



**TESTIMONY OF JOSEPH A. HERINGER  
COMMISSIONER  
North Dakota Department of Trust Lands**

**House Bill No. 1185**

**House Education Committee  
January 17, 2023**

Chairman Heinert and members of the House Education Committee, I am Joseph Heringer, North Dakota Commissioner of University and School Lands. I am here to testify in opposition to House Bill No. 1185 due to its unconstitutionality.

The Board of University and School Lands (Board), as established by the North Dakota Constitution, is charged with overseeing the management of state trust lands and mineral rights and investing the revenue generated therefrom to grow as a source of long-term income for the state. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. 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 also responsible for managing various trust funds established by the North Dakota Constitution and/or statute. One such fund is the Coal Development Trust Fund (Fund) which is established by Section 21 of Article X of the North Dakota Constitution and implemented by N.D.C.C. ch. 57-62. The Fund receives 15 percent of North Dakota's coal severance tax. It is held in trust and administered by the Board for loans to coal development impacted counties, cities, and school districts as provided by N.D.C.C. § 57-62-03, and for school construction loans under N.D.C.C. ch. 15.1-36. Any balance not loaned out is invested according to the policies of the Board. The income earned by the Fund is transferred to the general fund each year. The

Fund balance as of June 30, 2022, was \$78,865,673, with loan balances of \$27,190,349 for school construction and \$9,007,400 for energy impact.

While HB 1185 may be well intentioned and for legitimate financial needs, under a plain reading of Section 21 of Article X of the North Dakota Constitution, it is unconstitutional. The full text of Section 21 is below with the relevant terms underlined and bolded:

**Section 21.** Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may **loan** moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable **loans** made from the fund, and the balance shall be credited to the general fund of the state. Up to fifty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for lignite research, development, and marketing as provided by law. An additional twenty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for clean coal demonstration projects approved by the industrial commission.

N.D. Const. art. X, § 21 (emphasis added).

As you see, Section 21 only authorizes loan programs, not grants. The only other distributions allowed from the Fund are for the specific purposes of lignite research, development, and marketing and clean coal demonstration projects approved by the Industrial Commission.

I do not believe the Board/Department could implement the grant program intended by HB 1185 as doing so would be a distribution from the Fund that is not authorized by the North Dakota Constitution.

Thank you for your time and consideration, I look forward to answering any questions you may have.