

2011 HOUSE CONSTITUTIONAL REVISION

HCR 3050

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee
Prairie Room, State Capitol

HCR 3050
March 9, 2011
Job #15211

☐ Conference Committee

Committee Clerk Signature

Mary Main

Explanation or reason for introduction of bill/resolution:

A concurrent resolution for the amendment of section 6 of article IX of the Constitution of North Dakota, relating to exchanges of land and mineral rights.

Minutes:

Attachments #1, #2, #3, #4 and #5

Chairman Koppelman: We'll open the hearing on HCR 3050.

Representative Shirley Meyer: (See attached testimony #1.) This is before you because of a constituent that contacted us and requested that he be allowed to purchase some land from the State land board, exchange property as in this bill. He could not be here today and he asked if I would read his remarks into the record.

Chairman Koppelman: That's fine.

Clyde Wetzel from New Salem was not present but his testimony was presented by Representative Meyer: (See attached testimony #2 and handout #3)

Representative Kasper: In the proposed amendment, section 6 Article IX of the Constitution and on the bill page 1 line 17, 'The purchaser shall pay 20% of the purchase price at the time the contract is executed;'. Maybe back in the old days when things were cheap, 20% was a good deal. Had you thought about softening the terms of the purchase price to 10% or 15% or is that an area that you thought you did not want to go into?

Representative Meyer: This is basically identical to legislation that was tried back in 1991. It went on the ballot in 1992 and I simply used the exact same language. If you feel like it would be better served to be 10%, OK. What I'm attempting to try to do here is to give the State Land Board a tool so on these acreages that farmers and ranchers have, they can exchange them, especially in the Badlands where you have tracts that are inaccessible. The terms of this are exactly what was offered before.

Representative Owens: I find this interesting. Isn't there some restriction with the Indian lands since its part of a treaty? Can't we just exchange? Can we actually do this since the lands with the Indian Reservations were actually given to them under treaty?

Representative Meyer: It's my understanding that currently we cannot. This would allow that to happen. The technical aspects of that, Mr. Gaebe probably knows the answer to that. This concurrent resolution would allow that to happen. This could become a very pertinent piece of legislation this year with our massive amounts of oil development that we're seeing at Ft. Berthold. Technically I do not believe that they can do that now but I could be corrected if I'm wrong. This would enable them to make those exchanges.

Representative Owens: When you were talking in your testimony about 'would still have fiduciary responsibility the school lands board, etc' and you continued talking about their fiduciary responsibility, there's no restriction about the land exchange had to be somewhat of equal value. Your point was their fiduciary responsibility would cover that. Am I correct in assuming that?

Representative Meyer: You are correct. That will be their responsibility but the State Land Board has an excellent reputation for doing things correctly and watching your fiduciary responsibilities.

Vice Chairman Kretschmar: Is Mr. Wetzel in his letter, just interested in the land or the mineral rights too?

Representative Meyer: Just interested in the land but this does make them transfer together. He would have to be giving up any mineral acreage that he has currently in Morton County. The minerals are going to have to remain with the surface which is a huge problem in the western part of the State with our split estates. This would keep that from contributing to that problem. He is not interested in the minerals is what he stated to me. They would transfer with the surface.

Vice Chairman Kretschmar: Under current law, could the State not sell him that land? Does the board have the authority now to sell the land to Mr. Wetzel for a monetary amount?

Representative Meyer: Currently the State Land Board can sell tracts of land but they have to be small, irregular, unique pieces that don't fit with anything. In the case of Mr. Wetzel who wants to trade his property, they're not allowed to do that because of this constitutional provision because it's a larger piece of State land. If there's a small 2 or 3 acres, some of those could be sold but they are small marginal tracts of land.

Vice Chairman Kretschmar: Does the legislature have to approve that? We've had bills in previous sessions about selling small tracts of land owned by State institutions and we had a bill not too long ago about some land near Grafton that they want to make into a park. Could it be done by statute and allow them to sell the land?

Representative Meyer: You are correct but it's my understanding that we can give legislative authority on these small parcels or tracts but when it gets into larger pieces of land for exchanges or sales, it has to have a constitutional component where they would be allowed to do that.

Representative Schatz: I'm assuming if this were passed then it would go on the ballot?

Chairman Koppelman: That's correct.

Representative Schatz: Is there a limit to the number of measured we can have on a ballot.

Chairman Koppelman: No there's not.

Chairman Koppelman: The current Constitutional language refers to counties or municipalities, and your adding Indian tribe or any private individual or entity. It seems that that does eliminate some things like other political subdivisions such as school districts, townships, and other. Counties or municipalities are named. Would you have any objection to making that change as well if the committee decides that we want the resolution to move forward?

Representative Meyer: That would be fine with me. I do believe they can but Mr. Gaebe could answer that. I believe government entities currently can do that. I would suggest that that's clarified. If that would please the committee that would be fine with me but I do think that that is allowed.

Chairman Koppelman: Right after that it talks about 'as the legislature may provide' and that language is struck in your proposed amendment meaning that it could happen without any law on the books allowing it or structuring the way it could occur although a law could still be passed to do that. Was that intentional? It would put all that authority into the land board versus giving the legislature the prerogative constitutionally to provide for it.

Representative Meyer: When I had this drafted, it's identical to what was tried before. When the legislature has to keep acting on these small tracts of land, the thought was we shouldn't need to keep doing that. We should be able to trust our land board enough to be able to handle those kinds of decisions without us having to second guess them.

Chairman Koppelman: You're using that language to your amenable to amendment if need be.

Representative Meyer: Absolutely.

Kelly Moldenhauer: (See attached handout #4) I'm speaking in support of the bill because of the common sense of this. We have a State Land Board that is made up of a Governor, Doug Goehring, Al Jaeger, Superintendent of Schools, which are all elected officials. We have a body of people that are professional that could make a determination of the trading of private land for State land. We do it interagency wise and we do have an option to buy some land. Its policy that you can buy up to 80 acres of irregular land. So there is an option to do a little buying. I would like to explain my handout. The areas in black are the areas that I hold title to by the Heart River. The tract in yellow in the lower left is 160 acres and was lost in the 1930's and acquired by the State for back taxes. Above that is another tract of land in yellow that is 160 acres but that's something that could be bought because the road goes through it. 50 acres is in one of my pastures and about 80 acres or so is in the other pasture. Neither of those two pieces of land have water. They have to go from those pastures which I rent from the State to water on my land. On the

lower right, is where a trade would be beneficial to the State and to me. There are 3 quarters owned by the State of North Dakota and the one marked in black that is 160 acres is owned by me. I would like to trade that quarter, which would make the State have a full section, for a quarter to the west in the middle of my acreage. It would be an advantage to me because I could drill a well which could put water into the State quarter which could put it to my other quarter because the water right now is at the river which is a 2 mile walk. I'm not going to run pipelines across State land and find out that next year it is rented by somebody else and I don't have any water to the other quarter. It makes everything more secure in my cow operation if I was to own the quarter that the State presently owns. The State would then have a full section 3 miles to the east. That's what Representative Meyer was referring to. There are situations that come about. I think the State Land Board is capable of making decisions if it's equitable for the State.

Chairman Koppelman: You talked about the narrow strip of land being acquired by the State for back taxes in the 30's. Property taxes today are a local tax levied by the county, township, city, school district, etc. In the modern world, if land were to go back for back taxes, would it end up in the State's hand or some other political subdivision?

Kelly Moldenhauer: If there were an opportunity for me to have an open bidding on this, I'd buy it in a heartbeat because of security reasons. It's financially much better for me to rent it. I don't have to pay tax on it. Tax on my land out there is about \$500 per quarter. If this land would go for \$300 dollars per acre it would be \$48,000. That at a current investment of 4% would be about \$2000 of generated income. I can rent this piece of land for \$1100. I'm better off to rent it but I can't expand my watering in my sectional grazing because of where it's at. There's more money for the State if they sold it because land prices are so high. If we could do a trade, there's no net money gain or loss. I would prefer to buy but that's going to be more difficult because you have your environmentalists and your hunters and so on. This is tough because you can't get through it unless you walk through the Heart River to get to it.

Representative Kasper: Under the current law, couldn't you do an exchange right now?

Kelly Moldenhauer: As I understand it, no. Maybe that's what Shirley's proposing that we can exchange State land for private land. You can if it's agency to agency? Isn't that what your proposal is all about? So I can exchange it?

Representative Meyer: Yes

Kelly Moldenhauer: I can't do it now because I'm a private sector. I can't exchange it with a State land. I'd like to and I don't think the State Land would object to it. It seems like a common sense thing. They would have to approve it.

Chairman Koppelman: Further testimony in support of HCR 3050? Any testimony in opposition of HCR 3050? Any neutral testimony of HCR 3050?

Lance Gaebe, Commissioner of the State Land Department: (See attachment handout #5) I've only had this role for 6 months so I brought Mike Brand with me who has been there for about 30 years. I may ask him to answer the hard questions on behalf of the Land

Dept. Representative Meyer's testimony is essentially the same as mine so I won't present that. In 1991 and 1995, this was approved by the legislature and put on the ballot in both those years. In 1995, the resolution was defeated by a vote of 49 to 51 percent, 52,435 for and 54,256 against. In 1991, these were efforts of the State Land Board to have this put on a statewide ballot and it was a bit more of a lopsided vote at that time. I don't know why that occurred 20 years ago. I'm presenting neutral testimony because the board didn't have an opportunity to act on this since it was only introduced a few weeks ago and the board has not met in that time frame. I'd like to clarify some things from the previous testifiers. The Land Board is made up of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. They are by Constitution on the State Land Board. They are able to sell land as Representative Kasper identified in the language of the Constitution and why the \$10 per acre is the minimum and the contract value and so forth. So the board can sell land but have chosen in the past 40 years of so to do very much of that. Originally the State started with about 3.2 million acres of land for the support of the common schools as provided under the equal footings doctrine when North Dakota became a State. The Federal Government provided this to the State for the support of our public institutions and schools. Throughout the early part of the last century, the land board sold a lot of that. We now have about 700 thousand acres. In the mid 70's, it was realized that if we keep selling all of these revenue producing assets, we won't be producing revenues for the distribution to the common schools. While this land board does and can sell land, it's only for the more remote tracts. The 80 acres is not the law, it's the policy of the board. If it's a remote tract, 80 acres of grass land or less, hard to manage, secluded, they have given the ability to the commissioner and the staff to initiate the process to sell it. They could sell even the parcels that Mr. Moldenhauer described, but because they are public lands, they are open to sportsman, they have native grasses, in most cases it's been the public policy to not sell very many. The concept of exchanging them historically for the board has had appeal because we would have no net loss of school trust land. I presented our budget bill to the Appropriation Committee yesterday and in the current biennium our distributions to the common schools for the forthcoming biennium will be 92 million dollars from the assets produced by the minerals and the pastures and cropland that are held by the Common Schools Trust Fund. Collectively with the other permanent trusts, we'll disburse 98.5 million dollars. They are producing assets. There's a lot of talk about permanent trust and permanent set asides for future generations. Our forefathers, in the territorial legislation that was set up a long time ago, has been working throughout statehood to support our schools. The other thing is that the minerals would not necessarily have to go with the land. This resolution does two separate things. It would allow land to be traded with a private individual, like Mr. Moldenhauer said, or with any other type of entity that's listed there. In line 25 of page 2, there could be some confusion in the way that the word 'private' is entered. I think 'private' could modify to the word individual or entity. Maybe the word 'private' should be struck and then at least the board could trade with any Indian tribe or county municipality or other entity, so the word 'private' doesn't unintentionally preclude someone else. It wouldn't have to be with the minerals exchanged. The other thing that the resolution does is will allow the exchange of minerals which are not allowed in any case. As Representative Meyer's testimony said, if we have a stranded quarter in the middle of Forest Service lands, we could swap the lands with the United States Forest Service but we couldn't do the minerals. This change would allow the minerals if they are stranded, we could swap them for something else that the Forest Service has. One thing that she said that wasn't quite correct is the minerals don't

have to go with the land swap if that is to occur. There's not any active position on this although in the previous boards in '91 and '95, the board did support this legislation and even promoted it with the legislature and the public. What I gather from talking to folks who have been around longer than me, when it was defeated, there was concern over vast changes of land ownership and that the sportsman and conservation groups were concerned that farmers would buy up big blocks and vice versa, the agriculture sectors were concerned that the conservationists would get big blocks and so they canceled each other out and it lost support all around. I handed out a brochure to explain what the land department is as some of you may not have any idea. Besides managing the 700 thousand acres of land that that we have in possession for the State trust, we also manage 2.5 million acres of minerals and about 1.7 billion in financial assets that have been generated from those sources recently as a result of the ownership of these minerals. The oil and gas activity has doubled our assets for the trust in less than 3 years.

Representative Schatz: Is the State Land Board able to grant an easement to go across State land for water purposes so you could have a water line across their property so you could get to your property.

Lance Gaebe: Yes. The State Land Board does have the authority and has granted the authority to the commissioner to provide easements and we do it recently every day in oil country where we have gas gathering lines, electrical distribution lines, roads, oil sites, and so forth and we do have the authority to grant easements for compensation.

Representative Schatz: So that would be for private property too? Would Mr. Moldenhauer be able to get an easement?

Lance Gaebe: Yes for compensation. We don't have a set price per yard or per acre. For example, Southwest Water has a lot of rights of way across State land and we granted easements for compensation to the trust for those rights so private could do it as well.

Chairman Koppelman: You indicated the boards support before. Do you have any sense for whether they would look favorably upon this or would there be opposition or whether they would take a neutral stance?

Lance Gaebe: My speculation would be they would receive this positively because it offers them more flexibility. There's nothing in this resolution that requires or precludes in any way. It would be another option to try and implement some of the suggestions that were offered by the previous testifiers. It's permissive in nature so I don't see any reason why they would oppose it.

Chairman Koppelman: Is all of the land that the State owns managed by the land board and considered school lands?

Lance Gaebe: Not all the land but all of the land within the 13 different permanent trusts that own land, 94% are the Common Schools Trust Fund but there's also the Capitol Building Trust. Not all the land that the State owns but all the land within our responsibility is owned by a trust, one of 14 different trusts. It's not pooled so to speak. Let's say there's 700 thousand acres and the Common Schools has 90% of that, they actually specifically

own a quarter or a section so the tracts that Mr. Moldenhauer identified are specifically owned by possibly the Veterans Home or the State School of Science Trust. The revenue from that actual piece of land is what goes into that trust and then by the distribution that I talked about with the 98 million dollars that will be disbursed in the forthcoming biennium, is done by formula. Historically it used to be an interest and income formula where a legislature would appropriate the income earned for each trust. In 2006, the Constitution was changed by the people in the current biennium and is now 5% of the 5 year value that's disbursed. This committee approved that back in 2003 or 2005. That's how the disbursements are made.

Chairman Koppelman: Any further testimony on HCR 3050? We are going to close the hearing. I'm going to appoint a subcommittee to further research this. Representative Kasper will you chair that and Representative Louser and Representative Holman. Maybe by next week we can take a look at your findings.

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee
Prairie Room, State Capitol

HCR 3050
March 24, 2011
Job #15982

☐ Conference Committee

Committee Clerk Signature

Mary Main

Minutes:

Chairman Koppelman: This one would allow for exchange of land between the Board of University of School Land and private owners and the exchange of all mineral interests. This is one that is on the general ballot and in my opinion it should go primary.

Vice Chairman Kretschmar: I would move to put it in the primary.

Representative Conklin: Second.

Voice vote taken. Motion carries.

Chairman Koppelman: Is there any discussion or what are your wishes?

Vice Chairman Kretschmar: I have no objection to trading land with somebody or allowing the Board of University of School Land to do that. I object strongly against the State of North Dakota losing any mineral rights.

Representative Meier: I would move a do not pass.

Representative Schatz: Second.

Chairman Koppelman: Call the roll on a do not pass recommendation on HCR 3050.

8 Yes, 2 No, 1 Absent

Do Not Pass as Amended

Carrier: Rep. Kretschmar

March 24, 2011

VK
3/24/11

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3050

Page 1, line 10, replace "general" with "primary"

Renumber accordingly

Date: March 24, 2011
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3050

House Constitutional Revision Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Conklin

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Conklin		
Vice Chairman Kretschmar			Representative Holman		
Representative Kasper			Representative Winrich		
Representative Louser					
Representative Meier					
Representative Owens	AB				
Representative Schatz					
Representative Streyle					

Total (Yes) 10 No 0

Absent 1

Floor Assignment _____

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

move to
Primary
ballot
from general

voice vote
carries

Date: March 24, 2011
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3050

House Constitutional Revision Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Meier Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conklin	✓	
Vice Chairman Kretschmar	✓		Representative Holman		✓
Representative Kasper	✓		Representative Winrich		✓
Representative Louser	✓				
Representative Meier	✓				
Representative Owens	AB				
Representative Schatz	✓				
Representative Streyle	✓				

Total (Yes) 8 No 2

Absent 1

Floor Assignment Representative Kretschmar

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

REPORT OF STANDING COMMITTEE

HCR 3050: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (8 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HCR 3050 was
placed on the Sixth order on the calendar.

Page 1, line 10, replace "general" with "primary"

Renumber accordingly

2011 TESTIMONY

HCR 3050

**CONSTITUTIONAL REVISION COMMITTEE
REPRESENTATIVE KOPPELMAN, CHAIRMAN**

HCR 3050 provides for the amendment of Section 6 of Article IX of the Constitution of North Dakota, and would allow the Land Board to exchange land and minerals with federal, state and local government entities, Indian tribes and private owners. The Land Board currently is able to exchange surface and coal acres with the federal government, state agencies, counties and municipalities. The Constitution, as it now reads, does not permit the exchange of surface acres with Indian tribes and private owners; and non-coal mineral acres may not be exchanged with anyone.

The ability to exchange land and minerals assets would be an important management tool for the Land Board.

EXCHANGES WITH OTHER GOVERNMENT ENTITIES AND INDIAN TRIBES

Although the current constitutional language allows surface acre exchanges with other government entities, it does not allow the Land Board to exchange mineral interests with these entities. It also does not specifically permit exchanges of either surface or mineral estates with Indian Tribes. This means that if the Land Board were to exchange surface acres, it would still retain ownership of the minerals under the surface. Unfortunately, retention of minerals in an exchange could often result in a continuation of many of the problems an exchange was designed to avoid. For example, in southwestern North Dakota, the federal government (US Forest Service) owns a high percentage of the land in certain townships. The Board of University and School Lands also owns a significant amount of acreage in the same areas, much of which is surrounded by federal acreage. For a variety of reasons, it would make sense for both the Land Board and the U. S. Forest Service to exchange some of these tracts. This would allow the Land Board to consolidate its acreage and increase the value of its land and minerals.

If the Land Board is forced to retain minerals on tracts it would like to exchange, the exchange becomes much less desirable because the value of minerals is dependent on the ability to explore for, and extract, those minerals. This requires access to the tract, which obviously requires use of the surface estate. Because the Forest Service is already the dominant surface owner in these regions, and because section line access is often not a feasible alternative (because of terrain),

access to state minerals is already subject to considerable federal influence or control. Thus, if we are able to work out an exchange with the federal government or an Indian tribe, it makes sense to exchange both surface and minerals in the same transaction thereby increasing the value (and control) of that ownership for both parties.

EXCHANGES WITH PRIVATE OWNERS

As noted above, the Constitution currently does not provide any authority to exchange land and mineral assets with private owners. If the Land Board is to be allowed to enter into exchanges to consolidate its assets, it makes additional sense to include private ownership in this exchange authority. Although there are no private owners with the vast holdings of the federal government or Indian tribes, there are numerous situations where a trade of a small amount of acreage with a private owner would benefit both the private owner and out trusts.

CONCLUSION

The proposed constitution amendment described in HCR 3050 would broaden the asset exchange authority of the Board of University and School Lands in two respects. First, it would allow the exchange of all minerals. As noted, the authority to exchange mineral interests could be needed to make the exchange of surface interests a viable option in many situations.

Secondly, the proposed amendment would allow the Board to exchange property with Indian tribes and private individuals. This makes sense in circumstances where the interests of both parties would be served by such an exchange.

It should be noted that all exchanges would need to benefit the common schools or other trust fund which owns the land and minerals to be exchanged. The Land Board would still be subject to the fiduciary responsibility, imposed by Section 1 of Article IX of the Constitution, to manage this property in trust. Given the nature of this fiduciary responsibility, and the evolution of land ownership patterns during the last 100 years, we believe the exchange authority proposed in this amendment is reasonable, and will enhance the asset management and revenue-generating capabilities of the Land Board.

March 8, 2011

Members of the Constitutional Revisions Committee,

It is with regret that I have to write this letter as I would rather be there in person to testify regarding this matter. This legislation is of great importance to me but at this time we are out of state so that is why I am writing about my concerns.

I own land in Morton County that has a parcel of state land in the middle of my land. This was not school land but the state acquired the 320 acres because of delinquent payments by previous owners in the 1930's.

This state land is all pasture and there is no water available on any part of it.

I believe the state of North Dakota should benefit if land is traded with a landowner. With the land that I would trade to the state, they would have water with a spring fed dugout for the pasture land and also have some crop acres.

I would gain in the trade by having all my land connected in one and then I could dig in permanent water lines to get water to areas that could be dry during a drought. At this time, I would not want to dig water lines across land that does not belong to me.

I recommend passage of this legislation as there would be only positive results for both the state of North Dakota and landowners in North Dakota.

Thank you for your consideration in this matter.

Clyde Wetzel
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Attachment #3

LEASING OF STATE LANDS - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4027 (2009) (attached as an appendix) directs the Legislative Management to study the leasing of state lands. In particular, the legislative history and resolution focus on the leasing of school lands by the Land Department, generally to ranchers, at public auction for a maximum term of five years. The main concerns in the resolution and legislative history with the present practice relate to:

1. The limited term of five years for the lease.
2. The practice of leasing and not selling the land.
3. Not giving a preference to the present lessee in this bidding process.

The resolution and legislative history suggest that the term of 5 years is too short and a term of 7 years or 10 years may be more appropriate. A longer term would reduce the costs of land auctions and encourage lessees to make improvements. Improvements would be encouraged because a longer term would allow for more time to recover the cost of the improvement. The longer duration would be less of an incentive for another lessee to unfairly profit by leasing the property after an improvement to the property. In short, if a lessee does a good job of managing the pasture and making improvements, there is more competitive bidding. This is a negative incentive to make improvements. In Montana, the present lessee is given the preference of being able to meet the high bid at the auction and keep the lease. In effect, this preference is an extension of the lease.

The legislative history is silent on the reasons for studying the sale of school lands. It would appear the reasons for longer leases would be the same as they would be for sale of the land. Mainly, the sale of the land would provide for more certainty for a rancher to make improvements and manage the property. In addition, managing money instead of land would arguably be less burdensome to the Land Department.

The major arguments against and limitations on expanding the term of lease, providing a preference for the present lessee, or allowing the sale of land included:

1. The bidding process allows for the adjustment of price and the shorter the term of the lease, the more responsive the price is to the market.
2. School lands are managed to provide income for public schools and leased land provides a stable income.
3. The state constitutional provisions limiting the term of lease to five years and not providing a

preference to a person due to occupation or cultivation or improvement of any public lands by that person.

STATE-OWNED TRUST LANDS

In 1889 Congress passed an Act to provide for the states of North Dakota, South Dakota, Montana, and Washington. This Act is commonly known as the Enabling Act. The Enabling Act divided the Dakota Territory into North Dakota and South Dakota and granted the 16th and 36th sections of land in each township to the state "for the support of common schools." In addition, the Enabling Act granted lands for the support of colleges, universities, the State Capitol, and other public institutions. The other public institutions include North Dakota Vision Services - School for the Blind, the School for the Deaf, the State Hospital, the Youth Correctional Center, and the Veterans' Home.

Generally, original grant lands are governed by Article IX of the Constitution of North Dakota, and North Dakota Century Code (NDCC) Chapters 15-04 through 15-06. Article IX, Section 3, of the Constitution of North Dakota provides in pertinent part that "[s]ubject to the provisions of this article and any law that may be passed by the legislative assembly, the board [of university and school lands] has control of the appraisement, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law." The term "original grant lands" is defined in Section 15-06-01 as "all of the public lands which heretofore have been or hereafter may be granted to the state by the United States for the support and maintenance of the common schools or for the support and maintenance of the university, the school of mines, the North Dakota youth correctional center, North Dakota state university, the school for the deaf, any normal school, or any other educational, penal, or charitable institution, and any lands which have been obtained by the state through a trade of any such lands for other lands."

The Board of University and School Lands consists of the Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and State Treasurer. Under NDCC Section 15-02-01, the board appoints a commissioner to manage the Land Department. The following table includes the land managed by the board. The land is divided into the separate trusts for which the land is managed and is divided by tracts, total acres, and types of acres.

County	Tracts	Total Acres	Rank in Total Acres	Grass	Crop	Hay
Adams	109	17,097.52	18	16,967.52	0.00	0.00
Barnes	18	2,803.32	38	1,785.61	258.00	12.00
Benson	109	11,957.28	24	8,625.83	1,331.10	218.00
Billings	205	30,927.06	5	26,380.51	51.40	0.00
Bottineau	24	3,591.94	35	2,507.00	938.20	58.00
Bowman	205	29,310.48	6	28,399.91	106.70	33.80
Burke	112	16,119.43	19	14,930.71	180.00	0.00
Burleigh	193	27,890.13	9	24,435.13	1,244.00	440.67
Cass	1	40.00	49	0.00	0.00	0.00
Cavalier	6	596.47	46	336.06	179.80	0.00
Dickey	27	3,981.51	34	3,164.01	419.50	100.00
Divide	142	20,795.84	16	19,527.40	66.50	296.00
Dunn	168	25,653.18	11	24,237.35	0.00	0.00
Eddy	84	10,274.62	26	8,690.58	303.00	398.00
Emmons	92	13,516.93	23	12,790.44	421.00	0.00
Foster	21	3,111.51	36	2,686.71	175.50	18.30
Grand Forks	8	1,274.77	43	1,274.77	0.00	0.00
Golden Valley	199	28,983.55	7	22,833.37	199.00	0.00
Grant	227	33,478.72	3	32,388.42	425.30	285.00
Griggs	13	1,741.24	41	1,161.24	342.00	95.00
Hettinger	65	9,883.69	27	9,804.65	0.00	0.00
Kidder	188	28,643.79	8	26,665.79	88.00	188.00
LaMoure	9	1,435.72	42	817.72	245.00	75.00
Logan	66	9,404.92	28	8,036.42	277.40	125.60
McHenry	146	22,720.56	14	20,949.46	197.10	106.00
McIntosh	46	6,209.87	32	5,422.87	25.00	123.00
McKenzie	419	64,714.78	1	56,627.93	0.00	0.00
McLean	159	21,042.50	15	19,597.60	606.40	0.00
Mercer	111	15,129.38	21	14,140.93	309.00	73.00
Morton	128	18,113.89	17	16,912.00	332.30	198.04
Mountrail	234	32,445.36	4	30,474.32	556.20	113.70
Nelson	30	2,694.45	37	1,487.70	490.70	163.40
Oliver	54	7,588.41	30	7,269.68	111.50	0.00
Pierce	102	13,660.93	22	11,288.45	610.18	335.00
Ramsey	23	2,056.50	39	354.00	667.40	48.00
Ransom	7	1,120.00	45	785.00	135.00	0.00
Renville	12	1,910.12	40	1,873.22	25.00	0.00
Richland	4	513.68	47	360.68	30.00	0.00
Rolette	50	6,226.08	31	5,987.57	0.00	0.00
Sargent	8	1,127.79	44	757.79	166.00	20.00
Sheridan	183	25,826.44	10	23,091.52	1,036.80	358.00
Sioux	159	23,411.56	13	22,704.36	0.00	120.00
Slope	155	23,605.98	12	21,352.51	0.00	35.00
Stark	42	6,142.64	33	6,013.53	0.00	48.00
Towner	76	8,076.00	29	5,159.83	1,358.51	245.60
Walsh	3	201.02	48	193.02	0.00	0.00
Ward	73	11,038.98	25	10,449.70	0.00	80.00
Wells	43	5,248.80	33	4,587.46	153.00	77.20
Williams	250	38,399.32	2	37,588.27	65.00	0.00
Total	4,917	707,402.67		637,049.76	14,865.40	5,067.51

In 1990 the fair market value method of determining the opening bid for leased land was adopted. The fair market value is determined based on cash rents for grassland in the region and adjusted for differences between school land and private land. Using United States Department of Agriculture statistics, the lowest average county rent in the region is averaged over the last five years and reduced by 10 percent to find the rental value. Deducted from the rental value of private property is \$1.50 per acre for fencing and one-half the cost of leafy spurge control. The other half of spurge control may be recovered as a cost-share. The Land Department has paid 100 percent of the cost of controlling saltcedar, yellow star thistle, knapweed, and Canada thistle. The land

is adjusted for potential forage productivity. Using United States Department of Agriculture rental value survey statistics for 2007 and lease amounts for 2008, if the high rental value statistics are used, the approximate average reduction is approximately 44 percent. This reduced value is the minimum opening bid.

The lease prohibits a number of activities by the lessee without consent. The lessee may not:

1. Assign the lease.
2. Cultivate additional land.
3. Use the land for storage or dumping.
4. Make permanent improvements or major repairs. This does not include fences or water tanks. Permanent improvements and major

to maintain an inventory of state-owned assets. The Office of Management and Budget reported it maintains an inventory of state-owned land and a bill draft was not necessary to accomplish the inventory.

SUGGESTED APPROACH

The three main concerns to be addressed by this study are the term of the leases, the sale of land, and giving a preference to present lessees. Two of the areas of study--the term of the lease and giving a preference--are controlled by North Dakota constitutional provisions. Because a change in the Constitution of North Dakota would require a vote of the people, the committee may wish to receive

testimony to see if there is popular support for the changes. The sale of land is as well governed by the constitution; however, Article IX, Section 5, of the Constitution of North Dakota, states "[t]he legislative assembly shall provide for the sale of all school lands subject to the provisions of this article." The committee may desire to receive testimony on the value of state land as a state asset as opposed to the cash from the sale of the state land and from agricultural producers of instances in which the policy of generally not selling does not appear to be the best use of the resource.

ATTACH:1

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

**SENATE CONCURRENT RESOLUTION NO. 4027
(Senators Taylor, Flakoll, Olafson)
(Representatives Belter, Boe, Froelich)**

A concurrent resolution directing the Legislative Council to study the leasing of state lands.

WHEREAS, state lands in North Dakota are managed by the Board of University and School Lands or the Land Department; and

WHEREAS, currently these lands are leased at public auction for a maximum lease term of five years; and

WHEREAS, state lands have been sold in the past; and

WHEREAS, whether and to what extent a preference is given to the lessee should be reviewed; and

WHEREAS, extending the lease term from five years to seven or ten years may be more efficient in that it would reduce the cost of land auctions and encourage lessees to make improvements that they otherwise would not make under a shorter lease term; and

WHEREAS, promoting policies that encourage good land stewardship would be beneficial to the state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the leasing of state lands; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

Minerals Management Division

This division is responsible for the management of over 2.5 million mineral acres.

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

This division also issues coal leases, potash leases, and seismic permits. It monitors mining and reclamation activity, ensures lease compliance, and works with the Surface Division to ensure that mineral development on trust land proceeds in an environmentally sound manner.

ACTIVITY

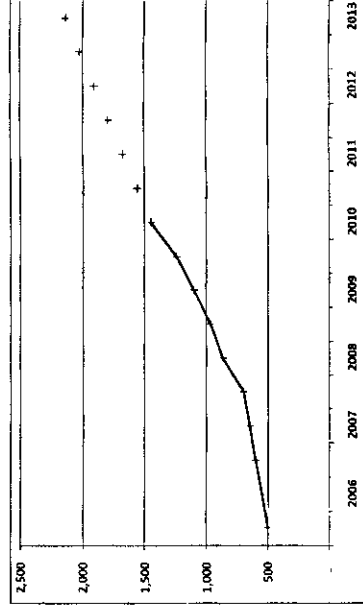
- During fiscal year 2010, \$295 million of lease bonus money was collected, which is approximately the amount collected during the previous 39 years combined.
- Oil and gas royalties were \$56.5 million in calendar year 2009 and \$85 million in calendar year 2010.
- The division oversees over 1,500 producing wells, up from approximately 500 just four years ago.
- Department-managed minerals participate in 40% of active and producing oil wells.

FUNCTIONS OF THE DIVISION

- Collect bonus and rental payments.
- Approve assignments of oil and gas leases and pooling agreements.
- Enforce shut-in well policy and offset well policy.
- Monitor statewide drilling activity to track production on state-owned minerals.
- Monitor activities of other governmental agencies to determine effect on state-owned minerals.

- Maintain royalty information, including the volume, value, and net paid of royalties paid to the State.
- Additionally, about 40% of leases sold since 2000 are "new", meaning they've never been leased before and have not gone through a title opinion vetting.

PRODUCING WELLS AND UNITS MANAGED



Energy Development Impact Office

Objective: Mitigate financial hardship to local political subdivisions adversely affected by oil development and exploration

Funding Source: 6.667% of the Oil & Gas Gross Production Tax (up to a maximum of \$8 million per biennium)

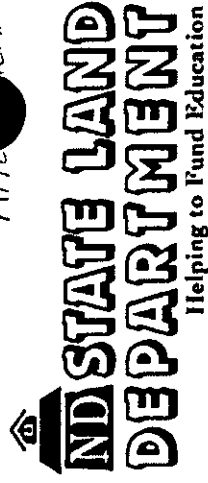
Criteria for Approving Grants

- The local political subdivision requesting funds must demonstrate that it is experiencing a financial hardship directly from oil activity.
- The project must reduce that impact.
- The applicant must demonstrate financial need.

Grant Allocation Procedure: Administer one grant round per year, as follows:

- Request applications for assistance in February
- Meet with each applicant in April or May
- Make grant allocations in June

Grants are made by the EDIO Director. The Board of University and School Lands is the appellate body.



Managing Agency Of The

Board of University
and School Lands

January 2011

GOVERNOR

Jack Dalrymple, Chairman

SECRETARY OF STATE

Al Jaeger, Vice Chairman

ATTORNEY GENERAL

Wayne Stenehjem

STATE TREASURER

Kelly Schmidt

SUPT OF PUBLIC INSTRUCTION

Dr. Wayne Sanstead

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Land Department History

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

Over time, much of this land was sold. However, the 13 educational trust funds still own approximately 707,000 surface acres, 2.5 million mineral acres and \$1.5 billion in financial assets. The Common Schools Trust Fund, which benefits K-12 education, is the largest trust with total financial assets of over \$1.4 billion on December 31, 2010.

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

In addition to its responsibility managing the land, minerals, and financial assets of the trusts, the Land Department is also responsible for the administering the Uniform Unclaimed Property Act, and the Energy Development Impact program.

Unclaimed Property Division

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

Once the money is reported to this division, efforts are made to "reunite" the property with its owner by promoting free internet searches, publishing statewide newspaper ads, conducting media interviews, displaying a list of owners at trade shows, and preparing direct mailings and e-mail distributions.

Funds held by the Department may be claimed at any time by the owner or the owners' heirs. Money that is not claimed is invested in the common schools trust fund to benefit local public school districts. Currently, approximately \$32 million of unclaimed property is held in trust.

Investments Division

The Investment Division is responsible for directing, implementing, coordinating and monitoring all aspects of the Land Board's financial investments.

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

- Total permanent trust investment assets grew by \$387 million during fiscal year 2010 to approximately \$1.28 billion on June 30, 2010.
- Approximately \$125 million of fiscal year 2010's trust growth can be attributed to the 14.48% total return posted by the investment portfolio during year; much of the balance of trust growth can be attributed to various oil and gas related sources (oil extraction tax, royalties and bonuses).

Permanent Trust Distributions for the 2011-2013 Biennium

During the 2011-2013 biennium, the 13 educational trust funds will distribute a total of \$98.5 million to beneficiaries.

The Common Schools Trust Fund will contribute \$46.3 million to K-12 education each year of the biennium, or approximately \$351 per pupil. The other 12 trust funds will pay out nearly \$3 million per year to the various beneficiaries as shown below.

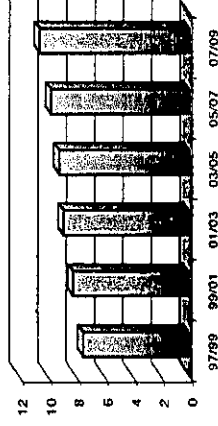
Beneficiary	2011-2013 Distribution	Increase From 09-11
Common Schools (K-12)	\$92,514,000	20%
ND State University	1,424,000	16%
University of ND	1,310,000	18%
Youth Correctional Center	528,000	21%
School for the Deaf	454,000	28%
State College of Science	523,429	28%
State Hospital	603,429	26%
Veterans' Home	279,429	1%
Valley City State University	286,000	10%
ND Vision Services	247,429	6%
Mayville State University	184,000	3%
Dakota college at Bottineau	31,429	12%
Dickinson State University	31,429	12%
Minot State University	31,429	12%
Total	\$98,448,000	20%

Surface Management Division

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

School trust lands are managed as an asset for the benefit of the schools and institutions. Each tract is classified as to its productivity, income potential and cash value. School trust lands have an estimated value of more than \$220 million and produce about \$11.5 million/biennium.

Surface Rental \$ in Millions



FUNCTIONS OF SURFACE MANAGEMENT

Lease Marketing and Maintenance

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

Natural Resource Management

- 97% of school trust lands are grasslands. Most trust lands are open to public walk in access.
- Improvement projects include grazing systems, clubmoss control, trash cleanup, abandoned well sealing and seeding marginal cropland to grass.
- Invasive plants including Leafy spurge, Canadian thistle, Hounds tongue, and Kentucky bluegrass are actively controlled using chemical and biocontrol techniques.
- Trust lands inspected at least once every 5 years.

Rights-of-Way and Gravel Mining

- A record 231 rights-of-way for routes across trust lands were processed in 2010.
- Construction and reclamation of rights of way and oil/gas wells are monitored.
- Gravel lease royalties are negotiated and leases are issued.