease auctions held 4 out of every 5 years.
- 4,456 leases issued to more than 2000 lessees.
- Over 99% of trust lands are under lease.
- Minimum bids at public auction calculated using the Fair Market Value method and are based on private market rentals.
- Lease rentals are billed and paid annually.
- Constitution limits lease terms to a 5-yr maximum.

Natural Resource Management

- 97% of school trust lands are grasslands. Most trust lands are open to public walking access.
- Improvement projects include grazing systems, clubmoss control, trash cleanup, abandoned well sealing and seeding marginal cropland to grass.
- Invasive plants are actively controlled using chemical and biocontrol techniques.
- Trust lands are inspected at least every 5 years.

Rights-of-Way and Gravel Mining

- 281 rights-of-way applications for trust lands were processed in FY16 with negotiated fees and consideration providing revenue to the trusts.
- Construction and reclamation of rights-of-way and oil/gas wells are monitored. 520 right-of-way reclamation inspections were conducted in FY16.
- Construction aggregate lease royalties provided \$468,000 to the trusts in FY16.

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SENATE AGRICULTURE COMMITTEE
February 2, 2017 - 10:00a.m. – Roosevelt Park Room

North Dakota Department of Transportation
Matt Linneman, Program Manager - Environmental & Transportation Services

Senate Bill 2245

Mr. Chairman and members of the Committee – I am Matt Linneman, Program Manager in the Environmental & Transportation Services Division at the North Dakota Department of Transportation (NDDOT). Thank you for giving me the opportunity to provide information on SB 2245 today.

Highway improvement and other public works infrastructure projects have the potential to result in unavoidable impacts to wetlands. In many cases these impacts require compensatory mitigation for the loss of those wetlands. Compensation is required by federal agencies with jurisdiction or oversight of the wetlands such as the US Army Corps of Engineers, the US Fish & Wildlife Service, or the Federal Highway Administration. Impacts may need to be mitigated in the same Regional Service Areas of the state as the impact.

State agency, county, and city projects may require compensatory mitigation for wetland impacts.

There are several ways to provide the compensatory mitigation: permittee responsible mitigation, in-lieu fee programs, or through a mitigation bank.

Permittee responsible mitigation, referred to at the NDDOT as on-site mitigation, typically involves the creation of a specific wetland acreage at various locations near the project site.

In-lieu fee programs involve a governmental or non-governmental natural resource management organization that provides the mitigation on the landscape, potentially at a future date. Entities needing compensatory mitigation provide payment to the organization in return for mitigation credits.

Mitigation Banking is the restoration of drained wetlands; creation of new wetlands; or enhancement or preservation of existing wetlands in advance of any impacts. Once the bank is approved, compensatory mitigation credits can simply be deducted from the mitigation bank sponsor's ledger in order to authorize or permit construction.

Wetland mitigation banking is the preferred option for providing compensatory mitigation. Banks have higher probabilities of meeting success criteria; have the lowest cost/credit; are more easily monitored and maintained; do not pose an issue for future roadway construction or maintenance operations; and provide a higher ecological resource value.

Developing a mitigation bank requires working with a willing landowner to provide a protective easement or deed restriction; securing interagency approval of the site plan; constructing a restoration project; and monitoring for wetland establishment and success criteria. These costs are more efficiently spent at a wetland complex than at permittee responsible sites along the roadway scattered across the state.

I have also brought a pamphlet today that has more information regarding the wetland banking process. In the center of the pamphlet you will see a comparison of costs of compensatory mitigation, the regional service areas, and a map of NDDOT mitigation banks throughout the state.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

SOURCES OF COMPENSATORY MITIGATION

There are three ways compensatory mitigation can be provided: mitigation banks, in-lieu fee programs, and permittee-responsible mitigation. Mitigation banks and in-lieu fee programs are generally the preferred options for compensatory mitigation, because they consolidate resources and involve more financial planning and scientific expertise. These factors help reduce the risk of failure of mitigation projects.

Mitigation bank: One or more sites where aquatic resources such as wetlands or streams are restored, established, enhanced and/or preserved for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

In-lieu fee program: A program that involves the restoration, establishment, enhancement, and/or preservation of aquatic and terrestrial resources by a governmental or nongovernmental natural resource management (NRM) organization. Those needing compensation then provide payment to this NRM for credits.

Permittee-responsible mitigation: Individual projects constructed by permittees to provide compensatory mitigation for specific highway improvement projects. The NDDOT refers to this as *On-site mitigation*.

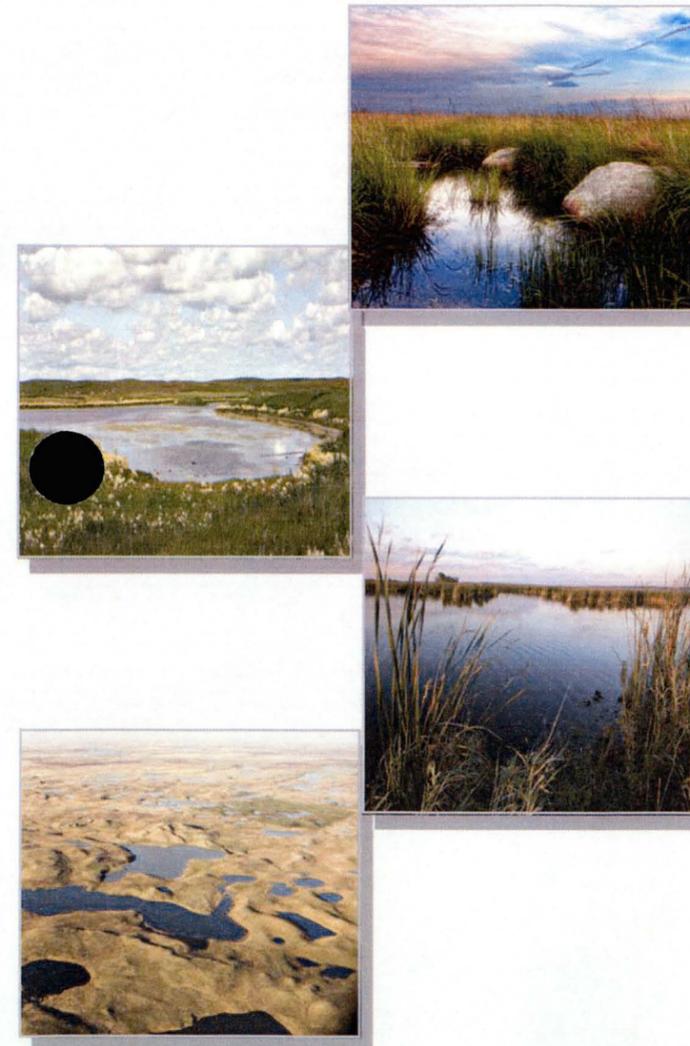
WHO OVERSEES COMPENSATORY MITIGATION?

The Corps of Engineers establishes an Interagency Review Team (NDIRT) to review, approve and oversee the management and operation of proposed compensatory mitigation. In North Dakota, the team consists of representatives from the USACE, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), Natural Resources Conservation Service (NRCS), and ND Game and Fish (NDGF). The Corps of Engineers makes the final decision on whether or not to approve the proposed compensatory mitigation.

North Dakota Department of
Transportation
608 E Boulevard Ave
Bismarck, ND 58505

www.dot.nd.gov
(Search Wetlands)

Wetland Mitigation



NDDOT
North Dakota
Department of Transportation

Safely move people and goods.

2/2/17 SB 2245 #2

North Dakota Wetlands

In North Dakota, a variety of wetland habitat types exist including: prairie and glacial potholes; saline wetlands; riparian wetlands; sloughs and abandoned meanders along rivers; slope wetlands and spring seeps; emergent fringe wetlands around lakes, ponds, and reservoirs; fens, wet meadows; and artificial man-made wetlands.

WETLAND MITIGATION REQUIREMENTS

North Dakota Department of Transportation (NDDOT) highway improvement projects sometimes result in unavoidable impacts to wetlands and other aquatic habitats. This requires NDDOT to provide *compensatory mitigation* to these aquatic resources in compliance with Federal regulations.

Compensatory mitigation is the restoration, creation, enhancement, or preservation of aquatic resources for the purpose of offsetting losses of aquatic resources. This compensation is required by federal agencies with oversight of wetland resources such as the US Army Corps of Engineers' (USACE), Federal Highway Administration (FHWA) and the US Fish and Wildlife Service (USFWS).

TYPES OF COMPENSATORY MITIGATION

Restoration – An activity that returns natural or historic functions to a drained or degraded aquatic resource.

Creation – An activity that alters an upland site to develop an aquatic resource at that site.

Enhancement – An activity that improves the functioning of an existing aquatic resource.

Preservation – An activity that protects and maintains an existing aquatic resource through real estate actions (deed restrictions, conservation easements) or physical actions, such as constructing a fence.



WHY WETLAND MITIGATION BANKING?

Given the high cost and higher risk of failure of small on-site mitigation projects, wetland mitigation banking is a preferred option for mitigating permitted impacts to aquatic resources. Banking consolidates mitigation into large sites that have significant ecological value, are protected by conservation easements, have a high probability of success and sustainability, are monitored and managed for 5 years, and may have a long term management agreement in place with a third party such as NDGF or USFWS. Banks provide compensatory mitigation credits to many transportation projects, as opposed to the typical impact-by-impact on-site mitigation.

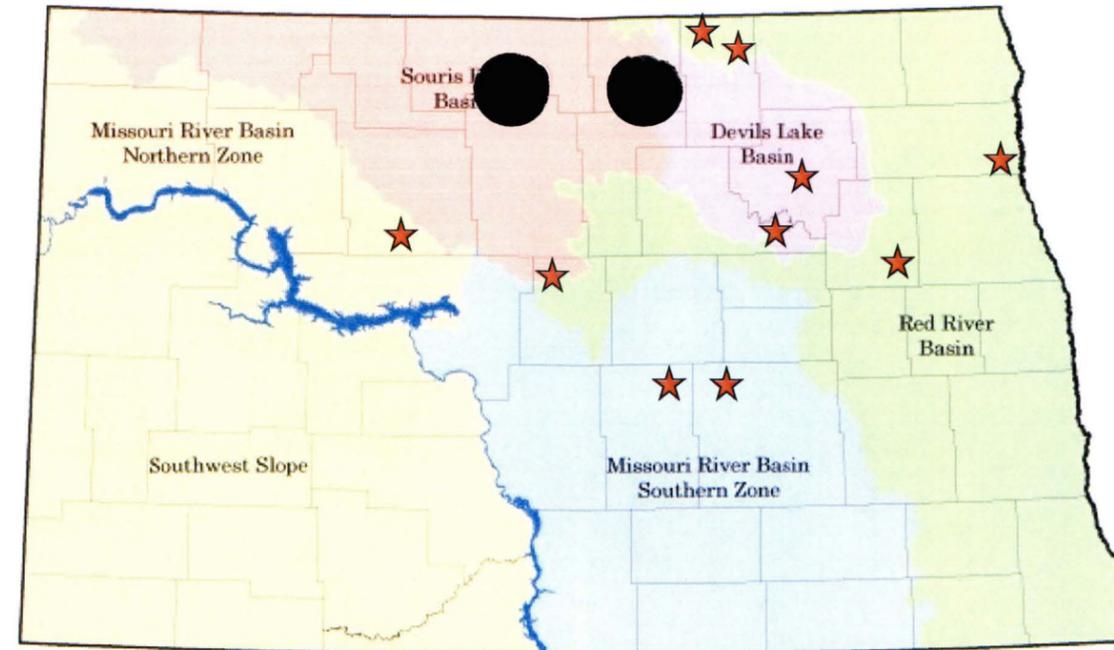
Wetland mitigation banking constructs wetland banks in advance of anticipated aquatic resource impacts in each Regional Service Area (RSA). North Dakota is divided into six RSA's. RSA's define the maximum geographic applicability for wetland mitigation banks in North Dakota (see center map). By constructing the banks in advance of impacts, it allows the wetland credits to be available before credits need to be used for transportation projects. This not only helps to speed up the permitting and project development process, but in most cases, using credits from an NDDOT bank is more cost effective than on-site mitigation or purchasing In-Lieu Fee credits.

Mitigation banking uses a system of credits and debits described in the "credits" section.

NDDOT MITIGATION BANKING PROCESS

All NDDOT banks require the long-term protection of the aquatic resources by the use of a deed restriction or agreement. Sites are chosen based on suitability to support the anticipated wetland functional needs. The NDDOT establishes dialogue with the ND Interagency Review Team (NDIRT) during the early planning stages to inform them of the NDDOT's interest in a parcel of land. NDDOT then conducts a full office review, field analysis, and cost appraisal of the proposed mitigation bank site and proposes it to NDIRT. Upon approval by NDIRT and NDDOT executive staff, the property interest is purchased and the bank is designed and constructed. Upon completion, credits are released to the NDDOT to use for transportation projects that result in aquatic resource impacts.

Mitigation Banks in North Dakota



★ Wetland Mitigation Bank

USACE Credits Available By RSA

- Missouri River Basin North—17.05
- Souris River Basin — 3.40
- Devils Lake Basin — 13.03
- Southwest Slope — None
- Missouri River Basin South — None
- Red River Basin — 109.68

Note: Average credits used per year 50.82

Other Credits Available Statewide

- FHWA— 73.30
- US— 36.67

NDDOT Onsite Mitigation Cost/Credit

\$40,000 to \$70,000/credit: variable by RSA, Right of Way Costs, and availability of land. Additional costs include: Monitoring, maintenance, long-term tracking

NDDOT Mitigation Bank Costs/credit in Each RSA

- Missouri River Basin North— \$15,500
- Souris River Basin — \$15,000 estimated
- Devils Lake Basin — \$22,000
- Southwest Slope — \$55,000 estimated
- Missouri River Basin South — \$15,500
- Red River Basin — \$16,000

Note: Long-term monitoring required

Ducks Unlimited In-Lieu Fee Costs/credit in Each RSA

- Missouri River Basin North— \$50,000
- Souris River Basin — \$40,000
- Devils Lake Basin — \$40,000
- Southwest Slope — \$60,000
- Missouri River Basin South — \$40,000
- Red River Basin — \$50,000

Note: No long-term monitoring required.

Credit Definitions

- FHWA** —used for Executive Order 11990 impacts and are available for statewide use
- USACE** —used for Clean Water Act impacts and are available only within the RSA
- USFWS** —used for impacts to USFWS Fee Title or Easement Wetlands and are available for statewide use.

WETLAND MITIGATION BANKING CREDITS

The value of a wetland mitigation bank is determined by quantifying the value of the restored, created, enhanced, and preserved wetlands in terms of "credits." Credits may be determined in terms of acreage, functional units, or some other assessment method. The number of potential credits a bank may be is determined by the bank sponsor (the NDDOT) and NDIRT during the bank review process.

The total of potential credits is an estimated amount that may vary depending on the actual performance of the bank. Credits are periodically released by NDIRT throughout the establishment period of the bank as performance standards are met, which typically lasts 5 years. Once a potential credit is released by NDIRT, it becomes an available credit for the NDDOT to use. Once a credit is used for compensatory mitigation, it is considered a debited credit.

IS A CREDIT THE SAME AS AN ACRE?

A credit is not equivalent to an acre. The method for calculating credits and the number of credits are typically proposed by the bank sponsor and then are reviewed with NDIRT prior to final approval. The value of a credit varies among banks because wetland mitigation banks vary in the type and extent of wetland resource values and improvements that can be made to them. Below is a typical acre to credit ratio for wetland banks.

Mitigation Activity	Ratio (Acre: Credit)
Restoration	1:1 to 2:1
Creation	2:1
Enhancement - 50 foot buffer	5:1
Enhancement—Uplands to Grassland	20:1
Preservation of existing wetlands	10:1

For more information, view the NDDOT Design Manual Reference and Forms webpage—Environmental Information— Appendix E6. Wetland Banking in North Dakota

2/9/17

#1

17.0904.01001
Title.

Prepared by the Legislative Council staff for
Senator Luick

February 8, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2245

Page 1, line 8, replace "national" with "natural"

Page 1, line 9, after "service" insert "and United States army corps of engineers"

Renumber accordingly

Introduced by
Senators Dotzenrod, Luick, Wanzek

Representatives D. Anderson, J. Nelson, Mitskog

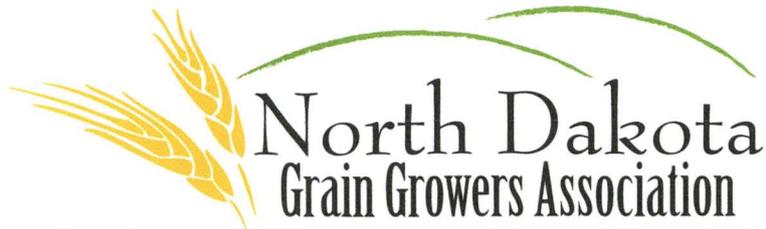
A BILL for an Act to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to listing parcels under the control of certain state entities for use as wetlands mitigation for agriculture, transportation, or infrastructure improvement projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Identification of parcels for wetlands mitigation.

The director and board of university and school lands, in consultation with the national resources conservation service, shall provide a list of land parcels that may qualify for use as wetlands mitigation on lands under the jurisdiction, management, or control of the game and fish department or the department of trust lands, and on lands remediated by the department of mineral resources through the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund. This list must be submitted to the agriculture commissioner no later than July 1, 2018.



#1

Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association
Testimony on SB 2245
House Agriculture Committee
March 17, 2017

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council NDGGA engages in domestic policy on behalf of wheat and barley farmers on the state and national levels. NDGGA appears before you today in support of SB 2245.

Chairman Johnson, members of the House Agriculture Committee, you are keenly aware of the need for orderly water management in North Dakota. This is a top priority for the North Dakota Grain Growers Association. One "piece of the puzzle" regarding orderly water management has been the lack of mitigation acres and mitigation banks available in the state to facilitate the completion of water management projects. SB 2245 is the right step in the mitigation process; it directs the Director and Board of University and School Lands to identify possible mitigation acres on Department of Trust Lands as well as lands under the control of North Dakota Game and Fish.

Mitigation in North Dakota needs to "begin at home" meaning state lands should be a starting point in the promotion of mitigation and mitigation banking in our state. However before that can happen those state-owned acres must be assessed as to their suitability. With the modern assessment technologies available today, accomplishing the task outlined in SB 2245 should be a reasonable request.

Therefore, Chairman Johnson, members of the House Agriculture Committee, the North Dakota Grain Growers Association requests your Do Pass recommendation on SB 2245.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.



**North Dakota Mineral Resources
Abandoned Well Plugging and Site Restoration Fund
Brine Pond Wetland Mitigation Potential**

**March 17, 2017
Cody VanderBusch, Reclamation Specialist
Oil and Gas Division
Department of Mineral Resources
North Dakota Industrial Commission**

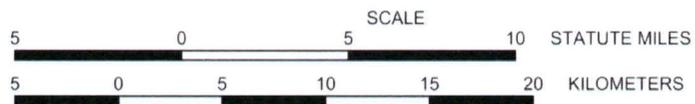
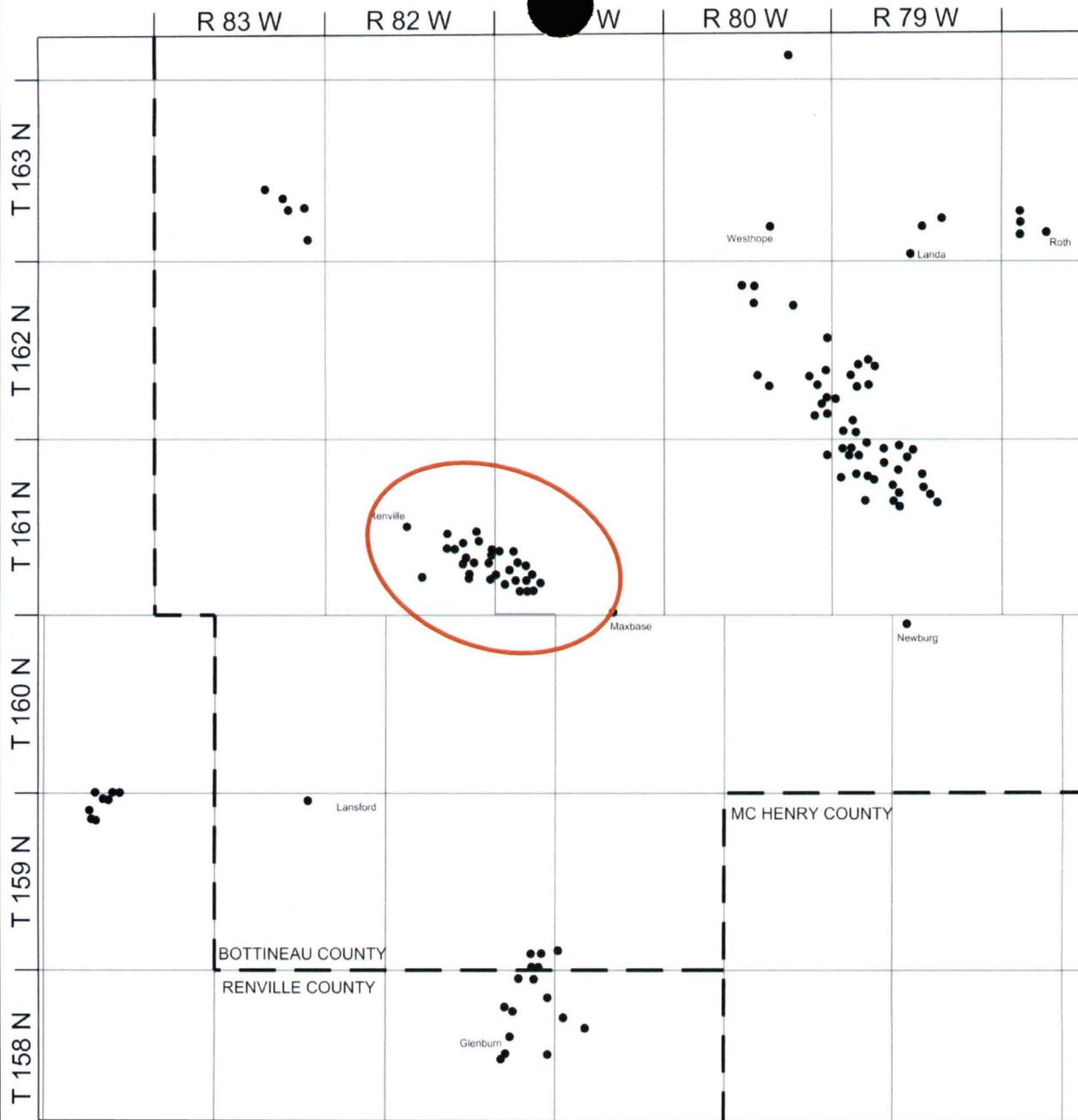
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#2
SR 2245
3/17/17

NDSU SOILS DEPT 1984 STUDY

Identified 121 old brine pond sites in Bottineau and Renville Counties.

Estimated the area contaminated by old brine ponds at 1,450 acres (average of 12 acres per site).

Interpreted aerial photographs from various years and scales.



6

Stratton SWD #1 (Fossum Site 1)



1985

A high salinity plume extends laterally around the site over an area of 250,000 ft² (about 6 acres).

Plume extends to a depth of over 80 feet (highest concentrations in top 40 feet).

Plume restricted to till and not impacting any useable water supply (ND Health Dept. concurred in 2006).

High chloride levels at 160 feet (500 - 750 mg/l) appear to be coming from the underlying Fox Hills Formation (hydraulic heads).

HB1347:

SECTION 2. APPROPRIATION - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND - ONE-TIME FUNDING - EXEMPTION - BRINE POND AND SOIL REMEDIATION STUDIES - REPORT TO LEGISLATIVE MANAGEMENT.

1. Notwithstanding section 38-08-04.5, there is appropriated out of any moneys in the abandoned oil and gas well plugging and site reclamation fund in the state treasury, not otherwise appropriated, the sum of \$5,500,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of conducting brine pond and soil remediation studies, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item. The industrial commission shall conduct the following studies, during the biennium beginning July 1, 2017, and ending June 30, 2019:

a. A study of the number of brine ponds in the north central portion of this state which were active between 1951 and 1984 and which require the remediation of salt and any other contamination from the surrounding soil. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study. Estimate \$100,000

HB1347:

SECTION 2. APPROPRIATION - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND - ONE-TIME FUNDING - EXEMPTION - BRINE POND AND SOIL REMEDIATION STUDIES - REPORT TO LEGISLATIVE MANAGEMENT.

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e. A pilot project to study and to test the best techniques for remediating salt and any other contamination from the soil surrounding brine ponds in the north central portion of this state which were active between 1951 and 1984. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study. Estimate \$720,000

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Fax: (701) 328 – 3650



www.land.nd.gov

Lance D. Gaebe, Commissioner

**TESTIMONY OF MICHAEL HUMANN
Surface Division Manager
North Dakota Department of Trust Lands**

**In Opposition to
SENATE BILL NO. 2245**

**House Agriculture Committee
March 17, 2017**

Chairman Johnson and members of the House Agriculture Committee, I am Michael Humann, surface division manager for the North Dakota Department of Trust Lands (Department). I am here on behalf of the Department in opposition to Senate Bill 2245. By and through the Department, the North Dakota Board of University and School Lands (Board) manages thousands of acres of trust lands that the federal government granted to North Dakota at statehood.

The Board and Department have a fiduciary responsibility outlined in the North Dakota Constitution and statutes regarding the management of permanent trust lands and assets held for the benefit of the common schools and other education beneficiaries. The Board has the responsibility to manage the trusts to generate income to continuously support the state's public schools and institutions. Through the Department of Trust Lands, it competitively leases trust land for grazing and farming, as well as for the production of minerals including coal, gravel, clay, potash, oil and gas.

The Fiscal Note prepared by the Department shows that the cost cannot be determined, but we do know that there will be costs. In the case of the Board and Department, the permanent funds should not bear that expense, unless it creates value for the trusts.

The Department and the Attorney General's office are currently studying the legal aspects of using trust lands for wetland mitigation to determine if it is possible to create an income stream for the trusts.

The following are the basis of the Department's opposition to Senate Bill 2245:

- Mitigation of wetlands is a program involving federal oversight, resulting in the potential for a perpetual conservation easement involving various federal agencies to ensure the mitigated wetlands are protected.
- If accepted on trust-owned land, wetland mitigation banks would be an administrative burden on the trusts and would limit use of trust lands for other revenue producing purposes.
- Federal requirements under the wetland easement could interfere with the ability of the trusts to lease the surface and mineral estate, manage surface resources, and develop minerals.
- Trust lands and the natural resources they contain are managed as assets for the benefit of schools and institutions; therefore, no part of the Common Schools Trust Fund must ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of common schools as provided by Article IX, of the North Dakota Constitution.
- The bill's July 1, 2018 deadline to evaluate and submit a list of trust lands for wetland mitigation will be difficult if not impossible for the Department to achieve, as current staff tend to income producing projects.

- If wetland mitigation banks are determined to be a potential benefit to the trusts by providing a “no strings attached” income stream, fair market value for wetland bank credits would need to be received by the trusts.
- Wetland credits would need to have a base value and would need to be offered at a competitive process similar to how surface and mineral leases are offered at public auctions.
- The North Dakota Department of Agriculture’s Wetland Credits Database website states: “Wetlands that have never been farmed cannot be used for mitigation purposes.” <https://www.nd.gov/ndda/wetland-credits-database>. If this criteria remains accurate, Trust Lands’ participation would be limited to crop and tame hayland acreage. The Board currently manages 15,675 acres of cropland and 4,957 acres of tame hayland and of these acres, it is unknown how many have prior converted wetlands.

Because of the potential limits, Department participation in a wetland mitigation program would require Board approval, and then likely only if it could produce revenue in excess of the expense.

The potential for burden to the trusts comes in not only as interference in the management of the land but also in the management of the wetland bank itself. A wetland mitigation bank requires a bank sponsor to have:

- A technical staff with a wetland and soils background;
- A mitigation banking instrument (agreement) with the US Army Corps of Engineers (USACE) or the Natural Resources Conservation Service (NRCS), which can take 18 months to develop;
- Field surveys – soils, plants and topography;
- Technical engineering designs and construction management oversight; and
- Detailed annual field monitoring and reports every year for five years after construction (until wetland success criteria are met and have been approved by the USACE or NRCS).

A perpetual obligation for:

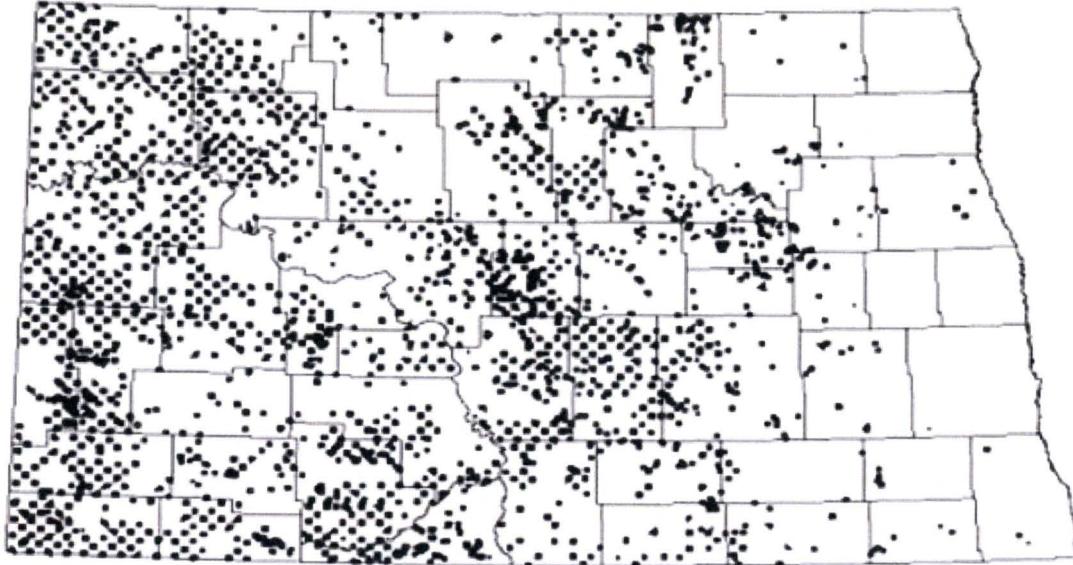
- Maintenance and remedial action plans to sustain wetland functions;
- Data and asset management; and
- Five-year status reports.

The USACE has completed an Interagency Guidance Manual for Mitigation Bank Sponsors for Wetland Mitigation Banking in North Dakota and the NRCS is creating an Interagency Guidance Manual for Mitigation Bank Sponsors for Wetland Mitigation Banking in North Dakota

In closing, I’d like to reiterate that the Department is studying wetland mitigation banks in order to determine if it might present an income producing opportunity for the permanent trusts, or alternatively if the program will encumber and burden the Board, Department and trusts. We will continue to review the legal issues and impacts of hosting wetland mitigation banks on trust land.

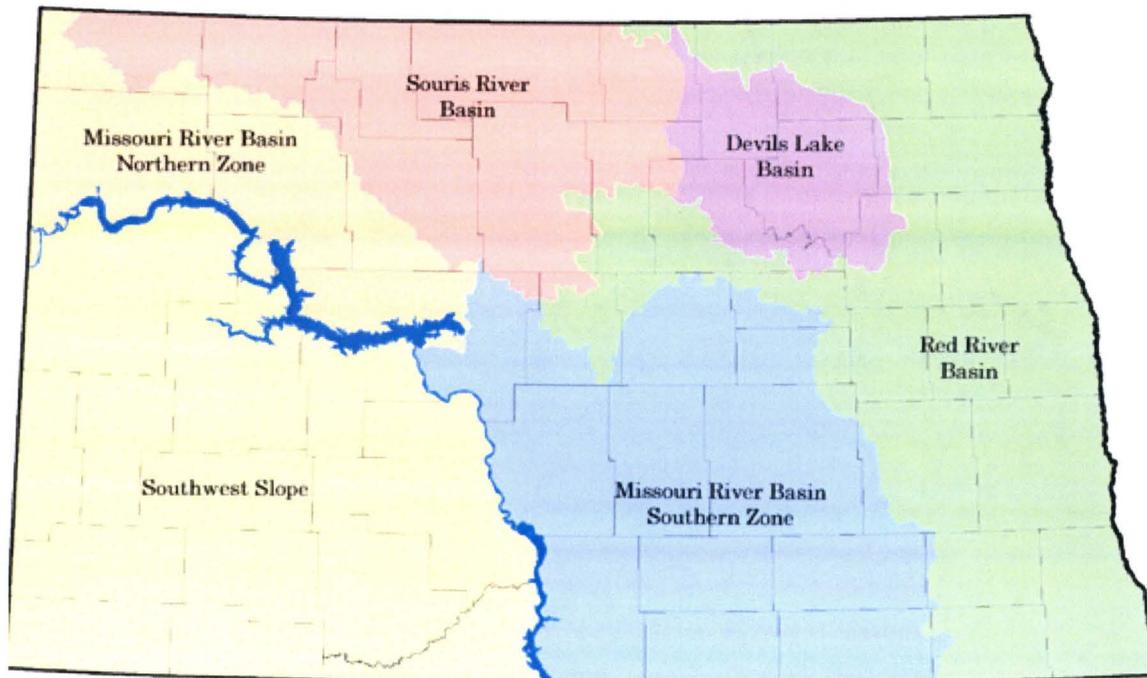
If it is determined that wetland banks can provide a direct benefit to the trusts, the Board of University and School Lands will be asked to consider procedures for establishment of the wetland banks. If we reach that point, we can report back to the Legislature during the interim or next session with our findings. However, because we do not yet know these answers, we do not support the deadlines in this bill, or its disposition toward automatically including trust lands in a potential wetland bank this is a decision that only the Board is authorized to make.

School Trust Surface Distribution



Wetland Mitigation Bank Regional Service Areas

Map obtained from ND Interagency Review Team Publication



A regional service area is a geographic area in the State where banked credits can be used to compensate for project losses.

Minerals Management

The Department is responsible for the management of 1.7 million acres of trust minerals and 800,000 of sovereign, non-trust minerals.

Oil and gas public lease auctions are held and leases are awarded to the company or individual offering the highest up-front payment or "bonus" for the lease. Lease terms are for five years (or as long as there is commercial production if a well is drilled); and provide for a 1/6th or 3/16 royalty on oil and gas produced.

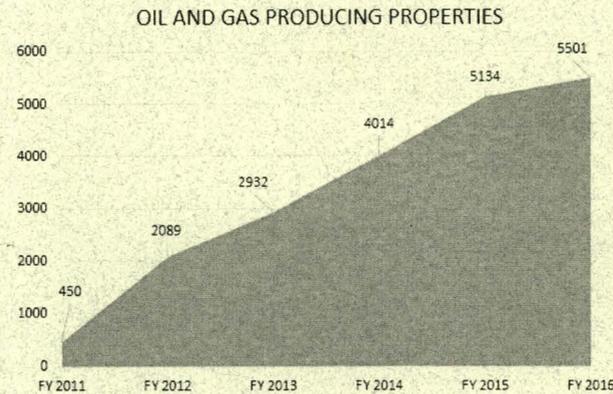
The Department also issues coal leases. It monitors mining and reclamation activity, ensures lease compliance, and works to ensure that mineral development on trust land proceeds in an environmentally sound manner.

MINERAL LEASING

- Lease oil and gas mineral tracts (714 new leases in FY16).
- Manage leases (9,567 active leases FY16).
- Approve assignments of oil and gas leases and pooling agreements.
- Enforce shut-in well policy and offset well policy.
- Monitor drilling activity to track production on state-owned minerals.
- Monitor activities of other governmental agencies to determine effect on state-owned and trust minerals.

Revenue Compliance

- Process all incoming payments.
- Manage mineral receipts.
 - * FY16 oil and gas royalties totaled \$192.2 million on 5500 producing properties. The Department manages minerals in 42% of all active and producing oil wells in North Dakota.
 - * FY16 oil and gas bonus totaled \$12.4 million.
- Manage escrowed royalties.
- Conduct producer compliance audits.



Producing Wells & Units Managed

Energy Infrastructure and Impact Office

Objective: To mitigate financial hardship to local political subdivisions adversely affected by energy development and exploration.

Grant Source: A portion of the Oil & Gas Gross Production Tax (with a maximum amount prescribed by the legislature each biennium.)

Past Funding Levels:

2007-2009:	\$6 million
2009-2011	\$8 million
2011-2013	\$165 million
2013-2015	\$240 million
2015-2017	\$140 million

Criteria for Grants:

- The political subdivision requesting funds must demonstrate a financial hardship resulting from energy development activity.
- The project must reduce that impact.
- The applicant must demonstrate financial need.

In consideration of specified grant criteria, legislative mandates and input from a variety of industry-specific advisory committees, grant awards are recommended by the EIO Director and approved by the Board of University and School Lands. Grant payments are distributed via a reimbursement process.

Coal Development Impact: The Office also issues low interest loans to coal development impacted political subdivisions.



Managing Agency For The

ND Board of University and School Lands

January 2016

GOVERNOR

Doug Burgum, Chairman

SECRETARY OF STATE

Al Jaeger, Vice Chairman

ATTORNEY GENERAL

Wayne Stenehjem

STATE TREASURER

Kelly Schmidt

SUPERINTENDENT OF PUBLIC INSTRUCTION

Kirsten Baesler

1707 N 9th St
PO Box 5523
Bismarck, ND 58506-5523
(701) 328-2800
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Department History

The Board of University and School Lands manages the Common Schools Trust Fund and 12 other permanent educational trust funds that are governed by Article IX of the North Dakota Constitution. The trust funds were established at statehood when the Federal Government granted the state 3.2 million acres of land "for the support of common schools" and other public institutions.

Over time, much of this land was sold. However, the 13 educational trust funds still own 707,000 surface acres, 1.7 million mineral acres and \$3.9 billion in financial assets. The Common Schools Trust Fund, which benefits K-12 education, is the largest trust with total financial assets of over \$3.7 billion on December 31, 2016.

Revenues are generated through the prudent management of trust assets. Surface acres are leased to ranchers and farmers and mineral acres are leased for oil, gas, coal, gravel and scoria exploration and development. Revenues are invested in a diverse portfolio of financial assets, including stocks, bonds, farm loans and other securities.

In addition to its responsibility for the land, minerals, and financial assets of the trusts; the Department also manages the Unclaimed Property Division, and the Energy Infrastructure and Impact Office.

Unclaimed Property Division

North Dakota's unclaimed property law has been in effect since 1975. "Property" in this case does not mean land but consists of uncashed checks, unused bank accounts, and securities not claimed by the owner. In some cases the property was missed in the probate of an estate, while in others it has simply been lost or forgotten. The Division receives these unclaimed funds from banks, insurance companies, hospitals, utilities, retailers, and other entities.

Once the money is reported, the Division works to "reunite" the property with its owner by promoting free internet searches, publishing statewide newspaper ads, conducting media interviews, preparing direct mailings, distributing mass e-mails and providing electronic claim reminders.

Nearly \$9 million was returned to owners in FY15 & FY16.

Funds held by the Division may be claimed at any time by the owner or the owners' heirs. Money that is not claimed is invested in the Common Schools Trust Fund to benefit local public school districts. Approximately \$67 million of reported unclaimed property remains unclaimed.

Investments Management

The ND Department of Trust Lands is responsible for directing, implementing, coordinating and monitoring the Board's financial investments.

The 13 educational trust funds are permanent and were established to provide funding for education for present and future generations. The Indian Cultural Education trust is similar in nature to the 13 permanent educational trusts and is in an investment pool with those trusts. The long range investment goals are to have trust assets and distributions increase at a rate equal to or greater than the rate of inflation. The Board has developed an investment allocation plan that includes a well diversified portfolio of stocks, bonds and other financial assets.

- The total fund balance of the 13 permanent trust funds grew by \$78.2 million during FY16 to \$3.72 billion; total financial assets have increased by more than \$1.99 billion over the past 5 fiscal years.
- The permanent trusts' investment portfolio posted a total return loss of -0.6% during fiscal year 2016, made up of an income yield of 1.9% and a net capital loss of -2.5%. The permanent trusts' portfolio 5.2% annualized, net of fees, over the past 5 years and 8.2% annualized over the past 7 years.

Permanent Trust Distributions for the 2017-2019 Biennium

During the 2017-2019 biennium, the 13 educational trust funds will distribute nearly \$306 million to beneficiaries, an increase of nearly 40 percent over the 2015-2017 biennium.

The Common Schools Trust Fund will contribute \$144.1 million to K-12 education each year of the biennium, or approximately \$1,282 per pupil per year. Biennial distributions for the permanent trusts are shown below.

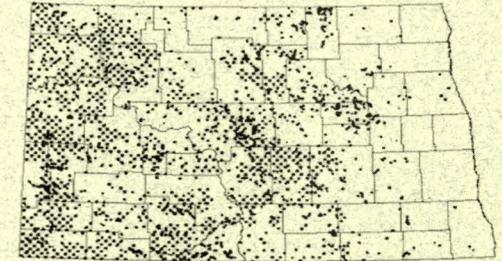
<u>Beneficiary</u>	<u>2017-2019 Distribution</u>
Common Schools (K-12)	\$288,264,000
ND State University	4,738,000
School for the Blind	654,000
School for the Deaf	1,598,000
State Hospital	1,184,000
Ellendale	1,304,000
Valley City	808,000
Mayville	542,000
Industrial School	1,422,000
School of Science	1,260,000
School of Mines	1,444,000
Veteran's Home	436,000
University of ND	2,218,000
Total	\$305,872,000

Surface Management

From 1889 to 1970s, grant land was sold when an application was made; total sales reduced grant land from 3.2 million acres at statehood to 656,000 acres (grant land) today. Land acquired through mortgage foreclosure (most in 1920s and 30s) is 51,000 acres, for total land managed of approximately 707,000 acres.

Trust lands are managed as an asset for the benefit of the schools and institutions. Each tract is classified as to its productivity, income potential and cash value. School trust lands, concentrated in the state's livestock producing regions as shown on the following map, produced over \$12.8 million in surface revenue in FY16.

School Trust Surface Distribution



Lease Marketing and Maintenance

- Public lease auctions held 4 out of every 5 years.
- 4,456 leases issued to more than 2000 lessees.
- Over 99% of trust lands are under lease.
- Minimum bids at public auction calculated using the Fair Market Value method and are based on private market rentals.
- Lease rentals are billed and paid annually.
- Constitution limits lease terms to a 5-yr maximum.

Natural Resource Management

- 97% of school trust lands are grasslands. Most trust lands are open to public walking access.
- Improvement projects include grazing systems, clubmoss control, trash cleanup, abandoned well sealing and seeding marginal cropland to grass.
- Invasive plants are actively controlled using chemical and biocontrol techniques.
- Trust lands are inspected at least every 5 years.

Rights-of-Way and Gravel Mining

- 281 rights-of-way applications for trust lands were processed in FY16 with negotiated fees and consideration providing revenue to the trusts.
- Construction and reclamation of rights-of-way and oil/gas wells are monitored. 520 right-of-way reclamation inspections were conducted in FY16.
- Construction aggregate lease royalties provided \$468,000 to the trusts in FY16.

North Dakota Wildlife Federation

Ensuring abundant wildlife, wildlife habitat, and access to wildlife recreational opportunities



TESTIMONY OF MICHAEL McENROE
NORTH DAKOTA WILDLIFE FEDERATION
SENATE BILL 2245
HOUSE AGRICULTURE COMMITTEE
MARCH 17, 2017

Chairman Johnson and Members of the House Agriculture Committee:

For the record, I am Mike McEnroe and I am representing the North Dakota Wildlife Federation. The Federation has 1,400 members in nineteen affiliated clubs and organizations across the State of North Dakota.

The North Dakota Wildlife Federation opposes SB 2245. We do not oppose the concept of wetland mitigation banks or credits.

SB 2245 calls for the Game and Fish Department, the Department of Trust Lands, and the Department of Mineral Resources to provide a list of parcels, presumably by tract name or legal description that may qualify for wetlands mitigation.

For the past 31 years, since 1986, the North Dakota Game and Fish Department has been developing and restoring wetlands on Wildlife Management Areas with their Federal, State, and NGO partners. I would venture to say there is little to no wetland restoration left to do on Game and Fish Department properties.



In addition, almost all Game and Fish Wildlife Management Areas have been acquired with Pittman-Robertson federal aid funds or are located on U.S. Army Corps of Engineers or Bureau of Reclamation land and may not be eligible for Natural Resource Conservation Service or Corps of Engineers mitigation requirements.

Restoration of drained wetlands on State School lands may decrease their agricultural rental value and not be permissible under laws directly the Department of Trust Land rules to receive the highest income from school lands.

Remediated sites on abandoned oil well sites will likely not have restored wetlands.

Additionally, while we support the State using wetland mitigation banks on State lands for Department of Transportation, State Water Commission, or other State agency projects, we would oppose using publicly funded wetland banks or credits on public lands for private agricultural drainage.

I would stand for any questions the Committee may have.

#5
3/17/17

TESTIMONY OF DAVID DEWALD
SENATE BILL 2245
SENATE AGRICULTURAL COMMITTEE
March 16, 2017

Chairman Johnson and Members of the House Agricultural Committee:

For the record, my name is David Dewald. I am here today as a private citizen. I am not representing anyone, except myself. I have past work experience relative to wetland mitigation and wetland mitigation banking. I retired from the Natural Resources Conservation Service in 2011 and then worked for the North Dakota Department of Transportation for 4 years as a wetland mitigation specialist.

In my opinion this bill sets up the Department of School Lands for failure for the following reasons:

- Requires a state agency, with no wetland mitigation expertise or qualified wetlands staff, to conduct an inventory on lands that **may** qualify for wetlands mitigation.
- The Department is to inventory over 700,000 acres looking for potential wetland mitigation. What criteria will the Department be using? How are these sites going to be inventoried without on-site review to determine if a dam or excavation can hold water to create a wetland? This cannot be done in a one year. What are the costs to the taxpayers?
- The Department already has the opportunity to work with the North Dakota Department of Transportation to develop wetland mitigation for transportation projects impacting wetlands, at no cost to the Department.
- The NDDOT along with local road departments, water resources boards and airports all have wetland mitigation needs. If income for the Department of School Lands is an issue, these agencies could pay for these wetland mitigation credits directly to the Department, maybe through a simple memorandum of agreement instead a public auction process usually conducted by the Department.

Wetland mitigation comes with a short-term acquisition, restoration or creation cost, and a long-term monitoring cost. This will require professional staff with the correct education and background to fulfill the annual and long-term monitoring requirements and any maintenance and repairs that are needed during establishment as well as in-perpetuity.

In closing, wetland mitigation banks remain into perpetuity. That means, if state owned lands were used for private wetland mitigation, North Dakota taxpayers would be required to maintain and monitor restored or created wetlands in perpetuity to subsidize ag sector mitigation.

I ask for a Do Not Pass on SB 2245 in order to keep wetland mitigation credits on state lands for public infrastructure projects.

Thank you. I will try to answer any questions the Committee may have.



House Agriculture Committee
Testimony on SB 2245

North Dakota Game and Fish Department
Terry Steinwand, Director
March 17, 2017

Chairman Johnson and members of the House Agriculture Committee, my name is Terry Steinwand, Director of the North Dakota Game and Fish Department. I'm here today to provide testimony on SB 2245.

The North Dakota Game and Fish Department currently manages 237 Wildlife Management Areas (WMA's) of which 117,695 acres are owned in fee title and 98,311 are leased from other entities such as U.S. Army Corps of Engineers and local water boards for wildlife management purposes. The purpose of these WMA's is to provide wildlife habitat for production of many different species and also access to the general public for hunting, fishing and wildlife related activities. We are currently in the process of identifying funding sources when these WMA's were purchased but many were acquired using some sort of federal funds, i.e., Pittman Robertson funds derived from sale of hunting and shooting associated equipment or Section 6 of the Endangered Species Act funding, which would make them ineligible for wetland mitigation. Additionally, since the purpose of WMA's are to produce wildlife, if a particular wetland type was needed on a WMA that would either enhance the WMA or a surrounding area, in all likelihood that wetland has either already been restored or created.

While this bill only requires identification of land parcels that may qualify for wetland mitigation, it's a process that will require additional work and possibly some additional expense to accomplish the desired result. In order to fulfill the intent of wetland mitigation for form and function of mitigated wetlands, it would require technical staff with a wetland and soils background. Game and Fish has biologists with wetland related background but have no one on staff with soils expertise and would have to contract that particular job to an outside entity. It would also require technical engineer design, again which Game and Fish would have to contract outside the agency. We have not yet asked the question to the Fish and Wildlife Service that administers federal aid funding (Pitman-Robertson), but there's a possibility that contracting such tasks out could be considered a diversion of funds since federal regulation states that utilization of any states hunting and fishing license fees or federal aid funds from Pittman Robertson funds cannot be used for any purpose other than for wildlife related purposes. Federal regulations state the revenues from hunting and fishing license sales must be controlled by the

state fish and wildlife agency and used only for the function required to manage the agency and fish and wildlife related resources for which the agency has authority under state law.

Given the information provided, and to insure that we would not be at risk of losing federal funding, I would ask for a DO NOT PASS recommendation on SB 2245.



Ducks Unlimited, Inc.

7

To: ND House Agriculture Committee Members
From: Eric Lindstrom, National Mgr. of Agricultural Policy, Ducks Unlimited, Inc.
RE: Testimony on Senate Bill 2245
Date: March 17, 2017

Good morning, Chairman Johnson, and members of the committee. My name is Eric Lindstrom representing Ducks Unlimited (DU) and our more than 6,000 members across North Dakota. I appreciate the opportunity to testify today and offer a few comments and recommendations on SB2245.

This bill proposes to create an “inventory,” but lot of unanswered questions and uncertainties remain. For example, it directs some state agencies to inventory public lands for wetland mitigation in consultation with the Natural Resources Conservation Service (NRCS) and U.S. Army Corps of Engineers (Corp). However, as currently written, the bill provides no real guidance on what is actually to be inventoried? Furthermore, it places additional undue staffing and financial burdens on our state agencies during a time of budget cuts.

Secondly, we’ve partnered with the Corp on extensive wetland mitigation work in the past. As a key provider of In-Lieu Fee mitigation credits, we’ve worked with a wide variety of partners including, BNSF, Canadian Pacific, XTO Energy, Conoco Phillips, Ward, Benson and Eddy Counties, and the Cities of Bismarck, Williston, and Watford City. This type of mitigation is well-established, includes comprehensive requirements, guidelines, interagency oversight, service areas, an approved crediting system and provides options for agricultural mitigation.

In contrast, NRCS’ agricultural mitigation program is still very much in its infancy and lacks these established guidelines, inter-agency reviews, approved service areas, banking instruments, etc. None of these requirements have been formally established, nor have approved yet, so it seems like this bill could potentially be “putting the cart in front of the horse”.

Third, and most importantly, we have serious concerns about using public lands for subsidized wetland mitigation for any private industry. That’s hardly a free- or fair market-based approach. The vast majority of our state Wildlife Management Areas (WMAs), which are owned and managed by the ND Game and Fish Department (NDGFD). were purchased using a combination of hunting license fee dollars and excise taxes derived from the sale of firearms, ammunition, and other sporting equipment (“Pittman-Robertson Funds”). These federal “P-R funds” have strict use, prohibition and purpose requirements; thus, I’m not sure many of these tracts would even qualify for mitigation and trying to do this could potentially jeopardize millions of federal dollars coming into our state. In addition, I’m not sure sportsmen’s dollars should or were ever intended to be used to help subsidize private wetland mitigation. That’s simply bad public policy and runs counter to the purposes of these funds.

In summary, this bill: 1) contains many unanswered questions on what’s actually being inventoried?; 2) places undue burdens on our already resource-strapped state agencies; and 3) potentially sets up a system to publicly subsidize private wetland drainage thereby working against sportsmen’s interests who helped purchase many of these lands (WMAs) and potentially jeopardizes future P-R federal funding too.

For these reasons, we’d respectfully ask this committee to give this bill a Do Not Pass recommendation.

Thank you for your time, Mr. Chairman and members of the committee, and I’d be happy to stand for any questions.