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Gary D. Preszler, Commissioner

**TESTIMONY OF GARY D. PRESZLER  
STATE LAND COMMISSIONER  
North Dakota State Land Department**

**ADMINISTRATIVE RULES COMMITTEE  
March 12, 2008**

Chairman Fischer, members of the Administrative Rules Committee, I am Gary D. Preszler, Secretary for the Board of University and School Lands (Board) and Commissioner for the State Land Department.

Efforts to remove the exempted agencies from Chapter 28-32 rulemaking requirements are not new. In 1986 and 1987 the Administrative Rules Committee studied and took testimony from each agency exempted from the Act. In 1993, SB2023 introduced by the Interim Administrative Rules Committee and identical to HB1479 failed to pass on a vote of 1 to 45.

The activities of the Board are exempt from Chapter 28-32 rulemaking requirements, except for the activities related to Chapter 47-30.1, the Uniform Unclaimed Property Act. This is because (1) unclaimed property administration is not a part of the Constitution, whereas activities related to lands, minerals, and investments management are proprietary and authorized under the Constitution; and, (2) the Trusts do not own the unclaimed property.

Further, all activities related to goods or services and the physical servicing, maintenance, or care of agency-owned or agency-operated facilities are excluded from the definition of "rule". See Section 28-32-01 (11)(c) and (d). The Board's activities are not regulatory as with many of the agencies subject to Chapter 28-32. Instead, our activities involve providing goods and services and the management of trust-owned investment and real property.

Currently, the Board has adopted rules and regulations pertaining to the farm (real estate) loan pool, investments, minerals leasing including coal and oil and gas, and sand and gravel, and surface leasing activities. Again, most of these relate to goods or services provided, or servicing, maintenance, or care of agency-owned property and would not meet the definition of a rule.

The Constitution, the Enabling Act, and case law in ND jurisdictions and other courts provide that the lands granted to the State of North Dakota are for the exclusive benefit of the trust beneficiaries and that the Board is empowered to manage those lands and trust funds. As such, it is the Board that has the ultimate decision making authority to prudently manage those assets. Due process is provided to any aggrieved party as the Board conducts its business during open public meetings and is the appellate body settling commercial disputes with Board activities.

I respectfully request that the Board remain exempt from Chapter 28-32 rulemaking requirements, with the exception for the Uniform Unclaimed Property Act.