



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

**House Bill 1269**

House Political Subdivisions Committee  
January 28, 2021

Chairman Dockter and members of the House Political Subdivisions Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on House Bill 1269.

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 (CSTF) and 12 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 five additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

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.

The Department's Surface Management Division manages more than 706,000 surface acres owned by the various trust funds under the Board's control. The major source of income from these lands comes from agricultural leases (grassland, crop, and hay land uses), with significant revenue generated from rights-of-way, surface damage agreements, and construction aggregate mining. The objective of the Surface Management Division is to obtain a "fair market" return from the trust lands while maintaining or improving the condition of the land.

Surface Acres by County As of December 31, 2020					
County	Acres	County	Acres	County	Acres
Adams	17,097.52	Golden Valley	28,983.55	Ramsey	2,056.50
Barnes	2,803.32	Grant	33,519.57	Ransom	1,120.00
Benson	11,999.60	Griggs	1,741.24	Renville	1,910.12
Billings	30,927.06	Hettinger	9,892.50	Richland	513.68
Bottineau	3,271.94	Kidder	28,643.79	Rolette	6,226.08
Bowman	29,310.48	LaMoure	1,435.72	Sargent	1,128.17
Burke	16,137.16	Logan	9,421.53	Sheridan	25,826.44
Burleigh	27,891.66	McHenry	22,720.56	Sioux	23,411.56
Cass	40.00	McIntosh	6,209.87	Slope	23,605.98
Cavalier	556.47	McKenzie	64,586.70	Stark	6,150.13
Dickey	3,981.51	McLean	20,890.99	Stutsman	15,627.81
Divide	20,791.24	Mercer	15,129.38	Towner	8,076.00
Dunn	25,673.31	Morton	18,101.82	Walsh	160.00
Eddy	10,292.81	Mountrail	32,445.59	Ward	10,798.98
Emmons	13,533.97	Nelson	2,694.45	Wells	5,251.89
Foster	3,111.51	Oliver	7,588.41	Williams	38,382.45
Grand Forks	1,274.77	Pierce	13,664.93	<b>Total</b>	<b>706,605.70</b>

Professional staff work day-to-day on land management projects that result in the generation of surface revenue and land improvement on school trust lands. These projects include:

- Linear easements.
- Oil well pad, saltwater disposal sites, pipeline and road siting, and reclamation.
- Developing water wells, pipelines, dams and dugouts for livestock water, and wildlife enhancement.
- Grazing management plans for improving range condition and productivity.
- Cooperative trash site clean-up and abandoned water well sealing.
- Gravel and scoria mine site reclamation.
- Noxious weed chemical and biological control.
- Coal mine reclamation.
- Monitoring flood affected tracts.
- Seismic permitting.
- Lessee and right-of-way contracts and public inquiries.

The trust lands have been leased by generations of North Dakotans for agricultural purposes. The land is leased in a series of auctions held each fall and spring. All auctions are open to the public and the lease goes to the highest bidder. The minimum bid is set by the Commissioner based upon the Board's Fair Market Value Minimum Rent Policy. The Department currently manages approximately 4,800 active surface land leases. Leasing interest continues to be high with over 99 percent of the tracts offered being successfully leased. The Department generated \$17.4 million in rental income during the previous biennium through the surface lease program, an increase of \$1.5 million over the prior biennium.

The surface inspection program generates approximately 1,500 tract inspections on an annual basis. These inspections are generally fall integrity inspections, reclamation inspections, livestock grazing, noxious weed, unleased tract, and posting inspections. Trained field staff inspect the surface acres managed by the Department at least once during the five-year lease term to help with early detection of noxious and invasive weed species and to monitor land integrity. Reclamation inspections are conducted to assist in determining whether a right-of-way having surface disturbance is meeting agreement vegetation standards, noxious and invasive weed control, and erosion.

The Department is testifying in a neutral capacity on HB 1269 for the following reasons:

Section 1 of House Bill 1269 appears to negate the duties of the constitutionally formed Board as the governing body for the various trusts and gives additional powers to one member of the Board, the governor. This bill creates eight district advisory boards made up of farmers and ranchers, with one member from each district appointed by the governor from a list of three names submitted by agricultural organizations. All members are subject to removal by the governor for cause only.

The proposed advisory board lacks balance in that there is no requirement the advisory board be made up of current trust land lessees and there is no representation from the various trusts (both educational and institutions). It is anticipated that an advisory group consisting of farmers and ranchers would have their best interests in mind (lower rent, limited public access, preferential rights, etc.), and not the best interest of the various trusts.

Further, equal representation from all counties creates additional balance issues. The largest share of the Board's land holdings is in the western two thirds of North Dakota, yet there would be equal representation on this proposed advisory board from the eastern portion of the state.

When adopting an Administrative Rule or a Board Policy, the Department posts notices on the website and advertisements in official newspapers that allow for comment periods; thus, allowing the public avenues to voice concerns on various matters of the Board and the Department. Additionally, the Board agendas are posted to the Secretary of State's and the Department's website (this typically occurs the Friday prior to the Board meeting.) Posting our agendas allows for constituents to review various topics of discussion and provides adequate time to contact the Commissioner or the Board members regarding concerns. All comments are reviewed prior to implementing or completing any action. There are several existing agricultural organizations that represent the farmers and ranchers throughout the State. Each of these organizations can monitor the actions of the Board and work directly with the Commissioner to ensure the voices of their constituents are being heard. Creating a State Land Advisory Board does not ensure effective communication from constituents which is the goal of this bill. The Board and the Department respectfully ask that the current organizations work with the Board and the Department to ensure effective communication. The Stockman's Association, the North Dakota Farmers Union, and the North Dakota Farm Bureau are not signed up to receive notifications on the Department's website or the Secretary of State's website as it relates to the Board meetings. This monthly meeting is key to ensuring relevant topics are addressed prior to issues arising.

Section 2 of this bill regarding compensation is in conflict with the mission of the Board which is to "prudently and professionally, manage the assets of the permanent trusts in order to preserve the purchasing power of the funds, maintain stable distributions to fund beneficiaries, and manage all other assets and programs entrusted to the Board in accordance with the North Dakota Constitution and applicable state law." The Department is special funded by the trusts, any financial obligation laid out by

the Legislature directly impacts the distributions made to each beneficiary. Article IX, Section 2, of the North Dakota Constitution states net proceeds “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.” Creating a separate advisory board that the trust is obligated to pay for, for the benefit of one constituent base, could be construed as a diversion from the various trusts. While the Department was not asked to complete a fiscal note, we are estimating a minimal additional expense to be \$96,000 per biennium.

Section 3 of this bill regarding meeting and duties generates several questions. What constitutes a public meeting at the district level? Who would be present? The statement the “board may advise the commissioner of university and school lands regarding any policy relating to the lease of state land and may make general recommendations concerning the operation and auction of state lands” needs clarity since such an advisory board cannot implement policy or administrative rules. We can only assume that representatives from the Department would be required to attend all advisory board meetings to assist the advisory boards in determining whether their recommendations comply with the Constitution, Statutes, and Administrative Rules.

The Department recognizes that there are always means by which we can improve. Feedback from our stakeholders is something both the Board and the Department values as it allows us the opportunity to adapt and respond to stakeholder feedback.

Our goal is to work with our constituent base to find resolutions to concerns without adding layers of bureaucracy. With this, we commit to continuing to improve our communications with our stakeholders. This can be accomplished without creating an Advisory Board. The Department is in the process of creating a communications plan that would improve concerns that have been brought forth over the course of the past months. This communications plan will create efficacy between the Board, the Department and all of our stakeholders.

In addition, Chapter 15-04 is not the proper location in the North Dakota Century Code to create and enact these sections. Chapter 15-04 is specific to original grant lands and does not include the non-grant lands managed by the Board. Placement in Chapter 15-08 would be a better location for the proposed sections.

I look forward to working with the committee on this issue and would be happy to answer any questions.