

2019 HOUSE APPROPRIATIONS

HB 1013

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division
Medora Room, State Capitol

HB1013
1/8/2019
Recording Job# 30529

- Subcommittee
 Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Attachments A and B

Chairman Vigesaa: Opened the hearing on HB1013.

Jodi Smith, Commissioner, ND Department of Trust Lands: See testimony attachment A.

Representative Bellew: Do you invest them as well?

Jodi Smith: We do invest those. We have our own investment department. We have about \$5.5 billion worth of investments through our department at this point.

Representative Bellew: Are they separated by funds?

Jodi Smith: Correct.

Jodi Smith continued with her testimony.

Representative Bellew: The Permanent Trust Fund is that the Common School Trust Fund?

Jodi Smith: That would be all of the schools.

Representative Bellew: That includes the colleges also?

Jodi Smith: Yes.

Jodi Smith continued with her testimony.

Vice Chairman Brandenburg: How much is in the Indian Cultural Education Trust Fund?

Jodi Smith: There's about \$1 million in that trust fund.

Jodi Smith continued with her testimony.

Vice Chairman Brandenburg: What have you given to Dickinson and Minot?

Jodi Smith: Are you referring to the airports?

Vice Chairman Brandenburg: Yes.

Jodi Smith: I'll have to come back to you with that answer. I can tell you that at the end of December we had 92 active grants; 38 of those grants were for airports and \$35.3 million had been awarded. We do have some that are outstanding.

Vice Chairman Brandenburg: If you can provide the data to the committee?

Jodi Smith: Yes.

Representative Kempenich: Where are you at the with the administrative rules process?

Jodi Smith: We are working through that process. We do have the Energy Infrastructure and Impact Office and Unclaimed Property as of January 1, 2019 adhere to administrative rules. Those did pass in December and we're still working through Surface and Minerals Management. We are seeking legislative intent during this session; we found some unintended consequences of how the bill was worded last time. We found that instead of taking 3 months to issue an oil and gas lease; it would take 12 to 18 months. Because we have interest in 6,900 wells, we felt that would be a significant impact to the state of North Dakota.

Representative Kempenich: We don't need a bill, we just need an amendment.

Jodi Smith: One of the things that we did with the board in good faith effort, is we had the board pass a policy in September which required first and second reading from the board and a line for public comment period.

Jodi Smith continued with her testimony.

Representative Bellew: (Unintelligible question)

Jodi Smith: That's where we have the \$45 million.

Vice Chairman Brandenburg: How much is in that Coal Development Trust Fund?

Jodi Smith: Sixty million dollars.

Jodi Smith continued with her testimony.

Representative Kempenich: What are you holding now?

Jodi Smith: It's about \$229 million.

Jodi Smith continued with her testimony. See attachments A and B.

Representative Kempenich: You're paying still for the IT consolidation, aren't you? You're still going to have a person in your agency that's dedicated to more or less aren't you? How is that going to work?

Jodi Smith: Our agency is a little bit different. We're not a cabinet agency, so it's not a mandate that's being placed on us. The 2 programmer/analysts I am willingly handing over to them. As we bring in new software I will no longer need those programmers. I didn't allow my network administrator to be moved up there. They will remain in house.

Representative Kempenich: At the end of the day, is there some savings in it?

Jodi Smith: I don't know.

Jodi Smith continued with her testimony.

Representative Kempenich: We need to make sure that the public can access what they need to do.

Jodi Smith: We are under the current process of updating our website. That will hopefully go live in May and we are partnering with ITD and with Mabu to get that done successfully.

Vice Chairman Brandenburg: I'm trying to follow the green sheet and in your testimony you don't really talk about that. We need to know what you're looking at in your budget.

Jodi Smith: Ok.

Chairman Vigesaa: The FTE's that are going to be reduced; are they people that are retiring or are they people that are going to be let go? What is the status of the ones being removed?

Jodi Smith: Two of them accepted the voluntary separation program and we are not replacing them at this time. I have one individual who is a grants administrator within the Energy Infrastructure and Impact Office; it is the intention of the department to do a workforce reduction on that particular individual by the end of the biennium, since that program will no longer be funded. One of those FTE's was one of the programmer/analysts and ITD has agreed to take him out of my budget.

Jodi Smith continued with her testimony.

Representative Kempenich: This fund has become diluted over the years. Truthfully, there's been conversation about having \$5 million or \$6 million in this fund for true impact funds that doesn't fit any mold of what's out there now.

Jodi Smith continued with her testimony.

Chairman Vigesaa: You said there was \$45 million is remaining in that fund. Has that all been allocated then to the penny?

Jodi Smith: There's about \$3 million that is not allocated. We call it the contingency fund; but it's really an emergency grant basis.

Vice Chairman Brandenburg: Getting back to the airports. What's the discussion for making that go for the Williston airport?

Jodi Smith: As far as the funds that would come from the Energy Infrastructure and Impact Office or the continuing needs?

Vice Chairman Brandenburg: There's a commitment at Williston to match up \$320 million.

Representative Kempenich: Williston shouldn't be a problem anymore. Williston should have what we're doing for them; it's Dickinson. The proposal that's out there now is Dickinson and Watford City. This next go around is across the state.

Jodi Smith continued with her testimony.

Representative Kempenich: This doesn't include the \$295 million?

Jodi Smith: No, that's already money we have that's set aside.

Representative Kempenich: What's the balance today?

Jodi Smith: Five hundred million dollars

Representative Kempenich: So you're anticipating another \$600 million by the end of the biennium?

Jodi Smith: Correct. Once a month we transfer those funds into our custodial bank and it will range anywhere from \$75 million to \$95 million depending on the price of oil.

Vice Chairman Brandenburg: You have about \$400 million in there now?

Jodi Smith: A little more than \$400 million.

Jodi Smith continued with her testimony.

Vice Chairman Brandenburg: I see that one is an assistant and one is an attorney?

Jodi Smith: Yes.

Vice Chairman Brandenburg: So you're looking to have an attorney in your office?

Jodi Smith: Yes.

Chairman Vigesaa: The duties of this administrative assistant; are those duties that have been taken by another employee or are these new duties that you wish to add?

Jodi Smith: These are duties that are currently being disbursed by my other FTE's. As we have new IT systems coming aboard we're realigning our workflow through the department.

Representative Mock: How many attorneys do you have in the office currently?

Jodi Smith: We don't have any.

Representative Mock: This will be a new position?

Jodi Smith: Correct. We do have one that's assigned to us through the Attorney General's office.

Representative Mock: Did you request through the Attorney General's office to have an additional attorney in that office dedicated to you?

Jodi Smith: In the past, I believe we have.

Representative Mock: I presume that was not enough? The answer you received was not the one you were looking for?

Jodi Smith: He may not have been allocated through his budget office.

Jodi Smith continued with her testimony.

Representative Kempenich: Are you looking for someone who is kind of knowledgeable in oil, gas, and minerals? It does get a little frustrating for both sides. If they don't know they're going to take the strictest approach they can.

Jodi Smith: That's correct. We regularly receive a demand letter. The legal counsel for one of those operators will send us a letter. We need to respond to that in a feasible amount of time. That all runs through the current attorney that's assigned to us.

Vice Chairman Brandenburg: Who is your attorney assigned to the Trust Land out of the AG's office?

Jodi Smith: Right now it's Dave Gartner. We had multiple attorneys assisting us and we've tried to not create that scenario again due to some conflicts of interest that have occurred.

Jodi Smith continued with her testimony.

Chairman Vigesaa: Would this study be done by an outside vendor or will that be internal?

Jodi Smith: It would require several outside vendors.

Jodi Smith continued with her testimony.

Chairman Vigesaa: I would like you to go through the final 2 pages of the green sheet.

Jodi Smith went through the green sheet.

Representative Bellew: I would like to know your investments.

Jodi Smith: We can provide that quite easily.

Vice Chairman Brandenburg: I'm trying to wrap my arms around where we were last session and where we're going this session; because there's an awful lot of money getting tied up in airports.

Ron Ness, President, ND Petroleum Council: Testified in support of the FTE's for the Department of Trust Lands.

Vice Chairman Brandenburg: If there are other agencies that were in need of an attorney, would you be in support of that also?

Ron Ness: Absolutely.

Chairman Vigesaa: Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division
Medora Room, State Capitol

HB1013
1/15/2019
Recording Job# 30776

- Subcommittee
 Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Attachment A

Chairman Vigesaa: Opened the hearing on HB1013.

Roll call taken.

Jodi Smith, Commissioner, ND Trust Lands: See testimony attachment A.

Vice Chairman Brandenburg: I was visiting with Senator Bekkedahl also. It looks like they're looking for another \$23 million just because of cost overrun. I would like to know the pathway. Where are we at and what are we doing?

Jodi Smith continued with her testimony.

Vice Chairman Brandenburg: In Dickey county we have a road that went under water where it cost \$250,000.00 to build up this road. This committee has been able to fill some of those gaps.

Jodi Smith continued with her testimony.

Representative Bellew: Normally when you have funds like this you have to pay some person to manage it. What are paying the people that are managing these funds?

Jodi Smith: We have a consulting firm that assists us in managing which is RBK. We also have our fund managers in which we pay them an investment fee.

Representative Bellew: Can you tell us how much that is?

Jodi Smith: For RBK it's \$149,000.00 per year.

Representative Bellew: Isn't there a fund manager and don't they get paid a significant amount of money? How much are we paying these fund managers?

Jodi Smith: In 2018 our total fees for our managers fees are custodial and consultant fees; which was \$25 million. This was for \$5.5 billion. Then there are incentive fees that we do. If they out perform the benchmark that we've set for them, we do pay them an incentive fee above and beyond that.

Representative Bellew: Is each fund managed separately and each has a separate fee to be managed? For your real estate one do you pay "X" amount of dollars to manage that one and then you pay a certain amount for commodities?

Jodi Smith: Yes. Depending on the asset class, because there are different risks that are taken with each asset class and some are active management and some are passive management. Depending on how we invest those funds, really depends on how that fee is set for us.

Representative Bellew: Can I get a break down of that?

Jodi Smith: Yes.

Representative Kempenich: The Legacy Fund is \$5.5 billion and the cost was \$12.5 million for managing fees last year. We're pooling close to \$10 billion.

Jeff Engelson, Chief Investment Officer, ND Trust Lands: The reason their fees are lower than ours is that they have a lot more conservative strategy. They have a lot more in fixed income and basis points that are maybe .2% that they invest at. We have less in fixed income. If you compare us to the pension; they're the opposite. They are more aggressive than us and have higher fees. The Insurance and Legacy side are less aggressive because they're focusing in paying out that income at the end of the biennium. It's a matter of how you invest.

Representative Kempenich: I'm trying to figure out how you're getting there with doubling.

Jeff Engelson: \$5.8 million of that \$25 million is because our real estate managers return 20%. When they do really good, they get a good incentive fee. Normally our base fee would be 44 basis points; which is very cheap for a fund like ours.

Representative Kempenich: How much is this fund on active management?

Jeff Engelson: We are 73% active.

Representative Bellew: This is the Common Schools Trust Fund?

Jodi Smith: It is all of the Permanent Trust. We manage \$5.5 billion and the Common Schools Trust Fund is a portion of that. We also have the SIIF Fund.

Representative Bellew: You said it was \$5.5 billion. This is \$4.85 billion.

Jodi Smith: Yes, \$4.85 billion plus you add in about \$500 million that we're sitting on; which is the SIIF Fund. Every month we brought in a significant amount of money for the SIIF Fund.

Representative Bellew: The Common Schools Trust Fund is all constitutional or is that legislative?

Jodi Smith: Correct.

Representative Bellew: What section is it in? Is it in the Trust Lands?

Jodi Smith: That's correct.

Representative Bellew: The Common School Trust Fund, the money you get, is for foundation education? That's the only thing it can be used for? Does that say that in the constitution also?

Jodi Smith: That's correct.

Chairman Vigesaa: What was the rate of return for 2018 on funds?

Jodi Smith: It was 6.5%.

Chairman Vigesaa: The green sheet didn't have sections like the one on the website.

Adam Mathiak, Analyst, ND Legislative Council: For purposes of the green sheet we do some summarizing in there. The actual language that the governor had proposed is in the bill draft they sent to our office which was attached at the end.

Jodi Smith explained the green sheet.

Chairman Vigesaa: I know that there are 3 options for health insurance. The one that's in the budget is continuing with what we do right now?

Adam Mathiak: For budgetary purposes wouldn't make a difference which plan an individual chooses. The dollar amount for budgetary purposes, when you look at the 3 specific plans, the dollar amount would even out per employee.

Jodi Smith continued with her explanation of the green sheet.

Representative Kempenich: You took 3 out and added 2 back in.

Jodi Smith: It's a little confusing this year. If you look at line item 4, you're transferring another 2 FTE's out for the unification project. There are some fees that are associated with not having them within our department and meeting excess fees from ITD as a result of that. In total, we reduced by 3 FTE's and we're asking to increase it by 2 FTE's.

Representative Kempenich: Between the 2 deductions you have \$800,000.00 and you're asking \$415,000.00 back for 2 FTE's. On your IT, you built that into your operating? Where are you addressing your IT needs?

Jodi Smith: I currently have 3 FTE's that are dedicated to IT. Two of them are programmers; those are the 2 that I've authorized to be transferred through the unification project. I have retained 1 FTE for desktop support services. Otherwise the budget reflects in our operating expenses to account for our new software.

Representative Kempenich: Will you save anything on the salary line?

Jodi Smith: No we won't.

Representative Kempenich: That attorney would more than likely be an attorney manager?

Jodi Smith: I hope so. I need someone who can handle the day to day operations.

Jodi Smith continued with her explanation of the green sheet.

Chairman Vigesaa: Are the proposed salary increases included in those numbers?

Adam Mathiak: Number 3 does include some operating expenses associated with those positions. The specific amounts for the salaries would exclude the salary increase amounts. The salary increase amounts would be up above in item #1.

Chairman Vigesaa: In visiting with ITD they say that the unification process isn't going to necessarily change any of the IT costs. But, we're seeing in all of the budgets that there is a line item for the costs; they move the people, but there are still costs to the department. Is that the case that it's revenue neutral across the board if we did that project?

Stephanie Gullickson, Analyst, ND Office of Management and Budget: If we did the unification across the cabinet member budgets than the ones that volunteered to be a part of the unification is we took the salaries and put them into operating; but those salaries need to have the increase. We applied the 4% and the 2% with health insurance increase to those that were moved to the operating line and add that in. That's why you're seeing an increase in all these budgets; it's the raise for the employees that would go to ITD.

Chairman Vigesaa: Item 4 would be the increase for the salaries?

Stephanie Gullickson: That's right. Item 4 would be the increase of the 4% and 2%; then the health and retirement for those staff that will go to ITD so the land department can pay those.

Representative Bellew: Can we get a breakdown of the operating expenses to find out what line item that \$23,000.00 is in the operating?

Stephanie Gullickson: It should be shown in their IT data processing line; that's how it will get charged back. When ITD takes those staff and then charges the department for services

that they provide, that will show up in your ITD data processing line. That's how ITD bills all the agencies.

Representative Kempenich: Since there is no historical number, how did you come up with that number?

Stephanie Gullickson: My understanding is the \$504,000.00 was what they put forth in their 10% budget reduction. That was their proposed reduction to get to the governor's 10%.

Jodi Smith: Because we had an increase in our professional services, which is our legal fees, we had to drastically reduce some of our other operating expenses. Page 7 of my previous testimony goes into a little more detail of where we were garnering some of those reductions.

Jodi Smith continued with her explanation of the green sheet.

Representative Kempenich: I was looking at your spend down. As a special funded agency, it's your challenge to manage.

Jodi Smith: I think that's accurate.

Jodi Smith continued with her explanation of the green sheet.

Chairman Vigesaa: In item 6 you add back in. Was that something that you requested and the governor allowed you to add operating expenses in?

Jodi Smith: Correct.

Chairman Vigesaa: That was a request you made of the governor and he restored that much?

Jodi Smith: Correct.

Jodi Smith continued with the green sheet.

Representative Kempenich: We're not here to criticize or micro manage. On your operating expenses you still have about \$1 million. Are you carrying that over?

Jodi Smith: I know there was some things built in for education that didn't go through. We will pay for continuing education for our staff. We are going to purchase some IT equipment in February.

Jodi Smith continued with the green sheet.

Vice Chairman Brandenburg: When we talk about minerals, we have to talk about all energy. In the study, are you going to what game and fish did? In Burke county you lost 6 wind towers because game and fish won't let you put them there and that was \$100,000.00 a year. So you're going to study oil?

Jodi Smith: Correct.

Vice Chairman Brandenburg: That's energy.

Jodi Smith: We're not doing an energy study. We have to look at anything we can knowingly pull out of the ground.

Vice Chairman Brandenburg: We want to protect oil, when we're dealing with that you're going to have to deal with the direct and indirect impact and exclusion areas. Are the trust lands paying any mitigation? Is there money being spent for mitigation right now that's going to game and fish that you know of? The companies are paying it if there's any mitigation?

Jodi Smith: Correct.

Vice Chairman Brandenburg: You don't know what they're paying?

Jodi Smith: I would have to check with my service division director if there's a way for us to estimate how much the companies are paying.

Jodi Smith continued with her explanation of the green sheet.

Vice Chairman Brandenburg: Lynn Helms shared with us that the oil industry paid \$3.3 million in mitigation last year.

Jodi Smith: We can provide data and cost concerning mitigation.

Vice Chairman Brandenburg: How many acres do we have? We're being affected by decisions being made by people that don't have anything on those abstracts.

Jodi Smith: The operators pay us for direct impact to state lands. We don't charge for indirect impacts. The board doesn't sign off on any projects unless there's local community support for them. As the state we won't overstep the authority of the local leadership.

Representative Bellew: You're a special funded organization? I would like to know where those special funds come from.

Jodi Smith: Yes.

Representative Bellew: The fund distributions. How are they determined and who determines them?

Jodi Smith: Yes, that will be a part of the board memo that we bring back to you.

Representative Mock: The attorney in the budget. You do have 1 attorney that works with you from the attorney general's office?

Jodi Smith: Correct.

Representative Mock: Is that a full time?

Jodi Smith: It's kind of shared. There's a natural resources division within the AG's office; it's kind of dependent on their skill set. In multiple cases we have to seek outside counsel because we have a conflict of interest.

Representative Mock: Is it appropriate for us to consider the attorney in the Trust Lands budget or should we look at the attorney general's budget? There's been a move to move attorneys away from individual agencies and over the attorney general.

Representative Kempenich: Special funded agencies aren't necessarily required to use an attorney general attorney.

Jodi Smith: SB50 from 1919 where the attorney general is allowed to appoint an attorney for the board of university and schools. As long as the attorney general complies with this and agrees that this is what's in the best interest of the board and department; then the attorney general can appoint an attorney to come in.

Representative Kempenich: I don't think the attorney general should be sitting on any of these boards in the past because it does create a conflict.

Chairman Vigesaa: Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
1/30/2019
Recording Job# 31780

- Subcommittee
 Conference Committee

Committee Clerk Signature Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Attachment A

Chairman Vigesaa: Opened the work session on HB1013.

Roll call taken.

Chairman Vigesaa: Discussed attachment A.

Representative Kempenich: Discussed the investments of the agency.

Representative Bellew: My concern is the \$25 million per year that we're paying these investment people. I think it's excessive and if we can do better, we should try. The reason I want to know about the college and university funds; my college president contacted me and he's one of the three colleges that received a reduction in grant money this biennium. He asked me if I could ask the trust lands about their investments and what goes where.

Chairman Vigesaa continued with the worksheet.

Representative Bellew: I think we should do the governor's recommendation. They're reducing three FTE's.

Representative Mock: We've moved a lot of attorneys to the attorney general's office. If this attorney is needed, should it be added to the attorney general's office instead of her's?

Representative Kempenich: I think what she's looking for is an attorney to manage attorneys.

Representative Beadle: They use the natural resources division of the attorney general's office. They stated it creates some conflicts; so they frequently have to seek outside counsel.

The in-house counsel would be proactive and allow them to do that review without going outside.

Vice Chairman Brandenburg: Aren't there five or six agencies that have their own attorneys? I don't have a problem with removing it.

Representative Bellew: I don't have a problem with that. Do we remove the administrative assistant also?

Chairman Vigesaa: I think for this half we should just not move those two FTE's over.

Representative Beadle: I don't have a problem with that.

Representative Bellew: Made a motion to remove 3 FTE's.

Vice Chairman Brandenburg: Seconded the motion.

Representative Mock: We're not going to do anything with the unification positions?

Chairman Vigesaa: I think we'll let that sit for now.

Representative Beadle: What is the salary difference between the admin assistant and the attorney? Of that \$415,492.00, what's attributed to what position?

Representative Kempenich: In section 7 of the bill, I think we should require a report to show where they're at with this project.

Adam Mathiak, Analyst, ND Legislative Council: The administrative assistant is \$123,000.00 and the attorney is \$248,000.00 for the biennium.

Representative Kempenich: Discussed the budget bill.

Chairman Vigesaa continued with the worksheet.

Representative Kempenich: The evaluation study, I think it's hiring consultants.

Vice Chairman Brandenburg: Section 5; is that the fund where they want to go from \$10 million to \$18 million?

Chairman Vigesaa: No.

Vice Chairman Brandenburg: Where is that fund at?

Adam Mathiak: The two funds that are referenced here in HB1013; the oil and gas impact grant fund and the energy impact fund. Those both receive money from the gross production tax side of the equation. The energy impact fund only received money in the 2017-2019 biennium; it was newly created and it was intended to provide money for airport grants exclusively. The oil and gas impact grant fund has been around for quite some time and is

used to address needs in the oil areas. In the industrial commission bill, there's the oil and gas research fund; that fund receives money from the oil extraction tax and the gross production tax. There is \$10 million in current law that goes into that fund; their proposal was to increase that to \$18 million so that they could fund a new research project related storing gas.

Chairman Vigesaa: Do you have the balances of those funds?

Adam Mathiak: I don't have the balances off hand. The energy impact fund received a total of \$15 million; part of it was from the oil formula which was \$4 million and then there were transfers from other funds from SIIF. That money is all committed in that fund; it's been awarded to the airports. They do it on a reimbursement basis to ensure that the work has been completed. Their carry over authority is to make the payments as the work on those airport projects are completed. The oil and gas impact grant fund would be less than \$5 million that would be available for new grants. The oil and gas research fund; most of it was committed, there was \$4 million or \$5 million that was still uncommitted.

Chairman Vigesaa: Does the oil and gas impact grant fund continue to get funding? Is that an ongoing?

Adam Mathiak: The oil and gas impact grant fund in current law would receive \$5 million; HB1066 proposes removing those allocations altogether.

Chairman Vigesaa continued with the worksheet.

Vice Chairman Brandenburg: On section 4 is that the transfers for all schools?

Chairman Vigesaa: Yes.

Representative Kempenich: What we have to look at is the desirability of moving all these funds into the investment board. We'd have to set up that the land department would be the advisors on how that money is invested. It should be a study and the legislation it would take to move that over.

Representative Beadle: Once we get information about where that's coming from or how that's decided and allocated, it's worth checking into with the E and E section.

Representative Kempenich: Discussed the disbursement of various funds from the trust lands.

Adam Mathiak: Section 2 of article 9 of the constitution, which provides the formula for the common schools trust fund, also applies to these trust funds as well. It's the biennial distributions from these perpetual trust funds; and those distributions must be 10% of the 5 year average value of the trust assets.

Vice Chairman Brandenburg: What is your thoughts with the interim study of all these trust funds?

Representative Kempenich: They're not complicated in some ways but they are. I think it would just be the weight of how they're managed. Between the investment board, PERS, the teacher's retirement fund, WSI, Legacy and common schools trust fund; we're paying over \$40 million per year on managing these funds and most of it's going to east coast advisors.

Vice Chairman Brandenburg: I agree with Representative Kempenich's comments.

Chairman Vigesaa continued with the worksheet.

Representative Bellew: I think it would be might be ok to move that over.

Chairman Vigesaa continued with the worksheet.

Chairman Vigesaa: The financial software contracts; would that be service contracts?

Adam Mathiak: The financial software maintenance agreement is related to the new project. When it's implemented, they anticipate that they would have an ongoing maintenance agreement.

Representative Mock: What is the source of funding for those projects?

Adam Mathiak: All the proposed changes in the budget for the 2019-2021 biennium would be out of the trust lands maintenance fund. They use a formula that reflects the amount of work that their staff is doing associated with the various funds that they manage. They take an administrative fee off of the various permanent trust funds as well as SIIF under their management; and they use that as the funding source for the department. The IT project was primarily funded with money from the maintenance fund. There was a little bit from the unclaimed property associated with the unclaimed property portion of that IT project. All of that money would have been appropriated last time and this was the carry over for that project.

Chairman Vigesaa continued with the worksheet.

Chairman Vigesaa: Wouldn't that be operating expenses at some point?

Representative Kempenich: I think that's what they're asking for; just an ongoing \$350,000.00 expense. We could have them do a report to see where they're at next session and if we want to keep funding this.

Vice Chairman Brandenburg: With some of these studies I get concerned.

Chairman Vigesaa: If we do put it in as one time funding it won't be added to their base.

Representative Bellew: Made a motion to move the changes discussed to the House side.

Representative Beadle: Seconded the motion.

Voice Vote made.

Motion Carried.

Chairman Vigesaa: Closed the meeting.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
2/4/2019
Recording Job# 32048

- Subcommittee
- Conference Committee

Committee Clerk Signature Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

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Chairman Vigesaa: Opened the discussion.

Adam Mathiak, Analyst, ND Legislative Council: Went through the changes that had previously been done.

Representative Kempenich: Has there been a decision on the unification?

Chairman Vigesaa: Representative Delzer and the leader were going to meet with ITD.

Vice Chairman Brandenburg: When you start transferring this IT from one agency to another, we should be able to get a number. We need to get the difference of the cost of moving it over and what it's costing the agency.

Representative Kempenich: There's \$8.2 million in DOT which is a switch in operating to salaries. It does track pretty close to that. Their operating is a little under what the \$8.2 million is; but there's other increases also.

Representative Kempenich: Discussed the changes to the budget.

Chairman Vigesaa: If leadership decides we're not going to do the unification, legislative council will have to do the amendments.

Representative Kempenich: Explained his proposed amendments to the budget.

Chairman Vigesaa: In addition to what's there, to be paid out over time to and to be done with it, to add some additional?

Representative Kempenich: We'd put it in the new bill.

Chairman Vigesaa: Can you give us the balance on the funds?

Representative Kempenich: If we did continue, they could be combined into one fund; because they're doing the same thing.

Chairman Vigesaa: There's no money currently being put into these?

Representative Kempenich: They're turn back.

Chairman Vigesaa: Are they accepting applications for new projects?

Representative Kempenich: I have a notice that they were going out again.

Chairman Vigesaa: We need to know what's left to be paid out of approved grants and if there is a request for new grants out of the money that's remaining.

Vice Chairman Brandenburg: I don't know if we should empty these out until we know.

Representative Kempenich: The current biennium doesn't end until June; so whatever is flowing in for this biennium is still there. After June 30, there isn't any language anymore to collect money for these funds.

Representative Kempenich continued with his explanation.

Chairman Vigesaa: If we did move section 7 over, we didn't include the cost, they'll just have to find it within their budget to continue the project without any additional money. Would that be correct?

Adam Mathiak: That's correct.

Representative Kempenich continued with his explanation.

Chairman Vigesaa: Is it to study it or move it?

Representative Kempenich: There's no study. It gives the land board two years to do the right thing.

Chairman Vigesaa: Based on what each of those entities are spending for investment costs, I think it's a fairly compelling amendment.

Chairman Vigesaa: Closed the discussion.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
2/7/2019
Recording Job# 32423

- Subcommittee
 Conference Committee

Committee Clerk Signature Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Attachment A.

Chairman Vigesaa: Opened the discussion on HB1013.

Chairman Vigesaa: See attachment A.

Vice Chairman Brandenburg: The permanent fund distribution, section 4, does that mean that they don't have to come back and report?

Adam Mathiak, Analyst, ND Legislative Council: You're looking at the item that deals with the fund distributions, section 4 in the executive recommendation and section 3 in the House version? That's the payments from those permanent funds and the common schools trust fund that keeps happening.

Vice Chairman Brandenburg: That still keeps happening.

Adam Mathiak: It's just provided in the bill to identify how much is going out to those different entities. The constitution requires the payments; but it's included in the bill each session to identify those amounts.

Chairman Vigesaa continued with the green sheet and the work sheet.

Representative Kempenich: I would like to combine the two grant funds.

Adam Mathiak: I did look for some information regarding those two funds. The energy impact grant fund had a \$15 million appropriation; they have awarded and committed all \$15 million for the airport grants. That was part of a total package of \$40 million for airport grants last time; \$25 million came from the oil and gas impact grant fund and \$15 million came from the energy impact grant fund. There's a little less than \$6 million to be paid out as reimbursements from that fund. For the oil and gas impact grant fund there wasn't new

money provided for other grants last time. The \$25 million of new money was committed for the airports. They did have some additional money that was turned back and they were able to carry over; there's about \$3.5 million available during the 2017-2019 biennium for contingency grants. They were authorized to set aside a portion of that for administrative expenses of the fund; that was about \$400,000.00. That left about \$3.1 million for grants; they've awarded and committed \$1.3 million for various grants. The cash balance is higher than that in that fund; mainly it's dealing with carry over funds from 2015-2017 and 2013-2015 that was rewarded. As of December 31 there was about \$48.5 million in the fund; of which \$45.7 million was committed.

Representative Kempenich: (Unintelligible question).

Adam Mathiak: It's for specific projects; but the work on the projects hasn't been completed and the grant funding has not been requested by political subdivisions yet. That left about \$2.8 million at the end of December to be available for contingency grants. During January they awarded \$1 million; that's where the \$1.8 million is coming from.

Representative Kempenich: (Unintelligible question).

Adam Mathiak: It's for specific projects.

Representative Kempenich: I'd like to have wording so that whatever is left in that fund goes into the oil and gas impact grant fund so we only have one fund to track.

Chairman Vigesaa: There would be \$1.8 in the other one that's not committed?

Representative Kempenich: Yes.

Chairman Vigesaa: Would there be another funding source for that other than general funds?

Representative Kempenich: We might end up going to SIIF for something like that.

Chairman Vigesaa: We've eliminated a lot out of SIIF in this committee, if we wanted to use \$4.2 million out of SIIF instead of general funds.

Vice Chairman Brandenburg: What you want is the language so we can money into the oil and gas impact fund; just have one fund. There's \$1.8 million in there. Did you say there's \$6 million left in the energy impact fund; but that's all awarded?

Adam Mathiak: Correct.

Chairman Vigesaa: You'd have to put a date on that probably as to when that fund would end. Some of those projects will drag out yet.

Representative Kempenich: We'd put the end of the biennium for 2023.

Adam Mathiak: We'd more than likely put June 30, 2021 for the end date.

Representative Kempenich: Made a motion to combine the energy impact grant fund into the gas and oil impact grant fund and to add \$4.2 million of SIIF funds.

Representative Beadle: Seconded the motion.

Voice Vote made.

Motion Carried.

Representative Kempenich: Made a motion to move the funds managed by the trust lands to RIO as of July 1, 2021.

Representative Bellew: Seconded the motion.

Voice Vote made.

Motion Carried.

Chairman Vigesaa: Closed the discussion.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
2/11/2019
Recording Job# 32513

- Subcommittee
- Conference Committee

Committee Clerk Signature Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Attachment A.

Chairman Vigesaa: Opened the discussion on HB1013.

Chairman Vigesaa: See attachment A.

Representative Bellew: Can you explain the \$4 million that we're giving to local entities in section 9?

Representative Kempenich: We have two impact funds; the intent is to get that down to one impact fund which would be the oil and gas impact fund. There was roughly about \$2 million out of the two funds that were uncommitted. We added another \$4 million to get it to \$6 million; that's to keep the oil and gas impact fund together. It's for unforeseen impacts in oil and gas.

Representative Bellew: That money will sit there?

Representative Kempenich: It would have to be an impact.

Representative Bellew: Define an impact for me.

Representative Kempenich: It would be for a road that washes out or if they find more oil that wasn't on the map and there are some impacts to that. It's basically for unanticipated impacts of oil and gas.

Chairman Vigesaa: In section 5 at the end of this upcoming biennium anything that's left in that energy impact fund would be transferred to the one fund remaining?

Representative Kempenich: Yes. That closes out that fund and has language in there for the university and school lands are to be transferred also. Transferring that over, I wanted a delayed date on that also.

Chris Kadrmas, Analyst, ND Legislative Council: That is in section 12.

Representative Kempenich: Explained the amendment.

Representative Beadle: Do there need to be any adjustments done for the mineral repayment? Do to some ongoing lawsuits that may still not be paid out.

Representative Kempenich: It's held. There's \$128 million there. I don't think we need to move anything over for that.

Chairman Vigesaa: The numbers on section 3, the distributions to state institutions; the numbers on the base bill are the correct numbers for this time? It's not in the amendment because it's already on the bill?

Chris Kadrmas: That's correct, they are current on HB1013.

Representative Kempenich: How much is going into these?

Chairman Vigesaa: The \$3.6 million that was appropriated for that technology project, do we know how much was expended?

Chris Kadrmas: I would have to check back in the testimony.

Representative Kempenich: Made a motion to move the amendment 19.0201.01003 to the House version.

Representative Beadle: Seconded the motion.

Voice Vote made.

Motion Carried.

Representative Kempenich: Made a motion for a "Do Pass as Amended."

Representative Howe: Seconded the motion.

Roll Call Vote: 7 Yeas 0 Nays 0 Absent

Motion Carried.

Chairman Vigesaa: Closed the discussion.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1013
2/12/2019
32606

- Subcommittee
 Conference Committee

Committee Clerk: Risa Bergquist and Parker Oswald

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Chairman Delzer: Called the meeting to order for HB 1013.

(3:00) Representative Kempenich: HB 1013 this is a special fund agency. We will go through the **bill and the amendment 19.0201.01003**, starting on **page 1 of the amendment**.

(5:45) Chairman Delzer: Why did you do that compared to the other bill that takes all the impact money out?

Representative Kempenich: HB 1066 is mainly aimed at hub cities. That money is coming out of SIF (Strategic Investment and Improvement Fund) money. Continuing on **amendment page 1**.

(8:20) Chairman Delzer: Where did they get with the replacement project?

Representative Kempenich: We appropriated about \$4M for that, but they did not have enough funds and that money was carried forward and will be used. Begins to outline **section 4 and 5 of amendment 19.0201.01003**.

(12:15) Representative Monson: Sections 6 and 7 would be to move the common schools trust money under the control of REO (Real estate owned)?

Representative Kempenich: It is fees and things like that because they are talking about basis points and right now the Legacy fund is at about ¼ basis points.

(14:25) Chairman Delzer: It's not so much the return it's the cost of getting the return.

Representative Monson: For the \$4M, there is \$1.8M leftover and you are adding \$4M to non-oil counties to offset HB 1066?

Representative Kempenich: This could sit there; it would be an impact fund.

Chairman Delzer: It covers for unexpected impact. Schools and everyone puts in for it.

Representative Kempenich: There's a pretty big list.

Chairman Delzer: Nothing is earmarked and if schools get some it is not imputed.

Representative Monson: How much was appropriated to this in the 2017 biennium?

Chairman Delzer: We earmarked a lot, but it was about \$5M.

(16:50) Representative Kempenich: There has been an earmark on this and I wanted to make a list like in section 5 to straighten these out again. **Continuing section 8** is repealing the definitions.

Adam Mathiak, LC: That repeal is related to the energy impact fund.

Representative Kempenich: Begins to present **section 9 and 10**.

(19:05) Chairman Delzer: How much has been spent?

Representative Kempenich: We appropriated around \$4M, so around \$500,000.

Chairman Delzer: What about the effective dates for sections 6 and 7?

Representative Kempenich: It gives the land board time to do the right thing because we will go through another biennium before this takes effect.

(20:40) Chairman Delzer: We were talking about capping the heritage fund for the next 2 years at \$15M.

Representative Vigesaa: We did that in the industrial commission.

Chairman Delzer: I thought we were doing that one here and the abandoned wells one in the industrial commission.

Representative Vigesaa: We put them both in there because the grants are administered by the industrial commission.

Representative Kempenich: The bill itself breaks down the common schools trust fund and how the \$388M is spread out to the schools.

Chairman Delzer: Further discussion?

Representative Kreidt: They had that lousy audit, did they say anything about that?

Representative Kempenich: They are making changes. There's a new commissioner and I think we will have to do a little more if this continues.

Representative Kreidt: There where funds that were being paid to entities that weren't supposed to be getting funds, all that is being corrected?

Representative Kempenich: There is some things taking place and we thought we would wait and see how this plays out. They have to move through the administrative rules process now.

Chairman Delzer: Further discussion?

(25:45) Representative Kempenich: I'll move to adopt amendment 19.0201.01003.

Representative Howe: Second.

(26:05) Chairman Delzer: Voice vote all in favor? Motion Carries

Representative Kempenich: Make a motion to move HB 1013 as amended.

Representative Howe: Second.

Chairman Delzer: Discussion on the do pass as amended?

A Roll Call vote was taken. Yea: 19 Nay: 2 Absent: 0

Motion carries and Representative Kempenich will carry the bill.

DA 2/12/19
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1013

Page 1, line 2, replace the second "and" with "to create and enact a new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code, relating to the investments of the state investment board; to amend and reenact subsection 2 of section 15-01-02 of the North Dakota Century Code, relating to the investments of the board of university and school lands; to repeal section 57-51-15.1 of the North Dakota Century Code, relating to the energy impact fund; to provide for transfers;"

Page 1, line 2 after "funds" insert "; to provide an exemption; to provide a report; to provide an effective date; and to provide a contingent effective date"

Page 1, line 6, after "fund" insert "and the oil and gas impact grant fund"

Page 1, replace lines 9 through 15 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants	0	4,000,000	4,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$4,127,991	\$12,009,264
Full-time equivalent positions	31.00	(3.00)	28.00"

Page 1, line 16, after "FUNDING" insert "- EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY"

Page 1, line 17, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 1, replace lines 19 through 22 with:

"Information technology replacement project	\$3,600,000	\$0
Airport grants	40,000,000	0
Mineral revenue repayments	187,000,000	0
Oil and gas impact grants	0	4,000,000
Mineral valuation study	<u>0</u>	<u>350,000</u>
Total special funds	\$230,600,000	\$4,350,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 17, insert:

"SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO OIL AND GAS IMPACT GRANT FUND. The office of management and budget shall transfer the sum of \$4,000,000 from the strategic

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2 of 4

investment and improvements fund to the oil and gas impact grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 5. TRANSFER - ENERGY IMPACT FUND TO OIL AND GAS IMPACT GRANT FUND. The commissioner of university and school lands shall transfer any unexpended funds remaining in the energy impact fund when the fund is repealed on June 30, 2021, to the oil and gas impact grant fund.

SECTION 6. AMENDMENT. Subsection 2 of section 15-01-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1, which must be made under the supervision of the state investment board pursuant to section 21-10-06 subject to the investing authority provided in law relating to state investments.

SECTION 7. A new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code is created and enacted as follows:

Common schools trust fund and other investments under the control of the board of university and school lands.

SECTION 8. REPEAL. Section 57-51-15.1 of the North Dakota Century Code is repealed.

SECTION 9. OIL AND GAS IMPACT GRANT FUND. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$4,000,000 from the oil and gas impact grant fund for grants to political subdivisions impacted by oil and gas development activities.

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amounts previously appropriated from the oil and gas impact grant fund and identified in section 10 of chapter 38 of the 2017 Session Laws related to the oil and gas impact grant fund, including grant awards returned to the fund, are not subject to section 54-44.1-11. Any unexpended funds are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 11. EXEMPTION - INFORMATION TECHNOLOGY PROJECT - REPORT TO INFORMATION TECHNOLOGY COMMITTEE. The \$3,600,000 appropriated from the state lands maintenance fund and identified in sections 1 and 12 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11, and any unexpended funds are available to complete the information technology project during the biennium beginning July 1, 2019, and ending June 30, 2021. During the 2019-20 interim, the commissioner of university and school lands shall provide at least one report to the interim information technology committee regarding the status of the information technology project.

SECTION 12. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 6 and 7 of this Act become effective on July 1, 2021, or earlier if the commissioner of board and university and school lands notifies the legislative council that the board of university and school lands approved, by a majority vote, transferring the board of university and school lands' investments to the state investment board. Section 8 of this Act becomes effective on June 30, 2021."

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3 of 4

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Department of Trust Lands - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants		4,000,000	4,000,000
Contingencies	100,000		100,000
Total all funds	\$7,881,273	\$4,127,991	\$12,009,264
Less estimated income	7,881,273	4,127,991	12,009,264
General fund	\$0	\$0	\$0
FTE	31.00	(3.00)	28.00

Department 226 - Department of Trust Lands - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Removes FTE Positions ³	Reduces Funding for Operating Expenses ⁴	Adds Funding for Legal and Audit Costs ²	Adds Funding for Financial Software Contracts ⁵
Salaries and wages	(\$293,941)	\$282,838	(\$288,863)			
Operating expenses				(\$504,949)	\$384,564	\$175,000
Grants						
Contingencies						
Total all funds	(\$293,941)	\$282,838	(\$288,863)	(\$504,949)	\$384,564	\$175,000
Less estimated income	(293,941)	282,838	(288,863)	(504,949)	384,564	175,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	(3.00)	0.00	0.00	0.00

	Adds Funding for Microsoft Office 365 Licensing ²	Adds One-Time Funding for a Mineral Valuation Study ⁴	Adds One-Time Funding for Oil Impact Grants ²	Total House Changes
Salaries and wages				(\$299,966)
Operating expenses	\$23,342	\$350,000		427,957
Grants			\$4,000,000	4,000,000
Contingencies				
Total all funds	\$23,342	\$350,000	\$4,000,000	\$4,127,991
Less estimated income	23,342	350,000	4,000,000	4,127,991
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	Other Funds
Salary increase	\$148,976
Health insurance increase	133,862
Total	\$282,838

³ Funding and authorization for 3 FTE positions, including 2 administrative assistants and an audit technician, is removed.

⁴ Funding is reduced for operating expenses, primarily related to travel, equipment, information technology costs, professional development, and other services.

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⁵ Funding is added for legal and audit costs related to the implementation of administrative rules, compliance requirements for internal controls and fraud risks, and financial statement audits.

⁶ Funding is added for ongoing costs associated with new financial software, including maintenance agreements and subscription fees.

⁷ Funding is added for Microsoft Office 365 licensing expenses.

⁸ One-time funding is added for a mineral valuation study to hire a consultant to estimate the value of the state's mineral resources.

⁹ Funding is added for grants to political subdivisions from the oil and gas impact grant fund. The estimated funding available for oil and gas impact grant funds for the 2019-21 biennium totals \$5.5 million, including \$4 million from the strategic investment and improvements fund and \$1.5 million of unspent prior biennium appropriations.

This amendment also adds sections to:

- Transfer \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund.
- Transfer any remaining funds in the energy impact fund to the oil and gas impact grant fund, related to the repeal of the fund.
- Provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board.
- Repeal the energy impact fund.
- Identify \$4 million of funding from the oil and gas impact grant fund for grants to political subdivisions.
- Provide an exemption to continue unspent prior biennium appropriations related to undesignated oil and gas impact grants and administrative costs of the oil and gas impact grant fund into the 2019-21 biennium.
- Provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and require the Commissioner of Board and University School Lands to report to the interim Information Technology Committee.
- Provide effective dates, including a contingent effective date, relating to the statutory changes requiring investment through the State Investment Board and the repeal of the energy impact fund.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1013**

House Appropriations - Government Operations Division 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 Representative Bellew Seconded By Representative Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Vigesaa			Representative Mock		
Vice Chairman Brandenburg					
Representative Beadle					
Representative Bellew					
Representative Howe					
Representative Kempenich					
					
					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
To move over the changes discussed to the House version. Motion carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1013**

House Appropriations - Government Operations Division 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 Representative Kempenich Seconded By Representative Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Vigesaa			Representative Mock		
Vice Chairman Brandenburg					
Representative Beadle					
Representative Bellew					
Representative Howe					
Representative Kempenich					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Made a motion to combine the energy impact grant fund into the gas and oil impact grant fund and to add \$4.2 million of SIIF funds.
Motion Carried

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1013**

House Appropriations - Government Operations Division 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 Representative Kempenich Seconded By Representative Bellew

Representatives	Yes	No	Representatives	Yes	No
Chairman Vigesaa			Representative Mock		
Vice Chairman Brandenburg					
Representative Beadle					
Representative Bellew					
Representative Howe					
Representative Kempenich					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: **Made a motion to move the funds managed by the trust lands to RIO.**
Motion Carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1013**

House Appropriations - Government Operations Division Committee

Subcommittee

Amendment LC# or Description: 19.0201.01003

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 Representative Kempenich Seconded By Representative Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Vigesaa			Representative Mock		
Vice Chairman Brandenburg					
Representative Beadle					
Representative Bellew					
Representative Howe					
Representative Kempenich					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1013**

House Appropriations - Government Operations Division Committee

Subcommittee

Amendment LC# or Description: 19.0201.01003

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 Representative Kempenich Seconded By Representative Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Vigesaa	X		Representative Mock	X	
Vice Chairman Brandenburg	X				
Representative Beadle	X				
Representative Bellew	X				
Representative Howe	X				
Representative Kempenich	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Representative Kempenich

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

Date: 2/12/2019
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1013**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.0201.01003

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 Representative Kempenich Seconded By Representative Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich					
Representative Anderson			Representative Schobinger		
Representative Beadle			Representative Vigesaa		
Representative Bellew					
Representative Brandenburg					
Representative Howe			Representative Boe		
Representative Kreidt			Representative Holman		
Representative Martinson			Representative Mock		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

Voice Vote/Motion Carries

Date: 2/12/2019
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1013**

House Appropriations 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 Representative Kempenich Seconded By Representative Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X			
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson		X			
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 19 No 2

Absent 0

Floor Assignment Representative Kempenich

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1013: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1013 was placed on the Sixth order on the calendar.

Page 1, line 2, replace the second "and" with "to create and enact a new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code, relating to the investments of the state investment board; to amend and reenact subsection 2 of section 15-01-02 of the North Dakota Century Code, relating to the investments of the board of university and school lands; to repeal section 57-51-15.1 of the North Dakota Century Code, relating to the energy impact fund; to provide for transfers;"

Page 1, line 2 after "funds" insert "; to provide an exemption; to provide a report; to provide an effective date; and to provide a contingent effective date"

Page 1, line 6, after "fund" insert "and the oil and gas impact grant fund"

Page 1, replace lines 9 through 15 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants	0	4,000,000	4,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$4,127,991	\$12,009,264
Full-time equivalent positions	31.00	(3.00)	28.00"

Page 1, line 16, after "FUNDING" insert "- EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY"

Page 1, line 17, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 1, replace lines 19 through 22 with:

"Information technology replacement project	\$3,600,000	\$0
Airport grants	40,000,000	0
Mineral revenue repayments	187,000,000	0
Oil and gas impact grants	0	4,000,000
Mineral valuation study	<u>0</u>	<u>350,000</u>
Total special funds	\$230,600,000	\$4,350,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 17, insert:

"SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO OIL AND GAS IMPACT GRANT FUND. The office of management and budget shall transfer the sum of \$4,000,000 from the strategic investment and improvements fund to the oil and gas impact grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 5. TRANSFER - ENERGY IMPACT FUND TO OIL AND GAS IMPACT GRANT FUND. The commissioner of university and school lands shall

transfer any unexpended funds remaining in the energy impact fund when the fund is repealed on June 30, 2021, to the oil and gas impact grant fund.

SECTION 6. AMENDMENT. Subsection 2 of section 15-01-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1, which must be made under the supervision of the state investment board pursuant to section 21-10-06 subject to the investing authority provided in law relating to state investments.

SECTION 7. A new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code is created and enacted as follows:

Common schools trust fund and other investments under the control of the board of university and school lands.

SECTION 8. REPEAL. Section 57-51-15.1 of the North Dakota Century Code is repealed.

SECTION 9. OIL AND GAS IMPACT GRANT FUND. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$4,000,000 from the oil and gas impact grant fund for grants to political subdivisions impacted by oil and gas development activities.

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amounts previously appropriated from the oil and gas impact grant fund and identified in section 10 of chapter 38 of the 2017 Session Laws related to the oil and gas impact grant fund, including grant awards returned to the fund, are not subject to section 54-44.1-11. Any unexpended funds are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 11. EXEMPTION - INFORMATION TECHNOLOGY PROJECT - REPORT TO INFORMATION TECHNOLOGY COMMITTEE. The \$3,600,000 appropriated from the state lands maintenance fund and identified in sections 1 and 12 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11, and any unexpended funds are available to complete the information technology project during the biennium beginning July 1, 2019, and ending June 30, 2021. During the 2019-20 interim, the commissioner of university and school lands shall provide at least one report to the interim information technology committee regarding the status of the information technology project.

SECTION 12. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 6 and 7 of this Act become effective on July 1, 2021, or earlier if the commissioner of board and university and school lands notifies the legislative council that the board of university and school lands approved, by a majority vote, transferring the board of university and school lands' investments to the state investment board. Section 8 of this Act becomes effective on June 30, 2021."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Department of Trust Lands - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants		4,000,000	4,000,000
Contingencies	100,000		100,000

Total all funds	\$7,881,273	\$4,127,991	\$12,009,264
Less estimated income	7,881,273	4,127,991	12,009,264
General fund	\$0	\$0	\$0
FTE	31.00	(3.00)	28.00

Department 226 - Department of Trust Lands - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Removes FTE Positions ³	Reduces Funding for Operating Expenses ⁴	Adds Funding for Legal and Audit Costs ⁵	Adds Funding for Financial Software Contracts ⁶
Salaries and wages	(\$293,941)	\$282,838	(\$288,863)			
Operating expenses				(\$504,949)	\$384,564	\$175,000
Grants						
Contingencies						
Total all funds	(\$293,941)	\$282,838	(\$288,863)	(\$504,949)	\$384,564	\$175,000
Less estimated income	(293,941)	282,838	(288,863)	(504,949)	384,564	175,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	(3.00)	0.00	0.00	0.00

	Adds Funding for Microsoft Office 365 Licensing ⁷	Adds One-Time Funding for a Mineral Valuation Study ⁸	Adds One-Time Funding for Oil Impact Grants ⁹	Total House Changes
Salaries and wages				(\$299,966)
Operating expenses		\$23,342	\$350,000	427,957
Grants			\$4,000,000	4,000,000
Contingencies				
Total all funds		\$23,342	\$350,000	\$4,127,991
Less estimated income		23,342	350,000	4,127,991
General fund		\$0	\$0	\$0
FTE		0.00	0.00	(3.00)

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	Other Funds
Salary increase	\$148,976
Health insurance increase	133,862
Total	\$282,838

³ Funding and authorization for 3 FTE positions, including 2 administrative assistants and an audit technician, is removed.

⁴ Funding is reduced for operating expenses, primarily related to travel, equipment, information technology costs, professional development, and other services.

⁵ Funding is added for legal and audit costs related to the implementation of administrative rules, compliance requirements for internal controls and fraud risks, and financial statement audits.

⁶ Funding is added for ongoing costs associated with new financial software, including maintenance agreements and subscription fees.

⁷ Funding is added for Microsoft Office 365 licensing expenses.

⁸ One-time funding is added for a mineral valuation study to hire a consultant to estimate the value of the state's mineral resources.

⁹ Funding is added for grants to political subdivisions from the oil and gas impact grant fund.

The estimated funding available for oil and gas impact grant funds for the 2019-21 biennium totals \$5.5 million, including \$4 million from the strategic investment and improvements fund and \$1.5 million of unspent prior biennium appropriations.

This amendment also adds sections to:

- Transfer \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund.
- Transfer any remaining funds in the energy impact fund to the oil and gas impact grant fund, related to the repeal of the fund.
- Provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board.
- Repeal the energy impact fund.
- Identify \$4 million of funding from the oil and gas impact grant fund for grants to political subdivisions.
- Provide an exemption to continue unspent prior biennium appropriations related to undesignated oil and gas impact grants and administrative costs of the oil and gas impact grant fund into the 2019-21 biennium.
- Provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and require the Commissioner of Board and University School Lands to report to the interim Information Technology Committee.
- Provide effective dates, including a contingent effective date, relating to the statutory changes requiring investment through the State Investment Board and the repeal of the energy impact fund.

2019 SENATE APPROPRIATIONS

HB 1013

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1013
2/28/2019
Job # 33017

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning and Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands.

Minutes:

Testimony Attached # 1

Chairman Holmberg: Called the committee to order on HB 1013. All committee members were present except Senator Bekkedahl.

Ron Ness, President, North Dakota Petroleum Council: (Ron had to get to a meeting so the committee let him speak first.)

No written testimony, but supports HB 1013.

This was supported by the AG office.

I think you will hear on the numbers on the work they have, there was a request for an attorney on the House side that got taken out. We stand in strong support of that because there are so many issues dealing with minerals and wells and lawsuits. You have a five board commission and various other entities that are engaged, but I think the commissioner and her team need some constant good advice that are at their convenience to engage in all the wells and the decisions on each of them that go forward with participating and nonparticipating, issuing leasing agreements in addition to the legal issues being presented to them. We think that is a good move and one that was supported by the Attorney General's Office in the House. We would hope to see that reinstated back in this budget. I will stand for questions.

Senator Oehlke: Would this attorney be in house or part of the Attorney General's staff?

Ron Ness: This would be an in-house attorney. They are all assistant Attorney General's in one way or another

Senator Oehlke: So the Attorney General's Office is incapable of handling this load right now?

Ron Ness: The workload has become extreme and they need an attorney in-house to help support the many decisions they are making. You know how the agreements with state agencies work where you get an attorney at their availability. I think the workload she and the agency have would benefit the entire land board and the thousands of issues before them.

Senator Oehlke: Is it just time? If we had our own attorney, we'd be done with this tomorrow, but you will have to wait two days because we have to go to the Attorney General's Office?

Ron Ness: Time is one thing. There are also serious issues of conflict that can arise here. We have seen this before where you have an assistant Attorney General that may be working on the industrial commission side. They come in and support or oppose hearings on individual wells. There is an inherent conflict that is kind of built into the process that they have before them. They act like a landowner on behalf of the state's minerals. At the same time, the Attorney General's Office acts as the hearing officer before the industrial commission meeting. I think consideration should be given to being a standalone attorney at times. They need in-house legal advice of their own once in a while.

**Jodi Smith, Commissioner and Secretary for the Board of University and School Lands
HB 1013 Trust Lands Testimony - Attached # 1.**

(13:57) Chairman Holmberg: When I read #2 under investments on page 10, you talk about your "asset allocation policy" which is a) support the trust beneficiaries, b) maintain the permanent strength and c) follow the prudent investor rule. Many in the legislature have had issues with how your investments are passed out. Can you tell us a little bit about your involvement with North Dakota trust companies?

Jodi Smith: If I understand the question correctly, you are asking how we invest into the state of North Dakota directly?

Chairman Holmberg: Yes, such as through banks and North Dakota trust companies.

Jodi Smith: Our funds go through the Bank of North Dakota and Northern Trust which is based out of Chicago is our custodial bank. The majority of our assets sit in Northern Trust and when necessary, we transfer them back to the Bank of North Dakota for distribution. As far as managers within the state of North Dakota, we don't currently have any managers. When we go through that competitive process of bringing in a new fund manager, they're welcome to work with our consultant in getting in that list so that we interview them through that due process to see if they would be a viable candidate. We do some investments back into the state of North Dakota. I did not bring the board memo with me but we just reported to our board this morning that over the past several decades, the board has invested about \$250M back into the State of North Dakota through various different avenues whether they are loans or indirect investments. Because of our investments and how we do that, we do invest back into some mid-stream operators indirectly who then benefit the state of North Dakota and then we do investments in the pipelines that go into the state of North Dakota as well.

Chairman Holmberg: If you are talking about the \$250M over the past X number of years, what was the total amount that was invested elsewhere if \$250M roughly came back to North Dakota. What was the amount invested elsewhere?

Jodi Smith: Are you asking more about the real estates?

Chairman Holmberg: I am asking about everything.

Jodi Smith: We have about \$5B in assets and so dependent on the asset class, would depend on where that is sitting. I have heard a lot of conversation about our investments sitting in Wall Street or in New York and that's maybe not necessarily a fully accurate statement. Our fund managers are placed around the nation. When we do a due diligence trip, it would be dependent on where that fund manager is. We have investments in real estate around the globe. We have real estate managers that assist us with that. They tend to invest in markets that have high growth so that our returns can be fairly significant.

Chairman Holmberg: Could you supply the committee with the report that was part of your morning meeting of the land board? This is an issue the legislature has tried to address, not only talking about your agencies, but others that invest. There is a right or wrong sense that folks like to invest outside of North Dakota. They really get their backs up if we try to direct them in some manner to invest in North Dakota. The answer that sometimes leaves some people cold is the prudent investor rule of our fiduciary responsibility. It would be helpful to get that to committee.

Jodi Smith: Continued reading on bottom of page 12.

(32:53) Chairman Holmberg: We will have a subcommittee that will be working on this. It will be chaired by Senator Wanzek. Senator Grabinger will be on it as well as one other person who will be designated later (Senator Hogue).

Senator Hogue: The proposal on the House version is to transfer management to the investment board and you said it had constitutional implications. What are those?

Jodi Smith: We had a board meeting on February 13 or 14 to discuss this as this amendment wasn't discussed with us and we're the state investment board. The responsibilities of the board are as they are laid out in the constitution. The board believes they have the direct responsibility of determining who manages those funds so it's not that the board couldn't use the state investment board, it's that somebody is telling us who we have to use. Our interpretation of the Constitution and the statutes is that the legislative body can put some parameters around the prudent investor rule. For example, if you did not want us to invest in real estate, and you said that's an asset class we no longer want you to invest in, then we would need to follow that. The board regularly reviews the fund manager. We recently renegotiated a contract with RBK so it's the belief of the board and the department that it's up to the board to make that determination and not the legislative body to direct them to do that.

Senator Hogue: I was just looking at the Constitution and it says “subject to laws passed by the legislative assembly”. You have control of it? I’m wondering if there is something I am missing.

Dave Garner, Assistant Attorney General assigned to represent Trust Lands: That has been interpreted to mean subject to laws the legislature passes with respect to the parameters Jodi spoke of. Those laws can’t alter the Constitution without a Constitutional Amendment. The enabling act which the constitution was based on, would also need to be amended because it has delegated authority to the board. It has not authorized the board to delegate that authority. You would need not only to get a constitutional amendment, you’d likely need to get federal legislation changed and have that approved by the state.

Chairman Holmberg: Or four Supreme Court justices saying the legislature is wrong. If the legislature decided to do something that you feel is inappropriate, it would take four justices of the North Dakota Supreme Court though to say the legislature was wrong in what we did.

Dave Garner: If you put the board under the auspices of the state investment board, rather than just allow the board to use the state investment board, and someone challenged that as being unconstitutional, the four justices, yes – would that keep it within the board - and the state investment board would not have that authority. We could still use the State Investment Board, but the authority could not be fully delegated to the State Investment Board. Senator Hogue was asking if it was subject to law, can’t the legislature re-delegate the authority from the board to the SIB and I think that would go beyond what the Constitution allows. They can pass laws, like the prudent investor rule. They can guide the board.

Senator Hogue: Ok, I think I understand your position.

Chairman Holmberg: Thank you for coming and adjusting your schedules. We will close the hearing on HB1013.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1013
3/21/2019
Job # 34149

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning and Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands.

Minutes:

Attachments: 1

Legislative Council: Adam Mathiak
OMB: Stephanie Gullickson

Senator Wanzek called the sub-committee to order on HB 1013.
Senator Hogue and **Senator Grabinger** were also present.

Senator Wanzek: I want to summarize the budget, point out highlights, and other things we might need to address.

Jodi Smith, Commissioner and Secretary for the Board of University and School Lands:

Testimony of Jodi Smith - Attached # 1

(4:09) Senator Wanzek: As far as the attorney, how do we handle legal matters? Is it through the Attorney General's Office?

Jodi Smith: Dave Garner is here. We are just at the point of managing the amount of assets and we have the number of leases going through the day to day operations of the department which can be encumbering. I also have paralegal on staff. Most of communications with land owners and operators can lead to litigation. Before we send out a lot of our communications, we run them by Dave Garner who is our assistant attorney general. All of our board members run through him. Any board or department policies do so as well. Right now, our policies are attached to a lease. When you lease land or minerals from us, we attach those. Everything we do has obligation to it. We've recently had backlog. It is no fault of Dave's but when we go into litigation, we have significant litigation and end up bottlenecking some of the work within the department. It is simply the day-to-day operations that we need assistance with. We have bankruptcy attorneys. No one in the AG office that handles that. We have a special assigned to us that helps us with all our matters with the tribe. That is the same with MHA tribe. We have one that's assigned to us because of conflict of interest that happened in the

AG's office. It is not the intention that this attorney would handle our litigation, it would still be up to the AG's office to do that. They would have to be in high communication with Dave in the AG's office to assist us in day to day operations.

Senator Wanzek: How would they work together with Dave Garner? He's funded through the Attorney General's office, and his office is in the building here in the Attorney General's office?

Dave Garner, Assistant Attorney General assigned to represent Trust Lands: No, the AG's in the south building. It houses natural resources and civil litigation.

Senator Wanzek: It always helps me to visually see things. I know I drive by it every once in a while.

Jodi Smith: You're welcome to join us. Mr. Garner is in our office quite a bit of time. There are circumstances that occur. If I sign a letter, a lot of times Dave has reviewed it. In order for Mr. Garner to sign something, the Attorney General (AG) has to review it. We have some letters that are floating around the department that we are ready to issue into industry. My staff reviews them, then Mr. Garner, myself and then they come back to us so we can send them out. We would like an in-house council. Sometimes they will wait 2 months to get a letter issued back out and it is just a matter of us to be able to do time management.

(8:23) Senator Grabinger: Is that a requirement? Is it just something in policy that you can't issue a letter yourself?

Jodi Smith: That is more of a risk management for me. I know that a lot of what we do could end up in court. I am trying to keep us out of court. I want to make sure we are writing those letters that we are adhering to court, rules, and statutes. It is very complicated when you are dealing with constitutional and statutory issues. We also have legal binding leases and board policies. I want to make sure that is accurate when it goes out and it doesn't end up in litigation. We make the assumption that when we send stuff out, it could end up in litigation. Just since I have been there, it has happened regularly. I am trying to mitigate that from happening. Sometimes I sign letter, but Mr. Garner looks it over first 99% of the time.

Senator Wanzek: Are there resources in your budget for meeting some of the legal ramifications? Is it all covered through the Attorney General?

Jodi Smith: That is budgeted. We pull past bills and we make an assumption on pending litigation and litigation we think might be up coming.

Senator Wanzek: Within OMB, they're putting litigation money in there, does that impact you?

Jodi Smith: No, we receive a monthly bill from the Attorney General's office and I receive a monthly bill from all my specials. Every month I sign off. Unclaimed property is a separate funding bucket for us as well as the grant. Anything that has to do with the SIF Fund, gets charged to it. We track what they are for so that we are can ensure we are charging it to the right bucket.

Senator Hogue: I have a question on the leasing activity. Are there recurring issues with that lease that certain companies do not agree with? Is that a primary source of litigation?

Jodi Smith: We have two on-going law suits right now. It is the interpretation of the lease between net and gross proceeds. That is the ability for them to take post-production deductions. We get them all the time. I have some flying up. They're wanting extensions because they can't get to production. They want that extension. They may be out of complaints with this on our shut ins. They will file it with the NDIC but they will not file it with our department. We have people issuing late payments. There a ton of things even though it is the same lease since 1979.

A company can issue a formal request for an extension and I will give them a formal response for that. I will have the attorney review that. They use words that one would not unless you are a lawyer. I get demand letters regularly from companies and particularly those on reservations. They think there is a title dispute and they do not want to pay us or they want to put it into escrow or spend their funds. It is an ongoing conversation with operators. We don't have problems with surface leases. We have one that has to do with a water issue on one lease. They put a road across our land and did not seek as easement from us. I am always willing to have those conversations to keep us out of court. I always have to have an attorney to advise me. Based upon our schedule for courts, I need a full time litigation attorney and a full time day-to-day operations to help keep us out of court. Sometimes we will go into friendly court battle and we'll agree to disagree.

Senator Hogue: I wasn't being facetious. Do you feel the amount of legal assistance you have is that you are being overwhelmed so you are settling cases that if you had the resources you would otherwise not?

Jodi Smith: There is a lot of backlog. We intentionally hold things back because we know we have one attorney who is dedicated to us and he can only do so much. For example, I had an open records request in which many people had to meet and we had to figure out the parameters because the conversation that they are doing open records requests for, could end up in court someday. If the general counsel is there, then they'd be able to work through litigation and free up some time for Dave. Industry will step in and support us getting our own general counsel. They have seen the outcome of us not having the general counsel and the delays it can occur in our office.

Section 2 – page six of attached # 1.

(17:39) Senator Wanzek: What is mineral evaluation study?

Jodi Smith: That has been a request of our office. What we know, is what we are pulling out of the ground right now. We do not know that value of the assets that are under the ground. There are companies that can come in and assist us to do this. What are the true assets of the state? Right now, you look at us and say we have assets of \$5.5 B. We do not know the value of all the minerals sitting under the earth that we have not extracted yet. That would have to go into other resources as well. So we ask different organizations to come in and evaluate that for us. That could help the bond rating for the state. When we do an extension,

we negotiate that with the operator. We have to use what the operator tells us is the value of the oil. That would help us best negotiate on behalf of the state for those minerals.

Senator Wanzek: As a farmer, do we know the value of the surface?

Jodi Smith: Yes, we do that every year. That is how we base our auction rates. On the report, you will see that some hundred years ago they allowed us to put it at 10 dollars an acre. We have a little over 700,000 acres that we manage and that is how it hits our balance sheet. Our land is valued at \$517 M dollars. That does not hit the balance sheet. I talked with a fund manager who does commonalties and works around the world on how they would do this when they go and value whether or not they want to invest with an operator. They say that they pick a number so low to put on the balance sheet that if the price of oil ever dropped to that, the world would be having a different conversation than what is sitting on our balance sheet. There is a way to evaluate that. It helped everyone understand what the value of the assets are in the state of ND.

Senator Hogue: Do you ever sell mineral acres? I know you sell surface. When you sell surface, do you always retain the minerals?

Jodi Smith: Yes. Our ability to sell surface is very limited. We are actually in the process of re-evaluating that policy. We will be bringing that to the board in the next year. That gets sort of complicated with some constitution and statutory stuff, but if we were to sell, we always retain the minerals. That is why we have 700,000 surface, and 2.5 M mineral acres.

Senator Grabinger: State hospital property that is rented for ag uses; is that under you at all? So that would not be included in any study or anything?

Jodi Smith: No. Different agencies across the state have land and those agencies have some minerals. There is one statute out there. One university wanted to sell land, but it was written in legislation that they had to confer with our department before they did that. It wasn't that we would tell them no, but so that we could advise them on how that contract should be written. They did take our language because we do this regularly but we do not manage anyone else's surface or minerals for them.

Senator Wanzek: Wouldn't most of the trust lands be the land that the federal government designated for schools?

Jodi Smith: Most of it is. There are some foreclosure properties that we acquired during the Great Depression. We haven't had one since I've been here. I think there was one in the past decade. Those come through BND or the state treasurer's office and then we manage those.

Senator Wanzek: Is there some sort of process if a private person wants to petition for something they are renting to be sold?

Jodi Smith: There is. It is in our sale policy. It has to do with how many acres are involved. It has to be under 40 acres. Everyone thinks we have these perfectly square sections around the state and we really don't. The way our land sale policy is right now, I am not comfortable with it. It addresses being able to exchange land. If you go back to the statutes in the

Constitution, a land owner can't exchange land with us the way it is written, but another political subdivision can. We could trade an exchange policy with Williston but you as a land owner would not be able to come in and trade things with us. We are writing an exchange policy separate from a sale policy based off the Constitution of Statutes. If our board or the public isn't happy with it, we have to come back and work through legislation. It is a complicated avenue to go through for this state and it is not always supported by some of the communities.

Senator Wanzek: When I met you downstairs, I was on my way to visit with Shawn Riley. He was concerned with the Trust Lands because of the assets in there and the draw that has for bad people. His concern is with the cyber security. He shared with me how he showed you how he could steal \$9 M every week. That concern is genuine. I feel that we need to put that unification process back in.

Jodi Smith: They came in last February and did risk assessments. We did a fraud risk assessment that also has an IT component attached to it. At this point, until we get new software systems in place, we are very limited on how we can lock the department down. That is why we want our programmers to be a part of ITD because we need them to understand that. I have kept a computer network specialist on my staff instead of putting them through that ITD unification. We have tablets and they have to GIS map it. He would be managing that component of it for us. Sean is aware of how I have split this up. I want all my program analysts to be with him and to leave the computer network specialist with me until we can get things done in our department. I have some staff on Office 2003. All my computers are outdated and we have good issues to deal with over there.

Senator Wanzek: It appears to me that the House with the evaluation mineral study was moved from ongoing to one time. They provided money for the study. Why would it have not been there in the first place?

Jodi Smith: We have never done this before? We wanted to do the ongoing because like with the surface, that is how we know the base leasing of it. For surface, we set that lease at an amount based off the survey we have done every year. I have my minerals director with me who has the day-to-day interaction with them. What takes so much money, is that first time setting it up. They are used to dealing with a land and mineral owner who may have even a few thousand of mineral acres. We have millions. They put all our tracks in there to scrape the data from the NDIC. They compare it and they can see how many wells are being drilled around us. One of them will boast that they found \$1 M that was left on the table up in McKenzie county. There is a way for them to ensure we are being paid accurately and we are getting paid at a good rate. That initial set up is what costs so much because you have to get all that data into the system. After that, every month, you hit a button and tell it to update. The ongoing cost tends to go down significantly. The onetime cost of the \$350,000 is one thing. Whether or not we want to continue to do it would be one thing. I am waiting to see the value it brings to the department before putting it in there as an on-going cost.

Senator Wanzek: So, you are fine with it being in there one time?

Jodi Smith: Yes. I want to see the value it brings to the state before we commit \$350,000 every year. None of these companies has ever done it for a state before and it has never been on a mass scale. They typically just work with landowners on this.

Senator Hogue: Is the proposal to value for all your minerals or just the Bakken? Are you selling gravel in all parts of the state? Do you want that valued as well?

Jodi Smith: Yes. We do coal, scoria, and the potash. To do a mineral evaluation, we have talked with our auditors and we spoke with OMB about this. We cannot just evaluate oil and gas. We have to evaluate all our minerals we are currently extracting. We have knowledge that there could be other minerals in other parts of the state. Since they're not pulling them out of the ground at this time, we can't really evaluate those. If we are aware we have a mineral and are currently extracting it, then we need to evaluate all the minerals, not just oil and gas.

Senator Wanzek: Do you do evaluation in our part of the country?

Jodi Smith: Yes.

Senator Wanzek: The House put oil impact grants back in. Those are the grants for impacts in the oil area for hospitals, schools, or anyone that may apply.

Jodi Smith: Yes.

Senator Wanzek: Was it in governor's budget at all? The House put it back. Can you share with us what their thinking was?

Jodi Smith: My understanding is that this is to go into our contingency funds. On quarterly basis, we release a granting opportunity to the oil impacted communities. They can seek funding for support on anything that has started since December of 2017. They were going to take everything out and they decided to come back and give \$4 M to put back in the bucket for emergency situations. In the last round, we had 6 applications. I think we funded 2 or 3 of them. They have to be things that were unanticipated.

Senator Wanzek: How did they come up with \$4 M?

Jodi Smith: I am not sure. Adam may be able to answer that.

Adam Mathiak: I believe that based on what is remaining in the fund plus the \$4 M, you would be around \$5 M - \$5.5 M. The \$4M is coming from SIF.

Senator Grabinger: I am just running through the sections.

Senator Wanzek: I am not finding time to get things done. This gets me back into the fold and jogs my memory. We will probably reschedule another hearing. I doubt we will get it done this week. We will get it done next week something. If there are any times that do not work for you, please let Rose know. I appreciate your work here.

Jodi Smith: Let me know if there's anything you need.

Senator Wanzek: With that, we will end this sub-committee.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1013
3/27/2019
JOB #34297

- Subcommittee
 Conference Committee

Committee Clerk: Alice Delzer and Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing for Department of Trust Lands

Minutes:

1. Testimony of Jodi Smith, Commissioner 03-21-19

Chairman Wanzek: Called the Subcommittee to order on HB 1013. Let the record show that all committee members were present: Chairman Wanzek, Senator Hogue and Senator Grabinger. Adam Mathiak, Legislative Council and Becky J. Keller, OMB were also present. Chairman Holmberg also was here.

Jodi Smith, Commissioner, Board of University and School Lands

Page 9 - Attachment # 1.

Last time we spoke, we were discussing the \$4 M that had been allocated from the Strategic Investment and Improvement Fund(SIIF) to Oil & Gas Impact Grant Fund. You had some questions about how that determination of the \$4 M came about. I was not quite clear. I understand that that was going to go into our contingency fund for political subdivisions that may have some needs on the western part of the state. They are still able to apply for those funds if necessary. It was not something that was originally in the appropriations bill. That was something that came back when the subcommittee was meeting. That is something that we are in support of. We wouldn't come in and contest if you wanted to remove it either. We have the staffing and we are procuring a financial management software that has a grants component. We could easily manage that \$4 M.

Senator Grabinger: You are saying this was something that was put in that you didn't necessarily request, but you would go along with it. The reason I may suggest that we move this is that the SIIF fund is already stretched.

Jodi Smith: Absolutely. It's completely up to you. Now, we have \$3M in that fund. We release a grant application quarterly. We receive those applications. We will have one close on April 1st. We will review those applications and then we will award those based on the application. We do receive grant requests from the political subdivisions on the western part of the state for projects that could not be anticipated in between the biennia. Whether it be road repairs or a foundation issue that we are helping with in their fire station. We assisted with that last time. We do have a couple that tend to come through to us that would be challenging for

anyone to print. What we do at this point and time is that when we retire a grant, say you were awarded \$500,000 and you spent \$495,000, that \$5,000 extra is going back into that contingency grant. We are using that to help us offset the cost of the operations, but we also grant that back out. There is an ongoing feed for that to come in. Since we have about \$35 M outstanding, there is potential for additional funds to be provided to that contingency grant by the natural retirement of those funds.

Senator Grabinger: There is a substantial amount. You could already work if we did not do this.

Jodi Smith: We have about \$3 M in there. Depending on the request, it tells if it is substantial or not.

(0.4:00) I can keep going through Section 5 on page 10 (Attachment #1) the transfer of Energy Impact Fund to the Oil & Gas Impact Grant Fund. The Department approves Section 5 as presented by the House. Section 6, an amendment that moves CSTF and other investments under control of the Board to the State Investment Board (SIB). The Department expresses opposition to these amendments.

(0.5:17) Chairman Wanzek: This is one of the sticking points between what the House had done. I think it is something we will have to give serious consideration to. I certainly would welcome more input on that.

Jodi Smith: Would you mind if I pass it off to my attorney? (Answer – No) I think the general crux of that is it is up to the board to determine who assesses and manages that. The board could certainly choose to use the state investment board to assist us in the process. Demanding that, is not allowable under the Constitution. Our attorney will go further into that.

(0.06.08) Dave Garner, Assistant Attorney General, assigned to the Department of Trust Lands: The transfer or the requirement that the supervision be placed with the state investment board of the board of general investment authority does create constitutional problems. This is pursuant to existing case law and other Attorney General's opinions that are still in effect. Under the constitution, the board has general and full powers regarding the investment of funds on behalf of the common schools trust fund. It is vested with judgment and discretion in the performance of its duty. The ND Supreme Court has said that the great and primary duty of the board is to safeguard the fund under its control and directing the investment, they are up to the best advantage. I believe the revisions to HB 1013 remove all discretion from the land board in making investment decisions on behalf of the Common Schools. The investment would now have to be approved by the State Investment Board. Thus, the constitutional authority granting the land board discretion and judgment in making investment decisions would now be eliminated and essentially transferred to the state investment board in direct comprehension to the language and intent of the Constitution. I believe there is some suggestion that the language regarding subject to applicable law, alters that. I would disagree with that. Any statute implicating the boards authority to invest must be compatible with the statutory authority and fiduciary duties regarding investments confronting the border of the Constitution. In other words, while I believe you can set parameters, such as the prudent investor rule which you've done in 15-03-04 and those types of guidelines, I think the ultimate authority of the board in making investment decisions, still must go back to the Constitution which vests it with the authority. Those guidelines must be

consistent with the board's fiduciary duties. I think the way this is drafted, which essentially transfers the supervision of all investments to the State Investment Board, would violate the constitutional authority of the board.

Senator Hogue: There must be other reasons that you oppose it besides the argument you are making about the Constitution. Does it not make good business sense? Are there other reasons or is it just constitutional?

Dave Garner: I am speaking purely on behalf of the constitutional issues. I am sure Jodi could get into the potential business implications.

Senator Hogue: I couldn't disagree more. The Constitution makes clear that it is subject to what the legislative assembly decides. The land board may invest the trust. It is explicit. It says just the opposite of what you are advocating for.

(0.09.17) Dave Garner: There is an Attorney General's opinion that elaborates on this situation. It says, in other words, speaking to the subject of applicable law section of the Constitution, to a degree the land board is subject to legislative authority. The source of the authority of the board is the Constitution itself and not the legislature. The legislature does not have carte blanche to do what it wishes with the fund. able to do what it wishes with the fund. While it can set guidelines, it cannot delegate the constitutional authority that has been vested in the board, or even saying those guidelines, contravene what the fiduciary duties are of the board, as set forth in the constitution. The constitution always has to remain the source of authority in moving forward from that authority, the legislature can set the guidelines and parameters that are consistent with the Constitution.

Senator Hogue: I think I could be persuaded by an argument that it makes no sense to put another \$5 B into a board that already has multiple funds under management. If the question of the subcommittee or the full Senate is it do we have the authority to do this, it couldn't be any clearer that we do. The constitution says that the investments, rents, and disposition of those assets are subject to what we provide as the legislative assembly. I think we should talk about whether it makes good business sense to do this and not the constitutional because I respectfully disagree.

Senator Grabinger: I would say this in light of the discussion. I would have to agree. First, let's decide if this makes good business sense and it would be a good move. Then we can decide whether the constitutionality of it if we do it. If it's not going to make any sense, there is no sense pushing it any farther. We should get his question answered as to whether or not it makes good business sense or not.

Chairman Wanzek: I would tend to agree. If we can come up with a good business reason as to why we should not do this, it sure helps you and I, Senator Grabinger, two commoners who are trying to decide between two people who have more legal expertise than us with different opinions. Maybe that's when we call on Ms. Smith and see what her views are as far as why this why, from a business prospective, is this something that they feel should not be done. Unless you want to offer your opinion.

Dave Garner: No, I am not in a position to offer business advice.

(0.12.44) Jodi Smith: Do you want to go back to the previous question?

Chairman Wanzek: Yes. If you could provide some insight and thoughts on why this is not a good business decision too.

Jodi Smith: I certainly can. I can also offer my Investment Director Jeff has joined me today. We don't think there is any benefit by combining them. We have done some fee structures. We do this regularly on the land board. We did this about 3 years ago. We had a consultant come in and assess this with us about whether or not we hire out a chief investment officer. You can completely hire that out. That land board could do it and so can the state investment board. (SIB) At that time, when they reviewed this about 3 or 4 years ago, the determination was made by the board based off the information that was provided to them that this was still the best business decision. Our fees are very competitive. We work collaboratively together. So when we have fund managers that both the SIB uses, and the land board uses, we negotiate with them from a state level to reduce that fee structure for the entire state. If our fees go down, so do the fees at the State investment board. We have looked at what they would charge to the land board to manage those funds. It is in excess of what we pay right now based on the resources we have internally to manage these. We are about .57 basis points and the state investment board is at .57 for the Legacy Fund. It was a little bit challenging to compare our fund with their fund just by the nature of our fund. When this came out, I know that there was no consultation that was given to the state investment board. I know this because I serve on it. It would be challenging for Dave Hunter and his team and the state investment board to automatically kind of pull this over. He did send out a letter to Representative Kempenich and some of the appropriations. I think it was all of the House Appropriations members outlining why. I wouldn't say he was against it; they would certainly manage it if the land board asked them to but there are some concerns surrounding that. I have his key points here; "REO and the land board staff already collaborate to reduce fees for our clients when we are using the same investment manager such as PIMCO(Pacific Investment Management Company) and SSGA(State Street Global Advisors). The SIB client boards generally retain responsibility for developing an asset allocation strategy although the SIB retains authority to approve any recommended investment policy in addition to the SIB retaining investment implementation oversight and authority."

(0.15.10) Essentially, that means we would not be able to reduce FTEs internally because of the transferring of funds that would have to occur with our bank accounts with the other agencies within the state. There is really no internal savings for that. There are no external savings because we already have the same negotiated fees with Northern Trust. We actually have a lower rate that is currently contracted through out fund manager consultant, RVK. They happen to use KALLEN. They are both great firms. I do not have any complaints against either one of them. Asset allocation decisions have a major impact on investment costs. Land boards current investment funds include several strategies that are not used by SIB clients including absolute return, mandates with GMO, PIMCO, and Gleskwood in addition to designate strategies with commodities and harvest masters limited partnerships and VanEck. I know you understand that SIB has been successful in significantly reducing investment fees in recent year. It is important to note that similar fee savings may not be realized given the different asset allocated policies used by the land board and the Legacy Fund. Although there be some operational cost savings and a transfer of the land board investment implementations SIB, I do not believe these coast savings would be large when compared to

the overall investment fee levels. SIB clients have benefited from successful investment implementations by SIB, REO, and our investment consultants in the last five years which has contributed to improving client returns by \$300 M for the 5 years ending. Although a historical track record is meaningful, it is important to understand that prior results may not reflect future performance. SIB is open to the discussion but, we invest in certain things in the land board that the State Investment Board wouldn't automatically be prepared to take on because of those different allocations. The staff are not experts in that. There is a little bit of a concern by SIB when bringing in about \$5 B over to them. It is something that we want to take into consideration.

(0.17.09) From our perspective, the way they charge their clients, it is a basis point. If it is the same fee structure as it has always been, there is no cost savings by transferring this over from internally or through combining your fund consultants. We wouldn't save any money on fees because anything that we do where we share fund managers, we would actually already make that savings with them. We meet with Dave Hunter and his team. Jeff and I have talked to him a couple times of week on issues. There was a consultant that we wanted to bring in. We were going to look at them from the land board's perspective. The State Investment Board was not able to successfully negotiate a contract. They notified us of this. We have abandoned working with that consultant based on our experience with them on the State Investment Board. We work with them exceptionally closely. We are not quite sure what the intentions of this were coming out of the House to combine those, if there are any cost savings that come from a business perspective. I do not know if that helps to answer your questions at all. We would more than happy to provide you with follow up information as well.

(0.18.36) Chairman Wanzek: This is something the House did.

Jodi Smith: We expressed some concerns on this. There was no public hearing held. We were invited in to be a part of the conversation. The State Investment Board was not invited to be a part of the conversation. It came out of sub-committee on a Monday afternoon. It went straight into Appropriations on Tuesday and it was brought to the floor on Wednesday. We were not aware that the amendments were even in there or asked for any opinion to contribute to answer any questions anyone may have on that. That was part of our concerns as well. IA significant move of \$5.5B of state assets without having any agency heads involved in the conversation is a little bit challenging for me.

(0.19.28) Senator Grabinger: Section 6 and 7 are real similar. I think they both have your constitutional arguments. To me, you want to talk about micro managing, we are really get in deep here when we start doing some of these things.

Jodi Smith: We look at our investment policy regularly. We are scheduled to look at that every 4-5 years. We just looked at it 4 years ago. In the next year, we will look at it again. That it is something up to re-review again. We constantly review our fee structure. That has been a question they've been asking a lot of committee meetings. It is a little bit challenging because people want to take the fee reports and compare them apples to apples. The way the fees are reported from the State Investment Board and from the Land Board, you cannot really take them apples to apples. My board has directed me to work with Dave Hunter on this. The next time to report those fees, which isn't until this fall, you will see the same fee report coming from the Land Board and from the State Investment Board. That is so anyone who wants to see how much the fees were at the Land Board for the investments and how

much are the fees within the State Investment Board, you can lay them side by side and see that much more clearly. Right now, it is a little more challenging to look at them. The Land Board is more than willing to have this conversation and re-review it. They could even bring in an outside consultant to have them help step them through some of these processes.

Senator Hogue: I know the funds that the State Investment Board has oversight for the teacher's funds for retirement and the PERS fund which have individual beneficiaries. They have representatives of those funds on the board along with yourself, the treasurer, and the lieutenant governor serves for the governor. On the Land Board side, you have the Common Schools Trust Fund, the Foundation Aid Stabilization Fund.

Jodi Smith: No, sir, we do not have those.

Senator Hogue: Do you have any funds where there are individual beneficiaries. I am not talking about universities.

Jodi Smith: No, sir.

Senator Hogue: To me, that is a significant distinction. Those folks have their funds. They have their representatives on the State Investment Board. They have differing views on what their fiduciary relationship is to those beneficiaries of those funds.

Chairman Wanzek: I understand. With that, I know there are other issues. Just to refresh, what we talked about last time is what we talked about last time is reinstating the unification strategy for IT. There was also talk about the 2 FTE's. Could you expand on that again? I know one was an attorney and the other one was an administrative type position.

Jodi Smith: We had the two requests for FTE's. When you look at our FTE count, it gets a little confusing because the House put two FTE's back into my appropriations. Those were IT FTEs. It is my recommendation that those programmers go up to ITD as a part of that unification. As we get this new technology brought in, it is all cloud based. I do not need them and I feel like ITD could provide us with better cybersecurity than we could internally. Because we do manage such significant assets for the state of ND, I think it is important that we partner with them very closely on the cyber security issue and that we have those resources at our finger tips instead of me trying to manage three IT people within my department to ensure that gets in place. That is where you will see that difference. It went down to 26 and it brought us back up to 28. I am saying to get rid of those 2 FTEs and replace them with an administrative assistant. That is based on the workload that we do. We manage so many assets. We receive checks on a daily basis and we do deposit those. We need people who can really get in there and make sure that information gets into these new systems and those become more sophisticated then they can take over the role of some of these other levels. This year, we got rid of an audit technician and an accountant technician. I just did a workforce reduction on my grants manager because our grants level has gone down so significantly. It was one of our programmer analysts that I have already moved over to ITD. We have reduced by those 4 and I just need it back and filled with different skill sets. One of those is an administrative assistant to help us make sure all those wills are turning appropriately. We push out nearly 6,000 claims a year through unclaimed property. We manage 6,900 leases in the state for oil and gas. The amount of royalty payments that

come through our department are significant. We do semi-annual surface auctions. When those leases are coming through, there is a lot that needs to be done to make sure that all that information gets in the system.

Senator Grabinger: Let me get this straight on the FTEs. You eliminated 4 and you're asking for 2 back. One is an administrative assistant and the other is the attorney. (Answer – Yes.) The funding level is real similar.

Jodi Smith: Yes. I think it pops up a little bit because of what we would pay an attorney. Because we reduced it by four and just came up by 2, I think it is fairly similar.

Senator Grabinger: You have one attorney on staff?

Jodi Smith: No, sir. Dave Garner reports to the Attorney General. He is the Assistant Attorney General. I do have a paralegal on staff to assist us with some of this work.

Chairman Wanzek: Your intent is to have an attorney in house or is it another attorney through the attorney general's office?

Jodi Smith: Our intent is to have an attorney in house. That is not to assist us with litigation. That should still be managed by the Attorney General under the purview that he does for the state. This is to help us with the work we do. In the past weeks since I've seen you last, I have had four oil operators fly up from Houston, one came out from Montana, one was from Colorado and another one flying in on Thursday to meet with me after hours and most of those meetings I should have general counsel present because there is something within their lease that they are requesting an exception for. I need an attorney that can assist me with those conversations. particularly when we have responses to that. I think everybody is aware that we are in some significant litigation at this point. We have briefings that are due to the courts. It is a constant interruption for Mr. Garner when he has to come to our office and assist us with those day to day operational tasks instead of being able to file those briefings and concentrate on litigation for the state. I would say we are stretched extremely thin based on the litigation that we have going on and the amount that we need to do. Our fiscal notes that we have submitted to you on behalf of bills from last session, have been used against this in a court. The testimonies of previous commissioner have come out and been used in courts against the state. So typically, not necessarily these, but when I speak about the ordinary high-water mark, extraction taxes, or pore space, I tend to want an attorney to glance at that for me because I know what we say on record can be used against us and probably will be in a court of law.

We have so much work. I consider us a \$5.5 B corporation for the state of North Dakota that brings back a lot of money to help support a lot of the projects. I think it is really important that we have that standing behind us. Previously, the industry has come in and made this recommendation as well. We get bottlenecked with work. We have had a letter that we wanted to go out to operators for a few months now. It has not been able to get out the door quite yet because during session, I am pulling Mr. Garner about 20 different ways between helping me with amendments, with bills and other things. We met for a few hours on a land sale policy this morning. We have these briefings due. We have a Land Board meeting tomorrow that if we have any board memo that goes out, we get those open record request

regularly. That is to review those board memos. I think it is better off for us and it is good risk management for the state if someone can review those for us.

(0.28.41) Senator Hogue: I am making an assumption here that this issue of getting this in-House lawyer has been an agenda item on the Land Board previously. I am getting a feel where the attorney general is at. There are four other commissioners. I would like you to tell us where they are at. Will this be an agenda item tomorrow when you meet?

Jodi Smith: The Land Board has not voted on this particular item. We have reviewed the budget and we specifically reviewed it when it came across so heavily amended by the House. There were no objections at that time. The attorney was mentioned as it was taken out by the House. It is on for the legislative update tomorrow. The Attorney General has not spoken on the land board and we have not taken a vote on it. There is no direct support or opposition for this. If you would like to see the board take a position on this, that is something we can bring up tomorrow morning. We will not meet again until April 25.

Senator Hogue: With the additional information, that would be helpful.

Jodi Smith: I can ensure that they can provide me with direction tomorrow.

Senator Grabinger: I am not opposed to good legal advice. A good lawyer is well worth it. There is a real question of whether you need that full time or if it should be in the Attorney General's Office and utilized as you already do. There is some discussion that we need to come up with.

Jodi Smith: I put in the number of hours that we get billed. We have multiple attorneys. Some of those cannot be replaced. That is particularly when you talk about bankruptcy. There is nobody in the Attorney General's Office that wants to touch that when we have operators going bankrupt. We also have a special that is assigned to us who helps with all the legal issues as they pertain to any sovereign nation. We would continue to use that Assistant Attorney General. We do have some concerns with we used to have someone else in the Attorney General's Office that helped us. When she was no longer available, we would outsource some additional work to another special because it is not feasible to continue to add on to Mr. Garner's work load at this point in time. We do have a considerable amount. I am in continuous struggle with my paralegal having to work over hours. At this point, I am reviewing stuff, she is on my team before it goes to our legal counsel to minimize the amount of work he has to do on any documentation because we know he is so stretched for time. I'll have the board review it tomorrow morning and provide me with direction on record on that if that is assistance.

Chairman Wanzek: That would be helpful. With that, we are going to close the hearing. Thank you.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1013
4/3/2019
JOB # 34471

- Subcommittee
 Conference Committee

Committee Clerk: Alice Delzer / Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing for Trust Lands

Minutes:

Testimony of Jodi Smith

Chairman Wanzek: called the Subcommittee to order on HB 1013 at 9:30 am in the Harvest Room. Let the record show that all subcommittee members were present: Chairman Wanzek, Senator Hogue and Senator Grabinger. Adam Mathiak, Legislative Council and Becky J. Keller, OMB were also present.

Chairman Wanzek: I am looking to highlight the big issues here. I know that Jodi has handed out testimony. For the interest of time, are you planning on reading your whole testimony or what were your thoughts?

Jodi Smith, Commissioner, Dept. of Trust Lands: submitted Attachment # 1 which states she is the commissioner and also secretary for the Board of University and School Lands Board. My two focuses on here were the FTE count for the department and the State Investment Board. The recommendations.

Chairman Wanzek: In my mind I was thinking the two issues I think that are significant is the State Board Investment piece, and the FTE and the attorney. I am trying to think if there was another significant issue. I can't recall that there were any major issues beyond those two.

Jodi Smith: We are one of those agencies that is a cabinet agency but we are still recommending that our two programmers become a part of ITD unification for a lot of the cybersecurity.

Chairman Wanzek: Your included on that list.

Jodi Smith: Yes sir. We are in support of that mainly because of the Northern Trust assets that we manage. We've done a fraud risk assessment with them, the ITD conducted but we've also done a fraud risk assessment internally that is now built into our operational budget. So we will complete that on a bi-annual basis. We have Eide Bailly came out and did

an outside assessment of our department and highlighted some recommendations for us to be able to address at this point in time. So, it's the men that we take very seriously in the department and we do appreciate being a part of that unification. I will skip kind of into the middle of the second page, it's kind of with the paragraph that starts, "In order to continue in this capacity". The department needs the two eliminated FTEs to be reallocated. They were eliminated due to the request to 10% reduction and without additional support our department to assist the hundreds of right of way applications and surface damage agreements, reclamation, inspections, there are thousands of oil and gas leases every year. Hundreds of thousands of royalty records and thousands of unclaimed property claims and billions of dollars' in investment, the department will be at risk of slowing the economic growth in North Dakota and increasing the risk of litigation and operating expenses need to be restored to allow for proper management of the trust assets. I think it's really important to note states who manage similar assets have significantly more appropriated to their Land Department and more staff to manage their assets. For example, every year Colorado's budget is 5% of their annual revenue for their agency for their operations. The don't go through kind of the same, or similar process like we do now. This equals \$3.2 million dollars for their annual budget while our request is for \$4.3 Million and our department generates 300% more income than the state of Colorado. If the department were to allow similar budgeting our annual budget would be over \$7.5 M dollars. In additionally we are recommending that you remove the boards discretion to make investments decisions on behalf of the current trust funds that they language needs to be eliminated. There is some documentation as your kind of requested. In early 2013 the investment consulting firm now known as RVK was hired through a competitive hiring process by the board, to submit a written report addressing the following issues that is recommendations for comprehensive evaluation, and to assist the board in writing an investment policy. A recommendation of the asset allocation policy for the permanent trust funds and a recommendation at the most appropriate way to transition the permanent funds from the then current assets allocation plans that are recommended asset allocation plan. For an analysis on the cost associated with the recommend asset allocation plan, and then 5, an analysis of the management of cash and cash like funds. In 2014 the Board entered into another agreement with RVK to implement these recommendations that came out of RVK 2013 investment settings provide performance monitoring services to the board. In 2015, after reviewing Pros and cons of potential partnerships such as SIB, the Board voted 4-1 to continue to actively manage the permanent trust investment program through the department staff with the assistance of a retained investment consultant while also working with SIB to minimize cost and fees and to prove efficiencies. I work very closely with the State Investment Board when negotiating money managers and service provider fees to insure both entities are getting the best possible fees based off the cumulative assets involved. The results have resulted in significant fee savings for entities in the past 20 years. I do serve on the State Investment Board, so I do have an acute knowledge of the work that they do on the State Investment Board. Both the department and the SIB pay investment fees that are directly related to the risk tolerance and asset allocations of the funds comparing the fees paid by both the department SIB as possible but not based upon current reports provided to the respective boards. These reports contain different data points which will allow for direct comparison and we're currently working on that process. Hopefully by next years' reporting period which again is around October/ November we will kind of a more apples to apples. In February 2019, the Board reviewed a report created by RVK regarding permit trust fund bench marks. Understand the nature of bench marking, what comparisons are relevant and which ones are not and the report detailed that both the Board and SIB are meeting their

benchmarks and the fees are comparable. So, I am open to any questions regarding both the FTE's and the recommendation from the House to move the investments over to SIB.

Senator Wanzek: Are there any questions? You mentioned now that the Board did take a position as far as the attorney goes?

Ms. Jodi Smith: They did. We did have a discussion about it, and so there is a strong agreeance that we need additional legal support. Whether that is in my budget or the Attorney General's budget is irrelevant to the Attorney General and myself if they need to report to the Attorney General. Then I did meet with the Attorney General again last night on the issue, and he agreed to continue to work with me on having someone located within our department and still kind of a cross-town, but to have them report to him. His budget I think is in the House but I don't know where it is at. So was irrelevant kind of where the cash kind of sat; but the individual would report directly to the Attorney General.

Chairman Wanzek: I think we discussed that last meeting about how we go about providing that situation and if I am not mistaken I think there is some funding maybe in this budget with the FTE, might be designated to. Becky do you have.

Ms. Becky J. Keller, OMB: The House took it out.

Chairman Wanzek: I am talking about if we propose that amendment and we want to keep the attorney under the auspices of the Attorney General's budget, do we still budget it in this budget for that purpose and then? Can we?

Ms. Becky J. Keller: OMB. That is kind of a tough one. Typically, the money follows the FTE. But I think if we can get a memorandum of understanding we could put the FTE in with her and all of that knowing that the Attorney General has to have control over the FTE. I guess that is something that her and if the Attorney General agrees with her.

Ms. Jodi Smith: The Attorney General was okay with that in the board meeting and again last night. It was more important that all attorney's report directly to the Attorney General if I am saying that correctly. But it was important to me that he or myself where that FTE kind of sat and where those funds sat. But he understood my need to have somebody just kind of physically in house within the department.

Senator Hogue: I think you could put that FTE in this budget. There is a statute that requires that any attorney that represents the state land board, is subject to the approval of the Attorney General and that person serves at the pleasure of the Attorney General.

Ms. Jodi Smith: That particular statute is lovely, it's from 1919. It is Senate bill 50. So back in 1919, there was one little paragraph that was put in there, that said the Attorney General can appoint one for the Board of University and School Lands. That is 100 years old now and we're still relying on it. It works.

Senator Hogue: The statute that is the current state of the law. So, I think you could put it there.

Chairman Wanzek: I think we are close to the wrapping this up. In the interest of time, if the other committee members have no objection I would work with Jodi and Levi and maybe even bring Wayne Stenehjem into it, but come next meeting with some amendments that I are going to address that and would take care of it in that matter with Legislative Council advise and then the other FTE for the administrative assistance and I guess I'm leaning towards moving the trust to the state board by taking that out and leaving it the way it is. If there is no objection, I'll work on those amendments. A lot of these budgets we got to move, we can't keep meeting and talking about it. At some point we've got to do something about it. So I am proposing that during this break before we have another meeting, I will hopefully come to that meeting with amendments. Is that fine?

Ms. Becky J. Keller: Can I just clarify. From the standpoint of OMB, we don't really care where the money or the FTE's sits. Just that if it is in DTL, that we would have to have probably the memorandum of understanding with the attorney general

Ms. Jodi Smith: I was directed to contact the Attorney General after this meeting. This will give me the opportunity to pop upstairs and start working with him to just pursue with the process a little bit to get that in place. I don't know if has one with another department already kind of constructed that we might be able to use.

Chairman Wanzek: We'll be in touch and work with Adam from Legislative Council. I just want to make sure the other committee members understand what I am trying to do. We'll see and take care of that in the next hearing.

Chairman Wanzek: Adjourned the hearing of the subcommittee on HB 1013.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1013
4/5/2019
Job #34546

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning and Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands.

Minutes:

Testimony #1.

Legislative Council: Adam Mathiak
OMB: Stephanie Gullickson

Senator Wanzek: Called the sub-committee to order on HB 1013.

Senator Holmberg (sitting in for Senator Hogue) and **Senator Grabinger** were also present.

Senator Wanzek: I want to summarize the budget, point out highlights, and other things we might need to address.

Has amendments drafted – but have one technical correction that needs to be made.

Adam Mathiak, Legislative Council: (Amendment 19.0201.02002 – Attached # 1)

There is a Century Code reference that deals with the appointment of special assistant Attorney Generals. I referenced the Century Code section that deals with most other agencies. I didn't see the one that dealt with the Board of University and School Lands. It's a technical correction and will be changed from NDCC 54-12-08 to 54-12-09. We'll get that correction made.

Senator Wanzek: The amendment addresses the three issues that were a point in this budget. First, is the salary change per the agreement between the House and the Senate. We also are funding for the two FTEs – an administrative assistant and an additional attorney. That attorney is pursuant to those provisions in that section he referenced. This attorney is assigned to the agency under the Attorney General. It reduces the salaries and wages in this budget by \$365,000 for the two FTEs being transferred into the IT department for unification for the trust lands and for cybersecurity reasons.

This amendment also removes the section that requires the Board of University of School Lands to make investments through the state investment board and leaves it as it is done

today. We removed the state investment board language in the bill that the House had put in. If there are any other issues you think I missed, I would like to hear them at this time.

**Senator Grabinger: Moved amendment 19.0201.02002 as corrected (technical change).
Senator Holmberg: Seconded the motion.**

Senator Holmberg: And **Adam Mathiak** will change amendment number.

Adam Mathiak: Since this has already been printed and distributed, we will probably have an 03 amendment. I will change the number and have it ready for the committee later this morning so there is no confusion. It is a very minor change.

**Senator Wanzek: Yes
Chairman Holmberg: Yes
Senator Grabinger: Yes**

**A Roll Call Vote Was Taken: 3 yeas, 0 nays, 0 absent.
Motion Carried.**

Senator Wanzek: Thanked the Trust Lands people and everyone involved.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

HB 1013
4/5/2019
JOB # 34550

- Subcommittee
 Conference Committee

Committee Clerk: Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands.

Minutes:

1.Proposed Amendment # 19.0201.02003

Legislative Council: Adam Mathiak
OMB: Becky Keller

Chairman Holmberg called the Committee to order on HB 1013. Roll call was taken. All committee members were present.

Senator Wanzek: Submitted proposed amendment 19.0201.02003 and explained it.

Senator Wanzek: Moved amendment 19.0201.02003.
Senator Bekkedahl: Seconded the motion.
Voice vote carried.

Senator Wanzek: Moved a Do Pass as Amended on HB 1013.
Senator Grabinger: Seconded the motion.

A Roll Call Vote Was Taken: 14 yeas, 0 nays, 0 absent.
Motion carried.

Senator Grabinger will carry the bill.

SY
 1002
 4/5

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1013

Page 1, line 2, remove "to create and enact a new subdivision to subsection 1 of section"

Page 1, remove lines 3 and 4

Page 1, line 5, remove "Code, relating to the investments of the board of university and school lands;"

Page 1, line 8, after the first semicolon insert "and"

Page 1, line 8, remove "; and to provide a contingent effective date"

Page 1, replace lines 18 through 22 with:

"Salaries and wages	\$6,005,550	(\$280,171)	\$5,725,379
Operating expenses	1,775,723	857,299	2,633,022
Grants	0	4,000,000	4,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$4,577,128	\$12,458,401"

Page 3, remove lines 12 through 21

Page 4, line 11, remove "- CONTINGENT EFFECTIVE DATE"

Page 4, line 11, remove "Sections 6 and 7 of"

Page 4, remove lines 12 through 14

Page 4, line 15, remove "to the state investment board."

Page 4, line 15, replace "8" with "6"

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Department of Trust Lands - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$6,005,550	\$5,705,584	\$19,795	\$5,725,379
Operating expenses	1,775,723	2,203,680	429,342	2,633,022
Grants		4,000,000		4,000,000
Contingencies	<u>100,000</u>	<u>100,000</u>		<u>100,000</u>
Total all funds	\$7,881,273	\$12,009,264	\$449,137	\$12,458,401
Less estimated income	<u>7,881,273</u>	<u>12,009,264</u>	<u>449,137</u>	<u>12,458,401</u>
General fund	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00

Department 226 - Department of Trust Lands - Detail of Senate Changes

	Adjusts Funding for Salary Increases ¹	Adds FTE Positions ²	Adjusts Funding and FTE Positions for IT Unification ³	Total Senate Changes
Salaries and wages	\$13,906	\$371,822	(\$365,933)	\$19,795
Operating expenses		43,670	385,672	429,342
Grants				
Contingencies				
Total all funds	\$13,906	\$415,492	\$19,739	\$449,137
Less estimated income	13,906	415,492	19,739	449,137
General fund	\$0	\$0	\$0	\$0
FTE	0.00	2.00	(2.00)	0.00

¹ Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The House provided funding for salary increases of 2 percent on July 1, 2019, and 2 percent on July 1, 2020.

² Funding is added for 2 FTE positions, including an administrative assistant (\$123,261) and an attorney (\$248,461), and related operating expenses (\$43,670). Pursuant to the provisions of North Dakota Century Code Section 54-12-09, the attorney position is assigned to the agency under appointment by the Attorney General. The House did not include the FTE positions.

³ Two FTE positions are transferred to the Information Technology Department for the information technology unification project, reducing salaries and wages by \$365,933 and increasing operating expenses by \$385,672. The House did not include the information technology unification project.

This amendment also removes two sections, which were added by the House, to provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board. A contingent effective date relating to the statutory changes is also removed.

Date: 4-5-19

Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1013

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 19,0201.02002 w/ technical correction

- 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 Grabinger Seconded By Holmberg

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	X		Senator Mathern		
Senator Krebsbach			Senator Grabinger	X	
Senator Wanzek	X		Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

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

Date: 4-5-19

Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1013**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.0201.02003

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 Wanzek Seconded By Bekkedahl

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice Vote
Carried*

Date: 4-5-19

Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1013**

Senate Appropriations 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 Wanzek Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Grabinger

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

REPORT OF STANDING COMMITTEE

HB 1013, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1013 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "to create and enact a new subdivision to subsection 1 of section"

Page 1, remove lines 3 and 4

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Page 4, line 15, replace "8" with "6"

Renumber accordingly

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House Bill No. 1013 - Department of Trust Lands - Senate Action

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Less estimated income	13,906	415,492	19,739	449,137
General fund	\$0	\$0	\$0	\$0
FTE	0.00	2.00	(2.00)	0.00

¹ Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The House provided funding for salary increases of 2 percent on July 1, 2019, and 2 percent on July 1, 2020.

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2019 CONFERENCE COMMITTEE

HB 1013

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
4/15/2019
Recording Job# 34733

Subcommittee
 Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Attachments A and B

Chairman Kempenich: Opened the conference committee on HB1013.

Roll Call taken.

Senator Hogue: Explained Senate changes. See attachments A and B.

Senator Grabinger: Continued with changes.

Chairman Kempenich: So the attorney would be an added FTE to the trust lands; not using an assistant AG?

Senator Grabinger: My understanding is we put it in under this budget; because it would be working for this budget. It would be under the guidance of the attorney generals office.

Representative Mock: The position would be funded through the agency but would report to the attorney general?

Senator Grabinger: Correct. That's my understanding.

Representative Mock: That's the current arrangement with the first attorney?

Senator Grabinger: That one is funded through the attorney general's office.

Representative Bellew: What is the administrative assistant assisting with? Is that for the attorney or for something else?

Senator Hogue: I'm not sure.

Adam Mathiak, Fiscal Analyst, ND Legislative Council: The administrative assistant position dealt with as the department did some restructuring and looking at things over the interim, they realized that some of the duties could be handled by an administrative assistant position.

Representative Bellew: How does that equate?

Chairman Kempenich: With the attorney issue, there are a lot of agencies looking for attorneys and the attorney general gets very defensive about agencies having attorneys without being attached to them. The question on this is going to be who's the boss?

Senator Hogue: There's a specific statute that references the land board and says that any attorney appointed to assist the land board with its legal matters answers to the attorney general.

Chairman Kempenich: Would it be better to put some money into consulting rather than have an FTE?

Senator Hogue: It's a recurring problem for state government. Traditionally a lot of these assistant attorney general positions are entry level positions. It would be nice if you had someone that could just come in and start helping the state with all of these. I'm convinced that given the dollars that are at stake in these disputes that it would be wise for the state to have an attorney.

Senator Grabinger: I think that it's prudent on our part if we can prevent some of this litigation in the first hand.

Chairman Kempenich: A lot of dollars have flowed through here in the last 10 years; and there probably are some issues. Is this one of the agencies that have been in the conversation for the IT unification?

Representative Mock: I was aware that this is one of the agencies that were selected for the pilot. I'm comfortable maintaining the Senate's changes for unification.

Chairman Kempenich: The other issue was the transparency and the understanding of the fund itself. On the surface it looked like it could be better.

Senator Hogue: We concur with the House completely that the management of this fund is under the authority of the legislature. The state land board came into our hearing suggesting there was a constitutional problem and we rejected that. We focused more on the business reasons. We thought it made more sense to keep them separated as they both handle large sums of money. In the state investment board, you have a lot of people on that board who have fiduciary responsibilities to specific beneficiaries.

Senator Grabinger: It's been successful as it is. There's got to be a good reason to change. The CIO of the investment board said that there would not be a lot of material savings by making this change.

Chairman Kempenich: I would like to have it set up where there's a biannual report to the budget section on this. When we looked at it on the surface it looked like there was duplication of effort on some of this.

Senator Hogue: I had the same thought when you look at the money that comes into the common schools trust fund; and it's getting to be a very large balance.

Chairman Kempenich: Closed the conference committee.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
4/22/2019
Recording Job# 34883

- Subcommittee
 Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Chairman Kempenich: Opened the conference committee on HB1013.

Roll Call taken.

Chairman Kempenich: The attorney is going to be tough even with the attorney general agreeing that it stays housed in his office. The administrative assistant is also a concern. We're at a standstill on the FTE positions. I do have an amendment to start requiring a budget section report on the status of the investments.

Senator Grabinger: I looked at it and I don't have a big problem with it. I would suggest that it be annual instead of semi-annually.

Senator Wanzek: How about you give us the FTE's and we'll give you your language?

Chairman Kempenich: The whole conversation with attorneys has been interesting. There are a number of agencies that have come in wanting attorneys.

Senator Wanzek: We're all citizen legislators and don't spend every day in the trust lands. I do tend to agree with the significance with how it's grown. I see the attorney position as part of a preventative measure. When something isn't done right, it could lead to even more serious attorney needs for litigation.

Representative Bellew: How did they do it before? How did they get along without them before?

Senator Wanzek: That's why I say considering the fact that the trust lands department and the assets in their control has grown dramatically. The size of what they're in control of has grown.

Senator Grabinger: When we first looked at this budget, I had to be sold on this. Then I started looking at the caseload and possible litigation that may be going through this department. It seems to me that this might be in the best interest of the state. I think it's the right thing to do for the state.

Senator Hogue: We have consistently rejected the idea that we need a Medicaid fraud unit within the attorney general's office. What that involves is duplicating resources that the federal government already provides. There has been no significant case in North Dakota where it's been demonstrated that we have rampant Medicare/Medicaid fraud. We're agreeing to create this unit. Why are we adding those positions and why wouldn't this be a priority over those?

Chairman Kempenich: I did talk to the attorney general and the way it would work would be that it would still be an assistant attorney general. If we're already doing an assistant attorney general for the department, how would this change the conversation? The position would be in the land department; but it would still be under the attorney general. I don't think the independence is as great as what we're thinking.

Senator Hogue: This FTE would be a direct answer to the attorney general. I think this should be a priority over and above the attorneys we're creating for the fraud unit.

Representative Mock: If we don't provide that attorney, with the ordinary high water mark litigation and the processing of refunds regarding that litigation, who handles that under the current operations? Do they have the adequate staff for that? What does the process look like?

Chairman Kempenich: I think it was indicated at the beginning of the session that they're looking at 19 lawsuits. It's trying to figure out where we're sitting today and how we're gaining by adding one that's still going to be under the attorney general's preview. It isn't going to be independent of the attorney general's office.

Senator Grabinger: That's already the way they utilize the attorney that they have. I don't think that this would be a lot more different in that respect with this attorney.

Chairman Kempenich: The big sticking point is this attorney right now.

Chairman Kempenich: Closed the conference committee.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
4/24/2019
Recording Job# 34976

Subcommittee
 Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

--

Chairman Kempenich: Opened the conference committee on HB1013.

Roll Call taken.

Chairman Kempenich: The attorney is still a sticking point.

Senator Wanzek: Could you tell me why you feel the attorney isn't necessary?

Chairman Kempenich: It's going to be an assistant attorney general and we have one there now. We basically think that the agency didn't need another attorney.

Senator Wanzek: When we had the discussion in the Senate it was made very clear that it was going to be an attorney under the attorney general. We were told that the FTE could be in this budget. Our rationale is that when you look at the growth of the assets that this agency takes care of for the state and the complexity of the legal matters that they deal with, their workload has grown.

Chairman Kempenich: It was brought up in our conversation with the chairman that if the attorney general's office wasn't able to provide the service; why didn't they ask for this?

Senator Grabinger: You and I visited a little about this yesterday. I did take the opportunity to go and discuss this with the attorney general. I'm probably more reinforced in my position on this than I was before. In looking at this budget did he agree that this attorney would be beneficial for this department and probably cost effective in the long run and the attorney general said yes. The attorney general does support this.

Chairman Kempenich: I'm trying to get convinced that it's a good idea.

Senator Grabinger: We're hearing from the attorney general that he thinks it's important and we should do it. The board voted and thought it was the right thing to do.

Representative Kempenich: Because of the way it's structured, I think that they had asked for an independent attorney originally.

Senator Wanzek: I took your advice and visited with the attorney general. He did tell me he felt there was a need.

Representative Mock: Are the FTE's a package deal?

Chairman Kempenich: I want to go talk to leadership.

Representative Mock: Do we have to do anything with the ordinary high water mark?

Chairman Kempenich: No, we're not going to touch that in here.

Chairman Kempenich: Closed the conference committee.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1013
4/24/2019
Recording Job# 34982

Subcommittee
 Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

Minutes:

Chairman Kempenich: Opened the conference committee on HB1013.

Roll Call taken.

Representative Mock: After visiting with the attorney general, I'm ok with the attorney and the administrative assistant.

Chairman Kempenich: The Senate majority leader approached me about the \$4 million grant that we put in on the House side. He asked if we'd take \$2 million out. The intent is more of an emergency type of grant. It would be what was carried over and add \$2 million; so it would be roughly \$3 million in that fund.

Senator Wanzek: You're proposing \$2 million or \$3 million?

Chairman Kempenich: No. They're carrying some money over and we put \$4 million on top of what they were carrying over out of the SIIF fund. So \$2 million of this \$4 million would go over and then whatever carry over they have the previous biennium is what we're proposing.

Senator Wanzek: Do they have a continuing appropriation?

Chairman Kempenich: It's supposed to be granted out.

Senator Wanzek: Whatever we list in the budget is the limit what they can grant out. Is this different?

Adam Mathiak, Fiscal Analyst, ND Legislative Council: This situation might be a little bit different. We provided carry over authority for any money that's still left in the fund at the

end of this biennium and made it clear with that exemption that they can carry it over and use it for grants and administrative expenses of the fund. The new money would be the \$4 million and as proposed, reduced to \$2 million. Between the carryover of \$1 million plus the \$2 million of new funding, there'd be about \$3 million available for grants and a little bit for administrative expenses in the next biennium.

Senator Wanzek: If we only appropriate \$2 million, they're not limited to \$2 million; they're limited to \$2 million plus the carry over?

Adam Mathiak: That's correct.

Senator Wanzek: We were told whatever the appropriation is in the budget, that's the limit that they can grant. They must not have carry over authority?

Adam Mathiak: That would be the likely case.

Chairman Kempenich: That \$1 million that's still there may be allocated to something.

Representative Bellew: Did the majority leader tell you why he wanted reduced?

Chairman Kempenich: There's a little gap between the House and Senate on SIIF money. This is filling in a little more of that gap.

Representative Bellew: I would like to see the \$4 million remain.

Senator Wanzek: Made a motion to have the "Senate recede from their amendments and further amend".

Senator Grabinger: Seconded the motion.

Roll Call Vote: 5 Yeas 1 Nay 0 Absent

Motion Carried.

Chairman Kempenich: Closed the conference committee.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1013

That the Senate recede from its amendments as printed on pages 1556 and 1557 of the House Journal and pages 1324 and 1325 of the Senate Journal and that Engrossed House Bill No. 1013 be amended as follows:

Page 1, line 2, remove "to create and enact a new subdivision to subsection 1 of section"

Page 1, remove lines 3 and 4

Page 1, line 5, replace "Code, relating to the investments of the board of university and school lands;" with "to create and enact a new section to chapter 15-02 of the North Dakota Century Code; relating to investment reports;"

Page 1, line 8, after the first semicolon insert "and"

Page 1, line 8, remove "; and to provide a contingent effective date"

Page 1, replace lines 18 through 22 with:

"Salaries and wages	\$6,005,550	(\$280,171)	\$5,725,379
Operating expenses	1,775,723	857,299	2,633,022
Grants	0	2,000,000	2,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$2,577,128	\$10,458,401"

Page 2, replace lines 6 through 11 with:

"Information technology replacement project	\$3,600,000	\$0
Airport grants	40,000,000	0
Mineral revenue repayments	187,000,000	0
Oil and gas impact grants	0	2,000,000
Mineral valuation study	<u>0</u>	<u>350,000</u>
Total special funds	\$230,600,000	\$2,350,000"

Page 3, line 6, replace "\$4,000,000" with "\$2,000,000"

Page 3, replace lines 12 through 21 with:

"SECTION 6. A new section to chapter 15-02 of the North Dakota Century Code is created and enacted as follows:

Investment reports - Report to budget section.

The commissioner shall prepare annual reports on the investment performance of each fund under its control. The reports must be comparable to the reports prepared by the state investment board under section 21-10-06.1. The reports must identify the expenses deducted from each fund, including details on investment management fees, advisory fees, transaction fees, the agency's expenses attributed to the fund, and any other costs. The commissioner shall report at least annually to the budget section on the status of its investment performance."

Page 3, line 24, replace "\$4,000,000" with "\$2,000,000"

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4/24/19

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2 of 3

Page 4, line 11, remove "- CONTINGENT EFFECTIVE DATE"

Page 4, line 11, remove "Sections 6 and 7 of"

Page 4, remove lines 12 through 14

Page 4, line 15, remove "to the state investment board."

Page 4, line 15, replace "8" with "7"

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Department of Trust Lands - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages	\$6,005,550	\$5,705,584	\$19,795	\$5,725,379	\$5,725,379	
Operating expenses	1,775,723	2,203,680	429,342	2,633,022	2,633,022	
Grants		4,000,000	(2,000,000)	2,000,000	4,000,000	(\$2,000,000)
Contingencies	100,000	100,000		100,000	100,000	
Total all funds	\$7,881,273	\$12,009,264	(\$1,550,863)	\$10,458,401	\$12,458,401	(\$2,000,000)
Less estimated income	7,881,273	12,009,264	(1,550,863)	10,458,401	12,458,401	(2,000,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00	28.00	0.00

Department 226 - Department of Trust Lands - Detail of Conference Committee Changes

	Adjusts Funding for Salary Increases ¹	Adds FTE Positions ²	Adjusts Funding and FTE Positions for IT Unification ³	Reduces Funding for Grants ⁴	Total Conference Committee Changes
Salaries and wages	\$13,906	\$371,822	(\$365,933)		\$19,795
Operating expenses		43,670	385,672		429,342
Grants				(\$2,000,000)	(2,000,000)
Contingencies					
Total all funds	\$13,906	\$415,492	\$19,739	(\$2,000,000)	(\$1,550,863)
Less estimated income	13,906	415,492	19,739	(2,000,000)	(1,550,863)
General fund	\$0	\$0	\$0	\$0	\$0
FTE	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The House provided funding for salary increases of 2 percent on July 1, 2019, and 2 percent on July 1, 2020.

² Funding is added for 2 FTE positions, including an administrative assistant (\$123,361) and an attorney (\$248,461), and related operating expenses (\$43,670). Pursuant to the provisions of North Dakota Century Code Section 54-12-09, the attorney position is assigned to the agency under appointment by the Attorney General. The Senate included the FTE positions, but the House did not.

³ Two FTE positions are transferred to the Information Technology Department for the information technology unification project, reducing salaries and wages by \$365,933 and increasing operating expenses by \$385,672. The Senate included the information technology unification project, but the House did not.

⁴ One-time funding for grants from the oil and gas impact grant fund is reduced by \$2 million, from \$4 million to \$2 million. This funding is in addition to the estimated \$1 million of funding available from prior bienniums and authorized to continue in the 2019-21 biennium. The related transfer from the strategic investment and improvements fund is also reduced. Both the House and the Senate provided \$4 million for grants.

This amendment:

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4/24/19
3 of 3

- Reduces the transfer from the strategic investment and improvements fund to the oil and gas impact grant fund by \$2 million, from \$4 million to \$2 million. The House and the Senate transferred \$4 million.
- Does not include two sections, which were added by the House, to provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board. A contingent effective date relating to the statutory changes was not included.
- Creates a new section to Chapter 15-02 requiring the Commissioner of University and School Lands to prepare investment reports in a manner similar to the State Investment Board's reports and to report to the Budget Section semiannually. Neither the House nor the Senate included this reporting provision.

**2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. HB1013 as (re) engrossed

House Appropriations – Government Operations Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Wanzek Seconded by: Senator Grabinger

Representatives	4/15	4/22	4/24	Yes	No	Senators	4/15	4/22	4/24	Yes	No
Chairman Kempenich	X	X	X	X		Senator Wanzek	X	X	X	X	
Representative Bellew	X	X	X		X	Senator Hogue	X	X	X	X	
Representative Mock	X	X	X	X		Senator Grabinger	X	X	X	X	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier Representative Kempenich Senate Carrier Senator Wanzek

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment
A motion to accept the proposed changes
Motion Carried

REPORT OF CONFERENCE COMMITTEE

HB 1013, as engrossed: Your conference committee (Sens. Wanzek, Hogue, Grabinger and Reps. Kempenich, Bellew, Mock) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1556-1557, adopt amendments as follows, and place HB 1013 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1556 and 1557 of the House Journal and pages 1324 and 1325 of the Senate Journal and that Engrossed House Bill No. 1013 be amended as follows:

Page 1, line 2, remove "to create and enact a new subdivision to subsection 1 of section"

Page 1, remove lines 3 and 4

Page 1, line 5, replace "Code, relating to the investments of the board of university and school lands;" with "to create and enact a new section to chapter 15-02 of the North Dakota Century Code; relating to investment reports;"

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Page 2, replace lines 6 through 11 with:

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Airport grants	40,000,000	0
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Oil and gas impact grants	0	2,000,000
Mineral valuation study	<u>0</u>	<u>350,000</u>
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Page 4, line 11, remove "- **CONTINGENT EFFECTIVE DATE**"

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Re-number accordingly

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House Bill No. 1013 - Department of Trust Lands - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
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Grants		4,000,000	(2,000,000)	2,000,000	4,000,000	(\$2,000,000)
Contingencies	100,000	100,000		100,000	100,000	
Total all funds	\$7,881,273	\$12,009,264	(\$1,550,863)	\$10,458,401	\$12,458,401	(\$2,000,000)
Less estimated income	7,881,273	12,009,264	(1,550,863)	10,458,401	12,458,401	(2,000,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00	28.00	0.00

Department 226 - Department of Trust Lands - Detail of Conference Committee Changes

	Adjusts Funding for Salary Increases ¹	Adds FTE Positions ²	Adjusts Funding and FTE Positions for IT Unification ³	Reduces Funding for Grants ⁴	Total Conference Committee Changes
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General fund	\$0	\$0	\$0	\$0	\$0
FTE	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The House provided funding for salary increases of 2 percent on July 1, 2019, and 2 percent on July 1, 2020.

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³ Two FTE positions are transferred to the Information Technology Department for the information technology unification project, reducing salaries and wages by \$365,933 and increasing operating expenses by \$385,672. The Senate included the information technology unification project, but the House did not.

⁴ One-time funding for grants from the oil and gas impact grant fund is reduced by \$2 million, from \$4 million to \$2 million. This funding is in addition to the estimated \$1 million of funding

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House Carrier: Kempenich
Senate Carrier: Wanzek

available from prior bienniums and authorized to continue in the 2019-21 biennium. The related transfer from the strategic investment and improvements fund is also reduced. Both the House and the Senate provided \$4 million for grants.

This amendment:

- Reduces the transfer from the strategic investment and improvements fund to the oil and gas impact grant fund by \$2 million, from \$4 million to \$2 million. The House and the Senate transferred \$4 million.
- Does not include two sections, which were added by the House, to provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board. A contingent effective date relating to the statutory changes was not included.
- Creates a new section to Chapter 15-02 requiring the Commissioner of University and School Lands to prepare investment reports in a manner similar to the State Investment Board's reports and to report to the Budget Section semiannually. Neither the House nor the Senate included this reporting provision.

Engrossed HB 1013 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1013

**Department 226 - Department of Trust Lands
House Bill No. 1013**

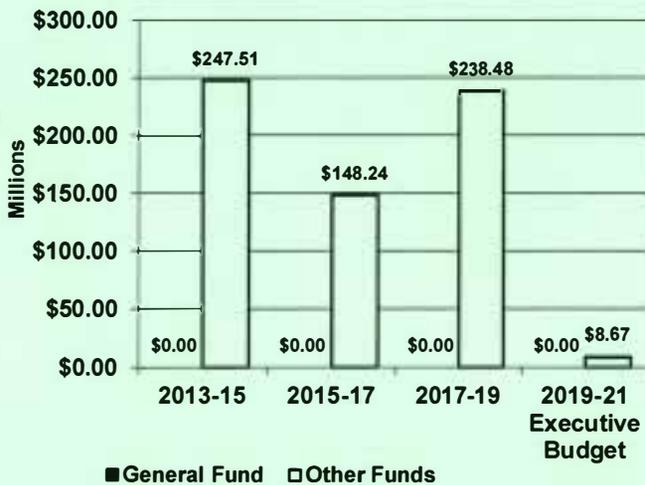
Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	28.00	\$0	\$8,674,631	\$8,674,631
2017-19 Legislative Appropriations	31.00	0	238,481,273	238,481,273
Increase (Decrease)	(3.00)	\$0	(\$229,806,642)	(\$229,806,642)

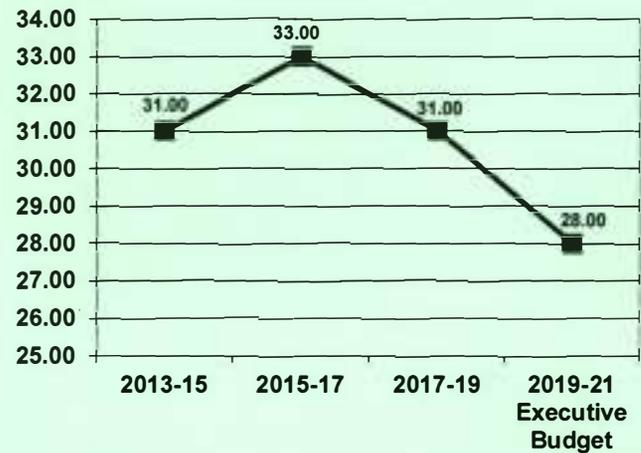
Ongoing and One-Time Other Funds Appropriations

	Ongoing Other Funds Appropriation	One-Time Other Funds Appropriation	Total Other Funds Appropriation
2019-21 Executive Budget	\$8,674,631	\$0	\$8,674,631
2017-19 Legislative Appropriations	7,881,273	230,600,000	238,481,273
Increase (Decrease)	\$793,358	(\$230,600,000)	(\$229,806,642)

Agency Funding



FTE Positions



Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2019-21 Executive Budget	\$0	\$8,674,631	\$8,674,631
2019-21 Base Level	0	7,881,273	7,881,273
Increase (Decrease)	\$0	\$793,358	\$793,358

Attached as an appendix is a detailed comparison of the executive budget to the agency's base level appropriations.

Executive Budget Highlights

	General Fund	Other Funds	Total
1. Provides funding for state employee salary and benefit increases of which \$226,509 is for salary increases, \$105,814 is for health insurance increases, and \$29,630 is for retirement increases	\$0	\$361,953	\$361,953
2. Removes 3 FTE positions, including 2 administrative assistants and an audit technician	\$0	(\$288,863)	(\$288,863)
3. Adds funding for 2 FTE positions, including an administrative assistant and an attorney, and related operating expenses	\$0	\$415,492	\$415,492
4. Transfers 2 FTE programmer analyst positions to the Information Technology Department for the information technology unification initiative resulting in an increase in operating expenses for the agency	\$0	\$23,175	\$23,175
5. Reduces funding for operating expenses primarily related to travel, equipment, information technology costs, professional development, and other services	\$0	(\$504,949)	(\$504,949)

6. Increases funding for operating expenses, including inflationary increases (\$57,285), information technology project management costs (\$50,000), and other costs (\$40,300)	\$0	\$147,585	\$147,585
7. Adds funding for legal and audit costs	\$0	\$384,564	\$384,564
8. Adds funding for a mineral valuation study	\$0	\$350,000	\$350,000
9. Adds funding for financial software maintenance agreements	\$0	\$175,000	\$175,000
10. Adds funding for Microsoft Office 365 licensing	\$0	\$23,342	\$23,342

**Other Sections Recommended to be Added in the Executive Budget
(As Detailed in the Attached Appendix)**

Line item transfer - Section 3 would allow the Commissioner of University and School Lands, upon approval of the Board of University and School Lands, to transfer funding between line items and requires the Commissioner to notify the Office of Management and Budget of each transfer.

Fund distributions - Section 4 would provide permanent fund income distributions to state institutions as follows:

	2017-19 Legislative Appropriation ¹	2019-21 Executive Budget	Increase (Decrease)
Common schools	\$288,264,000	\$366,756,000	\$78,492,000
North Dakota State University	4,738,000	5,916,000	1,178,000
University of North Dakota	3,662,000	4,504,000	842,000
Youth Correctional Center	800,814	1,864,000	1,063,186
School for the Deaf	1,598,000	1,898,000	300,000
North Dakota State College of Science	1,535,984	1,736,000	200,016
State Hospital	1,459,984	1,570,000	110,016
Veterans' Home	711,984	732,000	20,016
Valley City State University	808,000	1,034,000	226,000
North Dakota Vision Services - School for the Blind	929,984	1,122,000	192,016
Mayville State University	542,000	668,000	126,000
Dakota College at Bottineau	275,984	242,000	(33,984)
Dickinson State University	275,984	242,000	(33,984)
Minot State University	275,984	242,000	(33,984)
Total	\$305,878,702	\$388,526,000	\$82,647,298

¹The amounts shown reflect fund distributions as adjusted by the 2017 Legislative Assembly to correct errors identified in a performance audit conducted during the 2015-16 interim.

Oil and gas impact grant fund exemption - Section 5 would provide an exemption to continue unspent prior biennium appropriations from the oil and gas impact grant fund into the 2019-21 biennium.

Energy impact grant fund exemption - Section 6 would provide an exemption to continue unspent prior biennium appropriations from the energy impact grant fund into the 2019-21 biennium.

Information technology project exemption - Section 7 would provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Continuing Appropriations

Unclaimed property - North Dakota Century Code Section 47-30.1-23 - Payments made to owners of unclaimed property.

Investments and farm loans - Sections 15-03-16 - Money manager and custodial fees and loan administration fees to maintain and enhance income earning potential of trusts' financial assets.

County services - Section 15-04-23 - Payments made to counties for various services provided that benefit school trust lands.

Land expenses - Sections 15-04-24 and 15-07-22 - Payments for appraisal fees, survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, fire protection, land rent, value survey costs, and other expenses.

In lieu of taxes - Section 57-02.3-07 - Payments made in lieu of property taxes on certain state lands managed by the department.

Significant Audit Findings

The financial statement audit for the Department of Trust Lands conducted by Brady, Martz & Associates PC during the 2017-18 interim identified no significant findings; however, the agency is in the process of implementing changes to address some of the findings from the performance audit conducted during the 2015-16 interim.

Major Related Legislation

Senate Bill No. 2036 - Repeals an obsolete provision relating to the repayment of developmentally disabled loans from the strategic investment and improvements fund.

Senate Bill No. 2081 - Allows the Department of Trust Lands to pay building maintenance costs and payments in lieu of taxes pursuant to a continuing appropriation from the trust funds rather than the department's budget.

Senate Bill No. 2082 - Repeals obsolete provisions that allowed the department to lease fallow state lands at a lower rate.

Department of Trust Lands - Budget No. 226
House Bill No. 1013
Base Level Funding Changes

	<u>Executive Budget Recommendation</u>			
	<u>FTE</u>	<u>General</u>	<u>Other</u>	<u>Total</u>
	<u>Position</u>	<u>Fund</u>	<u>Funds</u>	
2019-21 Biennium Base Level	31.00	\$0	\$7,881,273	\$7,881,273
2019-21 Ongoing Funding Changes				
Base payroll changes			(\$293,941)	(\$293,941)
Salary increase			226,509	226,509
Health insurance increase			105,814	105,814
Retirement contribution increase			29,630	29,630
Removes 3 FTE positions	(3.00)		(288,863)	(288,863)
Adds 2 FTE positions	2.00		415,492	415,492
Adjusts funding and FTE positions for IT unification	(2.00)		23,175	23,175
Reduces funding for operating expenses			(504,949)	(504,949)
Adds funding for inflationary increases			57,285	57,285
Adds funding for a project manager contract			50,000	50,000
Adds funding for operating expenses			40,300	40,300
Adds funding for legal and audit costs			384,564	384,564
Adds funding for mineral valuation study			350,000	350,000
Adds funding for financial software contracts			175,000	175,000
Adds funding for Microsoft Office 365 licensing			23,342	23,342
Total ongoing funding changes	(3.00)	\$0	\$793,358	\$793,358
One-time funding items				
No one-time funding items				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(3.00)	\$0	\$793,358	\$793,358
2019-21 Total Funding	28.00	\$0	\$8,674,631	\$8,674,631

Other Sections for Department of Trust Lands - Budget No. 226

	<u>Executive Budget Recommendation</u>
Line item transfers	Section 3 would allow the Commissioner of University and School Lands, upon approval of the Board of University and School Lands, to transfer funding between the various line items, including the contingencies line item. The Commissioner shall notify the Office of Management and Budget of each transfer made pursuant to this section.
Fund distributions	Section 4 would provide the permanent fund income distributions to state institutions.
Oil and gas impact grant fund exemption	Section 5 would provide an exemption to continue unspent prior biennium appropriations from the oil and gas impact grant fund into the 2019-21 biennium.

Other Sections for Department of Trust Lands - Budget No. 226

Executive Budget Recommendation

Energy impact grant fund exemption

Section 6 would provide an exemption to continue unspent prior biennium appropriations from the energy impact grant fund into the 2019-21 biennium.

Information technology project exemption

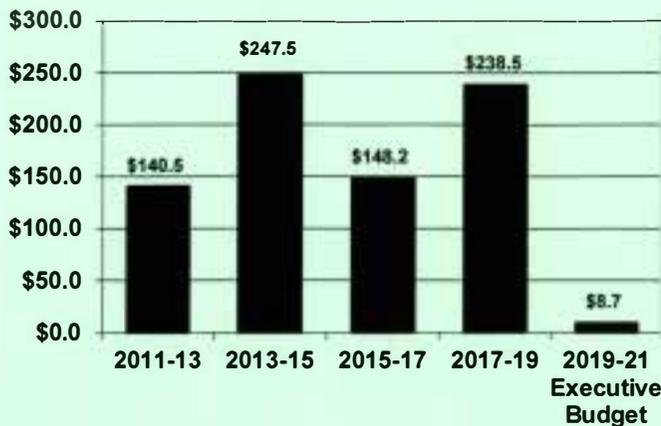
Section 7 would provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium.

Department 226 - Department of Trust Lands

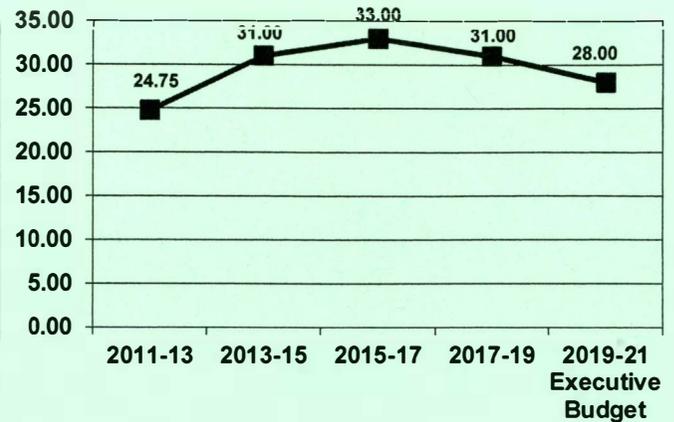
Historical Appropriations Information

Total Other Funds Appropriations Since 2011-13

Agency Funding (in Millions)



FTE Positions



Total Other Funds Appropriations					
	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Total other funds appropriations	\$140,465,189	\$247,506,969	\$148,243,153	\$238,481,273	\$8,674,631
Increase (decrease) from previous biennium	N/A	\$107,041,780	(\$99,263,816)	\$90,238,120	(\$229,806,642)
Percentage increase (decrease) from previous biennium	N/A	76.2%	(40.1%)	60.9%	(96.4%)
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	76.2%	5.5%	69.8%	(93.8%)

Major Increases (Decreases) in Total Other Funds Appropriations

2013-15 Biennium

- Added funding for 6.25 FTE positions, including a grant administrator position, an accounting and budget specialist position for the oil and gas impact grants, a land management specialist position, a mineral title specialist position, an audit technician position, and 1.25 administrative assistant positions \$1,056,889
- Added funding from the strategic investment and improvements fund for a private lands study \$50,000
- Added funding for contingencies \$100,000
- Added funding for grants to political subdivisions from the oil and gas impact grant fund \$105,000,000

2015-17 Biennium

- Added funding for 2 FTE positions, including a land management position and an unclaimed property and compliance officer position \$385,246
- Added funding for operating expenses related office space rental \$90,000
- Added funding for the administration of oil and gas impact grants \$163,922
- Reduced funding for contingencies (\$100,000)
- Reduced funding for grants to political subdivisions from the oil and gas impact grant fund (\$100,000,000)

2017-19 Biennium

- Added 1 FTE geographic information system specialist position, including \$177,080 for salaries and wages and \$23,025 for operating expenses \$200,105
- Removed 3 FTE positions, including 1 FTE energy infrastructure and impact office position (\$151,237), 1 FTE natural resources director position (\$259,307), and 1 FTE natural resources director position (\$617,094)

3. Adjusted funding for operating expenses, including increases for building maintenance and utility costs (\$93,746); increases for professional development (\$45,000); and decreases for professional development, information technology services, and travel (\$405,685)	(\$266,939)
4. Removed funding for Energy Infrastructure and Impact Office administrative expenses	(\$389,217)
5. Removed funding for grants to political subdivisions from the oil and gas impact grant fund	(\$99,300,000)
6. Added one-time funding for an information technology system replacement project	\$3,600,000
7. Added one-time funding for grants to airports, including \$25 million from the oil and gas impact grant fund and \$15 million from the newly created energy impact fund	\$40,000,000
8. Added one-time funding for mineral revenue repayments, including \$100 million from the strategic investment and improvements fund and \$87 million from a Bank of North Dakota line of credit	\$187,000,000

2019-21 Biennium (Executive Budget Recommendation)

1. Provides funding for state employee salary and benefit increases of which \$226,509 is for salary increases, \$105,814 is for health insurance increases, and \$29,630 is for retirement increases	\$361,953
2. Removes 3 FTE positions, including 2 administrative assistants and an audit technician	(\$288,863)
3. Adds funding for 2 FTE positions, including an administrative assistant and an attorney, and related operating expenses	\$415,492
4. Transfers 2 FTE programmer analyst positions to the Information Technology Department for the information technology unification initiative resulting in an increase in operating expenses for the agency	\$23,175
5. Reduces funding for operating expenses primarily related to travel, equipment, information technology costs, professional development, and other services	(\$504,949)
6. Increases funding for operating expenses, including inflationary increases (\$57,285), information technology project management costs (\$50,000), and other costs (\$40,300)	\$147,585
7. Adds funding for legal and audit costs	\$384,564
8. Adds funding for a mineral valuation study	\$350,000
9. Adds funding for financial software maintenance agreements	\$175,000

**GOVERNOR'S RECOMMENDATION FOR THE
DEPARTMENT OF TRUST LANDS AS SUBMITTED
BY THE OFFICE OF MANAGEMENT AND BUDGET**

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund, to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$214,962)	\$5,790,588
Operating expenses	1,775,723	1,008,320	2,784,043
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$793,358	\$8,674,631
Full-time equivalent positions	31.00	(3.00)	28.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
IT project	\$3,600,000	\$0
Impact grants – airports	25,000,000	0
Other grants - airports	15,000,000	0
Mineral revenue payments	<u>187,000,000</u>	<u>0</u>
Total special funds	\$230,600,000	\$0

SECTION 3. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the board of university and school lands, the commissioner of university and school lands may transfer between the various line items in section 1 of this Act, including transfers from the contingencies line item to all other line items. The commissioner shall notify the office of management and budget of each transfer made pursuant to this section.

SECTION 4. DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to section 1 of article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2019, and ending June 30, 2021, the following amounts, from the permanent funds managed for the benefit of the following entities:

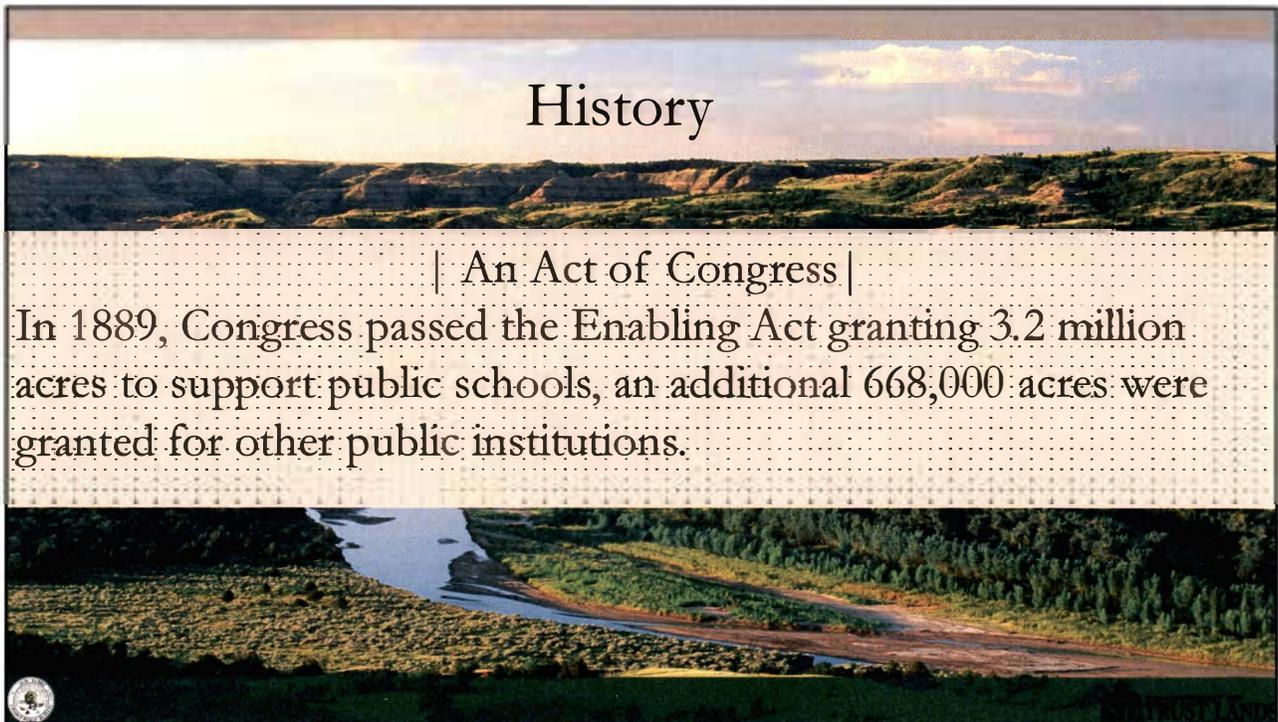
Common schools	\$366,756,000
North Dakota state university	5,916,000
University of North Dakota	4,504,000
Youth correctional center	1,864,000
School for the deaf	1,898,000
State college of science	1,736,000
State hospital	1,570,000
Veterans' home	732,000
Valley City state university	1,034,000
North Dakota vision services - school for the blind	1,122,000
Mayville state university	668,000
Dakota college at Bottineau	242,000
Dickinson state university	242,000
Minot state university	<u>242,000</u>
Total	\$388,526,000

SECTION 5. EXEMPTION - OIL AND GAS IMPACT GRANT FUNDS. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of

chapter 13 of the 2015 Session Laws, for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws, and for oil and gas impact grants in section 13 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2019, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019 and ending June 30, 2021

SECTION 6. EXEMPTION - ENERGY IMPACT FUND. The amount appropriated from the energy impact fund for airport grants in section 14 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11. Any unexpended funds from the appropriation are available for grants during the biennium beginning July 1, 2019 and ending June 30, 2021

SECTION 7. EXEMPTION – INFORMATION TECHNOLOGY PROJECT. The amount appropriated for an information technology project in the capital assets line item and the total special fund line item in section 1 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11. Any unexpended funds from the appropriation are available for the information technology project during the biennium beginning July 1, 2019 and ending June 30, 2021.



Department of Trust Lands

| Administrative Arm of the "Land Board" |

- Manage the Common Schools Trust Fund and 12 other permanent educational trust funds
- Manage four additional funds:
 - The Strategic Investment and Improvements Fund
 - The Coal Development Trust Fund
 - The Capitol Building Fund
 - The Indian Cultural Education Trust
- State Unclaimed Property Division
- Energy Infrastructure and Impact Office



The Land Board

| Board Members |

				
Governor Doug Burgum Chairman	Secretary of State Alvin Jaeger Vice Chairman	Attorney General Wayne Stenehjem	State Treasurer Kelly Schmidt	Superintendent of Public Instruction Kirsten Baesler

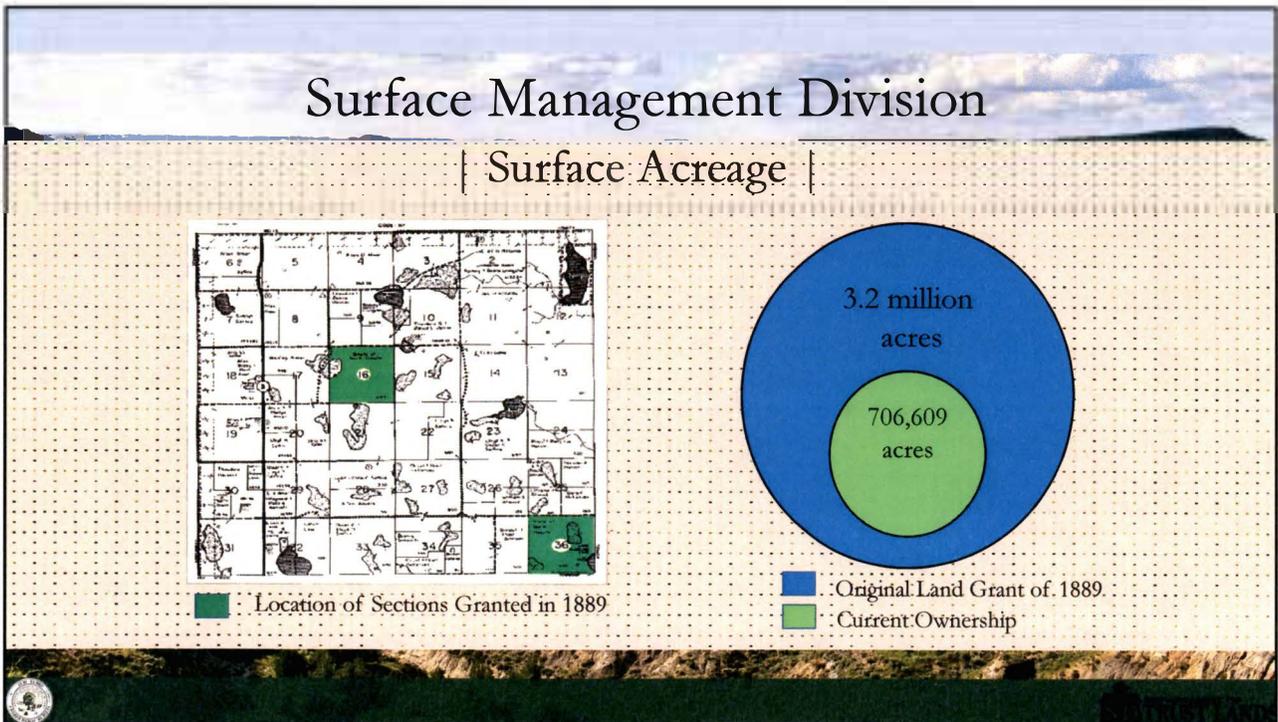




Responsibility

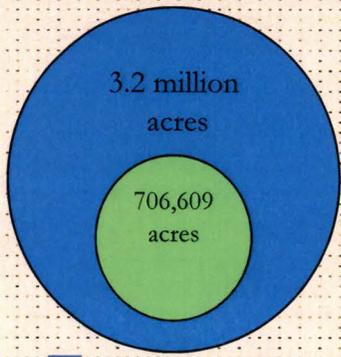
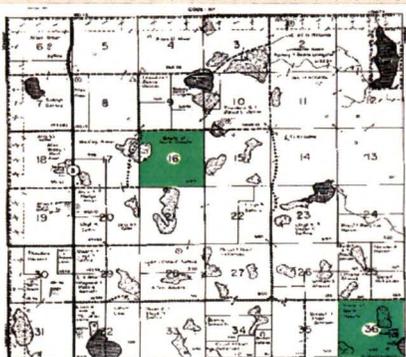
| Role of the Land Board |

The primary responsibility of the Department of Trust Lands is to manage the permanent educational trust funds and assets under the Board of University and School Lands' control.



Surface Management Division

| Surface Acreage |



■ Location of Sections Granted in 1889

■ Original Land Grant of 1889

■ Current Ownership

Category	Value
Original Land Grant of 1889	3.2 million acres
Current Ownership	706,609 acres



Surface Management Division

| Responsible for the management of 706,609 surface acres |

- Processing Easements and Surface Damage Agreements
- Surface Leasing (97% grassland leases)
- Construction Aggregate Leasing
- Reclamation of Oil Well Sites, Pipelines, Roads, Coal and Construction Aggregate Impacted Lands
- Permanent Improvements – Livestock Water Developments
- In-lieu taxes and Roads and Bridges fee
- Acquired Properties Management
- Land Sales
- Noxious weed control
- Management
- Public Access
- Range Improvement--Grazing
- Grazing Land Inspections
- Flood Inspections

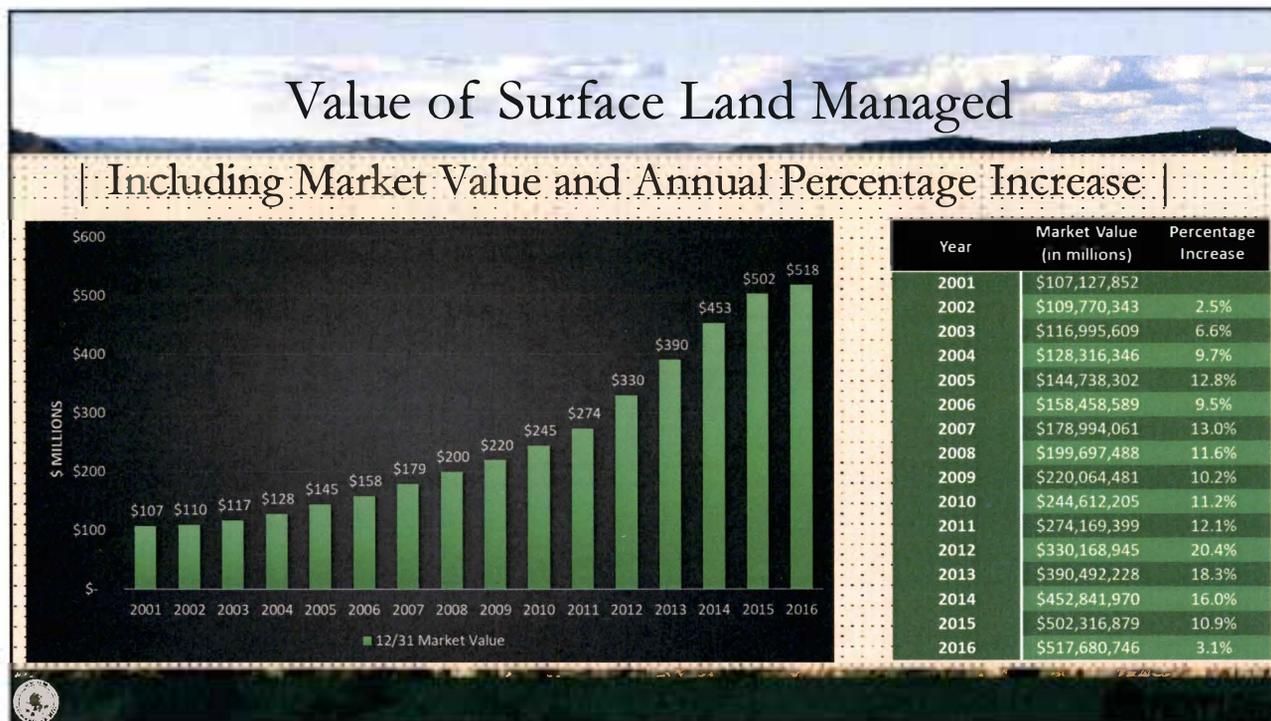


Surface Acreage Totals by Trust

| All Tracts – 12/31/2018 |

Trust	Tracts	Total	Grass	Crop	Hay	Tame
COMMON SCHOOLS	4,903	706,608.91	631,165.13	15,178.78	5,191.11	0.00
SCHOOL FOR THE BL	4,268	631,805.68	571,513.90	8,289.26	3,551.17	0.00
CAPITOL BUILDING	30	3,481.69	3,236.49	97.30	0.00	0.00
SCHOOL FOR THE DE	67	9,994.45	9,279.21	201.30	17.00	0.00
ELLENDALE	53	4,830.44	4,008.19	335.00	57.00	0.00
FARM LOAN POOL (P	48	4,912.82	3,817.22	371.90	107.00	0.00
STATE HOSPITAL	15	3,714.00	1,629.23	1,953.51	0.00	0.00
ND INDUSTRIAL SCH	28	2,208.11	2,018.21	48.50	30.40	0.00
INDIAN CULTURAL TF	34	3,584.42	2,432.02	616.30	149.00	0.00
SCHOOL OF MINES	1	160.00	146.75	0.00	0.00	0.00
ND STATE UNIVERSIT	32	3,330.38	2,452.77	358.80	203.60	0.00
VETERANS HOME	108	15,120.23	12,202.54	1,134.60	637.10	0.00
UNIVERSITY OF ND	24	2,753.69	2,086.61	119.00	62.00	0.00
VALLEY CITY	83	8,897.98	6,566.60	959.83	242.84	0.00
ND SCHOOL OF SCIE	5	640.00	478.00	40.00	45.00	0.00
MAYVILLE	38	3,712.94	3,322.05	231.00	0.00	0.00
VALLEY/MAYVILLE	5	640.00	423.00	49.00	76.00	0.00
	64	6,824.08	5,552.34	373.48	13.00	0.00





Minerals Management

| Responsible for the management of 2.6 million acres |

- Administers mineral interests held in trust by the various schools and institutions, mineral interests formerly owned by the Bank of North Dakota and State Treasurer; also the minerals under navigable rivers and lakes.
- Leases oil, gas, coal, potash and other mineral assets for production.
- Ensures ownership integrity of the mineral asset and manages leasing, drilling and mining activity to ensure Board rules and terms are followed.
- Assists Surface Division with energy and mineral exploration related.
- Evolving into an Energy / Mining Division.

ND TRUST LANDS

Minerals Management

| Tracts and Acres by Trust |

Trust	Tracts	Total Acres
BND (SIF)	12,405	673,243.36
Capital Building	264	28,009.08
Common Schools	15,326	1,534,748.14
Dickinson Experiment Station (SIF)	6	545.49
Ellendale	192	13,892.38
Farm Loan	28	1,746.29
Indian Cultural Trust		
Mayville Normal	143	9,241.84
ND Industrial School	440	29,607.50
ND School of Science	288	18,793.06
ND State Treasure (SIF)	29	1,081.79
NDSU	625	66,083.01
Normal Schools	238	16,872.57
School for the Blind	229	15,655.37
School for the Deaf	291	20,544.25
School for the Mines	299	20,556.44
Sovereign Lands (SIF)*	1,259	94,087.39
State Hospital	166	10,103.44
UND	594	42,653.05
Valley City Normal	118	8,202.41
Verzant Home	181	13,244.42
Total	33,322	2,621,391.48

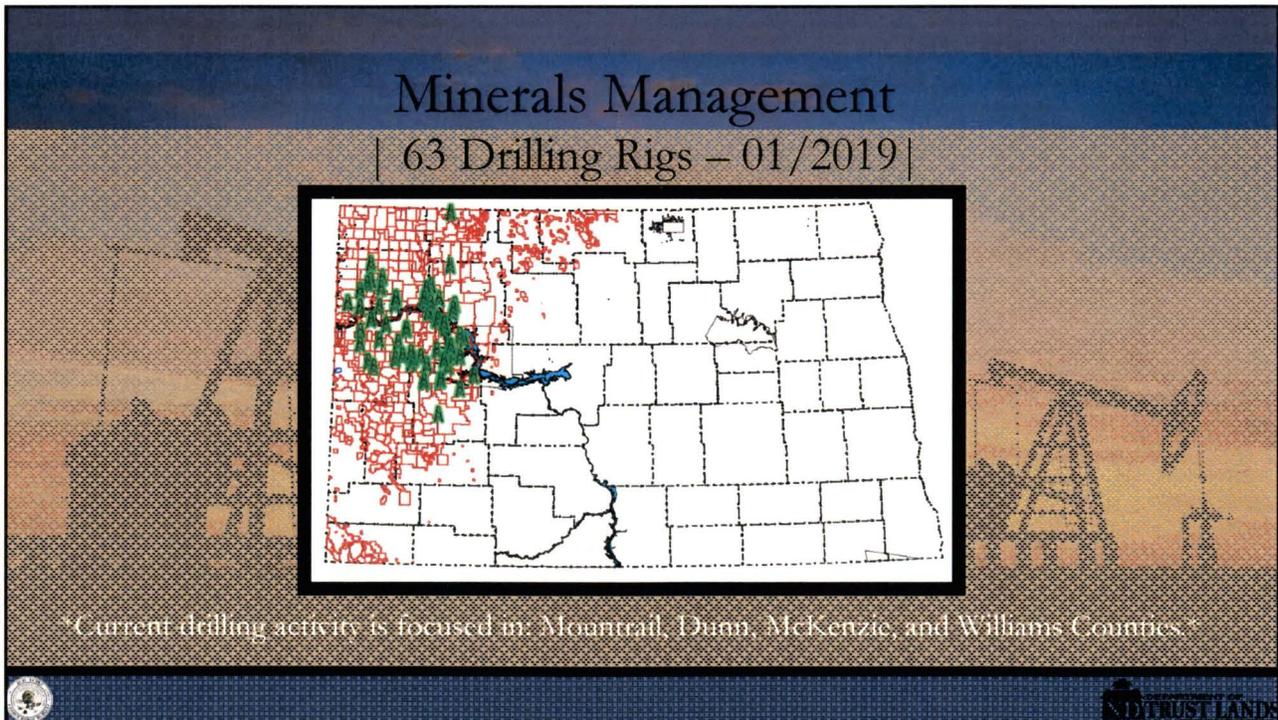
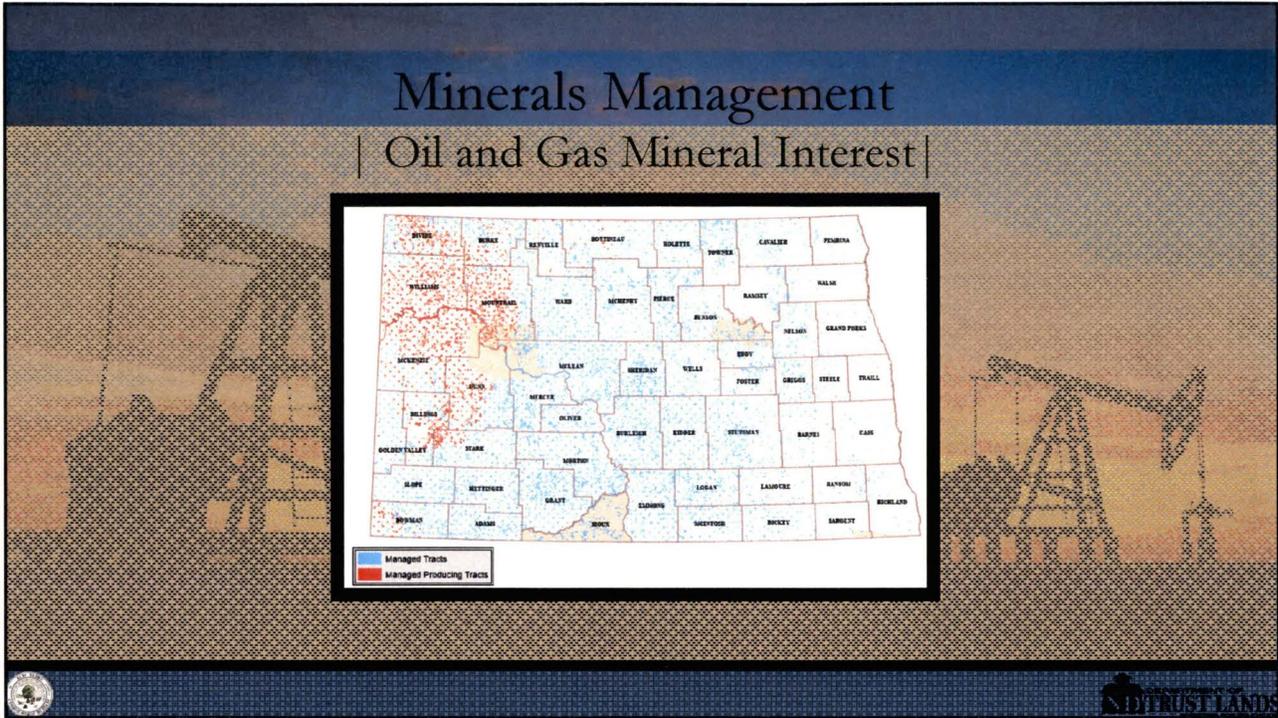
*ORRI Interests

Minerals Management

| Oil and Gas Mineral Acres Leased by County 2015-2017 |

County	Acres	Bonus	Avg Bonus per Acre
Billings	11,551.71	\$ 144,885.84	\$ 12.54
Bottineau	2,337.53	\$ 5,175.06	\$ 2.21
Bowman	3,868.37	\$ 16,582.22	\$ 4.29
Burke	16,903.22	\$ 1,385,513.23	\$ 81.97
Divide	16,637.51	\$ 1,421,973.44	\$ 85.47
Dunn	10,757.51	\$ 2,519,644.59	\$ 234.22
Emmons	1,979.13	\$ 4,182.26	\$ 2.11
Golden Valley	18,469.19	\$ 175,697.27	\$ 9.51
McHenry	861.51	\$ 1,502.04	\$ 1.74
McKenzie	10,066.42	\$ 4,900,793.21	\$ 485.88
McLean	720.00	\$ 1,440.00	\$ 2.00
Mercer	450.48	\$ 900.96	\$ 2.00
Mount Pleasant, Canada	320.00	\$ 1,600.00	\$ 5.00
Mountrail	5,287.23	\$ 9,067,399.13	\$ 1,714.96
Renville	1,687.83	\$ 13,777.01	\$ 8.16
Rolette	80.00	\$ 2,560.00	\$ 32.00
Sioux	2,717.04	\$ 3,114.84	\$ 1.15
Slope	3,177.78	\$ 7,735.56	\$ 2.43
Stark	10,714.83	\$ 95,288.71	\$ 8.89
Ward	2,469.86	\$ 2,469.88	\$ 1.00
Williams	8,612.89	\$ 1,600,859.54	\$ 186.55

- 1.5 million acres of leased minerals
- Interest in over 6,500 wells
- Interest in 39% of wells in North Dakota
- Manages 63 lignite coal leases containing 6,059 mineral acres



Revenue Compliance

| Revenue Compliance Tasks Generalized |

- All items related to revenue in the department
- Ensure oil and gas lease terms are adhered to
- Account
 - Book revenue and reconcile to payment amount
- Validations
 - Volume variances, decimal interest
 - Monthly monitoring across board
 - Readily available information (NDIC, Reports)
- Full Audits
 - In-depth (intensive) review of company
 - Expands volume and DI reviews
 - Review of price and deductions
 - Company by company focus



Revenue Compliance

| Land Revenue Streams |

- Oil and Gas Royalty
- Oil and Gas Bonuses
- Coal Royalty
- Coal Bonuses
- Mineral Delay Rental Payments
- Nomination Fees
- Lease Extension Fees
- Lease Assignment Fees
- Annual Surface Payments
- Surface Damage Payments
- Surface Easement Payments
- Salt Water Disposal Payments



Oil and Gas Royalties

| Fiscal Year 2018 Top Producers |

	Total Royalties	% of Royalties
CONTINENTAL RESOURCES INC	\$ 57,540,721.83	23.26%
WHITING OIL AND GAS CORP	31,049,259.74	12.55%
HESS BAKKEN INVESTMENTS II LLC	23,855,512.72	9.64%
XTO ENERGY INC	21,321,807.84	8.62%
CONOCOPHILLIPS	13,531,547.63	5.47%
OASIS PETROLEUM NORTH AMERIC.	10,640,693.41	4.30%
SLAWSON EXPLORATION CO INC	9,530,322.24	3.85%
STATOIL OIL & GAS LP	9,148,605.62	3.70%
MARATHON OIL COMPANY	8,688,795.15	3.51%
QEP ENERGY COMPANY	8,564,219.61	3.46%
EOG RESOURCES INC	8,375,344.29	3.38%
LIBERTY RESOURCES LLC	4,104,731.33	1.66%
LIME ROCK RESOURCES OPERATING	3,946,016.20	1.59%
CRESCENT POINT ENERGY US CORP	3,885,773.94	1.57%
PETRO-HUNT LLC	3,353,330.53	1.36%
NEWFIELD PRODUCTION CO	3,157,429.81	1.28%
SM ENERGY COMPANY	2,791,335.85	1.13%
NINE POINT ENERGY LLC	2,569,695.27	1.04%
DENBURY RESOURCES INC	2,152,064.68	0.87%
ABRAXAS PETROLEUM CORP	1,667,752.94	0.67%
Total	\$ 229,874,960.63	92.90%











Oil and Gas Royalties

| Fiscal Year 2018 Top Producers |

- Oil and Gas Royalties are highly concentrated in top 20 producers
- 82 payers total
 - Top 5 Producers: 59.53%
 - Top 10 Producers: 78.35%
 - Top 20 Producers: 92.90%
 - 62 payers make up final 7.10%.

Revenue Compliance

| Internal Audit Basics |

Roles:

- Audit
 - Monitor, evaluate, test
- Assess/ Identify Control Weaknesses
- Risk Management

Process:

- Assurance
 - Example: Acreage Adjustments
- Consultation
 - Example: Policy/Procedure Change
- Independent
 - Freedom to carry out internal audit
- Objective
 - Unbiased



Revenue Compliance

Management Decision vs. Internal Control Weakness

What if Commissioner doesn't establish a procedure to mitigate control weakness or risk?

For Example:

- a. Risk-Scissors are sharp.
- b. Action-Commissioner chooses not to remove pointy scissors from the office.
- c. Commissioner Accepts Risk. Commissioner makes final call on all risks.



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graph TD; A[Internal Audit  
Assess/Identify Weaknesses] --> B[Commissioner  
Establish Procedures]; B --> C[Supervisor  
Enforce Procedures];
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Permanent Trust Funds

| Permanent Trust Distributions |

Distributions are determined using a formula found in Article IX, Section 2 of the Constitution, which states:

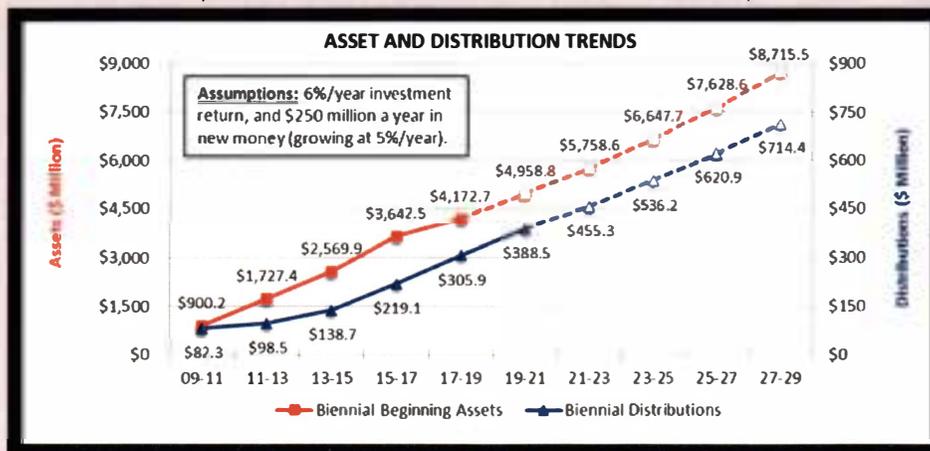
- Biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals.
- Year end asset values (financial statements) are used to determine average values
- Equal amounts will be distributed during each year.

Distribution formula was added to Article IX in 2009; before that distributions were set by legislature.



Permanent Trust Funds

| 13 Permanent Trust Funds |



Strategic Investment and Improvements Fund

| Background Information on the SIIF Fund |

The 2011 Legislature created the Strategic Investment and Improvements Fund (SIIF) when it changed the name and purpose of the former Lands and Minerals Trust Fund and directed that a portion of oil and gas taxes collected by the State be deposited into it. Mineral revenues from sovereign lands are also deposited into SIIF monthly. It is anticipated that the SIIF will collect close to \$1.08 billion of income during the current biennium, including almost \$855.0 million of oil taxes, \$188.0 million of oil and gas royalties and \$20.8 million of investment income.

- One-time expenditures to improve state infrastructure.
- Initiatives to make state government more efficient and effective.



Strategic Investment and Improvements Fund

| Background Information on the SIIF Fund |

The SIIF collects the revenues of approximately 800,000 mineral acres owned by the State of North Dakota:

- Foreclosed minerals formerly owned by BND and State Treasurer
- Minerals under navigable rivers and lakes

The SIIF, by statute, also receives a portion of the “state’s share” of oil and gas production and extraction taxes:

- **11-13 Bi: \$787 million**
- **13-15 Bi: \$1.0 billion**
- **15-17 Bi: \$136 million**
- **17-19 Bi: \$855 million**



Strategic Investment and Improvements Fund

| Background Information on the SIIF Fund |

Due to Strategic Investment and Improvements Fund characteristics:

- Fully expendable – 100% of balance can be appropriated (or obligated) by the legislature every 2 years.
- Revenues are volatile - heavily dependent on oil and gas revenues (royalties, bonuses and taxes).
- Even when the amount of spending is known, the timing of the spending often is not.
- The SIIF acts almost like state's back up checking account, the Board does not want to lose any of these fund.

SIIF is invested in way that focuses on principal preservation and liquidity, not maximization of income.



Indian Cultural Education Trust Fund

| Background Information Indian on the Cultural Education Trust Fund |

- Statutory created trust fund for benefit of Indian cultural education.
- Created by legislature and donation of money and land by North American Coal.
- Not constitutional, but has same long-term goals and objectives as the permanent trust funds.
- Land and financial assets are managed exactly as the permanent trust funds (by law and agreement).
- Invested in same investment pool as the permanent trust funds.

This fund benefits the Mandan, Hidatsa, and Arikara Nations Cultural Education Foundation.



Coal Development Trust Fund

| Background Information on the Coal Development Trust Fund |

- Permanent Trust, created under Article X of ND Constitution.
- Purpose of is to provide loans to:
 - Coal impacted political subdivisions
 - School Construction loans
 - Up to \$60 million with straight 2% interest, per statute.
 - 25 active loans (24 SCLP Loans and 1 Emergency)
 - Total Amount Loaned: \$44,670,541.94
 - Loans Awarded During Current Biennium: 1
- Receives a portion of the coal severance taxes collected by the state:
 - About \$1 million per year (starting FY 2018 this will be \$500,000/yr.)
 - No revenues from land or mineral assets

Investment Division works with BND and DPI to manage the school construction loan program and EIIO on coal impact loans.



Capitol Building Fund

| Background Information on the Capitol Building Fund |

- Capitol Building Fund created under Article IX of Constitution:
 - For construction and maintenance of “public buildings at the capital”
 - Fully expendable each year, unlike other Article IX trusts.
 - Capitol Grounds Planning Commission (CGPC) has authority over this fund
 - Land Board invests this fund on behalf of the CGPC
- Just like the permanent trust funds, the Capitol Building Fund earns money from:
 - Surface rentals
 - Mineral leasing and production
 - Investments



Unclaimed Property

| Administers & enforces N.D.C.C 47-30.1, the Uniform Unclaimed Property Act, since 1975 |

- Reunite abandoned property with its rightful owner
- Revenue earned off of interest on the investment of properties benefits the Common Schools Trust Fund.

Claims (\$ millions)

Year	Total returned (\$ millions)	Number of Claims
07-09	3,500,000.00	4,000
09-11	3,000,000.00	6,000
11-13	3,800,000.00	7,000
13-15	4,800,000.00	5,000
15-17	9,500,000.00	9,000

Collections (\$ millions)

Year	Total Collected (\$ millions)	Number of Reports
07-09	5,000,000.00	3,000
09-11	6,000,000.00	4,000
11-13	7,000,000.00	4,500
13-15	15,000,000.00	5,500
15-17	22,000,000.00	6,000

Energy Infrastructure & Impact Office

| Provides financial assistance to oil & gas development impacted political subdivisions |

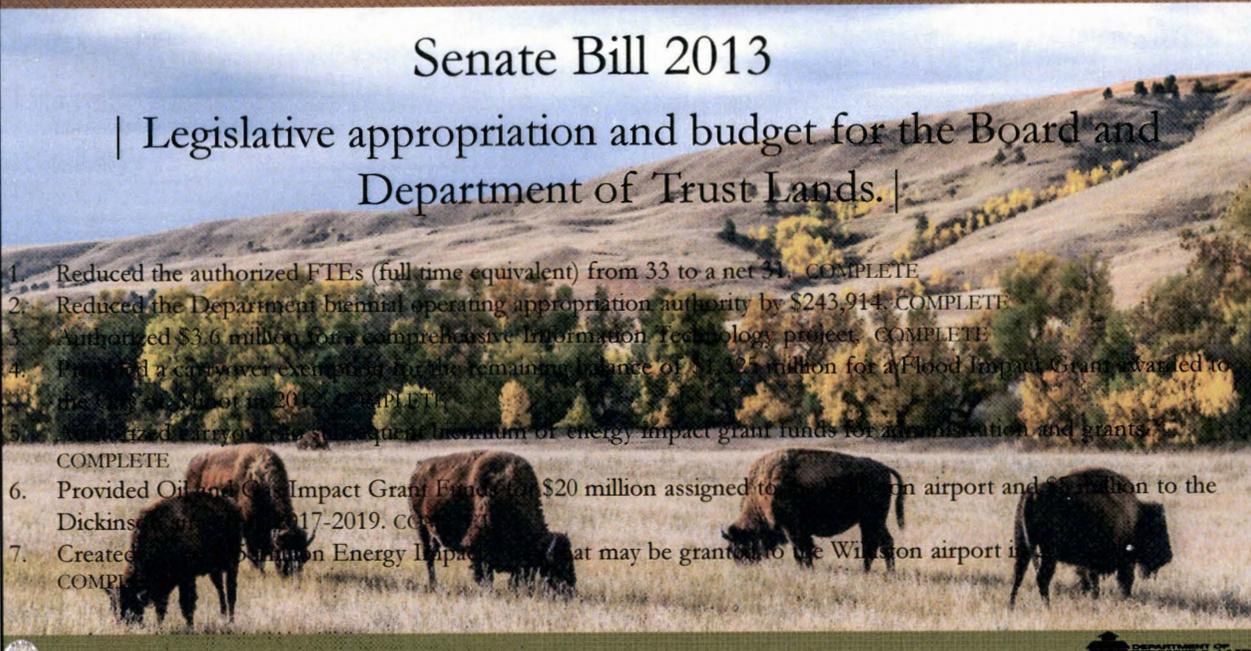
- 07-11 Bi: \$8 million
- 11-13 Bi: \$135 million
- 13-15 Bi: \$240 million
- 15-17 Bi: \$140 million
- 17-19 Bi: \$100 million

Biennium	Administrative/Operations	
	Appropriation Provided	Expended
2011-2013	Within grant funding	\$243,371
2013-2015	\$700,825	\$611,410
2015-2017	\$700,000	\$573,242
2017-2019	\$490,000	\$253,100

Senate Bill 2013

| Legislative appropriation and budget for the Board and Department of Trust Lands. |

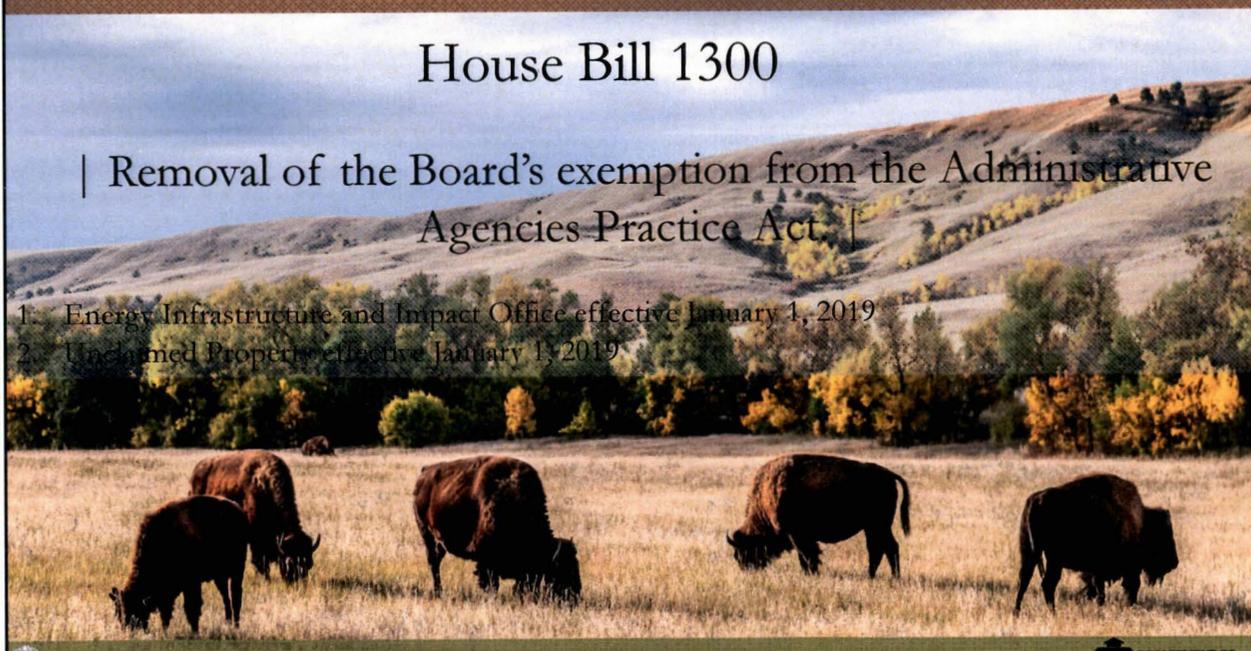
1. Reduced the authorized FTEs (full time equivalent) from 33 to a net 31. COMPLETE
2. Reduced the Department biennial operating appropriation authority by \$243,914. COMPLETE
3. Authorized \$3.6 million for a comprehensive Information Technology project. COMPLETE
4. Provided a carryover exemption for the remaining balance of \$1.25 million for a Flood Impact Grant awarded to the State of ND for in 2012. COMPLETE
5. Authorized carryover of subsequent biennium of energy impact grant funds for administration and grants. COMPLETE
6. Provided Oil and Gas Impact Grant Funds for \$20 million assigned to the Williston airport and \$3 million to the Dickinson airport for 2017-2019. COMPLETE
7. Created a \$10 million Energy Impact Grant that may be granted to the Williston airport in 2017-2019. COMPLETE

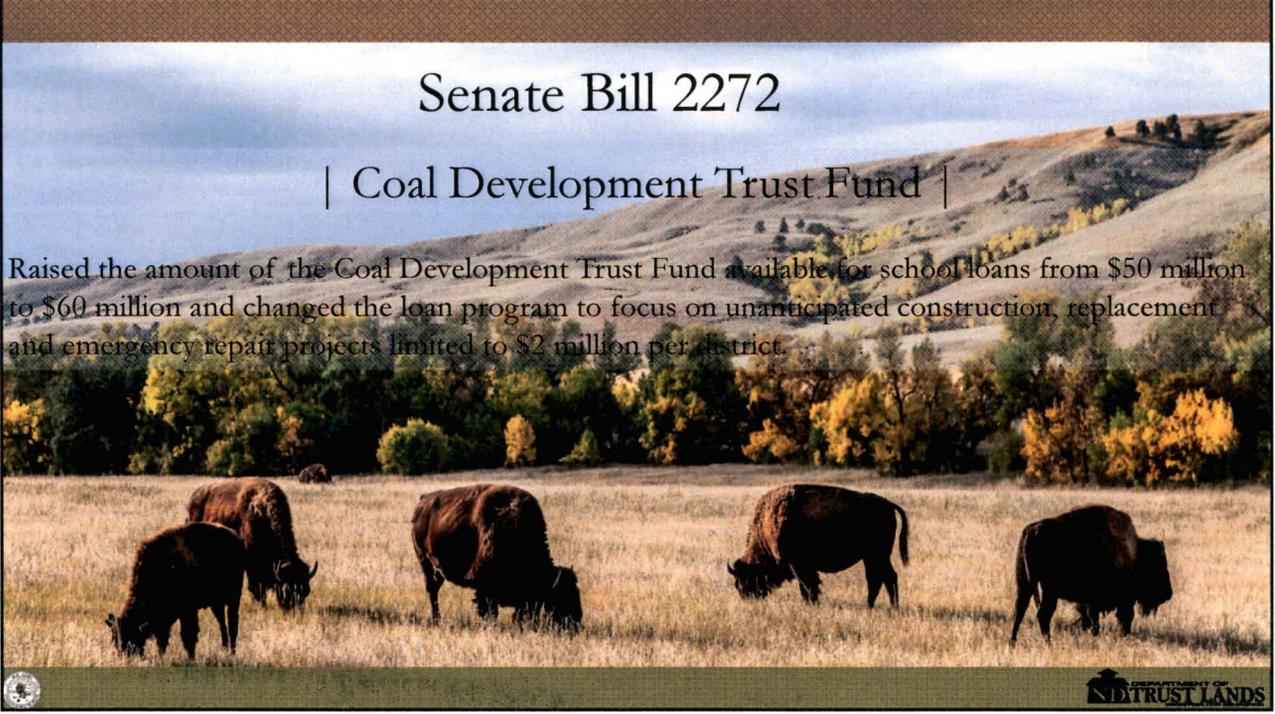



House Bill 1300

| Removal of the Board's exemption from the Administrative Agencies Practice Act |

1. Energy Infrastructure and Impact Office effective January 1, 2019
2. Unclaimed Property effective January 1, 2019

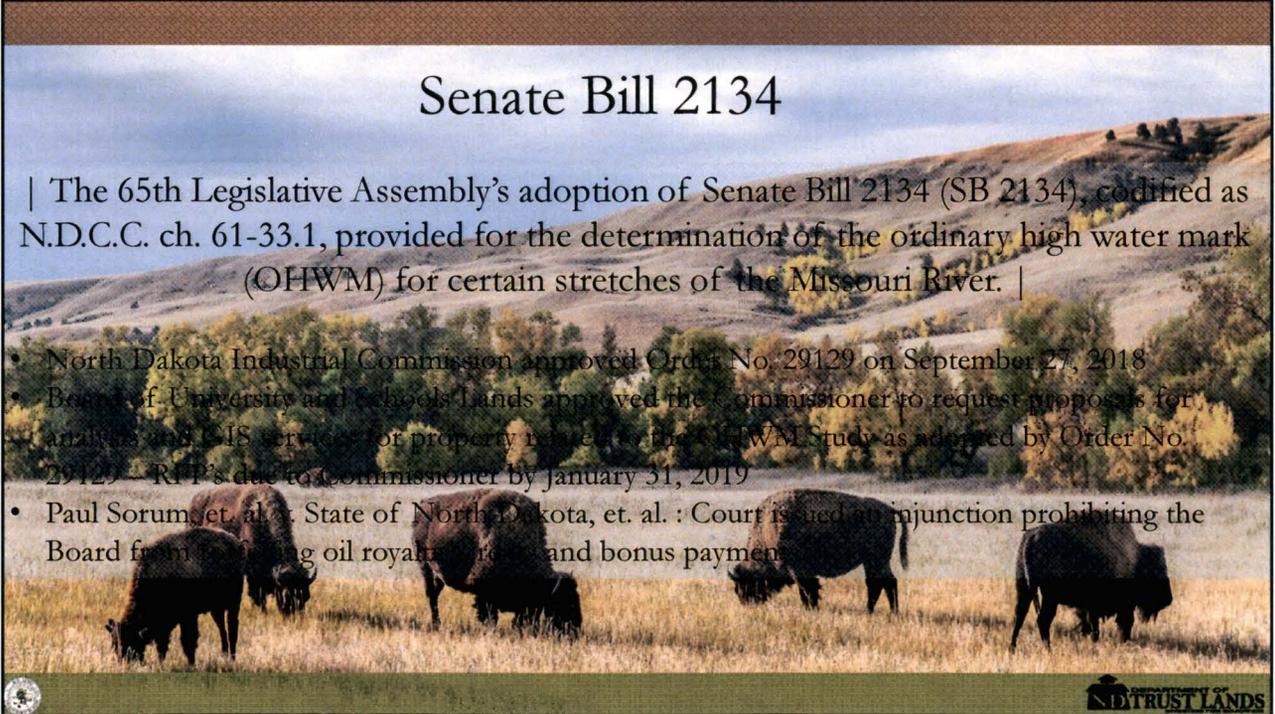


Senate Bill 2272

| Coal Development Trust Fund |

Raised the amount of the Coal Development Trust Fund available for school loans from \$50 million to \$60 million and changed the loan program to focus on unanticipated construction, replacement and emergency repair projects limited to \$2 million per district.



Senate Bill 2134

| The 65th Legislative Assembly's adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C. ch. 61-33.1, provided for the determination of the ordinary high water mark (OHWM) for certain stretches of the Missouri River. |

- North Dakota Industrial Commission approved Order No. 29129 on September 27, 2018
- Board of University and School Lands approved the Commissioner to request proposals for analysis and GIS services for property related to the OHWM Study as adopted by Order No. 29129 – RFP's due to Commissioner by January 31, 2019
- Paul Sorum, et. al. v. State of North Dakota, et. al. : Court issued an injunction prohibiting the Board from withholding oil royalty, rent, and bonus payments



Organization and Leadership

Successes:

- Dedicated
- Grown investment assets
- Continued to grow divisional outputs with minimal increase in FTE's and budget

Biennium	FTE	Assets
11-13	25	\$1.7B
13-15	31	\$2.5B
15-17	33	\$3.5B
17-19	31	\$4.2B
19-21	31	\$5.1*B

Challenges:

- Continued growing outputs with no increase in FTE's
- Retiring key staff
- Turnover in highly skilled positions that require extensive training
- Implementation of all new IT systems and establishing new workflows
- Lack of investment in leadership growth
- Historically forced decisions



Closing Themes

“A good disruption makes a compelling case for redefining economic prosperity, unlocking creativity and kick-starting regenerative cycles in the digital age.” – Ellen MacArthur

- Focus on resources will create opportunity to transform assets leading to less revenue for North Dakota
- Installing new IT systems and working through an internal change management process will create necessary changes
- Focusing on the human “Culture Eat the Enemy for Breakfast”



January 8, 2019

HB1013

Attachment B

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<https://land.nd.gov>



Jodi A. Smith, Commissioner

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

**HOUSE APPROPRIATIONS COMMITTEE
January 8, 2019**

Chairman Vigesaa and members of the Government Operations Division of the House Appropriations Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of the Department of Trust Lands' (Department) total special funds appropriation found in House Bill 1013.

The Department is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the Common Schools Trust Fund.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

Financial Audit

Brady Martz Certified Public Accountants and Consultants completed its review of the Department's financial statements for the year ending June 30, 2018 and provided the Board its opinion on the fair presentation of the financial statements on October 25, 2018.

The draft report identified no audit findings or recommendations.

Performance Audit

The performance audit recommendations and Department responses are contained in the State Auditor's Report Numbers 3036(a), 3036(b) and 3036(c), as follows:

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- 3036(a): Energy Infrastructure and Impact Office
- 3036(b): Unclaimed Property
- 3036(c): Trust Assets and Department Resources

In response to the audit, the Department built an improvement tracking tool to record and gauge progress on each of the audit findings. The database details the finding, the Department's response, a time stamped improvement tracking log, policy summaries or plans, and the location of any related documents or files.

Further, additional efforts were taken to organize and review all Department policies and procedures. A comprehensive policy and procedure document was adopted by the Commissioner to clarify Department operations, including division level policies and procedures concerning operations specific to each division.

Four of the findings are Pending Action.

DTL 2-06(b) We recommend the Department of Trust Lands avoid actions resulting in or creating the appearance of:

-
- (b) Creating an adverse effect on the integrity of the Land Board or Department.

The Commissioner has completed a review of the Department policies and is currently reviewing Board Policies, including the Code of Ethics Policy, many of which have not been updated in over a decade. To date, the Board's Surface Policies (with the exception of the Land Exchange Policy and Land Sale Policy), the Board's Farm Loan Pool Policies, and the Board's Coal Policies have been reviewed with industry and public comments taken into consideration and adopted by the Board. All Board policies are available for review at www.land.nd.gov.

DTL 4-01(b) We recommend the Department of Trust Lands ensure:

-
- (b) User manuals are established.

DTL 4-01(c) We recommend the Department of Trust Lands ensure:

-
- (c) Systems are used to the fullest extent possible.

The Commissioner is working with Information Technology (IT) staff to better understand current technology systems and how they can meet the Department's complex needs. As vendors are selected for systems for the various divisions, an analysis of continued needs for user manuals for current technology systems will be evaluated. Severe limitations in the current IT system including redundant manual processes, many of which were highlighted in the 2016 performance audit, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts potential improvements.

In planning for replacement of the IT system, a business process modeling contractor, Major Oak, was hired in 2016 to identify and document processes and to recommend efficiencies for most operations. Major Oak helped document current state processes for all functional areas of the

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Department. This was followed by preparation of a model of future-state suggestions to further enhance controls, increase efficiencies, and boost productivity. The Department is continuing to work with Major Oak to assist in the procurement process and to ensure the new software systems result in implementation of significant efficiencies.

To date, the Department has contracted with Kelmar Associates, LLC, (Kelmar) to provide a software system to assist with the management and administration of unclaimed property. With substantial knowledge of unclaimed property departments across the United States, Kelmar is able to work closely with the Department in creating system tools and process workflows.

The Department is currently involved in the procurement process for a Financial Management and Accounting (FMA) system. Once the Department contracts for a FMA system, the Department will be able to begin the procurement process for a Land Management system.

DTL 4-04 We recommend the Department of Trust Lands perform ongoing monitoring of the design and operating effectiveness of the Department's internal control procedures.

The Department has contracted with Eide Bailly LLP to safeguard against fraud, to pinpoint the Department's risks, and to advise on internal controls and employee programs to avoid potential fraudulent activity. Eide Bailly LLP conducted a fraud assessment which identified opportunities for improvement in the Department. These opportunities are being explored and appropriate controls are being implemented. Additionally, revised internal controls will be implemented through the integration of new technology systems.

Major Components of 2019-2021 Budget

The major components of the Department's budget are appropriated from special funds derived from the state lands maintenance fund, authorized under N.D.C.C. § 15-03-01.1, stating: There is created a special fund designated as the state lands maintenance fund, which is funded by the trust fund assets under the control of the board of university and school lands. All expenses paid out of the state lands maintenance fund are subject to legislative appropriation.

Funds are periodically transferred from the various trusts and programs managed by the Department to the maintenance fund to pay for administrative costs.

Costs that cannot be directly charged are allocated to the various trusts and programs managed by the Department based each trust's or funds:

- FTEs time allocation;
- Financial assets held;
- Mineral acreage owned; and
- Surface acreage owned.

Costs that can be attributed to a specific trust or program are charged directly to that trust or program when possible. Examples of direct expenses include tract survey expenses, rent credits, and litigation involving minerals under navigable water.

The Department also has continuing appropriation authority under N.D.C.C. §§ 15-04-24 and 15-07-22 for certain expenses related to managing and enhancing the value of assets under the Department's control. N.D.C.C. § 57-02.3-07 authorizes continuing appropriation authority for payments made in lieu of property taxes.

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EIIO salaries and operations are funded directly from the Energy Infrastructure and Impact fund.

Funds that are received by the Unclaimed Property Division are maintained in a separate account to pay owner claims and expenses; the income from the net proceeds benefits the Common Schools Trust Fund, which supports educational funding. N.D.C.C. § 47-30.1-23 contains continuing appropriation authority for:

- a. Any costs in connection with the sale of abandoned property;
- b. Costs of mailing, publication, and outreach efforts in connection with any abandoned property;
- c. Reasonable service charges;
- d. Costs incurred in examining records of holders of property and in collecting the property from those holders;
- e. Funds for the payment of claims; and
- f. Funds for the payment of holder refunds.

The following major components are included in the Department's 2019-2021 budget:

- Salaries and wages
- Operating expenses
- Contingencies

	2019-21 Budget Request	2017-19 Appropriation	2015-17 Appropriation	2013-15 Appropriation
Salaries and Wages	\$5,248,081	\$6,005,550	\$6,131,344	\$5,265,556
Operating Expenses	\$1,762,623	\$1,775,723	\$2,019,637	\$1,975,863
Contingencies	\$100,000	\$100,000	\$100,000	\$200,000
TOTAL	\$7,110,704	\$7,881,273	\$8,250,981	\$7,441,419

Funds for the major components support the Board and Department's primary focus, which is managing permanent trust assets to fund education and other governmental functions. The Department manages 706,000 surface acres that are leased to ranchers and farmers. The Department also oversees 2.6 million mineral acres which are offered for oil, gas, coal, gravel and subsurface mineral leasing and production. Revenues are invested in a diversified portfolio of financial assets, which portfolio is actively managed by the Board as a permanent endowment.

According to Article IX of the North Dakota Constitution, biennial distributions from the permanent trust funds must be ten percent of the five-year average value of trust assets. Equal amounts must be distributed during each year of the biennium.

Revenues over the past three years are lower than they were during FY 2013-2015; however, revenues have stabilized and continue to provide increased distributions from the trusts. In the 2019-2021 biennium trust distributions will increase by \$82,647,297, a 27% increase. The distributions per trust can be seen in the chart below:

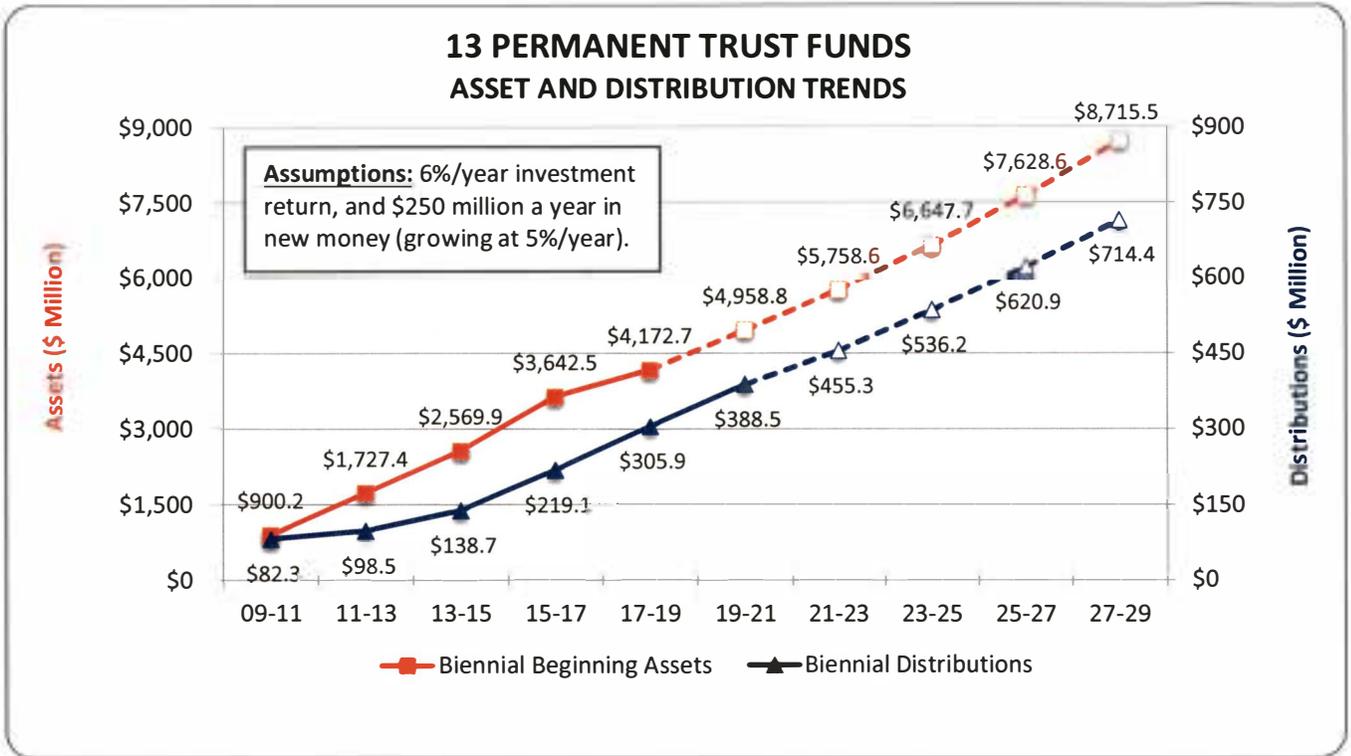
AHB

<u>Trust</u>	<u>2019-21 Biennium</u>	<u>2017-19 Biennium</u>	<u>Percentage of Change</u>	<u>Change in Distribution</u>
Common School	\$ 366,756,000	\$ 288,264,000	27.2%	\$ 78,492,000
<i>Permanent Funds:</i>				
ND State University	\$ 5,916,000	\$ 4,738,000	24.9%	\$ 1,178,000
ND School for the Blind	\$ 880,000	\$ 654,000	34.6%	\$ 226,000
ND School of the Deaf	\$ 1,898,000	\$ 1,598,000	18.8%	\$ 300,000
ND State Hospital	\$ 1,328,000	\$ 1,184,000	12.2%	\$ 144,000
Ellendale *	\$ 1,694,000	\$ 1,931,889	(12.3%)	\$ (237,889)
Valley City State University	\$ 1,034,000	\$ 808,000	28.0%	\$ 226,000
Mayville State University	\$ 668,000	\$ 542,000	23.2%	\$ 126,000
Youth Correctional Center	\$ 1,864,000	\$ 800,814	132.8%	\$ 1,063,186
ND State College of Science	\$ 1,494,000	\$ 1,260,000	18.6%	\$ 234,000
School of Mines **	\$ 1,746,000	\$ 1,444,000	20.9%	\$ 302,000
ND Veterans Home	\$ 490,000	\$ 436,000	12.4%	\$ 54,000
University of ND	\$ 2,758,000	\$ 2,218,000	24.3%	\$ 540,000
Total Permanent Funds	\$ 21,770,000	\$ 17,614,703	23.6%	\$ 4,155,297
Total Distributions	\$ 388,526,000	\$ 305,878,703	27.0%	\$ 82,647,297

* The following entities are equal beneficiaries of the Ellendale Trust:

- ❖ Dickinson State University
- ❖ Minot State University
- ❖ Dakota College at Bottineau
- ❖ ND School for the Blind
- ❖ ND Veterans Home
- ❖ ND State Hospital
- ❖ ND State College of Science

** Benefits of the original grant to the School of Mines are distributed to the University of North Dakota.



Proposed Budget Reductions

The Department’s special fund request limit for the 2019-2021 biennium is \$7,110,704. This reflects a 10% reduction from the Department’s legislatively authorized ongoing special fund appropriation for the 2017-2019 biennium, plus an adjustment for the Information Technology Department (ITD) rate increases. The Department’s 2019-2021 base budget FTE amount is 27.00. This meets the required 5% reduction from the Department’s 2017-2019 authorized FTE level and totals a 13% reduction in FTEs. The decrease in operating expenses combined with the decrease in FTE’s meets the required 10% reduction in budget.

	2019-21 Base Budget Request	2017-19 Appropriation	Percentage of Change
Salaries and Wages	\$5,248,081	\$6,005,550	(12.61%)
Operating Expenses	\$1,762,623	\$1,775,723	(0.74%)
Contingencies	\$100,000	\$100,000	0.00%
TOTAL	\$7,110,704	\$7,881,273	(9.78%)

While operational expenses were reduced, additional expenses were included due to implementation of administrative rules and increased legal fees. The necessary increase in operational expenses put additional pressure on the Department in reducing its budget by 10%.

A.H.B

The Department's 2017-2019 budget reflected 76% of expenses were salaries and wages. In order to meet the requested 10% reduction in expenses, the Department had to reduce an additional three FTEs in addition to the one required FTE reduction. In total, four FTEs were eliminated to meet the requested budget requirements. Additionally, as outlined in the table below, significant increases in Operating Expenses through ITD services, Operating, Professional Services, and Repairs are necessary. The increase in some of the operating expenses translates into additional reductions in not only FTEs, but also reductions in funds available for Office Equipment, IT Software and Services, Operating Fees and Services, Professional Development, Rent and Travel.

	2019-21 Budget Request				Executive Recommendation (Governor Burgum)
	2017-19 Appropriation	Base Budget Request	Optional Budget Request	Total Budget Request	
SALARIES AND WAGES	\$6,005,550	\$5,248,081	\$391,094	\$5,639,175	\$5,790,588
OPERATING EXPENSES	\$1,775,723	\$1,762,623	\$608,970	\$2,371,593	\$2,784,043
<i>Specific Operating Increases(Decreases):</i>					
<i>ITD Contractual Services</i>		25,000			
<i>Operating</i>		30,013			
<i>Professional Services</i>		384,564			
<i>Repairs</i>		41,334			
<i>IT & Office Equipment</i>		(75,493)			
<i>IT Software</i>		(16,027)			
<i>ITD Services</i>		(25,253)			
<i>Operating Fees & Services</i>		(241,525)			
<i>Professional Development</i>		(45,043)			
<i>Rent</i>		(19,420)			
<i>Travel</i>		(71,250)			
CONTINGENCIES	\$100,000	\$100,000		\$100,000	\$100,000
TOTALS	\$7,881,273	\$7,110,704	\$1,000,064	\$8,110,768	\$8,674,631
FTE	31	27	2	29	28
CAPITAL ASSETS (comprehensive IT upgrade)	\$3,600,000	\$3,600,000		\$3,600,000	\$3,600,000
Grants	\$40,000,000				

The Department reduced its base budget by four FTEs including Programmer Analyst, Administrative Assistant, Audit Technician, and Administrative Staff Officer. Through the ITD unification project, an additional FTE was “pulled” from the budget which brought the FTE count to 26. The addition of two FTEs through the Governor’s Executive Recommendation will keep the Department at 28 FTEs.

Biennium	FTE	Assets
11-13	25	\$3.7 B
13-15	31	\$4.6 B
15-17	33	\$4.7 B
17-19	31	\$5.1 B *

* as of June 30, 2018

Energy Infrastructure and Impact Office

The Coal Development Impact Office was created by the 1977 Legislative Assembly under N.D.C.C. ch. 57-62. In 1981, it became the Energy Development Impact Office and on July 1, 1989, became a division within the office of the Commissioner of the Board of University and School Lands (the North Dakota Department of Trust Lands). During the 2011 Legislative Assembly, it became the EIIO, with the purpose of providing financial assistance to oil and gas development-impacted political subdivisions of government.

The EIIO receives a portion of the oil and gas gross production tax (gross production tax) deposited into the Oil and Gas Impact Grant Fund. The amount of funding available to EIIO was \$8 million in the 2009-2011 biennium; funding increased to \$135 million in the 2011-2013 biennium. Funding increased again for the 2013-2015 biennium when \$240 million was appropriated to the Oil and Gas Impact Grant Fund. The appropriation for the 2015-2017 biennium was \$140 million; however, a sharp drop in gross production tax collections resulted in severely reduced revenues. The deposits into the Oil and Gas Impact Grant Fund fell sharply, from nearly \$7 million per month in the summer of 2015 to \$135,000 in April 2016. The reduced revenues limited the Board’s ability to proceed with awarding grant priorities provided in the 2015 legislative allocations. The Board suspended further grant awards in February 2016 and it was not until December 2016 that gross production tax collections were sufficient to provide for grants. By the end of the 2015-2017 biennium only \$56 million, or approximately 42 percent of the 2015 legislative allocations, had been granted.

In April 2017, the Legislative Assembly appropriated \$40 million of grant funding for the Williston and Dickinson airports out of two separate grant funds, \$25 million from the Oil and Gas Impact Grant Fund and \$15 million from a newly created Energy Impact Grant Fund.

The 2017 Legislative Session included a re-appropriation of \$700,000 for Human Trafficking, \$500,000 to the North Dakota Attorney General’s Office for Statewide Automated Victim Information Network operations, and \$261,000 to remove debt from a developmentally disabled provider serving the communities of Stanley, New Town, and Tioga. The legislation required the

developmentally disabled provider's funds be paid with a higher priority than all remaining appropriations from the 2015-2017 biennium.

As of December 20, 2018, the EIO has \$45.7 million in funds to distribute, consisting of 38 airport grants and 54 additional grants that have been awarded. Additionally, \$2.87 million in contingency funds is available to be awarded per Section 10 of Senate Bill 2013 which allows the use of unexpended funds to provide for grants and administrative costs during the 2017-2019 biennium.

While it is the Department's understanding that funds will not continue to be appropriated for the Board to award, the Department will still require authority to use any unexpended funds from the appropriation for the EIO's administrative costs during the 2019-2021 biennium. If no additional funds are appropriated to EIO, it is estimated it will cost \$250,000 to operate the EIO thru the next biennium as current grantees complete projects and final distributions are made. Funding to operate the EIO is not included in the Department's budget.

Strategic Investment and Improvement Fund

The 2011 Legislature created the Strategic Investment and Improvements Fund (SIIF) when it changed the name and purpose of the former Lands and Minerals Trust Fund and directed it receive a portion of oil and gas taxes collected by the State. Mineral revenues from sovereign lands are also deposited into the SIIF monthly. It is anticipated the SIIF will collect close to \$1.08 billion of income during the current biennium, including almost \$855 million of oil taxes, \$188 million of oil and gas royalties, and \$20.8 million of investment income. In July 2018, the Board once again classified \$229,325,049 of this fund as an "Assigned Fund Balance" which is a potential liability that should not be transferred out of the fund until title claims to sovereign land leases are resolved. The amount was derived based on the bonus and royalties collected from the leasing and production of oil and gas interests on sovereign lands and in consideration of associated litigation in these areas. The Assigned Fund Balance also includes the \$100 million of refunding authority provided by the Legislature last session in SB 2134.

2019-2021 Governor's Executive Base Level

In the Governor's executive base level budget, the Governor authorized: (1) the addition of two FTEs into the Department's budget; and (2) a Minerals Assessment.

Addition of Two FTEs

The budget proposed by the Governor included the addition of two FTEs into the budget.

One of the FTEs will fill an Administrative Assistant I position to assist the Department in day-to-day operations. The Department continues to process a growing number of royalty transactions, continued leasing requests, and steady applications for surface easements. The efforts to collect royalties due the State for production of its minerals has become more of a challenge and has prompted litigation. The increase in the number of transactions and funds under management has affected all divisions within the Department: Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property and the EIO. The expansion through the early part of the decade was rapid in terms of both the growth in trust assets and in the Department's workload. The Unclaimed Property Division has seen marked growth in both holder transfers and property claims. The growth in deposits can be attributed to enhanced education and unclaimed royalty proceeds, which have grown substantially as mineral production in the State has expanded. Additional outreach efforts resulted in increased property claims. The EIO has been active during the current biennium

managing previous and current grants. An additional Administrative Assistant would assist the Department in meeting the increasing demands placed upon the Department.

The second FTE would allow for an Attorney II to assist the Department in day-to-day operations. The Department manages over 706,000 surface acres, resulting in nearly 3,000 agricultural leases, and 2.6 million mineral acres, with interest in over 6,900 oil and gas wells (this is over one-third of the wells operating in North Dakota). With increased oil and gas activities, over 2,000 right-of ways are issued every biennium. Additionally, the Department's Revenue Compliance Division monitored nearly 6,900 producing properties and worked on audits of 80 operators. Furthermore, the Department administers the Unclaimed Property Division for the State of North Dakota with over \$20 million collected every biennium; requiring increased outreach efforts which result in increased claims being issued to citizens and additional necessary audits of holders. Additionally, the Department's policies for each Division (Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property and the EIO) require regular legal review. The Board's policies and Board memos regularly require legal review. In addition to Departmental policy, Board Policy, and Board Memo review, the Department has many general counsel issues that could be resolved by an in house attorney. Those include legality of forms, contracts, questions on easements, review of leases (mineral and agricultural), unclaimed property issues, audits, etc. Much of the Department's regular correspondence requires legal review due the correspondence addressing issues that could potentially lead to litigation. The Department is currently involved in litigation on various matters. By having an in house counsel, the Department could be proactive and potentially curb litigation. A general counsel could assist in the day to day operations of the Department and day to day legal issues, leaving the Attorney General's Office to address pending litigation. The work required to keep the Department's day-to-day operations going requires a full-time Attorney II FTE. This is in addition to the Attorney General's Natural Resources Assistant Attorney General assigned to the Department to manage litigation.

Minerals Assessment

The Department has been tasked with providing the State of North Dakota with an estimated value of the mineral assets held in trust by the Board. This estimated value will assist with the overall mission of providing North Dakota's constituents with a comprehensive financial statement.

Any mineral assessment must accurately reflect the value of all mineral assets managed by the Board, including oil and gas, and must be able to be verified and withstand scrutiny. Many of these mineral assets, including oil, gas, and lignite coal, have a quantifiable estimated value but that estimated value is subject to price fluctuation. Additionally, the State owns gravel, sand, potash, scoria, uranium, and other potentially high value assets such as rare earth discovered by the North Dakota Geological Survey. As the mineral assets managed by the Board is 2.6 million acres, the assessment is complicated by its sheer size, variance in geological aspects, and topography.

Additionally, it is important to keep in mind that as a government agency, any estimated value would become subject to and mandated to follow the Governmental Accounting Standards Board (GASB). Therefore, in compliance with GASB's Statement Number 72 – Fair Value Measurement and Application (Statement Number 72), the estimated value would need to appear on the Department's State of North Dakota financial statements. As the addition of such a sizable asset will have a significant impact on the State's Comprehensive Annual Financial Report (CAFR), the Department will have to work with the Office of Management and Budget, the State Auditor's

Office, and the Department's financial auditing firm to comply with GASB's Statement Number 72. It is reasonable to assume that the addition of the mineral estate assessment would impact the auditing process and fees on both the Department's financial statements and more significantly, on the CAFR.

Federal Funding

The Department does not receive any federal funding.

Conclusion

The Board's responsibility to preserve the trusts and maintain income stability for the trust beneficiaries continues to be met. All permanent and other trust funds remain in strong financial condition and are invested in a safe and prudent manner. Land is prudently managed to provide a fair market rental income. Mineral leasing and development activities continue with strong revenues collected to enhance trust balances.

Unclaimed property continues to be safeguarded and ultimately returned to rightful owners via improved technologies and expanded outreach efforts.

The leasing and production of sovereign minerals has contributed and will continue to contribute to substantial revenues for the SIIF to support state-wide infrastructure enhancements.

The future of the trusts and sovereign assets is very bright. I respectfully request your consideration in providing the Department with the means to manage the assets under the Board's control as effectively as possible. We particularly appreciate your consideration of the addition of two FTEs and the minerals assessment.

I look forward to working with the committee to explain the important role of the Board and Department for the State of North Dakota. It is a dynamic time in North Dakota, and the Department is working in the heart of the activity related to energy growth, agricultural success, educating children, safeguarding and returning unclaimed property, and supporting western infrastructure.

January 15, 2019

HB 1013

Attachment A

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Jodi A. Smith, Commissioner

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

House Bill 1013

House Appropriations Government Operations Committee
January 15, 2019

Chairman Vigesaa and members of the Government Operations Division of the House Appropriations Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of the Department of Trust Lands' (Department) total special funds appropriation found in House Bill 1013.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the Common Schools Trust Fund.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

Energy Infrastructure and Impact Office

The Coal Development Impact Office was created by the 1977 Legislative Assembly under N.D.C.C. ch. 57-62. In 1981, it became the Energy Development Impact Office and on July 1, 1989, became a division within the office of the Commissioner of the Board of University and School Lands (the North Dakota Department of Trust Lands (Department)). During the 2011 Legislative Assembly, it became the Energy Infrastructure and Impact Office (EIIO), with the purpose of providing financial assistance to oil and gas development-impacted political subdivisions of government.

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The EIO receives a portion of the oil and gas gross production tax (gross production tax) deposited into the Oil and Gas Impact Grant Fund. The amount of funding available to this program was \$8 million in the 2009-2011 biennium, funding increased to \$135 million in the 2011-2013 biennium, and funding increased again for the 2013-2015 biennium when \$240 million was appropriated to the Oil and Gas Impact Grant Fund. The appropriation for the 2015-2017 biennium was \$140 million; however, a sharp drop in gross production tax collections resulted in severely reduced revenues. The deposits into the Oil and Gas Impact Grant Fund fell sharply, from nearly \$7 million per month in the summer of 2015 to \$135,000 in April 2016. The reduced revenues limited the Board of University and School Land's (Board) ability to proceed with awarding grant priorities provided in the 2015 legislative allocations. The Board suspended further grant awards in February 2016 and it was not until December 2016 that gross production tax collections were sufficient to provide for grants. By the end of the 2015-2017 biennium only \$56 million, or approximately 42 percent of the 2015 legislative allocations, was granted.

In April 2017, the Legislative Assembly appropriated \$40 million of grant funding for the Williston and Dickinson airports out of two separate grant funds; \$25 million from the Oil and Gas Impact Grant Fund, and \$15 million from a newly created Energy Impact Grant Fund. The statute assigned the new Energy Impact Grant fund responsibility to the ND State Treasurer's Office. The Department now has to manually track these grants as the funds come from the State Treasurer, not internal software. All reimbursements, therefore, must be processed manually and cannot be direct deposited into the grantee's bank account. Recently one manually processed check was sent to Sloulin Field for \$1,783,057.78 in an overnight courier package.

The 2017 session also included a re-appropriation of \$700,000 for Human Trafficking, \$500,000 to the North Dakota Attorney General's Office for Statewide Automated Victim Information Network operations, and \$261,000 to remove debt from a developmentally disabled provider serving the communities of Stanley, New Town, and Tioga. The legislation required the developmentally disabled provider's funds be paid with a higher priority than all remaining appropriations from the 2015-2017 biennium.

When the Board reviews applications to determine grant awards, a number of criteria are considered, including:

- Objective;
- Project readiness and timeline for completion;
- Impact of energy activity;
- Health, welfare, and safety of citizens where the project contributes to sustained economic development or activity;
- Budget and other available funding;
- Completeness of the application; and
- Any other criteria deemed relevant by the advisory committee, board or director.

The Board established several advisory committees to assist with award prioritization and recommendations based on legislative appropriations. Advisory committees include community members who are vetted for their experience within the grant sector, are of good character and practices, seek to follow objectives and not personal gain, and work with others for the greater good. Each grant's advisory committee considers the grant criteria, eligibility, and application guidelines, and all meetings are conducted under the Open Meetings Laws. Grants are reviewed and approved through a process

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of consensus, not a majority vote. Any dissension is worked through as a whole until concerns are addressed and compromises are reached. The EIIO staff facilitates the process as a nonvoting member.

The following Advisory Committees were formed to make recommendations for the Board's final consideration:

- 1) Critical Access Hospitals Advisory Committee -- comprised of hospital administrators, a representative of the North Dakota Hospital Association, and a representative of the North Dakota Department of Health (Health Department);
- 2) Law Enforcement Advisory Committee -- comprised of the Attorney General's Drug and Violent Crime Policy Board;
- 3) K-12 Schools Advisory Committee -- comprised of superintendents from several school districts;
- 4) Airports Advisory Committee -- comprised of members of North Dakota Aeronautics Commission;
- 5) Fire Districts Advisory Committee -- comprised of select regional fire chiefs and a representative of the State Fire Marshal's Office;
- 6) Emergency Medical Services Advisory Committee -- comprised of select EMS leaders and a representative of the Health Department;
- 7) Nursing Home/Home Health Advisory Committee -- comprised of administrators of various long term care facilities and the executive director of the North Dakota Long Term Care Association;
- 8) Domestic Violence Shelter Advisory Committee -- comprised of experts within the field, the Health Department, and Department of Commerce; and
- 9) District Health Unit Advisory Committee -- comprised of representatives of the ND Association of Counties, Health Department, and three district health units.
- 10) General Grant Advisory Committee -- comprised of county commissioners, city mayors, emergency managers, and a representative of the Department of Transportation (ND-DOT).

Human Trafficking and Law Enforcement grants require detailed collaborative efforts between the EIIO and BCI due to combined state and federal funding requirements.

Legislative distribution and intent for the various sectors is intentionally broad; thus, the Department and assigned committees utilize discretion when interpreting the intent, with the ultimate goal of assigning funds to the most vital projects.

Once grants are awarded, the EIIO continues to verify and process reimbursement transactions. For example, the EIIO has made 332 reimbursement transactions between July 1, 2017 and March 31, 2018 to political subdivisions. Each transaction is reviewed and spending accounted for based on the scope of each project set in the grant award.

Reimbursements are periodically declined because they fail to meet the intent of the grant's scope, for example:

- 1) A snow blower purchased for a District Health Unit with funds that were for medical supplies, building improvements, and equipment to safeguard vaccines.
- 2) A community attempted to purchase a scoop loader in lieu of repairing a sewage lagoon.
- 3) A human trafficking sub-grantee tried collecting grant funds for its own services while simultaneously getting paid/reimbursed from another entity.
- 4) Another human trafficking sub-grantee attempted to collect reimbursements for depreciation on vehicles the organization had on hand.
- 5) A community collected \$9 million on infrastructure improvements between 2012 and 2015. Later it shifted attention from the project and used reimbursements for other purposes, which included

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trenching a drainage path out of a slough to limit water runoff that could have affected its sewage ponds.

Unused funds from each project are collected by the EIIO when a grant award is retired. Since January 2017, the EIIO has collected \$3.5 million to be reutilized for projects in a Contingency Grant advertised quarterly beginning in January 2018. The Board authorized up to \$3 million for any future emergent need, directly impacted by current oil or gas development activities, and has unanticipated costs that can be offset by these grant funds. At some point between February 2018 and June 2019 there may be grant funds from to support other unanticipated needs. The Contingency Grant Fund is available to offset costs for any emergency or unanticipated event directly caused by oil and gas impacts since December 2017.

The State Auditor's Office requires that public funds be managed with a reporting system where grantees submit updated project data to the EIIO on a semi-annual basis. From these reports, the EIIO analyzes shortages or obstacles encountered by each grantee, tracks each grant's status, and responds if necessary.

Additionally, the EIIO selects grant holders (based on geographic location) in various grant sectors and conducts a thorough site visit. As a result of the collaborative effort with BCI, information from law enforcement site visits is shared with BCI to reduce duplicated efforts.

Since 2011, all grant funds have been awarded per legislative intent. During the past two biennia, when completed grants have remaining funds the EIIO has been able to award those to other grantees across western North Dakota. Reimbursement grant funding allows for the EIIO to redirect unused funds; whereas, distributed funds cannot be reallocated.

As of January 14, 2019, there were 91 active grants:

- 4 from Fiscal Year 2014
 - o 3 extended through December 2019
 - o 1 grant will be retired at the end of this month
- 10 from Fiscal Year 2015
 - o 3 grants will be retired at the end of this month
 - o 2 grantees are non-responsive – action taken
 - o 2 grantees will complete in summer 2019
 - o 2 extended through December 2019
 - o 1 awaiting invoices from County Road Dept.
- 14 from Fiscal Year 2016
 - o 5 grants are scheduled to be retired by June 2019
 - o 4 grants will be retired by February 2019
 - o 2 grantees extended through September 2019
 - o 1 grantees are non-responsive – action taken
 - o 1 grantee going through special assessment district application
 - o 1 grantee awaiting final submission of reimbursement request
- 8 from Fiscal Year 2017
 - o 5 scheduled to close out by September 2019
 - o 2 grantees are non-responsive – action taken
 - o 1 grant will be retired in February 2019
- 38 from Fiscal Year 2018 (awarded in Fall 2017)

Many of these grants were delayed due to lack of gross production tax revenues or the grantee assumed work was halted

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- o 19 grants are from 2017-2019 appropriations
- o 15 grants are delayed 2015-2017 appropriations awarded
- o 2 grants are non-responsive – action taken
- o 2 grants are from collected funds of retired grants – Contingency Grant Fund
- 17 from Fiscal Year 2019
 - o 17 grants are from 2017-2019 airport appropriations

	TOTALS FOR AIRPORT GRANTS	REMAINING FUNDING AIRPORT GRANTS
Bowman County Municipal Airport	\$ 2,936,774	\$ -
Crosby Airport Authority	\$ 1,286,000	\$ -
Dickinson Municipal Airport	\$ 7,596,105	\$ 4,732,776
Dunn County Municipal Airport	\$ 4,886,739	\$ -
Garrison Municipal Airport	\$ 173,997	\$ -
Kenmare Municipal Airport	\$ 390,389	\$ -
Minot Internation Airport	\$ 23,693,078	\$ 59,475
Mohall Municipal Airport	\$ 924,543	\$ 100,000
New Town Municipal Airport	\$ 2,707,730	\$ -
Parshall Municipal Airport	\$ 141,668	\$ -
Sloulin Field Municipal Airport	\$ 59,795,607	\$ 50,435,611
Stanley Municipal Airport	\$ 412,550	\$ 170,000
Tioga Municipal Airport	\$ 1,011,853	\$ -
Turtle Lake Municipal Airport	\$ 31,252	\$ -
Washburn Municipal Airport	\$ 64,871	\$ -
Watford City Municipal Airport	\$ 3,164,815	\$ 950,000
Westhope Municipal Airport	\$ 133,277	\$ 87,696
	\$ 109,351,248	\$ 56,535,558

Efficiencies gained from operating the past five years has enabled the EIO to reduce the budgetary impact for salary and operations funding from \$700,000 per biennium to \$400,000 per biennium. The funds in that budget line item include advisory group travel reimbursements, facility space and utilities, salary dollars, printing and other administrative costs, as well as employee travel to conduct project site visits and public meetings in regional locations of western North Dakota.

BIENNIUM	ADMIN/OPERATION APPROPRIATION	EXPENDED
2011-2013	Within grant funding	\$243,371
2013-2015	\$700,826	\$611,410
2015-2017	\$700,000	\$573,242
2017-2019	\$0*	\$253,100*

*Note = \$0 was appropriated for the tasks necessary to operate the EIO, however a \$400,000 budget was submitted to OMB. As of 12/31/2018 \$253,100 has been expended.

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In the current biennium no line-item budget authority existed for operation and administrative costs, however remaining unused funds from prior biennia was authorized. Working in collaboration with the Office of Management and Budget the EIO established a budget of \$400,000 for the current biennium.

The EIO intends to purchase an off-the-shelf grant management software. With this new software the efficiencies of the EIO will reduce the need for a large budget for operations and administrative costs. We believe that \$450,000 is an appropriate level to sustain the grants program using a modern software package that can support multiple grants and legislative appropriations for western North Dakota. The Department's current software system is from 1992.

Current FTE's and how many people touch grant work:

STAFFING:	FTE assigned to EIO	Indirect FTE
2011-13	1.00	0.50
2013-15	2.00	0.25
2015-17	1.50	0.25
2017-19	0.75	0.25

Investments Division

The Investment Division is responsible for directing, implementing, and monitoring the Board's investment program. The majority of these assets are owned by 13 permanent educational trusts under the Board's control, while the remainder are owned by the SIIF, Coal Development Trust Fund, Capitol Building Fund and Indian Cultural Education Trust.

The type of investment assets owned by each trust fund is determined by the Board based on the fund's nature and purpose, its investment goals and objectives, and the timing and amount of distributions from that fund.

The 13 educational and institutional trust funds managed by the Board are permanent. The Indian Cultural Education Trust, which has a similar purpose to the educational trust funds, is pooled and invested with these trust funds.

The investment goal for the permanent trust funds is to grow trust assets and distributions at a rate that meets or exceeds the rate of inflation. To that end, the Board has developed an investment allocation plan that includes a diversified portfolio of stocks, bonds, real estate and other financial assets.

The Board is responsible for administering the Coal Development Trust Fund to provide loans to political subdivisions. Any monies that have not been lent are invested. The expendable nature of both the SIIF and Capitol Building Fund results in these trusts being pooled and invested along with the Coal Development Trust Fund in a short-term, high-quality bond portfolio.

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Account/Asset Class	Long-Term Asset Allocation	11/30/18 Actual Allocation \$	11/30/18 Actual Allocation %	11/30/18 % Diff.
Large Cap US Equity	13.3%	\$ 602,094,618	13.4%	0.1%
Mid/Small Cap US Equity	3.7%	\$ 164,733,925	3.7%	0.0%
International Equity	13.3%	\$ 580,081,432	12.9%	-0.4%
Emerging Market Equity	3.7%	\$ 168,471,343	3.8%	0.1%
Total Equities	34.0%	\$ 1,515,381,317	33.8%	-0.2%
Core Fixed Income	12.6%	\$ 646,903,670	14.4%	1.8%
Non-Core Fixed Income	8.4%	\$ 283,272,774	6.3%	-2.1%
Total Fixed Income	21.0%	\$ 930,176,445	20.7%	-0.3%
Total Absolute Return	20.0%	\$ 910,164,143	20.3%	0.3%
Commodities	3.0%	\$ 127,513,432	2.8%	-0.2%
MLPs	3.0%	\$ 132,673,028	3.0%	0.0%
TIPS	2.0%	\$ 87,834,555	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 85,484,939	1.9%	-0.1%
Total Inflation Strategies	10.0%	\$ 433,505,954	9.7%	-0.3%
Core Real Estate	8.0%	\$ 381,318,549	8.5%	0.5%
Core Plus Real Estate	7.0%	\$ 314,628,272	7.0%	0.0%
Total Real Estate	15.0%	\$ 695,946,821	15.5%	0.5%
Total Asset	100.0%	\$ 4,485,174,680	100.0%	

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

January 30, 2019

AB1013

Attachment A

**Department of Trust Lands - Budget No. 226
House Bill No. 1013
Base Level Funding Changes**

	Executive Budget Recommendation				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	31.00	\$0	\$7,881,273	\$7,881,273	31.00	\$0	\$7,881,273	\$7,881,273	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes			(\$293,941)	(\$293,941)			(\$293,941)	(\$293,941)				\$0
Salary increase			226,509	226,509			135,724	135,724			(90,785)	(90,785)
Health insurance increase			105,814	105,814			124,938	124,938			19,124	19,124
Retirement contribution increase			29,630	29,630				0			(29,630)	(29,630)
Removes 3 FTE positions	(3.00)		(288,863)	(288,863)				0	3.00		288,863	288,863
Adds 2 FTE positions	2.00		415,492	415,492				0	(2.00)		(415,492)	(415,492)
Adjusts funding and FTE positions for IT unification	(2.00)		23,175	23,175				0	2.00		(23,175)	(23,175)
Reduces funding for operating expenses			(504,949)	(504,949)				0			504,949	504,949
Adds funding for inflationary increases			57,285	57,285				0			(57,285)	(57,285)
Adds funding for a project manager contract			50,000	50,000				0			(50,000)	(50,000)
Adds funding for operating expenses			40,300	40,300				0			(40,300)	(40,300)
Adds funding for legal and audit costs			384,564	384,564				0			(384,564)	(384,564)
Adds funding for mineral valuation study			350,000	350,000				0			(350,000)	(350,000)
Adds funding for financial software contracts			175,000	175,000				0			(175,000)	(175,000)
Adds funding for Microsoft Office 365 licensing			23,342	23,342				0			(23,342)	(23,342)
Total ongoing funding changes	(3.00)	\$0	\$793,358	\$793,358	0.00	\$0	(\$33,279)	(\$33,279)	3.00	\$0	(\$826,637)	(\$826,637)
One-time funding items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(3.00)	\$0	\$793,358	\$793,358	0.00	\$0	(\$33,279)	(\$33,279)	3.00	\$0	(\$826,637)	(\$826,637)
2019-21 Total Funding	28.00	\$0	\$8,674,631	\$8,674,631	31.00	\$0	\$7,847,994	\$7,847,994	3.00	\$0	(\$826,637)	(\$826,637)

Other Sections for Department of Trust Lands - Budget No. 226

	Executive Budget Recommendation	House Version
Line item transfers	Section 3 would allow the Commissioner of University and School Lands, upon approval of the Board of University and School Lands, to transfer funding between the various line items, including the contingencies line item. The Commissioner shall notify the Office of Management and Budget of each transfer made pursuant to this section.	

Other Sections for Department of Trust Lands - Budget No. 226

Executive Budget Recommendation

House Version

Fund distributions	Section 4 would provide the permanent fund income distributions to state institutions.
Oil and gas impact grant fund exemption	Section 5 would provide an exemption to continue unspent prior biennium appropriations from the oil and gas impact grant fund into the 2019-21 biennium.
Energy impact grant fund exemption	Section 6 would provide an exemption to continue unspent prior biennium appropriations from the energy impact grant fund into the 2019-21 biennium.
Information technology project exemption	Section 7 would provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium.

February 7, 2019

HB1013

Attachment A

**Department of Trust Lands - Budget No. 226
House Bill No. 1013
Base Level Funding Changes**

	Executive Budget Recommendation				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	31.00	\$0	\$7,881,273	\$7,881,273	31.00	\$0	\$7,881,273	\$7,881,273	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes			(\$293,941)	(\$293,941)			(\$293,941)	(\$293,941)				\$0
Salary increase			226,509	226,509			148,976	148,976			(77,533)	(77,533)
Health insurance increase			105,814	105,814			133,862	133,862			28,048	28,048
Retirement contribution increase			29,630	29,630				0			(29,630)	(29,630)
Removes 3 FTE positions	(3.00)		(288,863)	(288,863)	(3.00)		(288,863)	(288,863)				0
Adds 2 FTE positions	2.00		415,492	415,492				0	(2.00)		(415,492)	(415,492)
Adjusts funding and FTE positions for IT unification	(2.00)		23,175	23,175				0	2.00		(23,175)	(23,175)
Reduces funding for operating expenses			(504,949)	(504,949)			(504,949)	(504,949)				0
Adds funding for inflationary increases			57,285	57,285				0			(57,285)	(57,285)
Adds funding for a project manager contract			50,000	50,000				0			(50,000)	(50,000)
Adds funding for operating expenses			40,300	40,300				0			(40,300)	(40,300)
Adds funding for legal and audit costs			384,564	384,564			384,564	384,564				0
Adds funding for mineral valuation study			350,000	350,000				0			(350,000)	(350,000)
Adds funding for financial software contracts			175,000	175,000			175,000	175,000				0
Adds funding for Microsoft Office 365 licensing			23,342	23,342			23,342	23,342				0
Total ongoing funding changes	(3.00)	\$0	\$793,358	\$793,358	(3.00)	\$0	(\$222,009)	(\$222,009)	0.00	\$0	(\$1,015,367)	(\$1,015,367)
One-time funding items												
Adds one-time funding for mineral valuation study				\$0			\$350,000	\$350,000			\$350,000	\$350,000
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$350,000	\$350,000	0.00	\$0	\$350,000	\$350,000
Total Changes to Base Level Funding	(3.00)	\$0	\$793,358	\$793,358	(3.00)	\$0	\$127,991	\$127,991	0.00	\$0	(\$665,367)	(\$665,367)
2019-21 Total Funding	28.00	\$0	\$8,674,631	\$8,674,631	28.00	\$0	\$8,009,264	\$8,009,264	0.00	\$0	(\$665,367)	(\$665,367)

Other Sections for Department of Trust Lands - Budget No. 226

	Executive Budget Recommendation	House Version
Line item transfers	Section 3 would allow the Commissioner of University and School Lands, upon approval of the Board of University and School Lands, to transfer funding between the various line items, including the contingencies line item. The Commissioner shall notify the Office of Management and Budget of each transfer made pursuant to this section.	

February 7, 2019

AB1013

out A

Other Sections for Department of Trust Lands - Budget No. 226

Executive Budget Recommendation

House Version

Fund distributions

Section 4 would provide the permanent fund income distributions to state institutions.

Section 3 provides the permanent fund income distributions to state institutions.

Oil and gas impact grant fund exemption

Section 5 would provide an exemption to continue unspent prior biennium appropriations from the oil and gas impact grant fund into the 2019-21 biennium.

Energy impact grant fund exemption

Section 6 would provide an exemption to continue unspent prior biennium appropriations from the energy impact grant fund into the 2019-21 biennium.

Information technology project exemption

Section 7 would provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium.

Section 4 provides an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium.

19.0201.01003
Title.

Prepared by the Legislative Council staff for
the House Appropriations - Government
Operations Division Committee

Fiscal No. 1

February 8, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1013

Page 1, line 2, replace the second "and" with "to create and enact a new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code, relating to the investments of the state investment board; to amend and reenact subsection 2 of section 15-01-02 of the North Dakota Century Code, relating to the investments of the board of university and school lands; to repeal section 57-51-15.1 of the North Dakota Century Code, relating to the energy impact fund; to provide for transfers;"

Page 1, line 2 after "funds" insert "; to provide an exemption; to provide a report; to provide an effective date; and to provide a contingent effective date"

Page 1, line 6, after "fund" insert "and the oil and gas impact grant fund"

Page 1, replace lines 9 through 15 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants	0	4,000,000	4,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$4,127,991	\$12,009,264
Full-time equivalent positions	31.00	(3.00)	28.00"

Page 1, line 16, after "**FUNDING**" insert "**- EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY**"

Page 1, line 17, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 1, replace lines 19 through 22 with:

"Information technology replacement project	\$3,600,000	\$0
Airport grants	40,000,000	0
Mineral revenue repayments	187,000,000	0
Oil and gas impact grants	0	4,000,000
Mineral valuation study	<u>0</u>	<u>350,000</u>
Total special funds	\$230,600,000	\$4,350,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 17, insert:

"SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO OIL AND GAS IMPACT GRANT FUND. The office of management and budget shall transfer the sum of \$4,000,000 from the strategic

investment and improvements fund to the oil and gas impact grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 5. TRANSFER - ENERGY IMPACT FUND TO OIL AND GAS IMPACT GRANT FUND. The commissioner of university and school lands shall transfer any unexpended funds remaining in the energy impact fund when the fund is repealed on June 30, 2021, to the oil and gas impact grant fund.

SECTION 6. AMENDMENT. Subsection 2 of section 15-01-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1, which must be made under the supervision of the state investment board pursuant to section 21-10-06 subject to the investing authority provided in law relating to state investments.

SECTION 7. A new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code is created and enacted as follows:

Common schools trust fund and other investments under the control of the board of university and school lands.

SECTION 8. REPEAL. Section 57-51-15.1 of the North Dakota Century Code is repealed.

SECTION 9. OIL AND GAS IMPACT GRANT FUND. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$4,000,000 from the oil and gas impact grant fund for grants to political subdivisions impacted by oil and gas development activities.

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amounts previously appropriated from the oil and gas impact grant fund and identified in section 10 of chapter 38 of the 2017 Session Laws related to the oil and gas impact grant fund, including grant awards returned to the fund, are not subject to section 54-44.1-11. Any unexpended funds are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 11. EXEMPTION - INFORMATION TECHNOLOGY PROJECT - REPORT TO INFORMATION TECHNOLOGY COMMITTEE. The \$3,600,000 appropriated from the state lands maintenance fund and identified in sections 1 and 12 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11, and any unexpended funds are available to complete the information technology project during the biennium beginning July 1, 2019, and ending June 30, 2021. During the 2019-20 interim, the commissioner of university and school lands shall provide at least one report to the interim information technology committee regarding the status of the information technology project.

SECTION 12. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 6 and 7 of this Act become effective on July 1, 2021, or earlier if the commissioner of board and university and school lands notifies the legislative council that the board of university and school lands approved, by a majority vote, transferring the board of university and school lands' investments to the state investment board. Section 8 of this Act becomes effective on June 30, 2021."

2-11-19
HB 1013
AM. A

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Department of Trust Lands - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants		4,000,000	4,000,000
Contingencies	100,000		100,000
Total all funds	\$7,881,273	\$4,127,991	\$12,009,264
Less estimated income	7,881,273	4,127,991	12,009,264
General fund	\$0	\$0	\$0
FTE	31.00	(3.00)	28.00

Department 226 - Department of Trust Lands - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Removes FTE Positions ³	Reduces Funding for Operating Expenses ⁴	Adds Funding for Legal and Audit Costs ⁵	Adds Funding for Financial Software Contracts ⁶
Salaries and wages	(\$293,941)	\$282,838	(\$288,863)			
Operating expenses				(\$504,949)	\$384,564	\$175,000
Grants						
Contingencies						
Total all funds	(\$293,941)	\$282,838	(\$288,863)	(\$504,949)	\$384,564	\$175,000
Less estimated income	(293,941)	282,838	(288,863)	(504,949)	384,564	175,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	(3.00)	0.00	0.00	0.00

	Adds Funding for Microsoft Office 365 Licensing ⁷	Adds One-Time Funding for a Mineral Valuation Study ⁸	Adds One-Time Funding for Oil Impact Grants ⁹	Total House Changes
Salaries and wages				(\$299,966)
Operating expenses	\$23,342	\$350,000		427,957
Grants			\$4,000,000	4,000,000
Contingencies				
Total all funds	\$23,342	\$350,000	\$4,000,000	\$4,127,991
Less estimated income	23,342	350,000	4,000,000	4,127,991
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	Other Funds
Salary increase	\$148,976
Health insurance increase	133,862
Total	\$282,838

³ Funding and authorization for 3 FTE positions, including 2 administrative assistants and an audit technician, is removed.

⁴ Funding is reduced for operating expenses, primarily related to travel, equipment, information technology costs, professional development, and other services.

⁵ Funding is added for legal and audit costs related to the implementation of administrative rules, compliance requirements for internal controls and fraud risks, and financial statement audits.

⁶ Funding is added for ongoing costs associated with new financial software, including maintenance agreements and subscription fees.

⁷ Funding is added for Microsoft Office 365 licensing expenses.

⁸ One-time funding is added for a mineral valuation study to hire a consultant to estimate the value of the state's mineral resources.

⁹ Funding is added for grants to political subdivisions from the oil and gas impact grant fund. The estimated funding available for oil and gas impact grant funds for the 2019-21 biennium totals \$5.5 million, including \$4 million from the strategic investment and improvements fund and \$1.5 million of unspent prior biennium appropriations.

This amendment also adds sections to:

- Transfer \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund.
- Transfer any remaining funds in the energy impact fund to the oil and gas impact grant fund, related to the repeal of the fund.
- Provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board.
- Repeal the energy impact fund.
- Identify \$4 million of funding from the oil and gas impact grant fund for grants to political subdivisions.
- Provide an exemption to continue unspent prior biennium appropriations related to undesignated oil and gas impact grants and administrative costs of the oil and gas impact grant fund into the 2019-21 biennium.
- Provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and require the Commissioner of Board and University School Lands to report to the interim Information Technology Committee.
- Provide effective dates, including a contingent effective date, relating to the statutory changes requiring investment through the State Investment Board and the repeal of the energy impact fund.

Department 226 - Department of Trust Lands
House Bill No. 1013

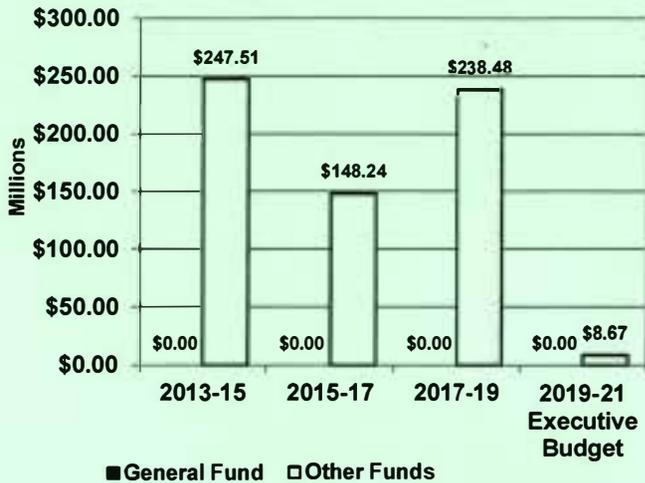
Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	28.00	\$0	\$8,674,631	\$8,674,631
2017-19 Legislative Appropriations	31.00	0	238,481,273	238,481,273
Increase (Decrease)	(3.00)	\$0	(\$229,806,642)	(\$229,806,642)

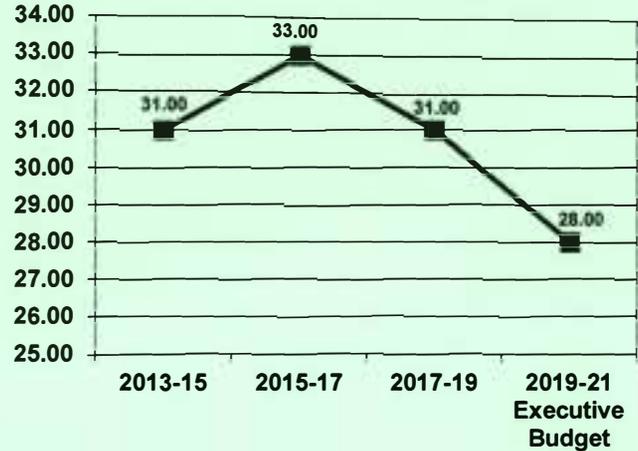
Ongoing and One-Time Other Funds Appropriations

	Ongoing Other Funds Appropriation	One-Time Other Funds Appropriation	Total Other Funds Appropriation
2019-21 Executive Budget	\$8,674,631	\$0	\$8,674,631
2017-19 Legislative Appropriations	7,881,273	230,600,000	238,481,273
Increase (Decrease)	\$793,358	(\$230,600,000)	(\$229,806,642)

Agency Funding



FTE Positions



Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2019-21 Executive Budget	\$0	\$8,674,631	\$8,674,631
2019-21 Base Level	0	7,881,273	7,881,273
Increase (Decrease)	\$0	\$793,358	\$793,358

First House Action

Attached is a comparison worksheet detailing first house changes to base level funding and the executive budget.

**Executive Budget Highlights
(With First House Changes in Bold)**

	General Fund	Other Funds	Total
1. Provides funding for state employee salary and benefit increases of which \$226,509 is for salary increases, \$105,814 is for health insurance increases, and \$29,630 is for retirement increases. The House added funding for salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month. The House did not add funding for retirement contribution increases.	\$0	\$361,953	\$361,953
2. Removes 3 FTE positions, including 2 administrative assistants and an audit technician	\$0	(\$288,863)	(\$288,863)
3. Adds funding for 2 FTE positions, including an administrative assistant and an attorney, and related operating expenses. The House did not add the 2 FTE positions or related funding.	\$0	\$415,492	\$415,492

4. Transfers 2 FTE programmer analyst positions to the Information Technology Department for the information technology unification initiative resulting in an increase in operating expenses for the agency. The House did not transfer the 2 FTE positions or adjust the operating expenses related to an information technology unification initiative.	\$0	\$23,175	\$23,175
5. Reduces funding for operating expenses primarily related to travel, equipment, information technology costs, professional development, and other services	\$0	(\$504,949)	(\$504,949)
6. Increases funding for operating expenses, including inflationary increases (\$57,285), information technology project management costs (\$50,000), and other costs (\$40,300). The House did not include funding for the increases in operating expenses.	\$0	\$147,585	\$147,585
7. Adds funding for legal and audit costs	\$0	\$384,564	\$384,564
8. Adds funding for a mineral valuation study. The House added one-time funding of \$350,000 for a mineral valuation study.	\$0	\$350,000	\$350,000
9. Adds funding for financial software maintenance agreements	\$0	\$175,000	\$175,000
10. Adds funding for Microsoft Office 365 licensing	\$0	\$23,342	\$23,342

Other Sections in House Bill No. 1013

Fund distributions - Section 3 provides permanent fund income distributions to state institutions as follows:

	2017-19 Legislative Appropriation ¹	2019-21 Executive Budget	Increase (Decrease)
Common schools	\$288,264,000	\$366,756,000	\$78,492,000
North Dakota State University	4,738,000	5,916,000	1,178,000
University of North Dakota	3,662,000	4,504,000	842,000
Youth Correctional Center	800,814	1,864,000	1,063,186
School for the Deaf	1,598,000	1,898,000	300,000
North Dakota State College of Science	1,535,984	1,736,000	200,016
State Hospital	1,459,984	1,570,000	110,016
Veterans' Home	711,984	732,000	20,016
Valley City State University	808,000	1,034,000	226,000
North Dakota Vision Services - School for the Blind	929,984	1,122,000	192,016
Mayville State University	542,000	668,000	126,000
Dakota College at Bottineau	275,984	242,000	(33,984)
Dickinson State University	275,984	242,000	(33,984)
Minot State University	275,984	242,000	(33,984)
Total	\$305,878,702	\$388,526,000	\$82,647,298

¹The amounts shown reflect fund distributions as adjusted by the 2017 Legislative Assembly to correct errors identified in a performance audit conducted during the 2015-16 interim.

Oil and gas impact grant fund - Section 4 transfers \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund. Section 9 identifies \$4 million from the oil and gas impact grant fund for grants to political subdivisions. Section 10 provides an exemption to continue unspent prior biennium appropriations from the oil and gas impact grant fund into the 2019-21 biennium.

Energy impact grant fund - Section 5 provides a contingent transfer of any remaining funds in the energy impact fund, related to the repeal of the fund. Section 8 repeals the energy impact fund, and Section 12 provides an effective date for the repeal.

Management of investments - Sections 6 and 7 provide statutory changes necessary to require the department to invest the permanent trust funds through the State Investment Board. Section 12 provides an effective date for the changes.

Information technology project exemption - Section 11 provides an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and requires the department to provide a report to the interim Information Technology Committee regarding the status of the project.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Continuing Appropriations

Unclaimed property - North Dakota Century Code Section 47-30.1-23 - Payments made to owners of unclaimed property.

Investments and farm loans - Sections 15-03-16 - Money manager and custodial fees and loan administration fees to maintain and enhance income earning potential of trusts' financial assets.

County services - Section 15-04-23 - Payments made to counties for various services provided that benefit school trust lands.

Land expenses - Sections 15-04-24 and 15-07-22 - Payments for appraisal fees, survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, fire protection, land rent, value survey costs, and other expenses.

In lieu of taxes - Section 57-02.3-07 - Payments made in lieu of property taxes on certain state lands managed by the department.

Significant Audit Findings

The financial statement audit for the Department of Trust Lands conducted by Brady, Martz & Associates PC during the 2017-18 interim identified no significant findings; however, the agency is in the process of implementing changes to address some of the findings from the performance audit conducted during the 2015-16 interim.

Major Related Legislation

House Bill No. 1192 - Changes the guidelines for determining the ordinary high water mark, which may impact the state's royalty interests.

House Bill No. 1392 - Identifies records audited by the department related to royalty payments as confidential records.

Senate Bill No. 2036 - Repeals an obsolete provision relating to the repayment of developmentally disabled loans from the strategic investment and improvements fund.

Senate Bill No. 2081 - Allows the Department of Trust Lands to pay building maintenance costs and payments in lieu of taxes pursuant to a continuing appropriation from the trust funds rather than the department's budget.

Senate Bill No. 2082 - Repeals obsolete provisions that allowed the department to lease fallow state lands at a lower rate.

Senate Bill No. 2211 - Authorizes the department to contract with an engineering and surveying firm to determine the mineral revenue repayments pursuant to Senate Bill No. 2134 (2017).

Senate Bill No. 2212 - Authorizes the Department of Trust Lands to impose a penalty if a royalty owner does not provide requested information to the department in a timely manner.

Senate Bill No. 2264 - Clarifies the process for the department to approve policies and the activities of the department that are subject to administrative rules.

House Concurrent Resolution No. 3008 - Amends the constitution, subject to voter approval, to allow a portion of the common schools trust fund investments to be used for low-interest rate loans to school districts for school construction projects.

House Concurrent Resolution No. 3012 - Adds the Tax Commissioner and removes the Attorney General as members of the Board of University and School Lands.

House Concurrent Resolution No. 3020 - Amends the constitution, subject to voter approval, to include funds obtained through asset forfeiture as part of the principal of the common schools trust fund used for the benefit of the schools in the state.

Department of Trust Lands - Budget No. 226
House Bill No. 1013
Base Level Funding Changes

	Executive Budget Recommendation				House Version			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	31.00	\$0	\$7,881,273	\$7,881,273	31.00	\$0	\$7,881,273	\$7,881,273
2019-21 Ongoing Funding Changes								
Base payroll changes			(\$293,941)	(\$293,941)			(\$293,941)	(\$293,941)
Salary increase			226,509	226,509			148,976	148,976
Health insurance increase			105,814	105,814			133,862	133,862
Retirement contribution increase			29,630	29,630				0
Removes 3 FTE positions	(3.00)		(288,863)	(288,863)	(3.00)		(288,863)	(288,863)
Adds 2 FTE positions	2.00		415,492	415,492				0
Adjusts funding and FTE positions for IT unification	(2.00)		23,175	23,175				0
Reduces funding for operating expenses			(504,949)	(504,949)			(504,949)	(504,949)
Adds funding for inflationary increases			57,285	57,285				0
Adds funding for a project manager contract			50,000	50,000				0
Adds funding for operating expenses			40,300	40,300				0
Adds funding for legal and audit costs			384,564	384,564			384,564	384,564
Adds funding for mineral valuation study			350,000	350,000				0
Adds funding for financial software contracts			175,000	175,000			175,000	175,000
Adds funding for Microsoft Office 365 licensing			23,342	23,342			23,342	23,342
Total ongoing funding changes	(3.00)	\$0	\$793,358	\$793,358	(3.00)	\$0	(\$222,009)	(\$222,009)
One-time funding items								
Adds one-time funding for mineral valuation study				\$0			\$350,000	\$350,000
Adds one-time funding for oil impact grants				0			4,000,000	4,000,000
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$4,350,000	\$4,350,000
Total Changes to Base Level Funding	(3.00)	\$0	\$793,358	\$793,358	(3.00)	\$0	\$4,127,991	\$4,127,991
2019-21 Total Funding	28.00	\$0	\$8,674,631	\$8,674,631	28.00	\$0	\$12,009,264	\$12,009,264

Other Sections for Department of Trust Lands - Budget No. 226

	Executive Budget Recommendation	House Version
Line item transfers	Section 3 would allow the Commissioner of University and School Lands, upon approval of the Board of University and School Lands, to transfer funding between the various line items, including the contingencies line item. The Commissioner shall notify the Office of Management and Budget of each transfer made pursuant to this section.	

Other Sections for Department of Trust Lands - Budget No. 226

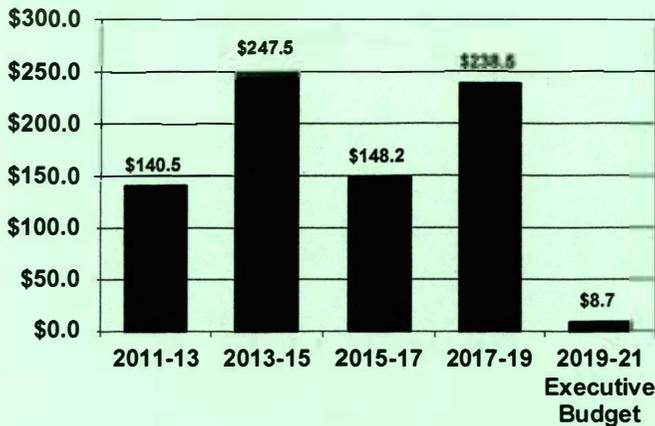
	<u>Executive Budget Recommendation</u>	<u>House Version</u>
Fund distributions	Section 4 would provide the permanent fund income distributions to state institutions.	Section 3 provides the permanent fund income distributions to state institutions.
Oil and gas impact grant fund	Section 5 would provide an exemption to continue unspent prior biennium appropriations from the oil and gas impact grant fund into the 2019-21 biennium.	Section 4 transfers \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund. Section 9 identifies \$4 million from the oil and gas impact grant funds for grants to political subdivisions. Section 10 provides an exemption to continue unspent prior biennium appropriations related to undesignated oil and gas impact grants and administrative costs of the oil and gas impact grant fund into the 2019-21 biennium.
Energy impact grant fund	Section 6 would provide an exemption to continue unspent prior biennium appropriations from the energy impact grant fund into the 2019-21 biennium.	Section 5 provides a contingent transfer of any remaining funds in the energy impact fund, related to the repeal of the fund. Section 8 repeals the energy impact fund, and Section 12 provides an effective date for the repeal.
Management of investments		Sections 6 and 7 provide statutory changes necessary to require the department to invest the permanent trust funds through the State Investment Board. Section 12 provides an effective date for the changes.
Information technology project exemption	Section 7 would provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium.	Section 11 provides an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and requires the department to provide a report to the interim Information Technology Committee regarding the status of the project.

Department 226 - Department of Trust Lands

Historical Appropriations Information

Total Other Funds Appropriations Since 2011-13

Agency Funding (in Millions)



FTE Positions



Total Other Funds Appropriations					
	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Total other funds appropriations	\$140,465,189	\$247,506,969	\$148,243,153	\$238,481,273	\$8,674,631
Increase (decrease) from previous biennium	N/A	\$107,041,780	(\$99,263,816)	\$90,238,120	(\$229,806,642)
Percentage increase (decrease) from previous biennium	N/A	76.2%	(40.1%)	60.9%	(96.4%)
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	76.2%	5.5%	69.8%	(93.8%)

Major Increases (Decreases) in Total Other Funds Appropriations

2013-15 Biennium

- Added funding for 6.25 FTE positions, including a grant administrator position, an accounting and budget specialist position for the oil and gas impact grants, a land management specialist position, a mineral title specialist position, an audit technician position, and 1.25 administrative assistant positions \$1,056,889
- Added funding from the strategic investment and improvements fund for a private lands study \$50,000
- Added funding for contingencies \$100,000
- Added funding for grants to political subdivisions from the oil and gas impact grant fund \$105,000,000

2015-17 Biennium

- Added funding for 2 FTE positions, including a land management position and an unclaimed property and compliance officer position \$385,246
- Added funding for operating expenses related office space rental \$90,000
- Added funding for the administration of oil and gas impact grants \$163,922
- Reduced funding for contingencies (\$100,000)
- Reduced funding for grants to political subdivisions from the oil and gas impact grant fund (\$100,000,000)

2017-19 Biennium

- Added 1 FTE geographic information system specialist position, including \$177,080 for salaries and wages and \$23,025 for operating expenses \$200,105
- Removed 3 FTE positions, including 1 FTE energy infrastructure and impact office position (\$151,237), 1 FTE natural resources director position (\$259,307), and 1 FTE natural resources director position (\$617,094)

3. Adjusted funding for operating expenses, including increases for building maintenance and utility costs (\$93,746); increases for professional development (\$45,000); and decreases for professional development, information technology services, and travel (\$405,685)	(\$266,939)
4. Removed funding for Energy Infrastructure and Impact Office administrative expenses	(\$389,217)
5. Removed funding for grants to political subdivisions from the oil and gas impact grant fund	(\$99,300,000)
6. Added one-time funding for an information technology system replacement project	\$3,600,000
7. Added one-time funding for grants to airports, including \$25 million from the oil and gas impact grant fund and \$15 million from the newly created energy impact fund	\$40,000,000
8. Added one-time funding for mineral revenue repayments, including \$100 million from the strategic investment and improvements fund and \$87 million from a Bank of North Dakota line of credit	\$187,000,000

2019-21 Biennium (Executive Budget Recommendation)

1. Provides funding for state employee salary and benefit increases of which \$226,509 is for salary increases, \$105,814 is for health insurance increases, and \$29,630 is for retirement increases	\$361,953
2. Removes 3 FTE positions, including 2 administrative assistants and an audit technician	(\$288,863)
3. Adds funding for 2 FTE positions, including an administrative assistant and an attorney, and related operating expenses	\$415,492
4. Transfers 2 FTE programmer analyst positions to the Information Technology Department for the information technology unification initiative resulting in an increase in operating expenses for the agency	\$23,175
5. Reduces funding for operating expenses primarily related to travel, equipment, information technology costs, professional development, and other services	(\$504,949)
6. Increases funding for operating expenses, including inflationary increases (\$57,285), information technology project management costs (\$50,000), and other costs (\$40,300)	\$147,585
7. Adds funding for legal and audit costs	\$384,564
8. Adds funding for a mineral valuation study	\$350,000
9. Adds funding for financial software maintenance agreements	\$175,000

**GOVERNOR'S RECOMMENDATION FOR THE
DEPARTMENT OF TRUST LANDS AS SUBMITTED
BY THE OFFICE OF MANAGEMENT AND BUDGET**

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund, to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$214,962)	\$5,790,588
Operating expenses	1,775,723	1,008,320	2,784,043
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$793,358	\$8,674,631
Full-time equivalent positions	31.00	(3.00)	28.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
IT project	\$3,600,000	\$0
Impact grants – airports	25,000,000	0
Other grants - airports	15,000,000	0
Mineral revenue payments	<u>187,000,000</u>	<u>0</u>
Total special funds	\$230,600,000	\$0

SECTION 3. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the board of university and school lands, the commissioner of university and school lands may transfer between the various line items in section 1 of this Act, including transfers from the contingencies line item to all other line items. The commissioner shall notify the office of management and budget of each transfer made pursuant to this section.

SECTION 4. DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to section 1 of article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2019, and ending June 30, 2021, the following amounts, from the permanent funds managed for the benefit of the following entities:

Common schools	\$366,756,000
North Dakota state university	5,916,000
University of North Dakota	4,504,000
Youth correctional center	1,864,000
School for the deaf	1,898,000
State college of science	1,736,000
State hospital	1,570,000
Veterans' home	732,000
Valley City state university	1,034,000
North Dakota vision services - school for the blind	1,122,000
Mayville state university	668,000
Dakota college at Bottineau	242,000
Dickinson state university	242,000
Minot state university	<u>242,000</u>
Total	\$388,526,000

SECTION 5. EXEMPTION - OIL AND GAS IMPACT GRANT FUNDS. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of

chapter 13 of the 2015 Session Laws, for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws, and for oil and gas impact grants in section 13 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2019, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019 and ending June 30, 2021

SECTION 6. EXEMPTION - ENERGY IMPACT FUND. The amount appropriated from the energy impact fund for airport grants in section 14 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11. Any unexpended funds from the appropriation are available for grants during the biennium beginning July 1, 2019 and ending June 30, 2021

SECTION 7. EXEMPTION – INFORMATION TECHNOLOGY PROJECT. The amount appropriated for an information technology project in the capital assets line item and the total special fund line item in section 1 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11. Any unexpended funds from the appropriation are available for the information technology project during the biennium beginning July 1, 2019 and ending June 30, 2021.

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Pg 1

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Jodi A. Smith, Commissioner

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

House Bill 1013

**Senate Appropriations Committee
February 28, 2019**

Chairman Holmberg and members of the Senate Appropriations Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify for the Department of Trust Lands' (Department) total special funds appropriation found in House Bill 1013.

The Department is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

HISTORY

In 1889, Congress passed the Enabling Act "to provide for the division of Dakota [Territory] into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Act of February 22, 1889, Ch. 180, 25 Statutes at Large 676.

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Section 10 of this Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases where portions of sections 16 and 36 had been sold prior to statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled more than 2.5 million acres.

Under sections 12, 14, 16 and 17 of the Enabling Act (and other acts referred to therein), Congress provided further land grants to the state of North Dakota for the support of colleges, universities, the state capitol, and other public institutions. These additional grants totaled approximately 668,000 acres, thus the total of Enabling Act land grants was nearly 3.2 million acres.

BOARD OF UNIVERSITY AND SCHOOL LANDS

Since statehood, Article IX of the North Dakota Constitution has entrusted the management of acquired land and grant land to the "board of university and school lands". N.D. Const. art. IX, § 3. The Board was initially made up of the Governor, the Secretary of State, the Attorney General, Superintendent of Public Instruction, and the State Auditor. On June 10, 1986, a constitutional amendment replaced the State Auditor with the State Treasurer as member of the Board.

As detailed in statute (N.D.C.C. chs. 15-01, 15-05, 15-08.1, 61-33), the Board has:

- Full control of the selection, appraisalment, rental, sale, disposal, and management of:
 - Lands donated or granted for the support and maintenance of the common schools.
 - Lands which fall to the state by escheat.
 - Lands donated or granted for the maintenance of other state institutions.
 - Lands acquired as a result of mortgage foreclosure when loans granted by the trust funds default.
- Responsibility for the investment of the permanent funds derived from the sale of any of trust lands.
- Full control of property that falls to the state by escheat and of the proceeds of all gifts and donations to the state for the support or maintenance of the common schools.
- Ability to provide refunds in the event of an error.
- Authority to award and distribute energy infrastructure and impact grants.
- Authority to lease lands for the production of oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays and may make and establish rules and regulations for development and drilling operations.
- Authority to manage minerals acquired or conveyed to the State via the Bank of North Dakota (BND) or State Treasurer.
- Responsibility to manage the State possessory interests in oil, gas, and related hydrocarbons in the sovereign lands lying within the ordinary high water mark of navigable lakes and streams.

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LAND SALES AND MINERAL RESERVATION

Beginning in 1939, whenever the State sold grant land, it reserved five percent of the minerals; in 1941, the reservation increased to 50 percent, and since June 28, 1960, the North Dakota Constitution has mandated a 100 percent mineral reservation.

The Department manages 655,953 of the original, grant land surface acres, and more than 1.8 million of the original mineral acres. Approximately 50,654 acres have been acquired through foreclosure or other means, bringing the total surface acreage to approximately 706,607 acres.

In 1977, the legislature transferred management authority for minerals acquired by the BND and the State Treasurer and responsibility for the minerals under sovereign land within navigable rivers and lakes to the Board's oversight. On behalf of the Board, the Department also manages State acquired minerals.

PERMANENT TRUST FUNDS

The land grant at statehood and the State Constitution both provide that the Board manage the trust land and minerals and their proceeds, for the exclusive benefit of supporting the common schools (primary education) and the institutions for which the lands were granted. In accordance with Article IX of the North Dakota Constitution, the trust funds must be managed to preserve purchasing power and to maintain stable distributions to trust beneficiaries.

Revenues are generated through the prudent management of permanent trust assets, including land, minerals, and investments. The surface acres are leased to ranchers and farmers, who assist in their care; mineral acres are leased for oil, gas, coal, and aggregate development. All revenues generated are deposited into the trust funds and are invested in a diversified portfolio of financial assets.

REVENUE AND DISTRIBUTION HISTORY

Article IX, Section 2 of North Dakota Constitution provides:

Distributions from the common schools trust fund, together with the net proceeds of all fines for violation of state laws and all other sums which may be added by law, must be faithfully used and applied each year for the benefit of the common schools of the state and no part of the 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 law. Distributions from an educational or charitable institution's trust fund must be faithfully used and applied each year for the benefit of the institution and no part of the fund may ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of the institution, as provided by law.

For the biennium during which this amendment takes effect, distributions from the perpetual trust funds must be the greater of the amount distributed in the preceding biennium or ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. Thereafter, biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends

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one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.

Educational and institutional trust distributions are based upon the growth in value of the trusts' financial assets over time, rather than on the amount of interest and income earned by each trust during the year. Biennial distributions from the permanent trust funds must be 10 percent of the five-year average value of trust assets, excluding the value of lands and minerals. Equal amounts are distributed during each year of the biennium. With the substantial growth in trust assets over the past 10 years, distributions to beneficiaries have significantly increased.

The key to a successful endowment type investment program is to maintain spending levels at sustainable rates. That was the objective of the constitutional spending formula implemented in 2009. It was advanced with the specific purpose of balancing the Board's dual mandates to preserve the purchasing power of the trusts and maintain stable distributions to beneficiaries.

In reviewing the historical annual distributions from the CSTF and the amount of income and assets available to make those distributions, there are two distinct time periods that should be considered:

- Statehood through FY 2009: In the majority of the years leading up to 2009, "interest and income" including investment income and dividends, surface rentals, and mineral rentals were distributed to the common schools. Revenues from mineral royalties and bonuses, easements, unclaimed property, etc., were deposited into the corpus, and could not be distributed.

The exception was through a constitutional measure during 1980 through 1984 when a portion of the mineral lease bonuses collected were distributed resulting in higher payout rates.

- FY 2010 to present: Since Fiscal Year (FY) 2010, distributions have been based on the growth in value of the trust fund over time as determined under the formula found in article IX, Section 2 of the North Dakota Constitution. Revenues from all sources are deposited into the fund and the total financial value determines distributions

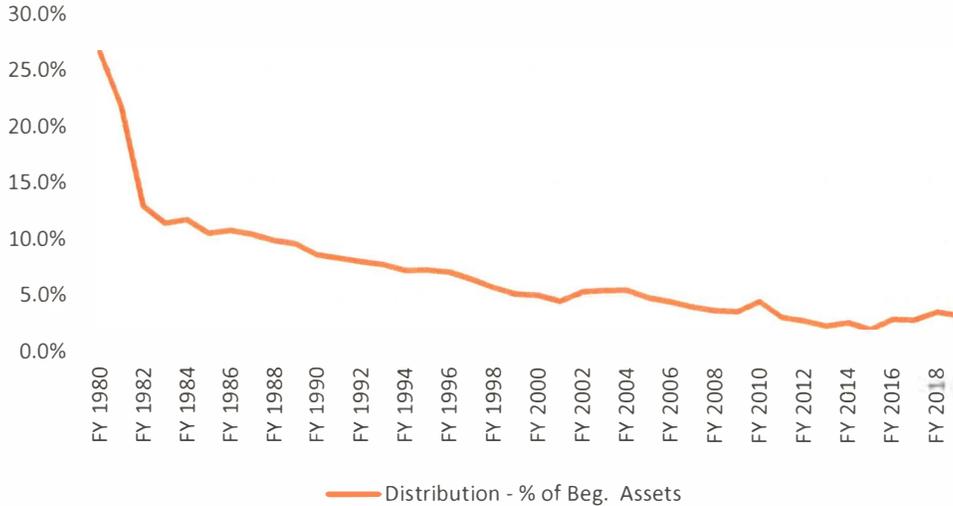
The following charts show the annual distribution of the CSTF compared to the trust's beginning financial assets for each of the previous four decades. While the spending rate starts above 20% in FY 1980, it has been under 5% since 2004.

Over time the formula will generate a yearly distribution rate of between 4.0-4.5%, although the exact rate for each year depends on the amount of new money flowing into the fund and investment returns over the past five years.

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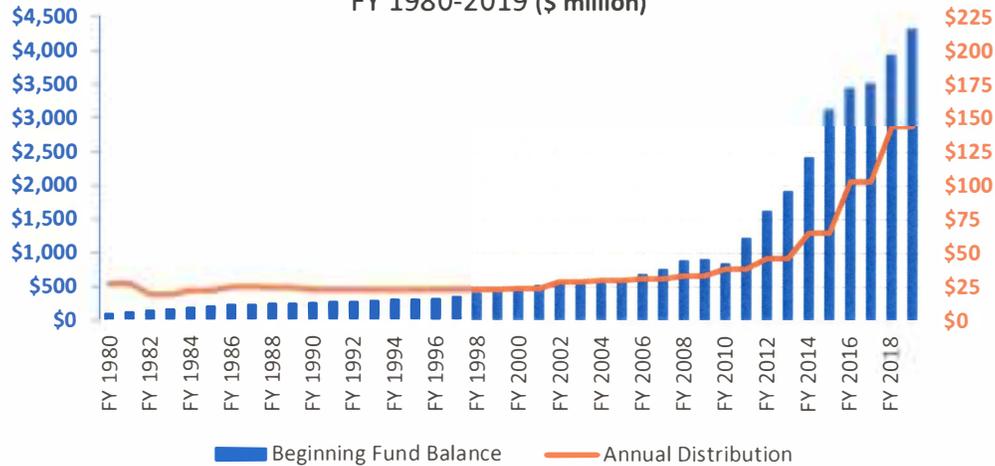
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CSTF Distributions as a % of Beginning Assets
 FY 1980-2019



The chart below shows CSTF distributions compared to the fund's beginning financial assets from 1980 through 2019:

CSTF Distributions vs. Beginning Fund Balance
 FY 1980-2019 (\$ million)



A ratio scale is used in the preceding chart and the following chart, with the orange scale depicted on the right being 5% of the blue scale on the left. When the orange line is above the blue bar for any given year, distributions for that year were greater than 5% of the beginning assets.

For many of the previous 40 years, distributions were made at unsustainable rates. The combination of constitutional language, legislative appropriation of distributions, and an objective to increase distributions made it difficult to manage the spending rate. In 1995, the Board adopted an asset allocation leading toward a total return investing and the percentage of assets approach to distributions. At that time, the Board adopted a 20-year forward looking asset allocation plan to

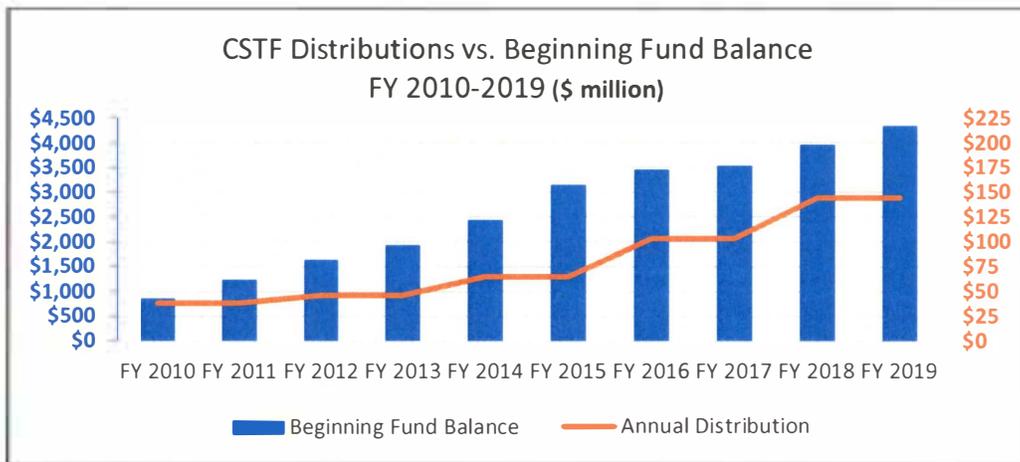
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decrease the distribution rate to below 5% and increase exposure to equities to more than 50% to balance the dual mandates to preserve the purchasing power of the trust and maintain stable distributions to beneficiaries.

Legislative action in 2001 resulted in an unanticipated bump to the permanent trust funds' distributions of 20%, undoing the Board's plan to reduce the distribution rate. The disruptive distribution led the Board to further investigate a total return and percent of assets approach to investing and distributions.

In 2003, the Board accepted investment consultant DiMeo-Schneider's asset allocation study, leading to its 2005 legislative resolution and 2006 ballot measure amending Article IX distributions. That law became effective July 1, 2009.

The following is a yearly comparison of CSTF distributions to the beginning financial assets from July 1, 2009, when the ballot measure went into effect, through FY 2019:



Oil and gas lease bonus and royalty revenues resulted in substantial growth in the CSTF, increasing by 300% over eight years. Strong investment markets have also driven growth since the 2008-2009 recession.

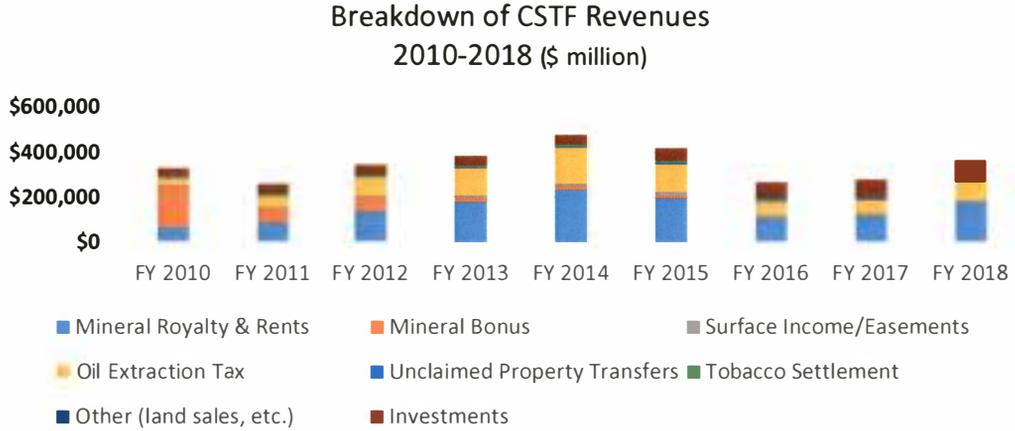
Because the distribution formula is based on asset values over the previous five years and the trust has experienced substantial trust growth over the past ten years, the effective distribution rate has averaged 3.1%. The growth in trust assets resulted in trust distributions growing by 331% from the 2008-2009 biennium to the 2017-2019 biennium.

The distribution rate has increased slightly over the past four years as trust growth has slowed. However, the effective distribution rate was 3.7% for FY 2018 and will be 3.3% for FY 2019.

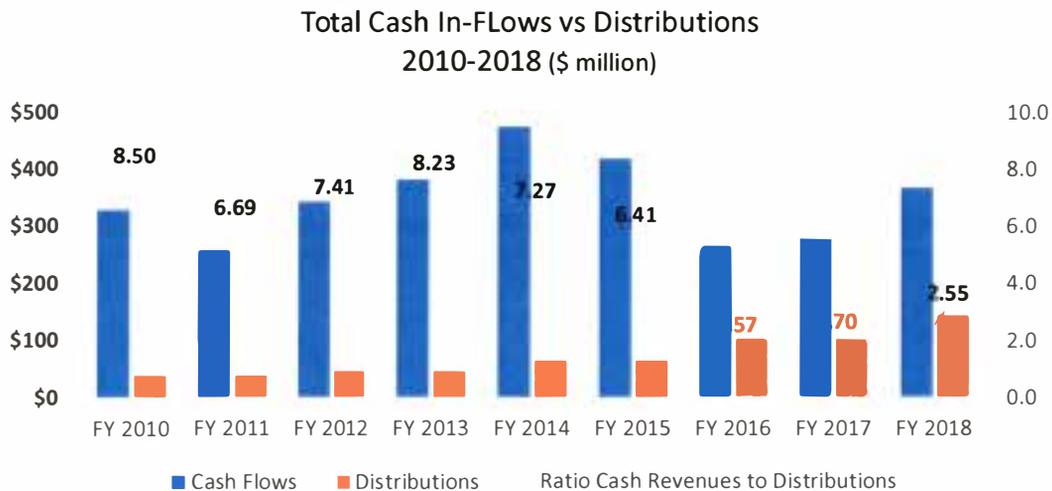
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TRUST REVENUES FROM FY 2010 THROUGH FY 2018

The following chart provides a breakdown of a cash revenues received by the CTSF.



Trust growth during the illustrated time-frame was driven by an increase in oil and gas lease bonuses in 2010, 2011, and 2012. Bonuses are one-time income items and the trust will most likely not receive similar bonuses in the future. During the period of FY 2012-2015, the greatest sources of trust growth were from oil royalties and oil tax revenues, partly attributable to oil priced at \$100 per barrel. Over the past three years, trust revenues have stabilized as the price of oil has remained consistent.



In conclusion, revenues over the past three years are lower than they were during FY 2013 through FY 2015; however, they have stabilized and continue to provide increased distributions from the trusts. In the 2019-2021 biennium distributions by the trusts will increase by \$82,647,297 which is a 27% increase.

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The Board manages other funds for the State and other beneficiaries, including:

Indian Cultural Education Trust

The Indian Cultural Education Trust was created in 2003 to generate income to benefit Indian culture (N.D.C.C. ch. 15-68). Present assets are managed for the benefit of the Mandan, Hidatsa, and Arikara Nation Cultural Education Foundation. This trust's assets are managed and distributions are determined in the same manner as the permanent trust funds.

Capitol Building Fund

The Capitol Building Fund was established in N.D.C.C. § 48-10-02 pursuant to Article IX of the North Dakota Constitution. Section 12 of the Enabling Act of 1889, authorized the land grant for "public buildings at the capital of said states". The Statute defines the fund, outlines its purposes, and assigns management of the land and the fund's investment to the Board. Unlike the permanent trust funds created under Article IX, this fund is fully expendable and is subject to legislative appropriation each biennium.

Strategic Investment and Improvements Fund

The Strategic Investment and Improvements Fund (SIIF) is a fund financed by the revenues earned from sovereign mineral acres, including those formerly owned by the BND and State Treasurer and minerals located under navigable rivers and lakes (N.D.C.C. ch. 15-08.1 and § 61-33-07). The SIIF also receives a portion of the oil and gas production and extraction taxes (N.D.C.C. § 57-51.1-07.5). This fund may be appropriated by the legislature for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of state government (N.D.C.C. § 15-08.1-08).

Coal Development Trust Fund

The Coal Development Trust Fund is established by N.D.C.C. ch. 57-62, pursuant to article X, § 21 of the North Dakota Constitution. The Fund receives 30 percent of the coal severance tax. This fund is held in trust and is administered by the Board for loans to coal impacted counties, cities, and school districts as provided by N.D.C.C. § 57-62-03 and for loans to school districts pursuant to N.D.C.C. ch. 15.1-36. Any balance not loaned is invested according to the policies of the Board. The income earned by this fund is transferred to the State General Fund each year.

FINANCIAL AUDIT

Brady Martz Certified Public Accountants and Consultants completed its review of the Department's financial statements for the year ending June 30, 2018 and provided the Board its opinion on the fair presentation of the financial statements on October 25, 2018.

The draft report identified no audit findings or recommendations.

PERFORMANCE AUDIT

In January 2015 the State Auditor initiated a performance audit of the Department as directed by the Legislative Audit and Fiscal Review Committee with objectives that included:

- Effectiveness of Unclaimed Property administration;
- Effectiveness of Energy Infrastructure and Impact Office grants administration; and
- Effectiveness and efficiency of the Department in obtaining, accounting for, and use of resources.

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In January 2018 the State Auditor began coordinating follow-up to two of the three reports. The Energy Infrastructure and Impact Office grants administration was not scheduled for follow-up as the office is being discontinued and the Oil and Gas Impact grants are earmarked funds.

As requested by the Legislative Audit and Fiscal Review Committee, the State Auditor conducted follow-up work on findings to determine whether appropriate corrective actions were taken on the following areas:

Unclaimed Property

1. Finding Property Owners

- | | |
|----------------------------------|------------------------------|
| 1-1 On-line Search Results | 1-13 Processing Claims |
| 1-2 Locate Owners of Property | 1-14 Claim Fees |
| 1-7 Property Information Correct | 1-15 State Agencies Claiming |
| 1-10 Aggregate Reporting | |

2. Accepting and Maintaining Property

- | | |
|-----------------------------------|----------------------------|
| 1-6 Early Acceptance of Property | 1-11 Protecting Property |
| 1-8 Safe Deposit Boxes | 1-12 Sensitive Information |
| 1-9 Timeliness Safe Deposit Boxes | 1-16 Property Sales |

3. Compliance with Unclaimed Property Laws

- | | |
|--------------------------------|----------------------|
| 1-3 Audits of Property Holders | 1-5 Annual Reporting |
| 1-4 Training and Information | |

Trust Assets and Department Resources

1. State Land Records

- | | |
|-------------------------------|-----------------------------|
| 1-1 Trust Assignment | 1-7 Monitor Acreage Changes |
| 1-2 Correct Interest in Wells | 4-1 IT Systems |

2. Management of State Land and Royalty Collections

- | | |
|-------------------------------|--------------------------------|
| 1-3 Royalty Allocation | 1-8 FMV Lease of Land |
| 1-4 Royalty Reporting | 1-9 On-line Auctions |
| 1-5 Interest on Late Payments | 1-10 Surface Tract Inspections |
| 1-6 Assessing Penalties | 2-4 Allocating Expenses |

3. Management of Department

- | | |
|-------------------------------------|-----------------------------------|
| 3-1 Hiring | |
| 3-2 HRMS Best Practices | 4-2 & 4-3 Policies and Procedures |
| 3-3 Veterans Preference | 4-4 Management Monitoring |
| 3-6 Performance Evaluations | 4-5 State Archives |
| 3-7 Improve Performance Evaluations | |

A final report, Performance Audit Follow-Up Report No. 3036.1, was issued on May 25, 2018 and presented to the Board on May 31, 2018. On June 27, 2018, the State Auditor presented the final report to the Legislative Audit and Fiscal Review Committee.

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INVESTMENTS

In early 2013, the investment consultant firm, R.V. Kuhns (now known as RVK), was hired through a competitive hiring process by the Board to submit a written report addressing the following issues:

1. Recommendations for a comprehensive evaluation and rewrite of the Board's investment policies and procedures for the permanent trust funds that would help state and ensure long-term goals and objectives for the permanent trust funds.
2. A recommendation of an asset allocation policy for the permanent trust funds that, while recognizing the Board's risk tolerance and return expectations, balanced the Board's responsibilities under North Dakota law to:
 - a. Support the trust beneficiaries;
 - b. Maintain the permanent strength of the fund; and
 - c. Follow the prudent investor rule
3. A recommendation as to the most appropriate way to transition the permanent trust funds from the then current asset allocation plan to the recommended asset allocation plan.
4. An analysis of the costs associated with the recommended asset allocation plan, including performance monitoring and measurement services. This analysis would include an evaluation of various implementation scenarios, including
 - a. An ultra low cost investment approach;
 - b. A more traditional plan sponsor/investment /consultant approach; and
 - c. An outsourced Chief Investment Officer (including SIB) approach.
5. An analysis of the management of cash and cash-like funds that are not part of the permanent trust fund responsibilities of the Board, in particular, the SIIF.

In January 2014, the Board entered into another agreement with RVK to implement the recommendations that came out of RVK's 2013 investment study and to provide performance monitoring services to the Board.

In July 2015, after reviewing the pros and cons of a potential partnership with the SIB, the Board voted four-to-one to continue to actively manage the permanent trusts' investment program through Department staff with the assistance of a retained investment consultant, while also working with the SIB to minimize costs and fees, and to improve efficiencies.

The Commissioner continues to work closely with SIB when negotiating money managers and service provider fees to ensure that both entities are getting the best possible fees, based on the cumulative assets involved. This has resulted in significant fee savings for both entities in the past 20 years.

Both the Department and SIB pay investment fees that are directly related to the risk tolerance and asset allocation of the funds. Comparing the fees paid by both the Department and SIB is possible but not based upon the current reports provided to the respective boards. These reports contain differing data points which does not allow for a direct comparison. The Department is currently working with SIB to provide this information.

Investment Fees

- During FY 2018 the permanent trust funds paid \$25,081,670 in investment related expenses (includes investment manager fees, custodial expenses, and general consultant expenses); this is an increase of 19.5% over the \$20,993,639 of fees paid in FY 2017. Average assets

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increased by 11.8% during the same period, from \$3.91 billion in FY 2017 to \$4.37 billion in FY 2018. The primary driver of the increase in trust fees is a result in the growth of the permanent trust funds; however, increased incentive fees also played a role.

- Incentive fees totaling \$5,819,245 were paid during FY 2018 due to the strong performance of the permanent trust fund's real estate portfolio; this equals 13.3 bps on the average value of total trust assets during FY 2018, or 23.1% of the total cost to management the permanent trust fund's investment program. Incentive fees totaled \$3,513,737 during FY 2017, the equivalent of 9.0 bps and 16.8% of the total cost to manage the program. Managers who received incentive fees added \$21.4 million of net excess return over the NCREIF ODCE Index during FY 2018.
- The pooled investments of the SIIF, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$146,372 of investment management expenses during FY 2018, down from \$214,894 of management fees paid in FY 2017. In both cases this represents 6 bps on average trust assets. This decline in fees is due to the decrease in the average assets under management from FY 2017 to FY 2018.

Permanent Trust Fund Pool

TABLE 1	2014	2015	2016	2017	2018
Manager Fees	\$8,295,916	\$11,755,957	\$16,026,712	\$20,679,283	\$24,750,026
Custodial Fees	164,440	283,925	190,257	169,356	183,019
Consultant Fees	227,000	114,000	147,917	145,000	148,625
Total Fees	\$8,687,356	\$12,153,882	\$16,364,886	\$20,993,639	\$25,081,670
Total Fee (in bps)	30.2	35.5	46.3	53.7	57.4
Incentive Fees			\$ 1,375,889	\$ 3,513,737	\$ 5,819,245
Incentive Fees (in bps)			3.9	9.0	13.3
Total Fees Ex Incentives	\$8,687,356	\$12,153,882	\$14,988,997	\$17,479,902	\$19,262,425
Total Fee Ex Incentives (in bps)	30.2	35.5	42.4	44.7	44.1
Avg. Assets (\$ billion)	\$ 2.90	\$ 3.42	\$ 3.53	\$ 3.91	\$ 4.37

Table 1 summarizes the amount and effective rate of investment related expenses paid to manage the permanent trust funds for each of the past five fiscal years. The increase in fees over the past five years is a result of several factors. During FY 2015 and FY 2016, the Board implemented a new strategic asset allocation for the permanent trust funds. Three of these strategic asset allocation strategies (real estate, absolute return, and diversified inflation) required active investment which resulted in higher overall fees than the historically more passive, low cost strategy. Approximately 4 bps from FY 2015 to FY 2016 were related to incentive fees on real estate.

From FY 2016 to FY 2018, expenses increased by \$8.7 million, of which \$4.4 million was a result of an increase in incentive fees paid to real estate portfolio managers. The remaining balance of \$4.3 million is due to trust growth, with a small portion of the increase due to minor changes made to the permanent trust funds' asset allocation and investment structure over the past two years.

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Table 1 also breaks out incentive fees paid for the past three years from the base cost (excluding incentive fees) of managing the investment program; it demonstrates that the base cost of managing the program has remained stable since the permanent trust funds' current asset allocation was fully implemented in 2016. The minor increase in base costs during FY 2017 was a due to the real estate portfolio not being fully funded until June 30, 2016. The slight decrease in base costs during FY 2018 was driven by the addition of a low-cost mid-cap index fund to the permanent trust funds' equity mix and other minor structural changes to the portfolio. Fees charged for some of the commingled funds in which the permanent trust funds invest have also declined slightly.

The major factor in increased cost structure for the permanent trust funds over the past three years has been the incentive fees. In many cases, performance fees are based on a fund's performance over a period of time, not just one year. This results in incentive fees being paid even when the fiscal year performance has not been strong. For example, in FY 2018 UBS earned a small incentive fee even though performance for the fiscal year was slightly below the benchmark NCREIF ODCE Index.

SIIF/Coal/Capitol Investment Pool

The assets of the SIIF, Coal Development Trust Fund, and Capitol Building Trust Fund are pooled together and invested in a very short duration fixed income strategy with Northern Trust, the NTI Ultra Short Extended portfolio. This investment pool has a fee schedule that charges 6 bps on the first \$500 million, 5 bps on the next \$500 million, and 4 bps thereafter. No custody fee is paid for this account.

During FY 2018, fees totaling \$146,372 were paid on an average balance of \$269.6 million in this account. During FY 2017, total fees were \$214,894, while the average asset balance was \$335.3 million. The asset balance of this account never exceeded \$500 million during these two years due to large cash flows through this account and delays in the billing cycle, thus the fee paid was a straight 6 bps each fiscal year. The decline in fees during FY 2018 was due to a decline in assets under management.

IT UPDATE

The Commissioner is working with Information Technology (IT) staff to better understand current technology systems and how they can meet the Department's complex needs. As vendors are selected for systems for the various divisions, an analysis of continued needs for user manuals for current technology systems will be evaluated. Severe limitations in the current IT system including redundant manual processes, many of which were highlighted in the 2016 performance audit, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts potential improvements.

In planning for replacement of the IT system, a business process modeling contractor, Major Oak, was hired in 2016 to identify and document processes and to recommend efficiencies for most operations. Major Oak helped document current state processes for all functional areas of the Department. This was followed by preparation of a model of future-state suggestions to further enhance controls, increase efficiencies, and boost productivity. The Department is continuing to

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work with Major Oak to assist in the procurement process and to ensure the new software systems result in implementation of significant efficiencies.

A collaborative planning effort is underway with the Information Technology Department (ITD) for project management, the Office of Management and Budget (OMB) or procurement, and the Executive Steering Committee (ESC) as required by N.D.C.C. § 54-59-32 for major IT projects. The ESC includes a project sponsor, the director of OMB (or designee), the state Chief Information Office (or designee), the Commissioner, and a large project oversight analyst designated by the State Chief Information Officer.

To date, the Department has contracted with Kelmar Associates, LLC, (Kelmar) to provide a software system to assist with the management and administration of unclaimed property. With substantial knowledge of unclaimed property departments across the United States, Kelmar is able to work closely with the Department in creating system tools and process workflows.

The Department is currently involved in the procurement process for a Financial Management and Accounting (FMA) system. A Proof of Concept contract is being negotiated with the intention of awarding a full contract in the summer of 2019. Once the Department approves the Proof of Concept for a FMA system, the Department will be able to begin the procurement process for a Land Management System which is anticipated to begin in April 2019.

The Department's 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013 of the 65th Legislative Assembly. A spending update is as follows:

Spent through January 31, 2019 - \$112,617

Estimated spending through the end of the biennium (February 1 to June 30) - \$800,764

Estimated amount remaining to be carried over into the 2019-21 biennium - \$2,686,620

MAJOR COMPONENTS OF 2019-2021 BUDGET

The major components of the Department's budget are appropriated from special funds derived from the state lands maintenance fund, authorized under N.D.C.C. § 15-03-01.1, which provides:

There is created a special fund designated as the state lands maintenance fund, which is funded by the trust fund assets under the control of the board of university and school lands. All expenses paid out of the state lands maintenance fund are subject to legislative appropriation.

Funds are periodically transferred from the various trusts and programs managed by the Department to the maintenance fund to pay for administrative costs.

Costs that cannot be directly charged are allocated to the various trusts and programs managed by the Department based each trust or funds:

- FTEs' time allocation;
- Financial assets held;
- Mineral acreage owned; and
- Surface acreage owned.

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Costs that can be attributed to a specific trust or program are charged directly to that trust or program when possible. Examples of direct expenses include tract survey expenses, rent credits, and litigation involving minerals under navigable waters.

The Department also has continuing appropriation authority under N.D.C.C. §§ 15-04-24 and 15-07-22 for certain expenses related to managing and enhancing the value of assets under the Department's control. N.D.C.C. § 57-02.3-07 authorizes continuing appropriation authority for payments made in lieu of property taxes.

EIIO salaries and operations are funded directly from the Energy Infrastructure and Impact fund.

Funds that are received by the Unclaimed Property Division are maintained in a separate account to pay owner claims and expenses; the income from the net proceeds benefits the CSTF, which supports educational funding. N.D.C.C. § 47-30.1-23 contains continuing appropriation authority for:

- a. Any costs in connection with the sale of abandoned property;
- b. Costs of mailing, publication, and outreach efforts in connection with any abandoned property;
- c. Reasonable service charges;
- d. Costs incurred in examining records of holders of property and in collecting the property from those holders;
- e. Funds for the payment of claims; and
- f. Funds for the payment of holder refunds.

The following major components are included in the Department's 2019-2021 budget:

- Salaries and wages
- Operating expenses
- Contingencies

	2019-21 Budget Request	2017-19 Appropriation	2015-17 Appropriation	2013-15 Appropriation
Salaries and Wages	\$5,248,081	\$6,005,550	\$6,131,344	\$5,265,556
Operating Expenses	\$1,762,623	\$1,775,723	\$2,019,637	\$1,975,863
Contingencies	\$100,000	\$100,000	\$100,000	\$200,000
TOTAL	\$7,110,704	\$7,881,273	\$8,250,981	\$7,441,419

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Funds for the major components support the Board and Department's primary focus, which is managing permanent trust assets to fund education and other governmental functions. Revenues are invested in a diversified portfolio of financial assets that are managed by the Board as a permanent endowment. Revenues over the past three years are lower than they were during FY 2013-2015; however, revenues have stabilized and continue to provide increased distributions from the trusts. In the 2019-2021 biennium trust distributions will increase by \$82,647,297, a 27% increase. The distributions per trust can be seen in the chart below:

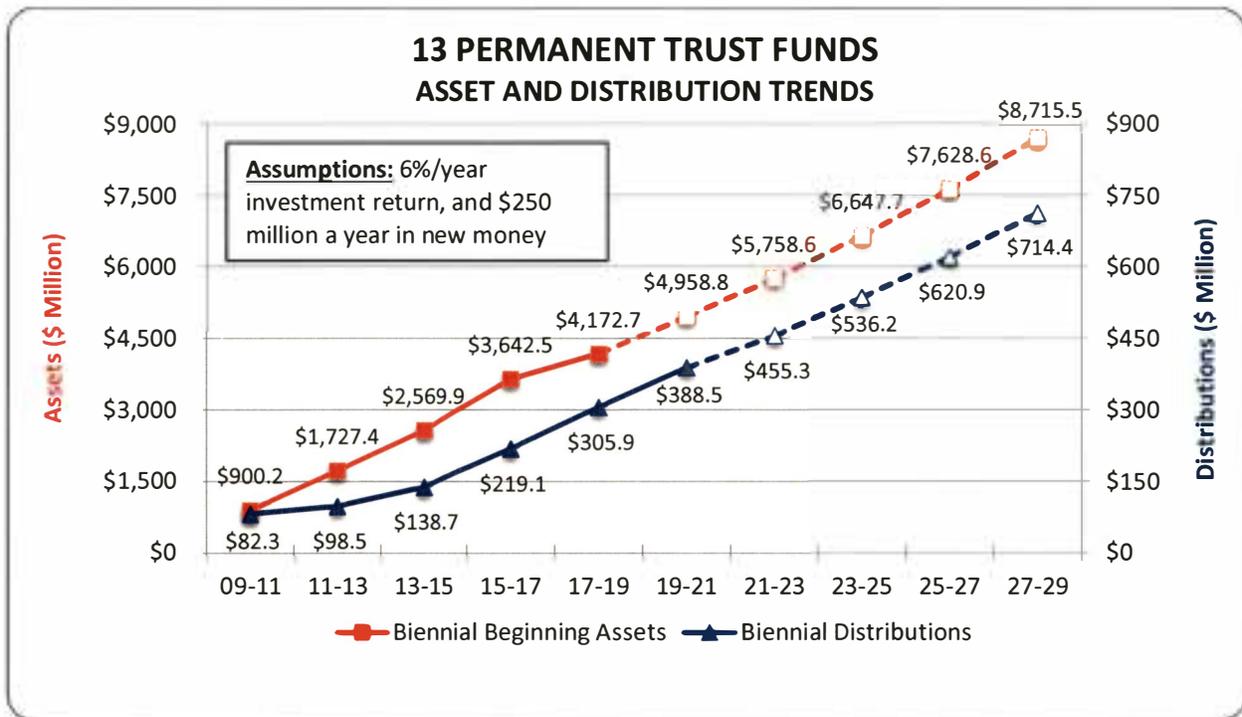
<u>Trust</u>	<u>2019-21 Biennium</u>	<u>2017-19 Biennium</u>	<u>Percentage of Change</u>	<u>Change in Distribution</u>
Common School	\$ 366,756,000	\$ 288,264,000	27.2%	\$ 78,492,000
<i>Permanent Funds:</i>				
ND State University	\$ 5,916,000	\$ 4,738,000	24.9%	\$ 1,178,000
ND School for the Blind	\$ 880,000	\$ 654,000	34.6%	\$ 226,000
ND School of the Deaf	\$ 1,898,000	\$ 1,598,000	18.8%	\$ 300,000
ND State Hospital	\$ 1,328,000	\$ 1,184,000	12.2%	\$ 144,000
Ellendale *	\$ 1,694,000	\$ 1,931,889	(12.3%)	\$ (237,889)
Valley City State University	\$ 1,034,000	\$ 808,000	28.0%	\$ 226,000
Mayville State University	\$ 668,000	\$ 542,000	23.2%	\$ 126,000
Youth Correctional Center	\$ 1,864,000	\$ 800,814	132.8%	\$ 1,063,186
ND State College of Science	\$ 1,494,000	\$ 1,260,000	18.6%	\$ 234,000
School of Mines **	\$ 1,746,000	\$ 1,444,000	20.9%	\$ 302,000
ND Veterans Home	\$ 490,000	\$ 436,000	12.4%	\$ 54,000
University of ND	\$ 2,758,000	\$ 2,218,000	24.3%	\$ 540,000
Total Permanent Funds	\$ 21,770,000	\$ 17,614,703	23.6%	\$ 4,155,297
Total Distributions	\$ 388,526,000	\$ 305,878,703	27.0%	\$ 82,647,297

* In 1972, House Concurrent Resolution 3045 was approved removing the Ellendale Branch as a branch of the University of North Dakota. In 1973, House Bill 1052 was passed to reallocate the grant lands and other assets of the Ellendale fund, maintained by the Department, in equal portions to:

- Dickinson State University
- Minot State University
- Dakota College at Bottineau
- North Dakota School for the Blind
- North Dakota Veterans Home
- North Dakota State Hospital
- North Dakota State College of Science

** Benefits of the original grant to the School of Mines are distributed to the University of North Dakota.

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PROPOSED BUDGET REDUCTIONS

The Department's special fund request limit for the 2019-2021 biennium is \$7,110,704. This reflects a 10% reduction from the Department's legislatively authorized ongoing special fund appropriation for the 2017-2019 biennium, plus an adjustment for the ITD rate increases. The Department's 2019-2021 base budget FTE amount is 27.00. This meets the required 5% reduction from the Department's 2017-2019 authorized FTE level and totals a 13% reduction in FTEs. The decrease in operating expenses combined with the decrease in FTE's meets the required 10% reduction in budget.

While operational expenses were reduced, additional expenses were included due to implementation of administrative rules and increased legal fees. The necessary increase in operational expenses put additional pressure on the Department in reducing its budget by 10%. The Department's 2017-2019 budget reflected 76% of expenses were salaries and wages. In order to meet the requested 10% reduction in expenses, the Department had to reduce an additional three FTEs in addition to the one required FTE reduction. In total, four FTEs were eliminated to meet the requested budget requirements. Additionally, as outlined in the table below, significant increases in Operating Expenses through ITD services, Operating, Professional Services, and Repairs are necessary. The increase in some of the operating expenses translates into additional reductions in not only FTEs, but also reductions in funds available for Office Equipment, IT Software and Services, Operating Fees and Services, Professional Development, Rent and Travel.

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	2019-21 Base Budget Request	2017-19 Appropriation	Percentage of Change
Salaries and Wages	\$5,248,081	\$6,005,550	(12.61%)
Operating Expenses	\$1,762,623	\$1,775,723	(0.74%)
Contingencies	\$100,000	\$100,000	0.00%
TOTAL	\$7,110,704	\$7,881,273	(9.78%)

	2019-21 Budget Request				Executive Recommendation
	2017-19 Appropriation	Base Budget Request	Optional Budget Request	Total Budget Request	
SALARIES AND WAGES	\$6,005,550	\$5,248,081	\$391,094	\$5,639,175	\$5,790,588
OPERATING EXPENSES	\$1,775,723	\$1,762,623	\$608,970	\$2,371,593	\$2,784,043
<i>Specific Operating Increases(Decreases):</i>					
<i>ITD Contractual Services</i>		25,000			
<i>Operating</i>		30,013			
<i>Professional Services</i>		384,564			
<i>Repairs</i>		41,334			
<i>IT & Office Equipment</i>		(75,493)			
<i>IT Software</i>		(16,027)			
<i>ITD Services</i>		(25,253)			
<i>Operating Fees & Services</i>		(241,525)			
<i>Professional Development</i>		(45,043)			
<i>Rent</i>		(19,420)			
<i>Travel</i>		(71,250)			
CONTINGENCIES	\$100,000	\$100,000		\$100,000	\$100,000
TOTALS	\$7,881,273	\$7,110,704	\$1,000,064	\$8,110,768	\$8,674,631
FTE	31	27	2	29	28
CAPITAL ASSETS (comprehensive IT upgrade)	\$3,600,000	\$3,600,000		\$3,600,000	\$3,600,000
Grants	\$40,000,000				

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The Department reduced its base budget by four FTEs including Programmer Analyst, Administrative Assistant, Audit Technician, and Administrative Staff Officer. Through the ITD unification project, an additional FTE was “pulled” from the budget which brought the FTE count to 26. The addition of two FTEs through the Governor’s Executive Recommendation will keep the Department at 28 FTEs.

Biennium	FTE	Assets
11-13	25	\$3.7 B
13-15	31	\$4.6 B
15-17	33	\$4.7 B
17-19	31	\$5.1 B *

* as of June 30, 2018

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

The Coal Development Impact Office was created by the 1979 Legislative Assembly under N.D.C.C. ch. 57-62. In 1981, it became the Energy Development Impact Office and on July 1, 1989, became a division within the office of the Commissioner of the Board of University and School Lands. During the 2011 Legislative Assembly, it became the EIO, with the purpose of providing financial assistance to oil and gas development-impacted political subdivisions of government.

The EIO receives a portion of the oil and gas gross production tax (gross production tax) deposited into the Oil and Gas Impact Grant Fund. The amount of funding available to this program was \$8 million in the 2009-2011 biennium, funding increased to \$135 million in the 2011-2013 biennium, and funding increased again for the 2013-2015 biennium when \$240 million was appropriated to the Oil and Gas Impact Grant Fund. The appropriation for the 2015-2017 biennium was \$140 million; however, a sharp drop in gross production tax collections resulted in severely reduced revenues. The deposits into the Oil and Gas Impact Grant Fund fell sharply, from nearly \$7 million per month in the summer of 2015 to \$135,000 in April 2016. The reduced revenues limited the Board’s ability to proceed with awarding grant priorities provided in the 2015 legislative allocations. The Board suspended further grant awards in February 2016 and it was not until December 2016 that gross production tax collections were sufficient to provide for grants. By the end of the 2015-2017 biennium only \$56 million, or approximately 42 percent of the 2015 legislative allocations, was granted.

In April 2017, the Legislative Assembly appropriated \$40 million of grant funding for the Williston and Dickinson airports out of two separate grant funds; \$25 million from the Oil and Gas Impact Grant Fund, and \$15 million from a newly created Energy Impact Grant Fund. The statute assigned the new Energy Impact Grant Fund responsibility to the State Treasurer’s Office. The Department now has to manually track these grants as the funds come from the State Treasurer, and funds balances cannot be generated through internal software. All reimbursements, therefore, must be processed manually and cannot be direct deposited into the grantee’s bank account. Recently one manually processed check was sent to Sloulin Field for \$1,783,057.78 in an overnight courier package.

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The 2017 session also included a re-appropriation of \$700,000 for Human Trafficking, \$500,000 to the North Dakota Attorney General's Office for Statewide Automated Victim Information Network operations, and \$261,000 to remove debt from a developmentally disabled provider serving the communities of Stanley, New Town, and Tioga. The legislation required the developmentally disabled provider's funds be paid with a higher priority than all remaining appropriations from the 2015-2017 biennium.

When the Board reviews applications to determine grant awards, a number of criteria are considered, including:

- Objective;
- Project readiness and timeline for completion;
- Impact of energy activity;
- Health, welfare, and safety of citizens where the project contributes to sustained economic development or activity;
- Budget and other available funding;
- Completeness of the application; and
- Any other criteria deemed relevant by the advisory committee, board or director.

The Board established several advisory committees to assist with award prioritization and recommendations based on legislative appropriations. Advisory committees include community members who are vetted for their experience within the grant sector, are of good character and practices, seek to follow objectives and not personal gain, and work with others for the greater good. Each grant's advisory committee considers the grant criteria, eligibility, and application guidelines, and all meetings are conducted under the Open Meetings Laws. Grants are reviewed and approved through a process of consensus, not a majority vote. Any dissension is worked through as a whole until concerns are addressed and compromises are reached. The EIO staff facilitates the process as a nonvoting member.

The following Advisory Committees were formed to make recommendations for the Board's final consideration:

- 1) Critical Access Hospitals Advisory Committee -- comprised of hospital administrators, a representative of the North Dakota Hospital Association, and a representative of the North Dakota Department of Health (Health Department);
- 2) Law Enforcement Advisory Committee -- comprised of the Attorney General's Drug and Violent Crime Policy Board;
- 3) K-12 Schools Advisory Committee -- comprised of superintendents from several school districts;
- 4) Airports Advisory Committee -- comprised of members of North Dakota Aeronautics Commission;
- 5) Fire Districts Advisory Committee -- comprised of select regional fire chiefs and a representative of the State Fire Marshal's Office;
- 6) Emergency Medical Services (EMS) Advisory Committee -- comprised of select EMS leaders and a representative of the Health Department;
- 7) Nursing Home/Home Health Advisory Committee -- comprised of administrators of various long term care facilities and the executive director of the North Dakota Long Term Care Association;
- 8) Domestic Violence Shelter Advisory Committee -- comprised of experts within the field, the Health Department, and Department of Commerce; and

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- 9) District Health Unit Advisory Committee -- comprised of representatives of the ND Association of Counties, Health Department, and three district health units.
- 10) General Grant Advisory Committee – comprised of county commissioners, city mayors, emergency managers, and a representative of the Department of Transportation (ND-DOT).

Human Trafficking and Law Enforcement grants require detailed collaborative efforts between the EIIO and the Bureau of Criminal Investigation (BCI) due to combined state and federal funding requirements.

Legislative distribution and intent for the various sectors is intentionally broad; thus, the Department and assigned committees utilize discretion when interpreting the intent, with the ultimate goal of assigning funds to the most vital projects.

Unused funds from each project are collected by the EIIO when a grant award is retired. Since January 2017, the EIIO has collected \$3.5 million to be reutilized for projects in a Contingency Grant advertised quarterly beginning in January 2018. The Board authorized up to \$3 million for any future emergent need, directly impacted by current oil or gas development activities, and has unanticipated costs that can be offset by these grant funds. The Contingency Grant Fund is available to offset costs for any emergency or unanticipated event directly caused by oil and gas impacts since December 2017.

The State Auditor's Office requires that public funds be managed with a reporting system where grantees submit updated project data to the EIIO on a semi-annual basis. From these reports, the EIIO analyzes shortages or obstacles encountered by each grantee, tracks each grant's status, and responds if necessary.

Additionally, the EIIO selects grant holders (based on geographic location) in various grant sectors and conducts a thorough site visit. As a result of the collaborative effort with BCI, information from law enforcement site visits is shared with BCI to reduce duplicated efforts.

Since 2011, all grant funds have been awarded per legislative intent. During the past two biennia, when completed grants have remaining funds the EIIO has been able to award those to other grantees across western North Dakota. Reimbursement grant funding allows for the EIIO to redirect unused funds; whereas, distributed funds cannot be reallocated.

As of January 14, 2019, there were 91 active grants:

- 4 from FY 2014
- 10 from FY 2015
- 14 from FY 2016
- 8 from FY 2017
- 38 from FY 2018 (awarded in Fall 2017)
- 17 from FY 2019

Efficiencies gained from operating the past five years have enabled the EIIO to reduce the budgetary impact for salary and operations funding from \$700,000 per biennium to \$400,000 per biennium. The funds in that budget line item include advisory group travel reimbursements, facility space and utilities, salary dollars, printing and other administrative costs, as well as employee travel to conduct project site visits and public meetings in regional locations of western North Dakota.

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BIENNIUM	ADMIN/OPERATION	
	APPROPRIATION	EXPENDED
2011-2013	Within grant funding	\$243,371
2013-2015	\$700,826	\$611,410
2015-2017	\$700,000	\$573,242
2017-2019	\$0*	\$253,100*

*Note = \$0 was appropriated for the tasks necessary to operate the EIO, however a \$400,000 budget was submitted to OMB. As of December 31, 2018, \$253,100 has been expended.

In the current biennium no line-item budget authority existed for operations and administrative costs; however, remaining unused funds from prior biennia was authorized. Working in collaboration with OMB, the EIO established a budget of \$400,000 for the current biennium.

The EIO intends to purchase an off-the-shelf grant management software. With this new software the efficiencies of the EIO will reduce the need for a large budget for operations and administrative costs. We believe that \$300,000 is an appropriate level to sustain the grants program using a modern software package that can support multiple grants and legislative appropriations for western North Dakota. The Department's current software system is from 1992.

The current FTEs and number of staff involved in grant work are as follows:

STAFFING:	FTE assigned to EIO	Indirect FTE
2011-13	1.00	0.50
2013-15	2.00	0.25
2015-17	1.50	0.25
2017-19	0.75	0.25

Strategic Investment and Improvement Fund

The 2011 Legislature created the Strategic Investment and Improvements Fund (SIIF) when it changed the name and purpose of the former Lands and Minerals Trust Fund and directed it receive a portion of oil and gas taxes collected by the State. Mineral revenues from sovereign lands are also deposited into the SIIF monthly. It is anticipated the SIIF will collect close to \$1.08 billion of income during the current biennium, including almost \$855 million of oil taxes, \$188 million of oil and gas royalties, and \$20.8 million of investment income. In July 2018, the Board once again classified \$229,325,049 of this fund as an "Assigned Fund Balance" which is a potential liability that should not be transferred out of the fund until title claims to sovereign land leases are resolved. The amount was derived based on the bonus and royalties collected from the leasing and production of oil and gas interests on sovereign lands and in consideration of associated litigation in these areas. The Assigned Fund Balance also includes the \$100 million of refunding authority provided by the 65th Legislative Assembly in Senate Bill 2134.

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2019-2021 GOVERNOR'S EXECUTIVE BASE LEVEL

In the Governor's executive base level budget, the Governor authorized: (1) the addition of two FTEs into the Department's budget; and (2) a Minerals Assessment.

Addition of Two FTEs

The budget proposed by the Governor included the addition of two FTEs into the Department's budget.

One of the FTEs will fill an Administrative Assistant I position to assist the Department in day-to-day operations. The Department continues to process a growing number of royalty transactions, continued leasing requests, and steady applications for surface easements. The efforts to collect royalties due the State for production of its minerals have become more of a challenge and have prompted litigation. The increase in the number of transactions and funds under the Department's management has impacted all divisions within the Department: Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property and the EIIO. The expansion through the early part of the decade was rapid in terms of both the growth in trust assets and in the Department's workload. The Unclaimed Property Division has seen marked growth in both holder transfers and property claims. The growth in deposits can be attributed to enhanced education and unclaimed royalty proceeds, which have grown substantially as mineral production in the State has expanded. Additional outreach efforts resulted in increased property claims. The EIIO has been active during the current biennium managing previous and current grants. An additional Administrative Assistant would assist the Department in meeting the increasing demands faced by the Department.

The second FTE would allow for an Attorney II to assist the Department in day-to-day operations. The Department manages over 706,000 surface acres, resulting in nearly 3,000 agricultural leases, and 2.6 million mineral acres, with interest in over 6,900 oil and gas wells (this is over one-third of the wells operating in North Dakota). With increased oil and gas activities, over 2,000 right-of ways are issued every biennium. Additionally, the Department's Revenue Compliance Division monitors the nearly 6,900 producing properties and worked on audits of 80 operators. Further, the Unclaimed Property Division collects over \$20 million every biennium, requiring increased outreach efforts which result in increased claims issued to owners and additional audits of holders. Additionally, the Department's Division policies for Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property, and the EIIO require regular legal review, as do Board policies and Board memos. In addition to Departmental policy, Board Policy, and Board memo review, the Department has many general counsel issues that could be resolved by an in house attorney. Those include legality of forms and contracts, questions on easements, review of leases (mineral and agricultural), unclaimed property issues, audits, etc. Much of the Department's regular correspondence requires legal review as most issues could potentially lead to litigation. The Department is currently involved in litigation on a variety of matters. By having an in house counsel, the Department could be proactive and potentially curb litigation. A general counsel could assist in the day-to-day operations of the Department and day-to-day legal issues, leaving the Attorney General's Office to address pending litigation. In addition to the Attorney General's Natural Resources Assistant Attorney General assigned to the Department to manage litigation, the work required to address the Department's day-to-day operations requires a full-time Attorney II FTE.

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Minerals Assessment

The Department has been tasked with providing the State of North Dakota with an estimated value of the mineral assets held in trust by the Board. This estimated value will assist with the overall mission of providing North Dakota's constituents with a comprehensive financial statement.

Any minerals assessment must accurately reflect the value of all mineral assets managed by the Board, including oil and gas, and must be able to be verified and withstand scrutiny. Many of these mineral assets, including oil, gas, and lignite coal, have a quantifiable estimated value but that estimated value is subject to price fluctuation. Additionally, the State owns gravel, sand, potash, scoria, uranium, and other potentially high value assets such as rare earth discovered by the North Dakota Geological Survey. As the mineral assets managed by the Board include approximately 2.6 million acres, the assessment is complicated by its sheer size, variance in geological aspects, and topography.

Additionally, it is important to keep in mind that as a government agency, any estimated value would become subject to and mandated to follow the Governmental Accounting Standards Board (GASB). Therefore, in compliance with GASB's Statement Number 72 – Fair Value Measurement and Application (Statement Number 72), the estimated value would need to appear on the Department's financial statements. As the addition of such a sizable asset will have a significant impact on the State's Comprehensive Annual Financial Report (CAFR), the Department will have to work with the OMB, the State Auditor's Office, and the Department's financial auditing firm to comply with GASB's Statement Number 72. It is reasonable to assume that the addition of the minerals assessment would impact the auditing process and fees on both the Department's financial statements and more significantly, on the CAFR.

FEDERAL FUNDING

The Department does not receive any federal funding.

HOUSE BILL (HB) 1013 AS AMENDED BY THE HOUSE OF REPRESENTATIVES (HOUSE)

Section 1. APPROPRIATION

The Department does not support the amendments as proposed by the House in Section 1 of HB 1013.

Section 2. ONE-TIME FUNDING

The Department approves the amendments as proposed by the House in Section 2 of HB 1013. The proposed one-time funding will support \$4,000,000 for Oil and Gas Impact Grants and \$350,000 for a mineral valuation study.

Section 3. DISTRIBUTIONS TO STATE INSTITUTIONS

The Department approves Section 3 in HB 1013 as presented by the House.

Section 4. TRANSFER – STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO OIL AND GAS IMPACT GRANT FUND

The Department approves Section 4 in HB 1013 as presented by the House.

Section 5. TRANSFER – ENERGY IMPACT FUND TO OIL AND GAS IMPACT FUND

The Department approves Section 5 in HB 1013 as presented by the House.

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Section 6. AMENDMENT

The Department expresses opposition to the amendments that move CSTF and other investments under control of the Board to the State Investment Board (SIB) as proposed in HB 1013, Section 6. As amended, HB 1013 has direct constitutional implications.

Section 7. AMENDMENT

The Department expresses opposition to the amendments that move CSTF and other investments under control of the Board to the SIB as proposed in HB 1013, Section 7. As amended, HB 1013 has direct constitutional implications.

Section 8. REPEAL

The Department approves Section 8 in HB 1013 as presented by the House.

Section 9. OIL AND GAS IMPACT FUND

The Department approves Section 9 in HB 1013 as presented by the House.

Section 10. EXEMPTION – OIL AND GAS IMPACT GRANT FUND

The Board approves Section 10 in HB 1013 as presented by the House.

Section 11. EXEMPTION – INFORMATION TECHNOLOGY PROJECT – REPORT TO INFORMATION TECHNOLOGY COMMITTEE

The Department approves Section 11 in HB 1013 as presented by the House.

Section 12. EFFECTIVE DATE – CONTINGENT EFFECTIVE DATE

The Department expresses opposition to the amendments that move CSTF and other investments under control of the Board to the SIB as proposed in HB 1013, Section 7. As amended, HB 1013 has direct constitutional implications.

CONCLUSION

The Board's responsibility to preserve the trusts and maintain income stability for the trust beneficiaries continues to be met. All permanent and other trust funds remain in strong financial condition and are invested in a safe and prudent manner. Land is prudently managed to provide a fair market rental income. Mineral leasing and development activities continue with strong revenues collected to enhance trust balances.

Unclaimed property continues to be safeguarded and ultimately returned to rightful owners via improved technologies and expanded outreach efforts.

The leasing and production of sovereign minerals has contributed and will continue to contribute to substantial revenues for the SIF to support state-wide infrastructure enhancements.

The future of the trusts and sovereign assets is very bright. I respectfully request your consideration in providing the Department with the means to manage the assets under the Board's control as effectively as possible. We particularly appreciate your consideration of the addition of two FTEs and the minerals assessment.

I look forward to working with the committee to explain the important role of the Board and Department for the State of North Dakota. It is a dynamic time in North Dakota, and the Department is working in the heart of the activity related to energy growth, agricultural success, educating children, safeguarding and returning unclaimed property, and supporting western infrastructure.

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Jodi A. Smith, Commissioner

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

House Bill 1013

**Senate Appropriations Sub Committee
March 21, 2019**

Chairman Wanzek and members of the Senate Appropriations Sub-Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify regarding the Department of Trust Lands' (Department) total special funds appropriation found in House Bill 1013.

The Department is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 additional permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

HOUSE BILL (HB) 1013 AS AMENDED BY THE HOUSE OF REPRESENTATIVES (HOUSE)

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund and the oil and gas impact grant fund in the state treasury to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants	0	4,000,000	4,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$4,127,991	\$12,009,264
Full-time equivalent positions	31.00	(3.00)	28.00

The Department does not support the amendments as proposed by the House in Section 1 of HB 1013.

The major components of the Department's budget are appropriated from special funds derived from the state lands maintenance fund, authorized under N.D.C.C. § 15-03-01.1, which provides:

There is created a special fund designated as the state lands maintenance fund, which is funded by the trust fund assets under the control of the board of university and school lands. All expenses paid out of the state lands maintenance fund are subject to legislative appropriation.

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Funds are periodically transferred from the various trusts and programs managed by the Department to the state lands maintenance fund to pay for administrative costs.

Biennium	FTE	Assets
11-13	25	\$3.7 B
13-15	31	\$4.6 B
15-17	33	\$4.7 B
17-19	31	\$5.1 B *
19-21 Base Budget	27	\$5.9 B **
19-21 Optional Budget	29	\$5.9 B **
19-21 Engrossed	28	\$5.9 B **

* as of June 30, 2018
** estimated

The Department reduced its base budget by four FTEs, including Programmer Analyst, Administrative Assistant, Audit Technician, and Administrative Staff Officer to meet the required 10% reduction from the Department's legislatively authorized ongoing special fund appropriation for the 2017-2019 biennium. Through the Information Technology Department (ITD) unification project, an additional FTE was "pulled" from the budget, bringing the FTE count to 26. With the addition of two FTEs through the Executive Recommendation, the Department will maintain 28 FTEs. The House did not approve the addition of the two FTEs, instead denying the ITD unification project resulting in the loss of key positions not being filled.

The Department is respectfully requesting the Senate approve the ITD unification of one Programmer Analyst and fulfill the Department's request for two additional FTEs, an Administrative Assistant I and an Attorney II.

The Administrative Assistant I FTE will assist the Department in day-to-day operations. The Department continues to process a growing number of royalty transactions, leasing requests, and applications for surface easements. The efforts to collect royalties owing to the State for production of its minerals have become more challenging, prompting litigation. The increased number of transactions and funds under the Department's management has impacted all divisions within the Department: Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property, and the EIO. The rapid expansion, as a result of the oil and gas industry, through the early part of the decade affected both the growth in trust assets and the Department's workload. For example, the Unclaimed Property Division has seen marked growth in both holder transfers and property claims. The growth in deposits can be attributed to enhanced education and outreach efforts and increased unclaimed royalty proceeds, which have grown substantially as mineral production in the State has expanded. Further during the current biennium, the EIO was actively managing previous and current grants. An additional Administrative Assistant I would assist in meeting the increasing demands faced by the Department.

The second FTE would allow for an Attorney II to assist the Department in day-to-day operations. The Department manages over 706,000 surface acres, with nearly 3,000 agricultural leases, and 2.6 million mineral acres, with interest in over 6,900 oil and gas wells (over one-third of the wells operating in North Dakota). With increased oil and gas activities, over 2,000 right-of ways are issued every biennium.

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Additionally, the Department's Revenue Compliance Division monitors the nearly 6,900 producing properties and has worked on audits of 80 operators. Further, the Unclaimed Property Division collects over \$20 million every biennium, requiring increased outreach efforts resulting in increased claims issued to owners and increased audits of holders. Additionally, the Department's Division policies for Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property, and the EIO require regular legal review, as do Board policies and Board memos. In addition to Department policy, Board Policy, and Board memo review, the Department has many general counsel issues that could be resolved by an in-house attorney. Those include addressing the legality of forms and contracts, questions on easements, review of leases (mineral and agricultural), unclaimed property issues, audits, etc. Much of the Department's regular correspondence requires legal review as most issues could potentially lead to litigation.

The Department is currently involved in litigation on a variety of matters. By having in-house general counsel, the Department could be proactive and potentially curb litigation. In-house general counsel could assist in the Department's day-to-day operations and day-to-day legal issues, leaving the Attorney General's Office to address pending litigation. In addition to the Attorney General's Natural Resources Assistant Attorney General assigned to the Department to manage litigation, the work required to address the Department's day-to-day operations requires a full-time Attorney II FTE. The Department budgets over \$350,000 annually for legal fees and the Attorney General's Office bills over 500 hours annually. Plus, approximately 300 hours are billed annually by Special Assistant Attorneys General (SAAGs) assigned to the Department. SAAGs are assigned to the Department for various reasons, including: their expertise, because conflicts of interest may occur with the Board being represented by the assigned Assistant Attorney Generals, or due to the workload of the one Assistant Attorney General currently dedicated to the Department. Allowing the Department to hire an in-house general counsel to assist in the day-to-day operations will save the Department a significant amount of money and increase productivity (this is over \$75,000 through the end of January 2019 for the calendar year). It is important to reiterate that the Department manages significant assets for the State of North Dakota and the Board is a growing multi-billion dollar business. Any business of this significance should have an in-house general counsel whose sole responsibility is to advise the client on business matters.

House amendment also significantly reduced operating expenses. This reduction compromises the Department's ability to maintain the building, meet statutory requirements as they relate to land and mineral management, implement software, and complete other necessary Department functions.

	2019-21 Executive Budget Request	2019-21 Engrossed Budget	Percentage of Change
Salaries and Wages	\$5,790,588	\$5,705,584	-.015%
Operating Expenses	\$2,784,043	\$2,203,680	-.208%
Contingencies	\$100,00	\$100,000	0.00%
TOTAL	\$8,674,631	\$8,009,264	-.077%

Within the budgeted operating expenses, the following amendments were made by the House:

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	2019-21 Base Budget Request	2019-21 Executive Budget	2019-21 Engrossed HB 1013
OPERATING EXPENDITURES			
Travel ***	78,750	(51,250)	(71,250)
Supplies - IT Software ***	13,973	(15,367)	(16,027)
Financial Mgmt/Acct System		175,000	175,000
Office 365 Software		23,342	23,342
Supply/Material - Professional	6,693	(7,608)	(7,608)
Bldg, Grounds, Maintenance**	6,166	1,166	(3,834)
Miscellaneous Supplies	-	(10,315)	(10,315)
Office Supplies ***	15,300	(1,200)	(2,200)
Postage*	22,644	644	
Printing*	35,006	21,379	
IT - Equip Under \$5000 ***	40,367	(32,383)	(35,633)
Other Equipment - Under \$5000*	12,480	4,080	
Office Equip and Furniture Supplies ***	-	(30,260)	(39,860)
Utilities**	49,205	(15,795)	(20,795)
Insurance*	18,140	3,910	
Rentals/Leases - Bldg/Land	80,580	(19,420)	(19,420)
Repairs*	125,372	27,272	
IT - Data Processing ***	139,252	(5,398)	(10,748)
IT - Communications ***	36,724	(12,805)	(14,505)
IT - Contractual Services and Repairs	98,000		
ITD Project Manager		50,000	
IT Unification		389,108	
Professional Development ***	142,290	(35,435)	(37,435)
Operating Fees and Services ***	154,681	(215,209)	(215,319)
Operating Fees and Services ***		30,300	
Fees - Professional Services	687,000		
Legal and Audit Costs		384,564	384,564
Mineral Estate Evaluation		350,000	350,000
<i>Reductions</i>			
* Inflationary Increases			
** Restores Operating Costs			
*** Additional FTE costs			
Totals	\$1,762,623	\$2,784,043	\$2,203,680

The Department needs inflationary increases and several operating costs (i.e., building maintenance, utilities, and services) reinstated to maintain day-to-day operations and to ensure adequate budgeting of necessary building expenses.

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In summary, the Department respectfully requests one Programmer Analyst be transferred to ITD, the addition of two FTE's (Administrative Assistant I and Attorney II) be approved, and that necessary operating expenses be reinstated.

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Information technology replacement project	\$3,600,000	\$0
Airport grants	\$40,000,000	\$0
Mineral revenue repayments	\$187,000,000	\$0
Oil and gas impact grants	\$0	\$4,000,000
Mineral valuation study	\$0	\$350,000
Total special funds	\$230,600,000	\$4,350,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

The Department approves the amendments as proposed by the House in Section 2 of HB 1013. The proposed one-time funding will support \$4,000,000 for Oil and Gas Impact Grants and \$350,000 for a mineral valuation study.

SECTION 3. DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2019, and ending June 30, 2021, the following amounts, from the permanent funds managed for the benefit of the following entities:

Common schools	366,756,000
North Dakota state university	5,916,000
University of North Dakota	4,504,000
Youth correction center	1,864,000
School for the deaf	1,898,000
North Dakota state college of science	1,736,000
State hospital	1,570,000
Veterans' home	732,000
Valley City state university	1,034,000
North Dakota vision services – school for the blind	1,122,000
Mayville state university	668,000

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Dakota college at Bottineau	242,000
Dickinson state university	242,000
Minot state university	242,000
Total	\$388,526,000

The Department approves Section 3 in HB 1013 as presented by the House.

Funds for the major components support the Board and Department's primary focus, which is managing permanent trust assets to fund education and other governmental functions. Revenues are invested in a diversified portfolio of financial assets that are managed by the Board as a permanent endowment. Revenues over the past three years are lower than during Fiscal Year 2013-2015; however, revenues have stabilized and continue to provide increased distributions from the trusts. In the 2019-2021 biennium trust distributions will increase by \$82,647,297, a 27% increase. The distributions per trust can be seen in the chart below:

<u>Trust</u>	2019-21 Biennium	2017-19 Biennium	Percentage of Change	Change in Distribution
Common School	\$ 366,756,000	\$ 288,264,000	27.2%	\$ 78,492,000
<i>Permanent Funds:</i>				
ND State University	\$ 5,916,000	\$ 4,738,000	24.9%	\$ 1,178,000
ND School for the Blind	\$ 880,000	\$ 654,000	34.6%	\$ 226,000
ND School of the Deaf	\$ 1,898,000	\$ 1,598,000	18.8%	\$ 300,000
ND State Hospital	\$ 1,328,000	\$ 1,184,000	12.2%	\$ 144,000
Ellendale *	\$ 1,694,000	\$ 1,931,889	(12.3%)	\$ (237,889)
Valley City State University	\$ 1,034,000	\$ 808,000	28.0%	\$ 226,000
Mayville State University	\$ 668,000	\$ 542,000	23.2%	\$ 126,000
Youth Correctional Center	\$ 1,864,000	\$ 800,814	132.8%	\$ 1,063,186
ND State College of Science	\$ 1,494,000	\$ 1,260,000	18.6%	\$ 234,000
School of Mines **	\$ 1,746,000	\$ 1,444,000	20.9%	\$ 302,000
ND Veterans Home	\$ 490,000	\$ 436,000	12.4%	\$ 54,000
University of ND	\$ 2,758,000	\$ 2,218,000	24.3%	\$ 540,000
Total Permanent Funds	\$ 21,770,000	\$ 17,614,703	23.6%	\$ 4,155,297
Total Distributions	\$ 388,526,000	\$ 305,878,703	27.0%	\$ 82,647,297

* In 1972, House Concurrent Resolution 3045 was approved removing the Ellendale Branch as a branch of the University of North Dakota. In 1973, House Bill 1052 was passed to reallocate the grant lands and other assets of the Ellendale fund, maintained by the Department, in equal portions to:

- Dickinson State University
- Minot State University
- Dakota College at Bottineau
- North Dakota School for the Blind

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- North Dakota Veterans Home
- North Dakota State Hospital
- North Dakota State College of Science

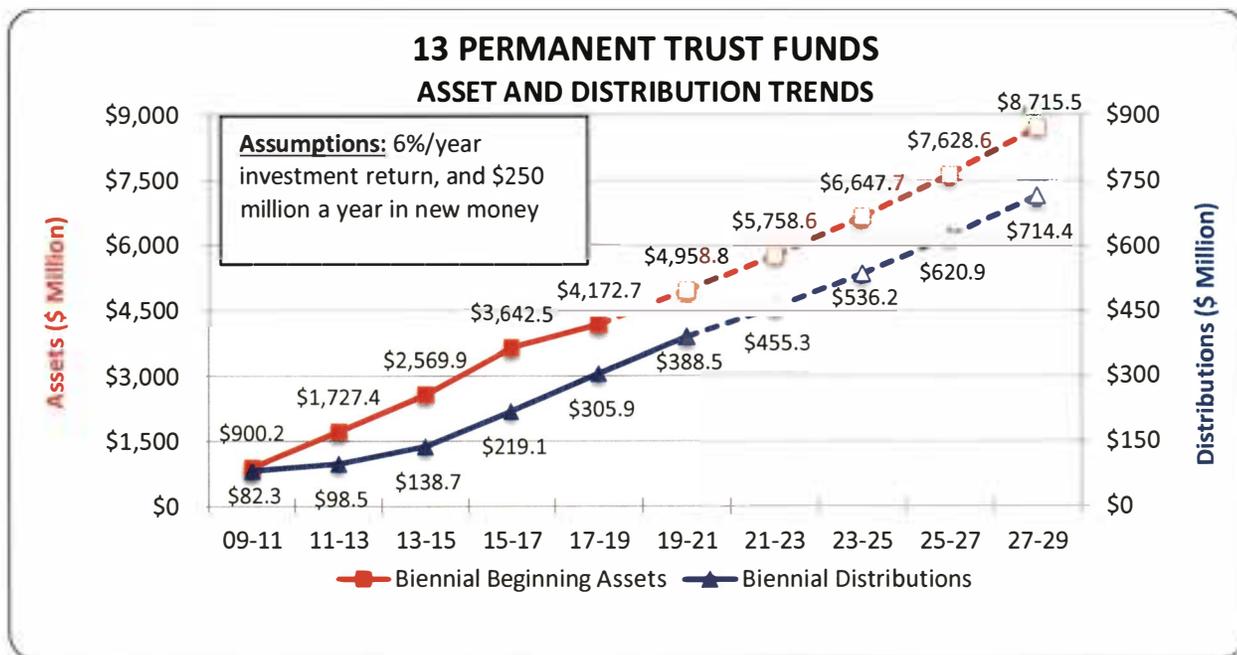
** Benefits of the original grant to the School of Mines are distributed to the University of North Dakota.

Since 2009, permanent trust distributions have been determined using the distribution formula found in Article IX, Section 2 of the North Dakota Constitution. By Board Policy, the fund balances in the annual audited financial statements are used to determine trust ending asset values for distribution purposes.

The 27% average increase in distributions for the next biennium is strong by itself, but when you look at trust distributions since implementation of the new distribution formula for the 2009-2011 biennium, the results have been impactful to education funding across the State.

Biennium	Total Biennial Distributions	% Increase from Previous Biennium
2009-11	\$82.3 million	15.5%
2011-13	\$ 98.5 million	19.7%
2013-15	\$ 138.7 million	40.9%
2015-17	\$ 219.1 million	58.0%
2017-19	\$ 305.9 million	35.9%

The following chart shows trust distributions and trust growth for the past 5 biennia, along with projected distributions for the next 5 biennia. As you can see, distributions could nearly double over the next 10 years, with distributions reaching a projected \$714.4 million during the 2027-2029 biennium.



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The following table shows how the CSTF's distributions have grown from 4% of the cost of K-12 education during the 2009-2011 biennium.

Biennium	Amount Distributed	CS % of Cost of Education	CS \$/Pupil Distribution
2009-11 bi.	\$ 77,178,000	4.0%	\$ 400.96
2011-13 bi.	\$ 92,514,000	4.5%	\$ 461.33
2013-15 bi.	\$ 130,326,000	6.0%	\$ 643.27
2015-17 bi.	\$ 206,134,000	8.6%	\$ 971.69
2017-19 bi.	\$ 288,264,000	11.5%	\$ 1,318.88
	\$ 366,756,000	13.9%	\$ 1,592.35

SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO OIL AND GAS IMPACT GRANT FUND. The office of management and budget shall transfer the sum of \$4,000,000 from the strategic investment and improvements fund to the oil and gas impact grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

The Department approves Section 4 in HB 1013 as presented by the House.

As of March 14, 2019, there are currently 73 active grants funded through the oil and gas impact grant fund totaling \$37,032,678.84. The following two tables detail these grants:

Calendar Year Grant Awarded	Number of Grants Active
2014	3
2015	5
2016	9
2017	7
2018	32
2019	17

Entities	Number of Active Grants	Balances
Airports	33	\$27,453,604.40
Cities and Townships	22	\$7,444,499.95
K-12 Schools	13	\$1,530,181.52
Fire and Emergency Medical Services	5	\$604,392.97

SECTION 5. TRANSFER - ENERGY IMPACT FUND TO OIL AND GAS IMPACT GRANT FUND. The commissioner of university and school lands shall transfer any unexpended funds remaining in the energy impact fund when the fund is repealed on June 30, 2021, to the oil and gas impact grant fund.

The Department approves Section 5 in HB 1013 as presented by the House.

The Energy Impact Fund currently has four active grants totaling \$4,997,365.24 for the Sloulin International Airport located in Williston.

SECTION 6. AMENDMENT. Subsection 2 of section 15-01-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1, which must be made under the supervision of the state investment board pursuant to section 21-10-06 subject to the investing authority provided in law relating to state investments.

The Department expresses opposition to the amendments that move CSTF and other investments under control of the Board to the State Investment Board (SIB) as proposed in HB 1013, Section 6. As amended, HB 1013 has direct constitutional implications.

The complete delegation of the Board's investment authority to the SIB raises constitutional issues. The North Dakota Supreme Court has stated that under the Constitution, the Board has general and full powers regarding the investment of funds on behalf of the CSTF. It is vested with judgment and discretion in the performance of this duty. According to the Court, the great and primary duty of the Board is to safeguard the CSTF under its control and direct the investment thereof to the best advantage.

The amendment to HB 1013 removes all discretion from the Board in making investment decisions on behalf of the CSTF. Any investment would now have to be approved by the SIB. Thus, the constitutional authority granting the Board discretion and judgment in making investment decisions would now be eliminated and essentially transferred to the SIB in contravention to the language and intent of the Constitution.

Moreover, the language in the Constitution providing that all investments shall be made *as provided by law* does not alter the ultimate conclusion that the Board cannot completely delegate its constitutional investment authority to the SIB. In other words, although Board investment decisions are subject to legislative authority, the source of the Board's authority remains the Constitution itself. Were it otherwise, a potentially self-defeating incompatibility would exist between the stated purpose and objective of the CSTF on one hand, and the alleged unbridled authority granted the State Legislature to defeat the strategy by means of creative rules and regulations on the other. Thus, any legislative control over the CSTF must be within the limits of the Constitution and compatible with the Board's fiduciary duties.

Furthermore, it must be presumed that with any statute, the legislative assembly intended the power conferred upon the Board should be exercised only in furtherance of, and in harmony with, the constitutional powers and duties of the Board and not otherwise. It must be presumed that the statute was enacted to enable the Board to better perform its duties.

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For example, N.D.C.C. § 15-03-04 requires the Board to follow the prudent investor rule in making investment decisions. The Board maintains judgment and discretion in making these decisions subject to this rule. Thus, this statute did not alter the Board's primary duty to safeguard the CSTF and can be harmonized with the Board's constitutional authority. As noted previously, however, the revisions to HB 1013 completely shift the authority over investments from the Board to the SIB. The SIB would have supervisory power over any Board investment decision. This is contrary to the law establishing that only the Board has been vested with this constitutional authority and fiduciary duty to protect the CSTF. Thus, any attempt to shift this authority cannot be reconciled with the Constitution or the legal authorities interpreting it.

SECTION 7. A new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code is created and enacted as follows:

Common schools trust fund and other investments under the control of the board of university and school lands.

The Department expresses opposition to the amendments that move the CSTF and other investments under control of the Board to the SIB as proposed in HB 1013, Section 7. As amended, HB 1013 has direct constitutional implications.

SECTION 8. REPEAL. Section 57-51-15.1 of the North Dakota Century Code is repealed.

The Department approves Section 8 in HB 1013 as presented by the House, which would repeal N.D.C.C. § 57-51-15.1, which currently reads as follows:

There is created in the state treasury the energy impact fund. The fund consists of all moneys deposited in the fund under section 57-51-15. The moneys in the fund may be spent pursuant to legislative appropriations.

SECTION 9. OIL AND GAS IMPACT GRANT FUND. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$4,000,000 from the oil and gas impact grant fund for grants to political subdivisions impacted by oil and gas development activities.

The Department approves Section 9 in HB 1013 as presented by the House.

In June 2017, the Board approved the establishment of a contingency grant to utilize undistributed funds from the 2013-2015 and 2015-2017 biennia.

The appointed advisory committee met on December 19, 2017 to establish grant criteria and application requirements. The Board adopted the recommendations by the advisory committee during the January 2018 meeting. Grant applications are submitted and reviewed on a quarterly basis.

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SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amounts previously appropriated from the oil and gas impact grant fund and identified in section 10 of chapter 38 of the 2017 Session Laws related to the oil and gas impact grant fund, including grant awards returned to the fund, are not subject to section 54-44.1-11. Any unexpended funds are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

The Board approves Section 10 in HB 1013 as presented by the House.

Efficiencies gained from operating the past five years has enabled the EIIO to reduce the budgetary impact for salary and operations funding from \$700,000 per biennium to \$400,000 per biennium. The funds in that budget line item include advisory group travel reimbursements, facility space and utilities, salary dollars, printing and other administrative costs, as well as employee travel to conduct project site visits and public meetings in regional locations of western North Dakota.

	Grants	Operating	Operating
<u>Biennium</u>	<u>Appropriation</u>	<u>Appropriation</u>	<u>Expended</u>
2011-13	\$104,778,269	\$354,731	\$155,960
2013-15	\$239,299,174	\$700,826	\$611,410
2015-17	\$139,300,000	\$700,000	\$573,242
2017-19	\$ 40,000,000	\$0	\$191,649 (as of 2/28/2019)

*Note = \$0 was appropriated for the tasks necessary to operate the EIIO; however a \$400,000 budget was submitted to the Office of Management and Budget (OMB). As of December 31, 2018, \$253,100 had been expended. Approximately 26% of operating appropriation is spent on salaries and benefits. The largest fixed cost EIIO has, and will continue to incur with funding being allocated to grants, is for ITD services (Connect ND, phone, technology fee, etc.). ITD charges are 95% of operating costs (approximately \$1,500 per month or \$36,000 per biennium).

In the current biennium, no line-item budget authority existed for operation and administrative costs; however, use of remaining unused funds from prior biennia was authorized. Working in collaboration with OMB, the EIIO established a budget of \$400,000 for the current biennium.

Currently, there are \$2,298,832 that were not awarded so these funds can be used for operating expenditures and new grants. We believe that \$300,000 is appropriate to sustain the grants program.

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SECTION 11. EXEMPTION - INFORMATION TECHNOLOGY PROJECT - REPORT TO INFORMATION TECHNOLOGY COMMITTEE. The \$3,600,000 appropriated from the state lands maintenance fund and identified in sections 1 and 12 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11, and any unexpended funds are available to complete the information technology project during the biennium beginning July 1, 2019, and ending June 30, 2021. During the 2019-20 interim, the commissioner of university and school lands shall provide at least one report to the interim information technology committee regarding the status of the information technology project.

The Department approves Section 11 in HB 1013 as presented by the House.

The Commissioner is working with Information Technology (IT) staff to better understand current technology systems and how they can meet the Department's complex needs. As vendors are selected for systems for the various divisions, an analysis of continued needs for user manuals for current technology systems will be evaluated. Severe limitations in the current IT system, many of which were highlighted in the 2016 performance audit and include including manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts potential improvements.

In planning for replacement of the IT system, a business process modeling contractor, Major Oak, was hired in 2016 to identify and document processes and to recommend efficiencies for most operations. Major Oak helped document current state processes for all functional areas of the Department. This was followed by preparation of a model of future-state suggestions to further enhance controls, increase efficiencies, and boost productivity. The Department is continuing to work with Major Oak to assist in the procurement process and to ensure the new software systems result in implementation of significant efficiencies.

A collaborative planning effort with ITD is underway for project management, OMB for procurement, and the Executive Steering Committee (ESC) as required by N.D.C.C. § 54-59-32 for major IT projects. The ESC includes a project sponsor, the director of OMB (or designee), the state Chief Information Officer (or designee), the Commissioner of University and School Lands, and a large project oversight analyst designated by the State Chief Information Officer.

The Department is under contract with Kelmar Associates, LLC, (Kelmar) to provide a software system to assist with the management and administration of unclaimed property. With substantial knowledge of unclaimed property departments across the United States, Kelmar is able to work closely with the Department in creating system tools and process workflows.

The Department is currently involved in the procurement process for a Financial Management and Accounting (FMA) system. A Proof of Concept contract is being negotiated with the intention of awarding a full contract in the summer of 2019. Once the Department approves the Proof of Concept for a FMA system, the Department will be able to begin the procurement process for a Land Management System, which is anticipated to begin in April 2019.

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The Department's 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013 of the 65th Legislative Assembly. A spending update is as follows:

Spent through January 31, 2019 - \$112,617

Estimated spending through the end of the biennium (February 1 to June 30) - \$800,764

Estimated amount remaining to be carried over into the 2019-21 biennium - \$2,686,620

SECTION 12. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 6 and 7 of this Act become effective on July 1, 2021, or earlier if the commissioner of board and university and school lands notifies the legislative council that the board of university and school lands approved, by a majority vote, transferring the board of university and school lands' investments to the state investment board. Section 8 of this Act becomes effective on June 30, 2021.

The Department expresses opposition to the amendments that move CSTF and other investments under control of the Board to the SIB as proposed in HB 1013, Section 12. As amended, HB 1013 has direct constitutional implications.

CONCLUSION

The Board's responsibility to preserve the trusts and maintain income stability for the trust beneficiaries continues to be met. All permanent and other trust funds remain in strong financial condition and are invested in a safe and prudent manner. Land is prudently managed to provide a fair market rental income. Mineral leasing and development activities continue with strong revenues being collected to enhance trust balances.

Unclaimed property continues to be safeguarded and ultimately returned to rightful owners via improved technologies and expanded outreach efforts.

The leasing and production of sovereign minerals has contributed to, and will continue to contribute to, substantial revenues for the Strategic Investment and Improvements Fund to support state-wide infrastructure enhancements.

The future of the trusts and sovereign assets is very bright. I respectfully request your consideration in providing the Department with the means to manage the assets under the Board's control as effectively as possible. We particularly appreciate your consideration of the addition of two FTEs and the minerals assessment.

I look forward to working with the sub- committee to explain the important role of the Board and Department for the State of North Dakota. It is a dynamic time in North Dakota, and the Department is working in the heart of the activity related to energy growth, agricultural success, educating children, safeguarding and returning unclaimed property, and supporting western infrastructure.

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Jodi A. Smith, Commissioner

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

House Bill 1013

**Senate Appropriations Sub Committee
March 21, 2019**

Chairman Wanzek and members of the Senate Appropriations Sub-Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify regarding the Department of Trust Lands' (Department) total special funds appropriation found in House Bill 1013.

The Department is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 additional permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

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HOUSE BILL (HB) 1013 AS AMENDED BY THE HOUSE OF REPRESENTATIVES (HOUSE)

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund and the oil and gas impact grant fund in the state treasury to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants	0	4,000,000	4,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$4,127,991	\$12,009,264
Full-time equivalent positions	31.00	(3.00)	28.00

The Department does not support the amendments as proposed by the House in Section 1 of HB 1013.

The major components of the Department's budget are appropriated from special funds derived from the state lands maintenance fund, authorized under N.D.C.C. § 15-03-01.1, which provides:

There is created a special fund designated as the state lands maintenance fund, which is funded by the trust fund assets under the control of the board of university and school lands. All expenses paid out of the state lands maintenance fund are subject to legislative appropriation.

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Funds are periodically transferred from the various trusts and programs managed by the Department to the state lands maintenance fund to pay for administrative costs.

Biennium	FTE	Assets
11-13	25	\$3.7 B
13-15	31	\$4.6 B
15-17	33	\$4.7 B
17-19	31	\$5.1 B *
19-21 Base Budget	27	\$5.9 B **
19-21 Optional Budget	29	\$5.9 B **
19-21 Engrossed	28	\$5.9 B **

* as of June 30, 2018
** estimated

The Department reduced its base budget by four FTEs, including Programmer Analyst, Administrative Assistant, Audit Technician, and Administrative Staff Officer to meet the required 10% reduction from the Department's legislatively authorized ongoing special fund appropriation for the 2017-2019 biennium. Through the Information Technology Department (ITD) unification project, an additional FTE was "pulled" from the budget, bringing the FTE count to 26. With the addition of two FTEs through the Executive Recommendation, the Department will maintain 28 FTEs. The House did not approve the addition of the two FTEs, instead denying the ITD unification project resulting in the loss of key positions not being filled.

The Department is respectfully requesting the Senate approve the ITD unification of one Programmer Analyst and fulfill the Department's request for two additional FTEs, an Administrative Assistant I and an Attorney II.

The Administrative Assistant I FTE will assist the Department in day-to-day operations. The Department continues to process a growing number of royalty transactions, leasing requests, and applications for surface easements. The efforts to collect royalties owing to the State for production of its minerals have become more challenging, prompting litigation. The increased number of transactions and funds under the Department's management has impacted all divisions within the Department: Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property, and the EIO. The rapid expansion, as a result of the oil and gas industry, through the early part of the decade affected both the growth in trust assets and the Department's workload. For example, the Unclaimed Property Division has seen marked growth in both holder transfers and property claims. The growth in deposits can be attributed to enhanced education and outreach efforts and increased unclaimed royalty proceeds, which have grown substantially as mineral production in the State has expanded. Further during the current biennium, the EIO was actively managing previous and current grants. An additional Administrative Assistant I would assist in meeting the increasing demands faced by the Department.

The second FTE would allow for an Attorney II to assist the Department in day-to-day operations. The Department manages over 706,000 surface acres, with nearly 3,000 agricultural leases, and 2.6 million mineral acres, with interest in over 6,900 oil and gas wells (over one-third of the wells operating in North Dakota). With increased oil and gas activities, over 2,000 right-of ways are issued every biennium.

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Additionally, the Department's Revenue Compliance Division monitors the nearly 6,900 producing properties and has worked on audits of 80 operators. Further, the Unclaimed Property Division collects over \$20 million every biennium, requiring increased outreach efforts resulting in increased claims issued to owners and increased audits of holders. Additionally, the Department's Division policies for Minerals Management, Surface Management, Investments, Revenue Compliance, Administrative and Information Technology, Unclaimed Property, and the EIO require regular legal review, as do Board policies and Board memos. In addition to Department policy, Board Policy, and Board memo review, the Department has many general counsel issues that could be resolved by an in-house attorney. Those include addressing the legality of forms and contracts, questions on easements, review of leases (mineral and agricultural), unclaimed property issues, audits, etc. Much of the Department's regular correspondence requires legal review as most issues could potentially lead to litigation.

The Department is currently involved in litigation on a variety of matters. By having in-house general counsel, the Department could be proactive and potentially curb litigation. In-house general counsel could assist in the Department's day-to-day operations and day-to-day legal issues, leaving the Attorney General's Office to address pending litigation. In addition to the Attorney General's Natural Resources Assistant Attorney General assigned to the Department to manage litigation, the work required to address the Department's day-to-day operations requires a full-time Attorney II FTE. The Department budgets over \$350,000 annually for legal fees and the Attorney General's Office bills over 500 hours annually. Plus, approximately 300 hours are billed annually by Special Assistant Attorneys General (SAAGs) assigned to the Department. SAAGs are assigned to the Department for various reasons, including: their expertise, because conflicts of interest may occur with the Board being represented by the assigned Assistant Attorney Generals, or due to the workload of the one Assistant Attorney General currently dedicated to the Department. Allowing the Department to hire an in-house general counsel to assist in the day-to-day operations will save the Department a significant amount of money and increase productivity (this is over \$75,000 through the end of January 2019 for the calendar year). It is important to reiterate that the Department manages significant assets for the State of North Dakota and the Board is a growing multi-billion dollar business. Any business of this significance should have an in-house general counsel whose sole responsibility is to advise the client on business matters.

House amendment also significantly reduced operating expenses. This reduction compromises the Department's ability to maintain the building, meet statutory requirements as they relate to land and mineral management, implement software, and complete other necessary Department functions.

	2019-21 Executive Budget Request	2019-21 Engrossed Budget	Percentage of Change
Salaries and Wages	\$5,790,588	\$5,705,584	-.015%
Operating Expenses	\$2,784,043	\$2,203,680	-.208%
Contingencies	\$100,00	\$100,000	0.00%
TOTAL	\$8,674,631	\$8,009,264	-.077%

Within the budgeted operating expenses, the following amendments were made by the House:

	2019-21 Base Budget Request	2019-21 Executive Budget	2019-21 Engrossed HB 1013
OPERATING EXPENDITURES			
Travel ***	78,750	(51,250)	(71,250)
Supplies - IT Software ***	13,973	(15,367)	(16,027)
Financial Mgmt/Acct System		175,000	175,000
Office 365 Software		23,342	23,342
Supply/Material - Professional	6,693	(7,608)	(7,608)
Bldg, Grounds, Maintenance**	6,166	1,166	(3,834)
Miscellaneous Supplies	-	(10,315)	(10,315)
Office Supplies ***	15,300	(1,200)	(2,200)
Postage*	22,644	644	
Printing*	35,006	21,379	
IT - Equip Under \$5000 ***	40,367	(32,383)	(35,633)
Other Equipment - Under \$5000*	12,480	4,080	
Office Equip and Furniture Supplies ***	-	(30,260)	(39,860)
Utilities**	49,205	(15,795)	(20,795)
Insurance*	18,140	3,910	
Rentals/Leases - Bldg/Land	80,580	(19,420)	(19,420)
Repairs*	125,372	27,272	
IT - Data Processing ***	139,252	(5,398)	(10,748)
IT - Communications ***	36,724	(12,805)	(14,505)
IT - Contractual Services and Repairs	98,000		
ITD Project Manager		50,000	
IT Unification		389,108	
Professional Development ***	142,290	(35,435)	(37,435)
Operating Fees and Services ***	154,681	(215,209)	(215,319)
Operating Fees and Services ***		30,300	
Fees - Professional Services	687,000		
Legal and Audit Costs		384,564	384,564
Mineral Estate Evaluation		350,000	350,000
Reductions			
* Inflationary Increases			
** Restores Operating Costs			
*** Additional FTE costs			
Totals	\$1,762,623	\$2,784,043	\$2,203,680

The Department needs inflationary increases and several operating costs (i.e., building maintenance, utilities, and services) reinstated to maintain day-to-day operations and to ensure adequate budgeting of necessary building expenses.

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In summary, the Department respectfully requests one Programmer Analyst be transferred to ITD, the addition of two FTE's (Administrative Assistant I and Attorney II) be approved, and that necessary operating expenses be reinstated.

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Information technology replacement project	\$3,600,000	\$0
Airport grants	\$40,000,000	\$0
Mineral revenue repayments	\$187,000,000	\$0
Oil and gas impact grants	\$0	\$4,000,000
Mineral valuation study	\$0	\$350,000
Total special funds	\$230,600,000	\$4,350,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

The Department approves the amendments as proposed by the House in Section 2 of HB 1013. The proposed one-time funding will support \$4,000,000 for Oil and Gas Impact Grants and \$350,000 for a mineral valuation study.

SECTION 3. DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2019, and ending June 30, 2021, the following amounts, from the permanent funds managed for the benefit of the following entities:

Common schools	366,756,000
North Dakota state university	5,916,000
University of North Dakota	4,504,000
Youth correction center	1,864,000
School for the deaf	1,898,000
North Dakota state college of science	1,736,000
State hospital	1,570,000
Veterans' home	732,000
Valley City state university	1,034,000
North Dakota vision services – school for the blind	1,122,000
Mayville state university	668,000

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Dakota college at Bottineau	242,000
Dickinson state university	242,000
Minot state university	242,000
Total	\$388,526,000

The Department approves Section 3 in HB 1013 as presented by the House.

Funds for the major components support the Board and Department's primary focus, which is managing permanent trust assets to fund education and other governmental functions. Revenues are invested in a diversified portfolio of financial assets that are managed by the Board as a permanent endowment. Revenues over the past three years are lower than during Fiscal Year 2013-2015; however, revenues have stabilized and continue to provide increased distributions from the trusts. In the 2019-2021 biennium trust distributions will increase by \$82,647,297, a 27% increase. The distributions per trust can be seen in the chart below:

<u>Trust</u>	<u>2019-21 Biennium</u>	<u>2017-19 Biennium</u>	<u>Percentage of Change</u>	<u>Change in Distribution</u>
Common School	\$ 366,756,000	\$ 288,264,000	27.2%	\$ 78,492,000
<i>Permanent Funds:</i>				
ND State University	\$ 5,916,000	\$ 4,738,000	24.9%	\$ 1,178,000
ND School for the Blind	\$ 880,000	\$ 654,000	34.6%	\$ 226,000
ND School of the Deaf	\$ 1,898,000	\$ 1,598,000	18.8%	\$ 300,000
ND State Hospital	\$ 1,328,000	\$ 1,184,000	12.2%	\$ 144,000
Ellendale *	\$ 1,694,000	\$ 1,931,889	(12.3%)	\$ (237,889)
Valley City State University	\$ 1,034,000	\$ 808,000	28.0%	\$ 226,000
Mayville State University	\$ 668,000	\$ 542,000	23.2%	\$ 126,000
Youth Correctional Center	\$ 1,864,000	\$ 800,814	132.8%	\$ 1,063,186
ND State College of Science	\$ 1,494,000	\$ 1,260,000	18.6%	\$ 234,000
School of Mines **	\$ 1,746,000	\$ 1,444,000	20.9%	\$ 302,000
ND Veterans Home	\$ 490,000	\$ 436,000	12.4%	\$ 54,000
University of ND	\$ 2,758,000	\$ 2,218,000	24.3%	\$ 540,000
Total Permanent Funds	\$ 21,770,000	\$ 17,614,703	23.6%	\$ 4,155,297
Total Distributions	\$ 388,526,000	\$ 305,878,703	27.0%	\$ 82,647,297

* In 1972, House Concurrent Resolution 3045 was approved removing the Ellendale Branch as a branch of the University of North Dakota. In 1973, House Bill 1052 was passed to reallocate the grant lands and other assets of the Ellendale fund, maintained by the Department, in equal portions to:

- Dickinson State University
- Minot State University
- Dakota College at Bottineau
- North Dakota School for the Blind

- North Dakota Veterans Home
- North Dakota State Hospital
- North Dakota State College of Science

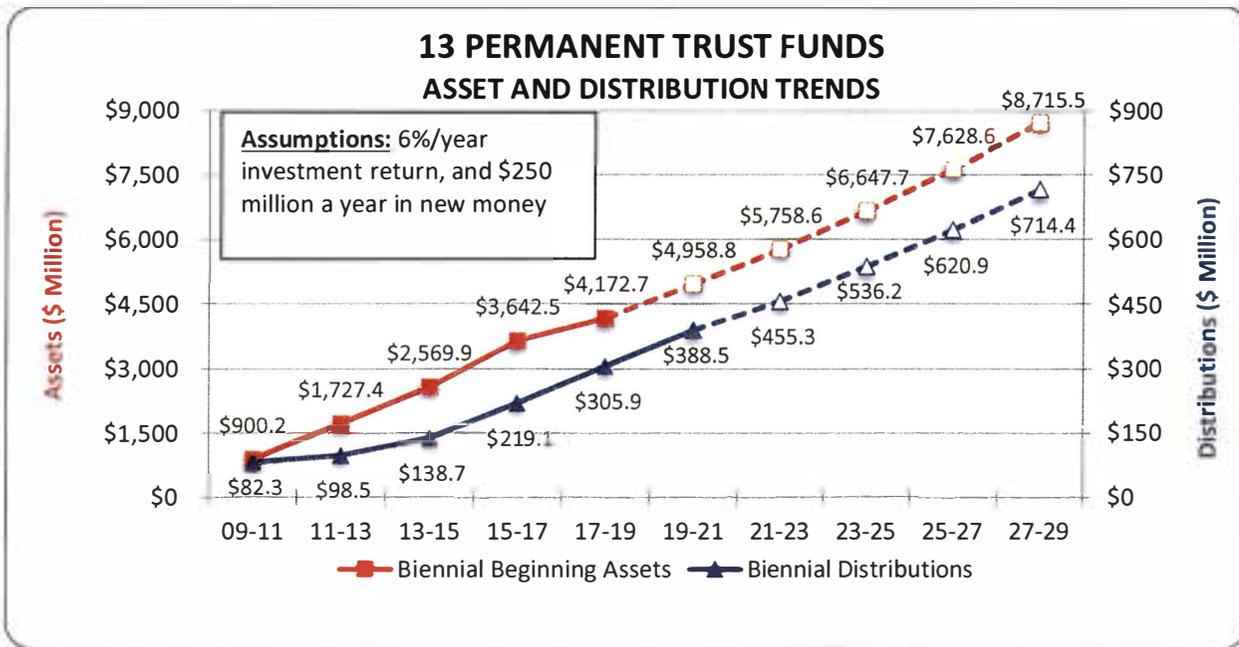
** Benefits of the original grant to the School of Mines are distributed to the University of North Dakota.

Since 2009, permanent trust distributions have been determined using the distribution formula found in Article IX, Section 2 of the North Dakota Constitution. By Board Policy, the fund balances in the annual audited financial statements are used to determine trust ending asset values for distribution purposes.

The 27% average increase in distributions for the next biennium is strong by itself, but when you look at trust distributions since implementation of the new distribution formula for the 2009-2011 biennium, the results have been impactful to education funding across the State.

Biennium	Total Biennial Distributions	% Increase from Previous Biennium
2009-11	\$82.3 million	15.5%
2011-13	\$ 98.5 million	19.7%
2013-15	\$ 138.7 million	40.9%
2015-17	\$ 219.1 million	58.0%
2017-19	\$ 305.9 million	35.9%

The following chart shows trust distributions and trust growth for the past 5 biennia, along with projected distributions for the next 5 biennia. As you can see, distributions could nearly double over the next 10 years, with distributions reaching a projected \$714.4 million during the 2027-2029 biennium.



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The following table shows how the CSTF's distributions have grown from 4% of the cost of K-12 education during the 2009-2011 biennium.

Biennium	Amount Distributed	CS % of Cost of Education	CS \$/Pupil Distribution
2009-11 bi.	\$ 77,178,000	4.0%	\$ 400.96
2011-13 bi.	\$ 92,514,000	4.5%	\$ 461.33
2013-15 bi.	\$ 130,326,000	6.0%	\$ 643.27
2015-17 bi.	\$ 206,134,000	8.6%	\$ 971.69
2017-19 bi.	\$ 288,264,000	11.5%	\$ 1,318.88
	\$ 366,756,000	13.9%	\$ 1,592.35

SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO OIL AND GAS IMPACT GRANT FUND. The office of management and budget shall transfer the sum of \$4,000,000 from the strategic investment and improvements fund to the oil and gas impact grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

The Department approves Section 4 in HB 1013 as presented by the House.

As of March 14, 2019, there are currently 73 active grants funded through the oil and gas impact grant fund totaling \$37,032,678.84. The following two tables detail these grants:

Calendar Year Grant Awarded	Number of Grants Active
2014	3
2015	5
2016	9
2017	7
2018	32
2019	17

Entities	Number of Active Grants	Balances
Airports	33	\$27,453,604.40
Cities and Townships	22	\$7,444,499.95
K-12 Schools	13	\$1,530,181.52
Fire and Emergency Medical Services	5	\$604,392.97

SECTION 5. TRANSFER - ENERGY IMPACT FUND TO OIL AND GAS IMPACT GRANT FUND. The commissioner of university and school lands shall transfer any unexpended funds remaining in the energy impact fund when the fund is repealed on June 30, 2021, to the oil and gas impact grant fund.

The Department approves Section 5 in HB 1013 as presented by the House.

The Energy Impact Fund currently has four active grants totaling \$4,997,365.24 for the Sloulin International Airport located in Williston.

SECTION 6. AMENDMENT. Subsection 2 of section 15-01-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1, which must be made under the supervision of the state investment board pursuant to section 21-10-06 subject to the investing authority provided in law relating to state investments.

The Department expresses opposition to the amendments that move CSTF and other investments under control of the Board to the State Investment Board (SIB) as proposed in HB 1013, Section 6. As amended, HB 1013 has direct constitutional implications.

The complete delegation of the Board's investment authority to the SIB raises constitutional issues. The North Dakota Supreme Court has stated that under the Constitution, the Board has general and full powers regarding the investment of funds on behalf of the CSTF. It is vested with judgment and discretion in the performance of this duty. According to the Court, the great and primary duty of the Board is to safeguard the CSTF under its control and direct the investment thereof to the best advantage.

The amendment to HB 1013 removes all discretion from the Board in making investment decisions on behalf of the CSTF. Any investment would now have to be approved by the SIB. Thus, the constitutional authority granting the Board discretion and judgment in making investment decisions would now be eliminated and essentially transferred to the SIB in contravention to the language and intent of the Constitution.

Moreover, the language in the Constitution providing that all investments shall be made *as provided by law* does not alter the ultimate conclusion that the Board cannot completely delegate its constitutional investment authority to the SIB. In other words, although Board investment decisions are subject to legislative authority, the source of the Board's authority remains the Constitution itself. Were it otherwise, a potentially self-defeating incompatibility would exist between the stated purpose and objective of the CSTF on one hand, and the alleged unbridled authority granted the State Legislature to defeat the strategy by means of creative rules and regulations on the other. Thus, any legislative control over the CSTF must be within the limits of the Constitution and compatible with the Board's fiduciary duties.

Furthermore, it must be presumed that with any statute, the legislative assembly intended the power conferred upon the Board should be exercised only in furtherance of, and in harmony with, the constitutional powers and duties of the Board and not otherwise. It must be presumed that the statute was enacted to enable the Board to better perform its duties.

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For example, N.D.C.C. § 15-03-04 requires the Board to follow the prudent investor rule in making investment decisions. The Board maintains judgment and discretion in making these decisions subject to this rule. Thus, this statute did not alter the Board's primary duty to safeguard the CSTF and can be harmonized with the Board's constitutional authority. As noted previously, however, the revisions to HB 1013 completely shift the authority over investments from the Board to the SIB. The SIB would have supervisory power over any Board investment decision. This is contrary to the law establishing that only the Board has been vested with this constitutional authority and fiduciary duty to protect the CSTF. Thus, any attempt to shift this authority cannot be reconciled with the Constitution or the legal authorities interpreting it.

SECTION 7. A new subdivision to subsection 1 of section 21-10-06 of the North Dakota Century Code is created and enacted as follows:

Common schools trust fund and other investments under the control of the board of university and school lands.

The Department expresses opposition to the amendments that move the CSTF and other investments under control of the Board to the SIB as proposed in HB 1013, Section 7. As amended, HB 1013 has direct constitutional implications.

SECTION 8. REPEAL. Section 57-51-15.1 of the North Dakota Century Code is repealed.

The Department approves Section 8 in HB 1013 as presented by the House, which would repeal N.D.C.C. § 57-51-15.1, which currently reads as follows:

There is created in the state treasury the energy impact fund. The fund consists of all moneys deposited in the fund under section 57-51-15. The moneys in the fund may be spent pursuant to legislative appropriations.

SECTION 9. OIL AND GAS IMPACT GRANT FUND. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$4,000,000 from the oil and gas impact grant fund for grants to political subdivisions impacted by oil and gas development activities.

The Department approves Section 9 in HB 1013 as presented by the House.

In June 2017, the Board approved the establishment of a contingency grant to utilize undistributed funds from the 2013-2015 and 2015-2017 biennia.

The appointed advisory committee met on December 19, 2017 to establish grant criteria and application requirements. The Board adopted the recommendations by the advisory committee during the January 2018 meeting. Grant applications are submitted and reviewed on a quarterly basis.

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SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amounts previously appropriated from the oil and gas impact grant fund and identified in section 10 of chapter 38 of the 2017 Session Laws related to the oil and gas impact grant fund, including grant awards returned to the fund, are not subject to section 54-44.1-11. Any unexpended funds are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

The Board approves Section 10 in HB 1013 as presented by the House.

Efficiencies gained from operating the past five years has enabled the EIIO to reduce the budgetary impact for salary and operations funding from \$700,000 per biennium to \$400,000 per biennium. The funds in that budget line item include advisory group travel reimbursements, facility space and utilities, salary dollars, printing and other administrative costs, as well as employee travel to conduct project site visits and public meetings in regional locations of western North Dakota.

	Grants	Operating	Operating
<u>Biennium</u>	<u>Appropriation</u>	<u>Appropriation</u>	<u>Expended</u>
2011-13	\$104,778,269	\$354,731	\$155,960
2013-15	\$239,299,174	\$700,826	\$611,410
2015-17	\$139,300,000	\$700,000	\$573,242
2017-19	\$ 40,000,000	\$0	\$191,649 (as of 2/28/2019)

*Note = \$0 was appropriated for the tasks necessary to operate the EIIO; however a \$400,000 budget was submitted to the Office of Management and Budget (OMB). As of December 31, 2018, \$253,100 had been expended. Approximately 26% of operating appropriation is spent on salaries and benefits. The largest fixed cost EIIO has, and will continue to incur with funding being allocated to grants, is for ITD services (Connect ND, phone, technology fee, etc.). ITD charges are 95% of operating costs (approximately \$1,500 per month or \$36,000 per biennium).

In the current biennium, no line-item budget authority existed for operation and administrative costs; however, use of remaining unused funds from prior biennia was authorized. Working in collaboration with OMB, the EIIO established a budget of \$400,000 for the current biennium.

Currently, there are \$2,298,832 that were not awarded so these funds can be used for operating expenditures and new grants. We believe that \$300,000 is appropriate to sustain the grants program.

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SECTION 11. EXEMPTION - INFORMATION TECHNOLOGY PROJECT - REPORT TO INFORMATION TECHNOLOGY COMMITTEE. The \$3,600,000 appropriated from the state lands maintenance fund and identified in sections 1 and 12 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11, and any unexpended funds are available to complete the information technology project during the biennium beginning July 1, 2019, and ending June 30, 2021. During the 2019-20 interim, the commissioner of university and school lands shall provide at least one report to the interim information technology committee regarding the status of the information technology project.

The Department approves Section 11 in HB 1013 as presented by the House.

The Commissioner is working with Information Technology (IT) staff to better understand current technology systems and how they can meet the Department's complex needs. As vendors are selected for systems for the various divisions, an analysis of continued needs for user manuals for current technology systems will be evaluated. Severe limitations in the current IT system, many of which were highlighted in the 2016 performance audit and include including manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts potential improvements.

In planning for replacement of the IT system, a business process modeling contractor, Major Oak, was hired in 2016 to identify and document processes and to recommend efficiencies for most operations. Major Oak helped document current state processes for all functional areas of the Department. This was followed by preparation of a model of future-state suggestions to further enhance controls, increase efficiencies, and boost productivity. The Department is continuing to work with Major Oak to assist in the procurement process and to ensure the new software systems result in implementation of significant efficiencies.

A collaborative planning effort with ITD is underway for project management, OMB for procurement, and the Executive Steering Committee (ESC) as required by N.D.C.C. § 54-59-32 for major IT projects. The ESC includes a project sponsor, the director of OMB (or designee), the state Chief Information Officer (or designee), the Commissioner of University and School Lands, and a large project oversight analyst designated by the State Chief Information Officer.

The Department is under contract with Kelmar Associates, LLC, (Kelmar) to provide a software system to assist with the management and administration of unclaimed property. With substantial knowledge of unclaimed property departments across the United States, Kelmar is able to work closely with the Department in creating system tools and process workflows.

The Department is currently involved in the procurement process for a Financial Management and Accounting (FMA) system. A Proof of Concept contract is being negotiated with the intention of awarding a full contract in the summer of 2019. Once the Department approves the Proof of Concept for a FMA system, the Department will be able to begin the procurement process for a Land Management System, which is anticipated to begin in April 2019.

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The Department's 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013 of the 65th Legislative Assembly. A spending update is as follows:

Spent through January 31, 2019 - \$112,617

Estimated spending through the end of the biennium (February 1 to June 30) - \$800,764

Estimated amount remaining to be carried over into the 2019-21 biennium - \$2,686,620

SECTION 12. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 6 and 7 of this Act become effective on July 1, 2021, or earlier if the commissioner of board and university and school lands notifies the legislative council that the board of university and school lands approved, by a majority vote, transferring the board of university and school lands' investments to the state investment board. Section 8 of this Act becomes effective on June 30, 2021.

The Department expresses opposition to the amendments that move CSTF and other investments under control of the Board to the SIB as proposed in HB 1013, Section 12. As amended, HB 1013 has direct constitutional implications.

CONCLUSION

The Board's responsibility to preserve the trusts and maintain income stability for the trust beneficiaries continues to be met. All permanent and other trust funds remain in strong financial condition and are invested in a safe and prudent manner. Land is prudently managed to provide a fair market rental income. Mineral leasing and development activities continue with strong revenues being collected to enhance trust balances.

Unclaimed property continues to be safeguarded and ultimately returned to rightful owners via improved technologies and expanded outreach efforts.

The leasing and production of sovereign minerals has contributed to, and will continue to contribute to, substantial revenues for the Strategic Investment and Improvements Fund to support state-wide infrastructure enhancements.

The future of the trusts and sovereign assets is very bright. I respectfully request your consideration in providing the Department with the means to manage the assets under the Board's control as effectively as possible. We particularly appreciate your consideration of the addition of two FTEs and the minerals assessment.

I look forward to working with the sub- committee to explain the important role of the Board and Department for the State of North Dakota. It is a dynamic time in North Dakota, and the Department is working in the heart of the activity related to energy growth, agricultural success, educating children, safeguarding and returning unclaimed property, and supporting western infrastructure.

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Jodi A. Smith, Commissioner

4-3-19 HB1013

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

House Bill 1013

**Senate Appropriations Sub-Committee
April 2, 2019**

Chairman Wanzek and members of the Senate Appropriations Sub-Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify for the Department of Trust Lands' (Department) total special funds appropriation found in House Bill 1013.

As the United States expanded west of the Mississippi River in the early 1800's, our federal government made the decision to provide grants of land to each new state to provide assets that could be used to generate a perpetual source of revenue to support public education in the states.

Each new state's Enabling Act required Constitutional covenants that the state manage its school trust land to provide funding to support for its children. The resulting "trust" relationship that was established continues to benefit North Dakota's K-12 schools and institutions of higher education.

In Fiscal Year 2018 the Department, for the sixth biennium in a row, distributed more funds to K-12 public schools than in any other biennium in North Dakota history.

During the past decade the financial performance of the Department has been phenomenal. The growth of trust assets and distributions to North Dakota public education has been unprecedented, and the surge in earnings by the Department has been a greater benefit to public education than ever before. The past twelve years have been the most progressive since statehood, positioning the trusts for continued growth and success. The Department's success is evidenced by many accomplishments, including:

- A decade of record distributions to beneficiaries;
- Achieving the highest annual yields from invested funds; and
- The historic pace of growth of the Board's trust assets and overall distributions.

Over the last eight years, the Board has distributed over \$1 billion to public education beneficiaries in the State of North Dakota, while simultaneously growing the permanent trust fund. This is more than any other period in state history. The Department's staff is pleased to be fiduciaries of more than 706,000 thousand acres of land, 2.6 million mineral acres, and nearly \$5 billion dollars in invested funds to generate revenue for public education in North Dakota.

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The Department is known nationally for superior management of its land and mineral assets, unclaimed property, energy grant distributions, and investment portfolio. The Department's primary responsibility is to manage the permanent educational trust funds and assets under the Board's control. The Department does so by maximizing state revenue through innovative administration and the prudent stewardship of trust lands and natural resources.

#1
p2

The Department's philosophy on transparency and collaboration in governance is noteworthy, and readily obtainable through a well-defined, common mission that embodies a shared consciousness and respect for all staff. Integrity, adaptability, and collaboration among staff are integral parts of our operation, and it is our staff that will be tasked with carrying out this mission on a daily basis. Therefore, we will continue to work to ensure the professional and personal growth of all Department staff, our agency's most valuable asset. We will accomplish our goals using the highest standards of ethics, professionalism, transparency, fairness, and responsiveness towards those we serve – the citizens of North Dakota.

In order to continue in this capacity, the Department needs two eliminated FTE's re-allocated. Those were eliminated due to the requested 10% reduction. Without additional support within our department to assist with the hundreds of rights-of-way application and surface damage agreements, reclamation inspections, thousands of oil and gas leases, hundreds of thousands royalty records, thousands of unclaimed property claims, and billions of dollars in investments, the Department will be at risk of slowing the economic growth of North Dakota and increasing the risk of litigation. Operating expenses need to be restored to allow for proper management of the trusts' assets.

It is imperative to note, state's who manage similar assets have significantly more appropriated to their land departments and more staff to manage the assets. For example, Colorado budgets 5% of the annual revenue for agency operations. This equals \$3.2 million for their annual budget while our request is \$4.3 million and our Department generates 300% more income. If the Department were allowed similar budgeting, our annual budget would be over \$7.5 million. Oklahoma's budget is \$8.5 million per year (Department is requesting \$4.3 million) with 62.3 FTE's and they manage over one million less mineral acres and \$2.5 billion less in cash assets.

Additionally, language removing the Board's discretion to make investment decisions on behalf of the permanent trust funds needs to be eliminated.

In early 2013, the investment consultant firm, R.V. Kuhns (now known as RVK), was hired through a competitive hiring process by the Board to submit a written report addressing the following issues:

1. Recommendations for a comprehensive evaluation and rewrite of the Board's investment policies and procedures for the permanent trust funds that would help state and ensure long-term goals and objectives for the permanent trust funds.
2. A recommendation of an asset allocation policy for the permanent trust funds that, while recognizing the Board's risk tolerance and return expectations, balanced the Board's responsibilities under North Dakota law to:
 - a. Support the trust beneficiaries;
 - b. Maintain the permanent strength of the fund; and
 - c. Follow the prudent investor rule
3. A recommendation as to the most appropriate way to transition the permanent trust funds from the then current asset allocation plan to the recommended asset allocation plan.

Submit #1 P3

- 4. An analysis of the costs associated with the recommended asset allocation plan, including performance monitoring and measurement services. This analysis would include an evaluation of various implementation scenarios, including
 - a. An ultra low cost investment approach;
 - b. A more traditional plan sponsor/investment /consultant approach; and
 - c. An outsourced Chief Investment Officer (including State Investment Board (SIB)) approach.

- 5. An analysis of the management of cash and cash-like funds that are not part of the permanent trust fund responsibilities of the Board, in particular, the SIIF.

In January 2014, the Board entered into another agreement with RVK to implement the recommendations that came out of RVK's 2013 investment study and to provide performance monitoring services to the Board.

In July 2015, after reviewing the pros and cons of a potential partnership with the SIB, the Board voted four-to-one to continue to actively manage the permanent trusts' investment program through Department staff with the assistance of a retained investment consultant, while also working with the SIB to minimize costs and fees, and to improve efficiencies.

The Commissioner continues to work closely with SIB when negotiating money managers and service provider fees to ensure that both entities are getting the best possible fees, based on the cumulative assets involved. This has resulted in significant fee savings for both entities in the past 20 years.

Both the Department and SIB pay investment fees that are directly related to the risk tolerance and asset allocation of the funds. Comparing the fees paid by both the Department and SIB is possible but not based upon the current reports provided to the respective boards. These reports contain differing data points which does not allow for a direct comparison. The Department is currently working with SIB to provide this information.

In February 2019, the Board reviewed a report created by RVK regarding permanent trust fund benchmarks, understanding the nature of benchmarking and what comparisons are relevant and which are not. The report detailed that both the Board and the SIB are meeting their benchmarks and the fees are comparable.

I look forward to continue working with the sub-committee to explain the important role of the Board and Department for the State of North Dakota. It is a dynamic time in North Dakota, and the Department is working in the heart of the activity related to energy growth, agricultural success, educating children, safeguarding and returning unclaimed property, and supporting western infrastructure.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1013

Page 1, line 2, remove "to create and enact a new subdivision to subsection 1 of section"

Page 1, remove lines 3 and 4

Page 1, line 5, remove "Code, relating to the investments of the board of university and school lands;"

Page 1, line 8, after the first semicolon insert "and"

Page 1, line 8, remove "; and to provide a contingent effective date"

Page 1, replace lines 18 through 22 with:

"Salaries and wages	\$6,005,550	(\$280,171)	\$5,725,379
Operating expenses	1,775,723	857,299	2,633,022
Grants	0	4,000,000	4,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$4,577,128	\$12,458,401"

Page 3, remove lines 12 through 21

Page 4, line 11, remove "- **CONTINGENT EFFECTIVE DATE**"

Page 4, line 11, remove "Sections 6 and 7 of"

Page 4, remove lines 12 through 14

Page 4, line 15, remove "to the state investment board."

Page 4, line 15, replace "8" with "6"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Department of Trust Lands - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$6,005,550	\$5,705,584	\$19,795	\$5,725,379
Operating expenses	1,775,723	2,203,680	429,342	2,633,022
Grants		4,000,000		4,000,000
Contingencies	<u>100,000</u>	<u>100,000</u>		<u>100,000</u>
Total all funds	\$7,881,273	\$12,009,264	\$449,137	\$12,458,401
Less estimated income	<u>7,881,273</u>	<u>12,009,264</u>	<u>449,137</u>	<u>12,458,401</u>
General fund	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00

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Department 226 - Department of Trust Lands - Detail of Senate Changes

	Adjusts Funding for Salary Increases ¹	Adds FTE Positions ²	Adjusts Funding and FTE Positions for IT Unification ³	Total Senate Changes
Salaries and wages	\$13,906	\$371,822	(\$365,933)	\$19,795
Operating expenses		43,670	385,672	429,342
Grants				
Contingencies				
Total all funds	\$13,906	\$415,492	\$19,739	\$449,137
Less estimated income	13,906	415,492	19,739	449,137
General fund	\$0	\$0	\$0	\$0
FTE	0.00	2.00	(2.00)	0.00

¹ Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The House provided funding for salary increases of 2 percent on July 1, 2019, and 2 percent on July 1, 2020.

² Funding is added for 2 FTE positions, including an administrative assistant (\$123,261) and an attorney (\$248,461), and related operating expenses (\$43,670). Pursuant to the provisions of North Dakota Century Code Section 54-12-08, the attorney position is assigned to the agency under appointment by the Attorney General. The House did not include the FTE positions.

³ Two FTE positions are transferred to the Information Technology Department for the information technology unification project, reducing salaries and wages by \$365,933 and increasing operating expenses by \$385,672. The House did not include the information technology unification project.

This amendment also removes two sections, which were added by the House, to provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board. A contingent effective date relating to the statutory changes is also removed.

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 # 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1013

Page 1, line 2, remove "to create and enact a new subdivision to subsection 1 of section"

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Page 4, remove lines 12 through 14

Page 4, line 15, remove "to the state investment board."

Page 4, line 15, replace "8" with "6"

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Department of Trust Lands - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$6,005,550	\$5,705,584	\$19,795	\$5,725,379
Operating expenses	1,775,723	2,203,680	429,342	2,633,022
Grants		4,000,000		4,000,000
Contingencies	<u>100,000</u>	<u>100,000</u>		<u>100,000</u>
Total all funds	\$7,881,273	\$12,009,264	\$449,137	\$12,458,401
Less estimated income	<u>7,881,273</u>	<u>12,009,264</u>	<u>449,137</u>	<u>12,458,401</u>
General fund	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00

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Department 226 - Department of Trust Lands - Detail of Senate Changes

	Adjusts Funding for Salary Increases ¹	Adds FTE Positions ²	Adjusts Funding and FTE Positions for IT Unification ³	Total Senate Changes
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Operating expenses		43,670	385,672	429,342
Grants				
Contingencies				
Total all funds	\$13,906	\$415,492	\$19,739	\$449,137
Less estimated income	13,906	415,492	19,739	449,137
General fund	\$0	\$0	\$0	\$0
FTE	0.00	2.00	(2.00)	0.00

¹ Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The House provided funding for salary increases of 2 percent on July 1, 2019, and 2 percent on July 1, 2020.

² Funding is added for 2 FTE positions, including an administrative assistant (\$123,261) and an attorney (\$248,461), and related operating expenses (\$43,670). Pursuant to the provisions of North Dakota Century Code Section 54-12-09, the attorney position is assigned to the agency under appointment by the Attorney General. The House did not include the FTE positions.

³ Two FTE positions are transferred to the Information Technology Department for the information technology unification project, reducing salaries and wages by \$365,933 and increasing operating expenses by \$385,672. The House did not include the information technology unification project.

This amendment also removes two sections, which were added by the House, to provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board. A contingent effective date relating to the statutory changes is also removed.

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Department of Trust Lands - Budget No. 226
House Bill No. 1013
Base Level Funding Changes

	House Version				Senate Version				Senate Changes to House Version Increase (Decrease) - House Version			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	31.00	\$0	\$7,881,273	\$7,881,273	31.00	\$0	\$7,881,273	\$7,881,273	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes			(\$293,941)	(\$293,941)			(\$293,941)	(\$293,941)				\$0
Salary increase			148,976	148,976			162,882	162,882			13,906	13,906
Health insurance increase			133,862	133,862			133,862	133,862				0
Removes 3 FTE positions	(3.00)		(288,863)	(288,863)	(3.00)		(288,863)	(288,863)				0
Adds 2 FTE positions				0	2.00		415,492	415,492	2.00		415,492	415,492
Adjusts funding and FTE positions for IT unification				0	(2.00)		19,739	19,739	(2.00)		19,739	19,739
Reduces funding for operating expenses			(504,949)	(504,949)			(504,949)	(504,949)				0
Adds funding for legal and audit costs			384,564	384,564			384,564	384,564				0
Adds funding for financial software contracts			175,000	175,000			175,000	175,000				0
Adds funding for Microsoft Office 365 licensing			23,342	23,342			23,342	23,342				0
Total ongoing funding changes	(3.00)	\$0	(\$222,009)	(\$222,009)	(3.00)	\$0	\$227,128	\$227,128	0.00	\$0	\$449,137	\$449,137
One-time funding items												
Adds one-time funding for mineral valuation study			\$350,000	\$350,000			\$350,000	\$350,000				\$0
Adds one-time funding for oil impact grants			4,000,000	4,000,000			4,000,000	4,000,000				0
Total one-time funding changes	0.00	\$0	\$4,350,000	\$4,350,000	0.00	\$0	\$4,350,000	\$4,350,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	(3.00)	\$0	\$4,127,991	\$4,127,991	(3.00)	\$0	\$4,577,128	\$4,577,128	0.00	\$0	\$449,137	\$449,137
2019-21 Total Funding	28.00	\$0	\$12,009,264	\$12,009,264	28.00	\$0	\$12,458,401	\$12,458,401	0.00	\$0	\$449,137	\$449,137

Other Sections for Department of Trust Lands - Budget No. 226

	House Version	Senate Version
Fund distributions	Section 3 provides the permanent fund income distributions to state institutions.	Section 3 provides the permanent fund income distributions to state institutions.
Oil and gas impact grant fund	Section 4 transfers \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund. Section 9 identifies \$4 million from the oil and gas impact grant funds for grants to political subdivisions. Section 10 provides an exemption to continue unspent prior biennium appropriations related to undesignated oil and gas impact grants and administrative costs of the oil and gas impact grant fund into the 2019-21 biennium.	Section 4 transfers \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund. Section 7 identifies \$4 million from the oil and gas impact grant funds for grants to political subdivisions. Section 8 provides an exemption to continue unspent prior biennium appropriations related to undesignated oil and gas impact grants and administrative costs of the oil and gas impact grant fund into the 2019-21 biennium.

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Other Sections for Department of Trust Lands - Budget No. 226

	<u>House Version</u>	<u>Senate Version</u>
Energy impact grant fund	Section 5 transfers any remaining funds in the energy impact fund, related to the repeal of the fund. Section 8 repeals the energy impact fund, and Section 12 provides an effective date for the repeal.	Section 5 transfers any remaining funds in the energy impact fund, related to the repeal of the fund. Section 6 repeals the energy impact fund, and Section 10 provides an effective date for the repeal.
Management of investments	Sections 6 and 7 provide statutory changes necessary to require the department to invest the permanent trust funds through the State Investment Board. Section 12 provides an effective date for the changes.	
Information technology project exemption	Section 11 provides an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and requires the department to provide a report to the interim Information Technology Committee regarding the status of the project.	Section 9 provides an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and requires the department to provide a report to the interim Information Technology Committee regarding the status of the project.

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STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1013 - Funding Summary

	Base Budget	House Version	Senate Changes	Senate Version
Department of Trust Lands				
Salaries and wages	\$6,005,550	\$5,705,584	\$19,795	\$5,725,379
Operating expenses	1,775,723	2,203,680	429,342	2,633,022
Grants		4,000,000		4,000,000
Contingencies	100,000	100,000		100,000
Total all funds	\$7,881,273	\$12,009,264	\$449,137	\$12,458,401
Less estimated income	7,881,273	12,009,264	449,137	12,458,401
General fund	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00
Bill total				
Total all funds	\$7,881,273	\$12,009,264	\$449,137	\$12,458,401
Less estimated income	7,881,273	12,009,264	449,137	12,458,401
General fund	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00

House Bill No. 1013 - Department of Trust Lands - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$6,005,550	(\$299,966)	\$5,705,584
Operating expenses	1,775,723	427,957	2,203,680
Grants		4,000,000	4,000,000
Contingencies	100,000		100,000
Total all funds	\$7,881,273	\$4,127,991	\$12,009,264
Less estimated income	7,881,273	4,127,991	12,009,264
General fund	\$0	\$0	\$0
FTE	31.00	(3.00)	28.00

Department 226 - Department of Trust Lands - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Removes FTE Positions ³	Reduces Funding for Operating Expenses ⁴	Adds Funding for Legal and Audit Costs ⁵	Adds Funding for Financial Software Contracts ⁶
Salaries and wages	(\$293,941)	\$282,838	(\$288,863)			
Operating expenses				(\$504,949)	\$384,564	\$175,000
Grants						
Contingencies						
Total all funds	(\$293,941)	\$282,838	(\$288,863)	(\$504,949)	\$384,564	\$175,000
Less estimated income	(293,941)	282,838	(288,863)	(504,949)	384,564	175,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	(3.00)	0.00	0.00	0.00

	Adds Funding for Microsoft Office 365 Licensing ⁷	Adds One-Time Funding for a Mineral Valuation Study ⁸	Adds One-Time Funding for Oil Impact Grants ⁹	Total House Changes
Salaries and wages				(\$299,966)
Operating expenses	\$23,342	\$350,000		427,957
Grants			\$4,000,000	4,000,000
Contingencies				
Total all funds	\$23,342	\$350,000	\$4,000,000	\$4,127,991
Less estimated income	23,342	350,000	4,000,000	4,127,991
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	Other Funds
Salary increase	\$148,976
Health insurance increase	133,862
Total	\$282,838

³ Funding and authorization for 3 FTE positions, including 2 administrative assistants and an audit technician, is removed.

⁴ Funding is reduced for operating expenses, primarily related to travel, equipment, information technology costs, professional development, and other services.

⁵ Funding is added for legal and audit costs related to the implementation of administrative rules, compliance requirements for internal controls and fraud risks, and financial statement audits.

⁶ Funding is added for ongoing costs associated with new financial software, including maintenance agreements and subscription fees.

⁷ Funding is added for Microsoft Office 365 licensing expenses.

⁸ One-time funding is added for a mineral valuation study to hire a consultant to estimate the value of the state's mineral resources.

⁹ Funding is added for grants to political subdivisions from the oil and gas impact grant fund. The estimated funding available for oil and gas impact grant funds for the 2019-21 biennium totals \$5.5 million, including \$4 million from the strategic investment and improvements fund and \$1.5 million of unspent prior biennium appropriations.

This amendment also adds sections to:

- Transfer \$4 million from the strategic investment and improvements fund to the oil and gas impact grant fund.
- Transfer any remaining funds in the energy impact fund to the oil and gas impact grant fund, related to the repeal of the fund.
- Provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board.
- Repeal the energy impact fund.
- Identify \$4 million of funding from the oil and gas impact grant fund for grants to political subdivisions.
- Provide an exemption to continue unspent prior biennium appropriations related to undesignated oil and gas impact grants and administrative costs of the oil and gas impact grant fund into the 2019-21 biennium.
- Provide an exemption to continue unspent prior biennium appropriations related to an information technology project into the 2019-21 biennium and require the Commissioner of Board and University School Lands to report to the interim Information Technology Committee.
- Provide effective dates, including a contingent effective date, relating to the statutory changes requiring investment through the State Investment Board and the repeal of the energy impact fund.

House Bill No. 1013 - Department of Trust Lands - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$6,005,550	\$5,705,584	\$19,795	\$5,725,379
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Less estimated income	7,881,273	12,009,264	449,137	12,458,401
General fund	\$0	\$0	\$0	\$0
FTE	31.00	28.00	0.00	28.00

Department 226 - Department of Trust Lands - Detail of Senate Changes

	Adjusts Funding for Salary Increases ¹	Adds FTE Positions ²	Adjusts Funding and FTE Positions for IT Unification ³	Total Senate Changes
Salaries and wages	\$13,906	\$371,822	(\$365,933)	\$19,795
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Grants				
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Total all funds	\$13,906	\$415,492	\$19,739	\$449,137
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General fund	\$0	\$0	\$0	\$0
FTE	0.00	2.00	(2.00)	0.00

¹ Funding is adjusted to provide employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and a 2.5 percent salary increase on July 1, 2020. The House provided funding for salary increases of 2 percent on July 1, 2019, and 2 percent on July 1, 2020.

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This amendment also removes two sections, which were added by the House, to provide the statutory changes necessary to require the Board of University and School Lands to make investments through the State Investment Board. A contingent effective date relating to the statutory changes is also removed.