

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/03/2017**

Amendment to: HB 1300

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

|                       | 2015-2017 Biennium |             | 2017-2019 Biennium |             | 2019-2021 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       |                    |             |                    |             |                    |             |
| <b>Expenditures</b>   |                    | \$20,000    |                    | \$746,720   |                    | \$601,370   |
| <b>Appropriations</b> |                    |             |                    |             |                    |             |

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

|                         | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|-------------------------|--------------------|--------------------|--------------------|
| <b>Counties</b>         |                    |                    |                    |
| <b>Cities</b>           |                    |                    |                    |
| <b>School Districts</b> |                    |                    |                    |
| <b>Townships</b>        |                    |                    |                    |

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

The bill will make the Board of University and School Lands an Administrative Agency under NDCC 28-32 for most of its responsibilities. The bill will replace existing Board authority to make rules with administrative processes, and it will implement adjudicative proceedings for most Board decisions.

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

Section 1, 2 and 3 would subject the Board and Commissioner of University and School Lands to administrative rule making processes and adjudicative proceeding requirements of the Administrative Agencies Practice Act (AAPA), from which they are presently exempt.

The Bill exempts some areas of the Board's responsibilities from the AAPA: managing escheat and gifts within trusts; energy impact grants; and investments. However responsibilities for sales, leases, contracts, permits, disposal, and appraisalment would all be subject to the AAPA.

There will be initial costs associated with developing and publishing administrative rules. Additional ongoing costs will be incurred for legal assistance and administrative hearing officers to conduct adjudicative proceedings. These costs will need to be appropriated from outside of the constitutional trust funds because the constitution states that these funds must not be diverted from the benefit of the common schools and other beneficiaries.

Under the Constitution and statutes, the Board has at least 85 existing sets of rules, policies and procedures related to management of land, oil and gas leasing, coal, easements, land sales and auctions (summary attached). Under the AAPA, these rules will need to be prioritized, revised into the form and style of administrative code, published, reviewed in hearings, and presented for administrative rules committee consideration.

None of the Board's current rules and procedures have been approved by the administrative rules committee, but the bill has an effective date of January 1, 2018. Given the aggressive time-frame to implement rules relating to most Board responsibilities, the estimated fiscal impact considers the need for additional staff to help manage the process and for additional legal expenses.

The Department of Trust Lands' submitted budget reduced its authorized FTE by two, but this bill would necessitate

the authorization and re-purposing of two FTEs. The Department will request an Administrative Staff Officer and Legal Assistant to assist with drafting and adopting of rules and with the ongoing processes relating to adjudicative proceedings. Compensation and operating costs for these not yet approved positions, is included in the estimated fiscal impact.

The bill will also necessitate expanded legal consultation from the Office of the Attorney General to ensure compliance with the AAPA for the Board's non-exempt duties. The legal review of existing rules, policies and procedures to identify which are subject to the rule making requirement and the subsequent drafting and revision of rules is estimated at \$10,000 per month through 2019. If the Attorney General does not have sufficient staff to support this effort, more costly outside counsel will need to be hired.

Once rule making is complete, adjudicative proceedings to address requests for rule exceptions and the consideration of draft orders will require state-appointed hearing officers at a rate of \$165 per hour.

From 2014 to 2016, the Board issued 611 easements, damage agreements, improvements, and rights-of-way. Of the 611 granted approvals, there were 75 different types of permits or use agreements. Unless specific administrative rules for each type of request were previously adopted, unique or distinct applications will need to be administered with a draft order, publication and an administrative hearing.

Requests for unique easements coupled with actions related to: acreage corrections; lease adjustments; requests for assignments of leases, extension or suspension of leases; reduction of assessed penalties; and public purpose land sales are collectively estimated to require 35 hours of administrative hearing officer time each month.

Hearings to consider draft rules and amendments, as well as proposed orders of proposed action or exemption to a rule require legal publication which is estimated at \$625 per month.

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

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

The administrative processes required by the bill will create processes and delays that may reduce bonus, royalty, and easement revenues to the 13 constitutional trust funds, the Capitol Building Fund, the Indian Cultural Education Trust Fund and the Strategic Investment and Improvements Fund; but the scope of the impact cannot be determined.

Because the negative revenue impact to the Common Schools Trust Fund and 12 other trusts identified in Article IX of the Constitution, may violate provisions of Section 2 of this Article, some provisions may not be able to be implemented.

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

The legal review of existing Board rules, policies, and procedures to identify which are subject to the AAPA rule requirement plus subsequent attorney assistance in drafting proposed administrative rules is estimated at \$10,000 per month from now through the 2017-2019 biennium and \$2,500 per month during the 2019-2021 biennium. Estimated totals are \$20,000 in the current biennium, \$240,000 in the 2017-2019 biennium and \$60,000 in 2019-2021.

Under the AAPA, adjudicative proceedings for proposed orders and rule exception hearings require a state hearing officer whose rates are \$165 per hour. Comparable state agency use of the Office of Administrative hearings derived an estimated average of 35 hours per month, starting in January 2018. This totals \$103,950 in 2017-2019 and \$138,600 in 2019-2021.

The estimated expenditure includes salary, benefits and associated overhead for two additional staff. One Administrative Staff Officer III with an estimated fixed monthly salary of \$5,680 (Grade L) and the second, a Legal Assistant II with a average monthly salary of \$4,781 (Grade J). With benefits, supplies, travel and fixtures these positions are estimated at \$204,673 per biennium for the staff officer and \$183,097 per biennium for the legal assistant.

The additional costs of required publishing of proposed rules and notice of hearings is estimated at \$7,500 annually.

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

Present Department staff is fully engaged with day-to-day responsibility managing trust and State assets, complying with existing statutory requirements and deadlines, implementing performance audit recommendations and preparing for information technology upgrades. The existing staff cannot implement the requirements of the bill without additional staff and funding.

Without the approval and funding for at least two FTEs, and an appropriation from a source outside of the trusts for legal and administrative hearings costs of compliance with the AAPA, it is improbable that the Board and Department can accomplish the objectives of the bill by the January 2018 effective date. Immediate authorization and funding for legal and FTE costs may help to implement critical rules before 2018.

None of the identified costs or FTEs are included in the proposed appropriation budget for the Commissioner of University and School Lands (Department of Trust Lands).

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**Date Prepared:** 04/04/2017

## Projected Expenditures of Implementing Administrative Rules and Adjudicative Proceedings

|                                               | FY 2017-2019 | FY 2019-2021 |
|-----------------------------------------------|--------------|--------------|
| Assistant AG and legal <sup>1</sup>           | \$ 240,000   | \$ 60,000    |
| Administrative Hearing cost <sup>2</sup>      | 103,950      | 138,600      |
| Administrative Staff Officer FTE <sup>3</sup> | 204,673      | 204,673      |
| Legal Assistant FTE <sup>3</sup>              | 183,097      | 183,097      |
| Advertising <sup>4</sup>                      | 15,000       | 15,000       |
| Increase in Expenditures                      | \$ 746,720   | \$ 601,370   |

<sup>1</sup> Legal review of existing rules, policies, and procedures to identify those impacted by the AAPA rule requirement. Estimates of legal reviews, subsequent drafting and attorney assisted revision of proposed rules is estimated at \$10,000 per month through the 17-19 biennium and \$2,500 per month for the following biennium.

<sup>2</sup> Adjudicative proceedings to address requests for rule exceptions will require assistance from the state hearing officers whose rate is \$165/hour. Estimated 35 hours/month.

<sup>3</sup> Includes salary, benefits and associated overhead.

<sup>4</sup> Required publication of rules and advertising for hearings, 17-19 biennium hearings

## Board and Commissioner of University and School Lands Rules, Guidelines, Policies and Procedure Review List

### Surface

|                                                        |
|--------------------------------------------------------|
| Chapter 15-09 Sale Policy                              |
| Commissioner Approval of Leases                        |
| Assignments and Custodial Agreements                   |
| Surface Damage Payment                                 |
| Surface Easement and Permit Issuance Policy            |
| Failure to Pay at Auction/Bidder Eligibility           |
| Fair Market Value - Grass                              |
| Sale of State Land for Landfills                       |
| Agricultural Lease Cancellation                        |
| Cropland and Hayland Flood Mitigation                  |
| Non-commercial Roads                                   |
| Agreements for Organized Events on State Lands         |
| Grace period for lease payments                        |
| Payment Schedule (Trust Specific Activities)           |
| Prairie Dog Control Cost Share                         |
| Non-Vehicular Public Access                            |
| Ramsey County Cropland & Hayland Flood Mitigation      |
| Railroad Rights-of-Way Ownership                       |
| Land Retention and Sales Policy                        |
| Minimum Rent Calculations for Spring Leases            |
| Construction Aggregate Rules (85-06-03)                |
| Prospecting Permit & Lease Application Procedures      |
| Prospecting Permit and Lease Management Review         |
| Surface Lease Assignment Approval Delegation           |
| Noxious and Invasive Weed Control Cost Share Policy    |
| Cultivating and Seeding of Potholes                    |
| Drop Line Easement Procedure                           |
| Badlands Water Adjustment                              |
| Managing Indian Cultural Trust (NDCC 15-68)            |
| Field Inspection Schedule                              |
| Productivity and Rental Adjustments                    |
| Lease Auction Rotation                                 |
| Accepting Letters of Credit                            |
| Rent Credits and Depreciation (15-08-26)               |
| Improvements: Pasture Drops and Permanent Tanks        |
| Rent Reduction for Spurge Control                      |
| Salt-water Disposal Easements Due Diligence            |
| Salt water Disposal Payment Collection                 |
| Refunds of Temporary Slope Construction Damages        |
| Determining Crop and Hay Valuation                     |
| Determining Grassland Valuation                        |
| Water Adjustment Guidelines – Surface Rentals          |
| Payment for Livestock Water Developments               |
| Approving Off-Lease Mineral or Spacing Unit Well Sites |
| Grazing Association Administrative Fee Reduction       |
| Fencing Adjustments                                    |
| Rent Credits for Permanent Improvements                |

### Foreclosed Properties

|                                                     |
|-----------------------------------------------------|
| Accepting and Rejecting Bids on Foreclosed Property |
| Criteria for Retaining Foreclosed Property          |
| Managing Acquired Properties                        |
| Subsurface Easements                                |

### Minerals

|                                                      |
|------------------------------------------------------|
| 85-06-06 Oil and Gas Rules                           |
| 85-06-07 Potash Rules                                |
| 15-05 Coal Rules                                     |
| Off Lease Mineral or Spacing Unit Well Site Requests |
| Mitigation of Wildlife Impact                        |
| Offset Wells                                         |
| Oil and Gas Lease Assignments                        |
| Pooling Agreements                                   |
| Shut in Well Policy                                  |
| Unitization Requests                                 |
| Oil and Gas Lease Terminations                       |
| Coal Leasing Procedures                              |
| Oil and Gas Lease Corrections                        |
| Oil and Gas Lease Extensions                         |
| Mineral Lease Nominations                            |
| Zero Production Policy                               |
| Stipulations of Interest                             |
| Mitigation of Archeological and Paleontological      |
| Coal Lease Adjustments                               |
| Coal Lease Terminations                              |
| Other Mineral Extraction                             |
| Disclaiming/Claiming Mineral interests               |
| Mineral Trespass                                     |

### Revenue Compliance

|                                  |
|----------------------------------|
| Royalty Reporting Requirements   |
| Assessing Penalty and Interest   |
| Waiver of Penalties              |
| Audit Procedures/Requested Items |
| Division Orders                  |
| Escrow Procedures                |
| Assigned Fund Procedures         |
|                                  |

### Other

|                    |
|--------------------|
| Fee Schedules      |
| Damage Payments    |
| Refunding Policies |
| Auction Procedures |