

2021 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2282

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SB 2282
2/4/2021

Relating to membership of the Board of University & School Lands; provide a contingent effective date.

Chair Vedaa opened the hearing at 9:15 a.m. with Sen Vedaa, Meyer, Elkin, K Roers, Wobbema, Weber, and Marcellais present.

Discussion Topics:

- Makeup of the Land Board

Doug Goehring - Ag Commissioner – testified in support #5289
Elizabeth Neshem – ND Stockman’s Assoc. – testified in favor #5418
Thomas Beadle – ND Treasurer - testified opposed #5300
Jodi Smith – University & School Lands testified opposed # 5381

Additional written testimony:

Kenny Graner - support #5358
Dan Wogsland – ND Grain Growers Assoc. support #5340

Adjourned at 9:35 a.m.

Pam Dever, Committee Clerk

COMMISSIONER
DOUG GOEHRING



#5289

ndda@nd.gov
www.nd.gov/ndda

**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

**Testimony of Doug Goehring
Agriculture Commissioner
Senate Bill 2282
Senate Government and Veterans Affairs Committee
February 4, 2021**

Chairman Vedaa and members of the Senate Government and Veterans Affairs Committee, I am Agriculture Commissioner Doug Goehring and I am here to provide supporting testimony on SB 2282.

There are over 706,000 surface acres managed through the Board of University and School Lands. A major source of income generation is through agricultural leases for grassland, crop, and hay land uses, but the agriculture community has no presence on the board. The surface lease program generated over 17 million dollars in rental income in the 2017-19 biennium. Yet the agriculture community that is generating those funds, has reached out with growing concerns regarding understanding an agricultural perspective on the Board of University and School Lands.

If the legislative assembly so chooses, I am willing to serve on the Board. Chairman Vedaa and committee members, thank you and I will stand for any questions.

North Dakota
STOCKMEN'S ASSOCIATION

#5418



407 SOUTH SECOND STREET
BISMARCK, ND 58504
(701) 223-2522
ndsa@ndstockmen.org
ndstockmen.org

North Dakota Stockmen's Association
Testimony to the
Senate Government and Veteran Affairs Committee on SB 2282
Feb. 4, 2021

Good morning, Chairman Vedaa and members of the Senate Government and Veterans Affairs Committee. Again, for the record, my name is Elizabeth Neshem and I appear here this morning on behalf of the North Dakota Stockmen's Association, the state's beef cattle trade organization.

Our testimony from earlier on SCR 4007 stands for SB 2282 as well. We support adding the agriculture commissioner to the North Dakota Board of University and School Lands to bring industry expertise to the table as the board makes decisions regarding the management and leasing of these acres.

Please give this bill a favorable recommendation.

Thank you for your time this morning.



State of North Dakota
OFFICE OF STATE TREASURER
Thomas Beadle, State Treasurer

#5300

February 4, 2021

Chairman Vedaa and members of the Senate Government and Veteran Affairs Committee,

For the record, my name is Thomas Beadle, State Treasurer for North Dakota. I'm here today in opposition to SCR 4007 & SB 2282

The Treasurer's office provides oversight of our state's funds including collections, disbursements and investments. We have a fiduciary obligation to our citizens to make sure this is done efficiently and effectively, and that we are providing good stewardship of our taxpayer resources. With the School and University Land Board overseeing assets under management of 13 permanent education trust funds, with total assets in excess of \$5B, I believe the perspective brought by the Treasurer is valuable to the board.

In addition, the Treasurer is the sole member of the Land Board that also serves on the State Investment Board. This allows the Treasurer to bring additional background and investment information to the table to help enhance discussions and better serve both boards in fulfillment of their missions.

One interesting thing of note, as Treasurer I am a member of the National Association of State Treasurers and the State Financial Officers Foundation. In addition to the general information around finance and investment provided by each of these associations that benefit the board, a topic that often comes up due to the roles of Treasurers in other states is unclaimed property, which is handled by Trust Lands here in ND. I believe the Treasurer position is uniquely suited to be able to provide valuable input and perspective in assisting the Board with those duties of the Land Board.

An area of concern that has come up in discussions previously and I know has been brought to me over this proposal, is that should this change take place, the entire Industrial Commission will be on the Land Board, and would constitute a quorum and majority vote of the Land Board. I'm sure there are others that can speak to this with more experience, but I know there are times where these two boards are on opposite sides of a disputed issue, with different obligations and responsibilities in conflict with each other. Having the entire Industrial Commission together on this board, and constituting the majority of this board, could create some obstacles.

I understand that the current driving force behind this change is due to the consternation with the Land auctions held virtually last year. I get that frustration. As a real estate broker who has worked with the sale and lease of land and other real estate for over a decade, I understand that operating in a virtual forum is not the same as being in an auction hall and really does change the game. I have expressed a desire to return to the normal ways of doing things, while leveraging technology where appropriate. But more than anything, we need to make sure that all changes and protocols are communicated clearly so that the players know what to expect, and that feedback is listened to so that we continue to improve.

It is my position that the Treasurer's position provides valuable insight into the Land Board, and I would ask the committee and the assembly to reject efforts to remove this position from the Board.



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

Senate Bill 2282

**Senate Government and Veterans Affairs Committee
February 4, 2021**

Chairman Vedaa and members of the Senate Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in opposition on Senate Bill 2282.

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.

History

In 1889, Congress passed the Enabling Act "to provide for the division of Dakota [Territory] into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Act of February 22, 1889, Ch.180, 25 Statutes at Large 676. Section 10 of this Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases where portions of sections 16 and 36 had been sold prior to statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled nearly 2.6 million acres.

The Enabling Act provided further land grants to the State of North Dakota for the support of colleges, universities, the state capitol, and other public institutions. Revenues are generated through the prudent

management of trust assets, which assets include approximately 706,600 surface acres and nearly 2.6 million mineral acres. With approval of the Enabling Act in 1889, Congress granted North Dakota the ability to become a state. The Board is part of that Act, making it an agency that predates statehood. The Enabling Act, the North Dakota Constitution, and statutes passed over the last 130 years, have defined the role of the Board and its beneficiaries.

Only once in the past 130 years has the Board changed its membership.

The Forty-ninth Legislative Assembly created a Government Reorganization Committee (Committee). This Committee was assigned three studies which were completed in 1984: (1) the methods of providing for more efficient and prompt collection of taxes by the state (under HCR 3068), (2) the study of feasibility of combining the Department of Labor, Job Service North Dakota, Workmen's Compensation Bureau, and other state agencies whose primary responsibility was related to labor and employment services (under SCR 4007), and (3) the study of the financial management and administrative services of state government including the functions and services of the State Treasurer, Office of Management and Budget, State Tax Commissioner, Bank of North Dakota, State Auditor, Board, and Director of Institutions (under SCR 4043). Among other things, the Committee determined that having the State Auditor on the Board and the Public Employees Retirement System created a conflict of interest as it related to the State Auditor's duties. Thus, the State Treasurer was recommended to fill the State Auditor's position on both the Board and the Public Employees Retirement System. The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

Based on the report of the Government Reorganization Committee, in the 49th Legislative Assembly Senate Bill 2072 and Senate Concurrent Resolution 4005 provided for a resolution to remove the Auditor from the Board. In a primary election held on June 10, 1986 voters amended the Constitution by voting to replace the State Auditor with the State Treasurer. S. L. 1987, Ch. 187. Legislation also repealed custodial school fund duties of the State Treasurer. S. L. 1987, Ch. 189.

Until 1986, the Board had retained its original members - nearly 100 years. Board membership was only changed after thoughtful consideration through a two-year study and was not met with opposition. Additionally, the shift in membership was the result of a specific concern as it related to a conflict of interest with the State Auditor's mission and day-to-day duties.

SB 2282 is proposing the removal of the State Treasurer and replacing that position with the Agriculture Commissioner. The Board believes it is an error to shift the membership by removing the State Treasurer. The Board has a fiduciary duty to all of the assets under management to uphold through administration, investment, monitoring, and distribution of property. This duty requires the Board make careful, good-faith decisions in the best interest of the trusts, independent of undue influence from any party. Removing a key Board member, one whose responsibility is to pursue and administer sound financial practices and programs benefiting the all of the citizens of North Dakota could have serious unintended consequences. Of those states who have Land Boards, all have a member whose day-to-day responsibility is based in finance (Treasurer, State Controller, Commissioner of Securities, State Auditor). Removal of this key role creates a void on the Board.

Placing the Agriculture Commissioner on the Board creates several serious issues that need to be taken into consideration.

First, the Agriculture Commissioner's mission is to serve, advocate, protect and promote agriculture to benefit everyone. While the Department works collaboratively with the North Dakota Department of

Agriculture on issues relating to the agriculture community, the Board's mission is unique and requires the Board to prudently and professionally manage 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. In the one state in the nation where the Agriculture Secretary is on the land board, there are consistently issues with conflicts of interest. These conflicts of interest have led to litigation and intervention by the Oklahoma Supreme Court due to the Agriculture Secretary directing the land commissioner and influencing the land board to drop rental rates and loans to a below market value. While this benefits the constituents of the Agriculture Secretary, it does not protect the interests of the trusts.

Second, the placement of the Agriculture Commissioner on the Board places the entire North Dakota Industrial Commission (NDIC) on the Board. The NDIC was created by Legislature in 1919 to conduct and manage, on behalf of the State, certain utilities, industries, enterprises and business projects established by state law. The members of the NDIC are the Governor, the Attorney General, and the Agriculture Commissioner. The NDIC Oil and Gas Division regulates the drilling and production of oil and gas in North Dakota and the mission is to encourage and promote the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources.

There are significant overlaps in topics and information relating to the NDIC Oil and Gas Division that will pose sincere conflicts of interest between the Board and the NDIC. Placing the Agriculture Commissioner, and subsequently nesting the NDIC within the Board, creates both the appearance and the opportunity to have Board members influenced by conflicting responsibilities.

Third, the NDIC oversees the Bank of North Dakota (BND). The Board has the fiduciary responsibility of administering five loan programs. For each of these separate loan programs, there is an agreement with BND to manage the applications and day-to-day functions of the loans. There are currently 71 loans managed through BND and funded by the Board. The separation in duties of the NDIC and Board ensure that there are checks and balances in place relating to these loan programs. Plus, the Board has several cash accounts at BND held at a minimum to meet our distribution obligations and 309 escrow accounts. Again, ensuring there is a separation of powers and duties between the NDIC and the Board as it relates to the Board's banking minimizes both the appearance of and the opportunity for the conflict of interest that can occur.

Decisions made by the NDIC could be in direct conflict of the Board's mission to protect the assets of the trusts through Oil and Gas Division, litigation that involves both the NDIC and the Board, and through the Bank of North Dakota.

In summary, the Board opposes this bill because it (1) removes a key member from the Board who provides financial expertise relating to the significant responsibility of managing the assets of the Board, (2) creates a conflict of interest relating to the mission of the Agriculture Commissioner and the Board, and (3) it places the entire NDIC within the Board.

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

To: Members of the Government and Veterans Affairs Committee

From: Kenneth & Mary Graner, 5355 Hwy 1806, Mandan, ND 58554

Chairman Veda and members of the committee,

I am Kenny Graner. My wife, Mary, and I own and operate a cow/calf and small grain operation South of Mandan. We have rented State School Trust Land for more than 30 years.

State trust lands were granted by the United States Congress to states upon entering the Union. These lands were designated to support essential public institutions, primarily public schools. State trust land managers lease and sell these lands to generate revenue for current and future designated beneficiaries.

Our primary concern is that farmers and ranchers do not have a seat at the table with the Land Trust Board. The Board members are becoming more and more removed from agriculture and have little experience with agriculture production and/or uses of the School Land.

There are 706,600 acres of school land in question. There are 4,400 Lessees renting this land for agriculture purposes. We need the Agriculture Commissioner on the Board to represent our interests as it is solely used for agricultural purposes.

Currently, there is a House Bill trying to get the ND Game and Fish to enforce the laws and rules for the Land Trust Department. There is a HUGE concern that if it passes, the ND Game and Fish will encourage the Land Trust Board to impose NDG&F management practices and add further expense and regulation of haying, grazing and farming to the Lessees of the property. The Lessees need the Agriculture Commissioner to represent their interests.

The failure of the bidding process was a prime example that shows the lack of knowledge of farming and ranching practices. We need transparency and accountability that only the Agriculture Commissioner can provide.

The Agriculture Commissioner is a better fit than the Treasurer on the Board. The rent received will still go through the State Treasurer for collections, disbursements, and investments. The treasurer will still maintain fiduciary obligation to our citizens as he will still have oversight of the funds which does not require sitting on the Board.

Thank you.

Kenny & Mary Graner



#5340

**North Dakota Grain Growers Association
Testimony in Support of SB 2282
Senate Government and Veterans Affairs
Committee
February 4, 2021**

Chairman Veeda, members of the Senate Government and Veterans Affairs Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). NDGGA, through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council, engages in domestic policy issues on the state and federal level on behalf of North Dakota wheat and barley farmers. I am appearing before you today on behalf of NDGGA in support of SB 2282.

SB 2282, as the Committee is well aware, places in state law the North Dakota Commissioner of Agriculture onto the Board of University and School Lands replacing the North Dakota State Treasurer contingent upon approval by the voters. To NDGGA this is not a commentary on the State Treasurer but rather it is placing a badly needed agricultural presence onto this very important panel. NDGGA feels that the Board of University and School Lands becomes more effective if that agricultural presence has the Agriculture Commissioner as a part of the Board makeup. Allowing the voters to decide the issue and having the corresponding North Dakota Century Code update would, to North Dakota Grain Growers Association, be the prudent course of action.

Therefore the North Dakota Grain Growers Association respectfully requests that the Senate Government and Veterans Affairs Committee give SB 2282 a Do Pass recommendation and would ask for the full North Dakota Senate concur.

"You Raise; We Represent"

Phone: 701-282-9361 | Fax: 701-404-5187 | 1002 Main Ave W. #3 West Fargo, N.D. 58078

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Room JW216, State Capitol

SB 2282
2/11/2021

Relating to membership of the Board of University & School Lands; provide a contingent effective date.

Chair Vedaa called to order at 11:10 a.m. with Sen Vedaa, Meyer, Elkin, K Roers, Wobbema, Weber, and Marcellais present.

Discussion Topics:

- Committee Work

Chair Vedaa brought forward amendment 21.1007.01001

Sen Weber: I move amendment 21.1007.01001

Sen Elkin: I second

Voice Vote was taken. Motion Passed

Sen Elkin: I move a Do Pass as amended

Sen Weber: I second

Roll Call Vote: 5 -- YES 2 -- NO -0-ab Motion Passed

Senators	Vote
Senator Shawn Vedaa	Y
Senator Scott Meyer	Y
Senator Jay R. Elkin	Y
Senator Richard Marcellais	N
Senator Kristin Roers	N
Senator Mark F. Webber	Y
Senator Michael A. Wobbema	Y

Sen Elkin will carry the bill

Adjourned at 11:17 p.m.

Pam Dever, Committee Clerk

21.1007.01001
Title.02000

Prepared by the Legislative Council staff for
Senator Vedaa

February 11, 2021

sk
190
21

PROPOSED AMENDMENTS TO SENATE BILL NO. 2282

Page 1, line 8, remove the overstrike over "~~state treasurer~~" and insert immediately thereafter an underscored comma

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2282: Government and Veterans Affairs Committee (Sen. Vedaa, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2282 was placed
on the Sixth order on the calendar.

Page 1, line 8, remove the overstrike over "state-treasurer" and insert immediately thereafter
an underscored comma

Renumber accordingly

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2282

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2282
3/25/2021

Relating to membership of the board of university and school lands; and to provide a contingent effective date

Chairman Kasper opened the hearing at 2:38 p.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Agriculture Commissioner as board member

Doug Goehring, Agriculture Commissioner, testified in favor, #10768.

Julie Ellingson, Executive Vice President, ND Stockmen's Association, testified in favor.

Emmery Mehlhoff, ND Farm Bureau, testified in favor, #10772.

Matt Perdue, ND Farmers' Union, testified in favor.

David King, Vice Chair, Northwest Landowners' Association, testified in opposition.

Jodi Smith, Commissioner, ND Dept. of Trust Lands, testified in opposition, #10791.

Al Jaeger, Secretary of State, testified in opposition.

Additional written testimony: #10729

Chairman Kasper ended at 3:50 p.m.

Carmen Hart, Committee Clerk

COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.nd.gov/ndda

**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

**Testimony of Doug Goehring
Agriculture Commissioner
Senate Bill 2282
House Government and Veterans Affairs Committee
March 25, 2021**

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Agriculture Commissioner Doug Goehring and I am here to provide supporting testimony on SB 2282 and SCR 4007.

There are over 706,000 surface acres managed through the Board of University and School Lands. A major source of income generation is through agricultural leases for grassland, crop, and hay land uses, but the agriculture community has no presence on the board. The surface lease program generated over 17 million dollars in rental income in the 2017-19 biennium. Yet the agriculture community that is generating those funds, has reached out with growing concerns regarding understanding an agricultural perspective on the Board of University and School Lands.

If the legislative assembly so chooses, I am willing to serve on the Board.

Chairman Kasper and committee members, thank you and I will stand for any questions.

House Government and Veterans Affairs Committee**SB 2282 & SCR 4007****Emmery Mehlhoff, NDFB Public Policy Liaison****March 25, 2021**

Chairman Kasper and members of the committee,

My name is Emmery Mehlhoff, farmer and rancher from Spiritwood, ND and NDFB Public Policy Liaison. I am here to represent the North Dakota Farm Bureau on behalf of our 28,000 members families.

NDFB stands in support of SB 2282 and SCR 4007 which would provide agricultural representation to the Board of University and School Lands assisting in the oversight of the State Trust Lands.

In 1889, the *Enabling Act* made ND a state and gave sections 16 and 36 in every township to the state “for the support of common schools.” The Department of Trust Lands now manages over 700,000 acres designated for agricultural production. 4,400 farmers and ranchers rent the land, generating over 17 million dollars in rental income for the 2017-2019 biennium. Yet there is no agriculture representation on the trust lands board. The agriculture community generating those funds has reached out with growing concerns regarding the agricultural perspective on the Board of University and School Lands.

NDFB believes the future of the funding for the state land investment funds relies on the sustainability of its land. The Land Board is more than an investment board that manages funds but also a board that manages land. The value of the land depends on agriculture production and producers managing it appropriately and adequately. Because of the uniqueness of managing land, the committee believes the agriculture commissioner will be an invaluable addition to the State Land Board.

NDFB urges the committee give a Do Pass recommendation to SB 2282 and companion piece SCR 4007 to send the question to the ballot for the people to decide if they believe there should be agricultural representation on the Land Board.

Fargo

1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064

Phone: 701-298-2200 | 1-800-367-9668

Bismarck

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793

Phone: 701-224-0330 | 1-800-932-8869



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

Senate Bill 2282

**House Government and Veterans Affairs Committee
March 25, 2021**

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in opposition to Senate SB 2282.

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.

History

State trust lands are a phenomenon dating back to the Northwest Ordinance of 1785. With this ordinance, the U.S. Congress established a policy of granting land to states when they entered the Union as an asset to generate funding to support the public education system, a fundamental state responsibility. Starting with Ohio in 1785 and ending with Arizona and New Mexico in 1910, each new state received a set of federal lands that, under federal enabling legislation and the corresponding state constitution, were to be held in trust for the benefit of the public schools. The trust mandates established by the U.S. Congress and the states are clear: to generate revenue to support the public schools and other institutions. In some cases there may be other minor institutional beneficiaries as well, but the public schools (K-12) are by far the largest beneficiary throughout the state trust land system. That singularity of purpose continues today and distinguishes state trust lands and the state programs that administer them from other types of public lands.

In the 1780s America's founders were preparing for westward expansion at the conclusion of the Revolutionary War. Thomas Jefferson developed a system -- today often referred to as the Jeffersonian Grid -- to orderly track and divide land into 36-square-mile townships/ranges/sections. Each state that joined the union after the war received a certain number of one-mile sections to be held in a trust and used for public beneficiaries, usually public schools.

In 1889, Congress passed the Enabling Act "to provide for the division of Dakota [Territory] into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Act of February 22, 1889, Ch.180, 25 Statutes at Large 676. Section 10 of this Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases where portions of sections 16 and 36 had been sold prior to statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled nearly 2.6 million acres.

The Enabling Act provided further land grants to the State of North Dakota for the support of colleges, universities, the state capitol, and other public institutions. Revenues are generated through the prudent management of trust assets, which assets include approximately 706,600 surface acres and nearly 2.6 million mineral acres. With approval of the Enabling Act in 1889, Congress granted North Dakota the ability to become a state. The Board is part of that Act, making it an agency that predates statehood. The Enabling Act, the North Dakota Constitution, and statutes passed over the last 130 years, have defined the role of the Board and its beneficiaries.

Only once in the past 130 years has the Board changed its membership.

In 1909, the Eleventh Legislative Assembly, through HB 307, created a Bureau of the Department of Agriculture and Labor to be known as the Dairy Department, which was created for the purpose of promoting, improving and regulating the dairy products of the state and to establish and enforce proper rules and regulations pertaining thereto. For 112 years, it has never been brought forth that the Agriculture Commissioner be placed on the Board.

The Forty-ninth Legislative Assembly created a Government Reorganization Committee (Committee). This Committee was assigned three studies which were completed in 1984: (1) the methods of providing for more efficient and prompt collection of taxes by the state (under HCR 3068), (2) the study of feasibility of combining the Department of Labor, Job Service North Dakota, Workmen's Compensation Bureau, and other state agencies whose primary responsibility was related to labor and employment services (under SCR 4007), and (3) the study of the financial management and administrative services of state government including the functions and services of the State Treasurer, Office of Management and Budget, State Tax Commissioner, Bank of North Dakota, State Auditor, Board, and Director of Institutions (under SCR 4043). Among other things, the Committee determined that having the State Auditor on the Board and the Public Employees Retirement System created a conflict of interest as it related to the State Auditor's duties. Thus, the State Treasurer was recommended to fill the State Auditor's position on both the Board and the Public Employees Retirement Board. The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the Forty-Ninth Legislative Assembly.

Based on the report of the Government Reorganization Committee, the Forty-Ninth Legislative Assembly through Senate Bill 2072 and Senate Concurrent Resolution 4006 provided for a resolution to remove the Auditor from the Board. In a primary election held on June 10, 1986, voters amended the Constitution

by voting to replace the State Auditor with the State Treasurer. 1985 N.D. Sess. Laws, ch. 711, § 1; 1987 N.D. Sess. Laws, ch. 187, § 1; 1987 N.D. Sess. Laws, ch. 775, § 1. Legislation also repealed custodial school fund duties of the State Treasurer. 1987 N.D. Sess. Laws, ch. 189, § 1.

Until 1987, nearly 100 years, the Board had retained its original members. Board membership was only changed after thoughtful consideration through a two-year study and was not met with opposition. Additionally, the shift in membership was the result of a specific concern relating to a conflict of interest with the State Auditor's mission and day-to-day duties.

Conflict of Interest

SB 2282 is proposing to add the Agriculture Commissioner to the Board, which will create several serious issues that need to be taken into consideration.

First, the Agriculture Commissioner's mission is to serve, advocate, protect and promote agriculture to benefit everyone. While the Department works collaboratively with the North Dakota Department of Agriculture on issues relating to the agriculture community, the Board's mission is unique and requires the Board to prudently and professionally manage 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.

Oklahoma is the one state in the nation where the Agriculture Secretary is on the land board and it consistently experiences conflicts of interest issues. These conflicts of interest have led to litigation and intervention by the Oklahoma Supreme Court due to the Agriculture Secretary directing the land commissioner and influencing the land board to drop rental rates and loans to a below market value. While this benefits the constituents of the Agriculture Secretary, it does not protect the interests of the trusts.

The Board serves as a trustee and must act in the best interests of the trust beneficiaries to manage their assets; the Board is a voice for those trusts. The sponsors of this bill, the agriculture associations, and the Agriculture Commissioner have all stated the intention of placing the Agriculture Commissioner on the Board is to protect the interests of the agriculture community, not to protect the assets of the trust. The agriculture associations all testified in support of adding the Agriculture Commissioner to the Board, not to enhance the assets of the trusts but to provide a voice on the Board that is specific to their needs. This could create a conflict of interest between what the agriculture community is requesting of the Agriculture Commissioner and what is in the best interest of the trusts.

Second, the placement of the Agriculture Commissioner on the Board places the entire North Dakota Industrial Commission (NDIC) on the Board. The NDIC was created by the Legislature in 1919 to conduct and manage, on behalf of the State, certain utilities, industries, enterprises, and business projects established by state law. The members of the NDIC are the Governor, the Attorney General, and the Agriculture Commissioner. The NDIC Oil and Gas Division regulates the drilling and production of oil and gas in North Dakota. Its mission is to encourage and promote the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources.

There are significant overlaps in topics and information relating to the NDIC Oil and Gas Division that could pose sincere conflicts of interest between the Board and the NDIC. Placing the Agriculture Commissioner, and subsequently nesting the NDIC within the Board, creates both the appearance and the opportunity to have Board members influenced by conflicting responsibilities.

There is already a quorum of the NDIC on the Board; however, the Board contains three additional members who are not part of the NDIC who impact the vote and hold a majority of the Board. The addition of the Agriculture Commissioner poses the opportunity in voting power for the NDIC to sway the vote on the Board, potentially not protecting the assets of the trusts.

Third, the NDIC oversees the Bank of North Dakota (BND). The Board has the fiduciary responsibility of administering five loan programs. For each of these separate loan programs, there is an agreement with BND to manage the applications and day-to-day functions of the loans. There are currently 71 loans managed through BND and funded by the Board. The separation in duties of the NDIC and Board ensure that there are checks and balances in place for these loan programs. Plus, the Board has several cash accounts at BND held at a minimum to meet our distribution obligations and 309 escrow accounts. Again, ensuring there is a separation of powers and duties between the NDIC and the Board as it relates to the Board's banking minimizes both the appearance of and the opportunity for conflicts of interest.

Decisions made by the NDIC, through Oil and Gas Division, could be in direct conflict with the Board's mission to protect the assets of the trusts, litigation that involves both the NDIC and the Board, and loan programs through BND.

Representation on the Board

Currently, the Board's membership includes the Governor, Attorney General, Secretary of State, Superintendent of Instruction, and the State Treasurer. Each Board member represents all of the constituents of the State, not just one subset.

If the reasoning to add the Agriculture Commissioner is because the Board manages over 700,000 surface acres and generates over \$17 Million in income during a biennium, then an argument could be made that the following additions to the Board should be considered:

Insurance Commissioner – The Board has a direct relationship with the Insurance Commissioner regarding Unclaimed Property. On average, the Board receives 1414 insurance reports, worth nearly \$5 Million, in a given biennium and it is the responsibility of the Insurance Commissioner to represent the citizens of North Dakota to ensure their interests are safeguarded, to ensure there is a competitive insurance market, and to promote a healthy and vibrant marketplace for the good of the consumer.

Tax Commissioner – The Tax Commissioner has a mission to fairly and effectively administer the tax laws of North Dakota. Some of those tax laws, specifically those that relate to the taxes that fund the CSTF, have a significant impact on the Board.

Tribal Representation – The Department currently manages 31,583 surface acres and 192,610 mineral acres within the boundaries of the reservations.

Representation from the sportsmen groups – According to North Dakota Game and Fish, the State issues 99,356 hunting licenses each year; many of those hunters hunt on lands managed by the Board. Additionally, the North Dakota Wildlife Federation states there are 116,000 sportsmen in the State and they provide \$222 Million to our economy.

Representation from conservation groups – There are over seven conservation groups located in the State that promote the sustainable use of natural resources, promote and enhance the outdoors, and protect the environment.

Commerce Commissioner – The Commerce Department works to improve the quality of life for North Dakota citizens by leading efforts to attract, train and expand wealth. In these efforts, the Commerce Department engages with businesses throughout the State. Through the Department's Unclaimed Property Division, the Board interacts and engages with every business in the State and receives nearly 6,000 reports each biennium and nearly \$30M in funds whose interest benefits the CSTF.

Petroleum Industry – The petroleum industry has an interest in the 2.6 million mineral acres managed by the Board and generates billions of dollars each biennium.

Wind Industry – The wind industry has 14 towers, generating \$200,000 annually in revenue for the trusts.

Coal Industry – The coal industry has been involved with the Board since statehood. Over the past decade, over \$35 Million in revenue has been generated for the trusts through the mining of coal.

University Systems – The Board manages 12 trusts that benefit the University system totaling \$1.5 Billion.

The Board and Commissioner communicate with ALL of the industries and officials listed above. Stakeholders regularly bring forth issues to be addressed by the Board. It is the responsibility of every agency leader to work collaboratively across state government (both elected and non-elected leaders), with our stakeholders and constituents to ensure necessary communications and voices are heard. Placing the voice of one stakeholder on the Board creates an imbalance. In summary, the Board opposes this bill because it (1) creates a conflict of interest relating to the mission of the Agriculture Commissioner and the Board, (2) it places the entire NDIC within the Board, and (3) it places the voice of one stakeholder on the Board without consideration of all our stakeholders.

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



**North Dakota Grain Growers Association
Testimony in Support of SB 2282
House Government and Veterans Affairs
Committee
March 25, 2021**

Chairman Kasper, members of the House Government and Veterans Affairs Committee, for the record my name is Tom Bernhardt; I am a diversified family farmer from Linton, North Dakota and I am involved with renting land from the Board of University and School Lands. I am also President of the North Dakota Grain Growers Association. NDGGA, through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council, engages in domestic policy issues on the state and federal level on behalf of North Dakota wheat and barley farmers. I am providing testimony for you today on behalf of myself and NDGGA in support of SB 2282.

Chairman Kasper, members of the House Government and Veterans Affairs Committee, it is essential in today's world to have an agricultural voice in the activities of the Board of University and School Lands. I and NDGGA feel that the Board of University and School Lands becomes more effective in dealing with landowner relations and land administration if that agricultural presence has the Agriculture Commissioner as a part of the Board makeup. From my experience in dealing with the Board, I believe that having the Ag Commissioner as a part of the Board gives the Board a better perspective on Board administration, landowner relations and North Dakota agriculture in general. It is my opinion as well as that of NDGGA that allowing the voters to decide the issue and having the corresponding North Dakota Century Code update would be the prudent course of action.

NDGGA has heard two criticisms of the legislation; first this would create a situation of an even numbered board. I would point out that 8 House and 7 Senate legislative standing committees operate very effectively with an even number of members. NDGGA is confident that the Board of University and School Lands can effectively operate with an even number of members.

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Second, there is a concern with the Board having all three of the Industrial Commission members of the board. I would point out that right now a quorum of the Industrial Commission presently are members of the Board. NDGGA feels that having an agricultural presence on the Board far outweighs any concerns of having the full Industrial Commission membership considering a quorum of the Industrial Commission is already represented.

Therefore, Chairman Kasper, members of the House Government and Veterans Affairs Committee, SB 2282 is a necessary step in paving the way for the Agriculture Commissioner to become a member of the Board of University and School Lands should the voters approve it. Therefore I and the North Dakota Grain Growers Association feel this is a positive step forward for North Dakota governance and would ask the Committee and the full House to approve SB 2282.

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2282
4/1/2021

Relating to membership of the board of university and school lands; and to provide a contingent effective date

Chairman Kasper opened the committee work meeting at 9:27 a.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	A
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Committee action

Rep. Louser moved “amending 2282 to a mandatory study with the same language that is in SCR 4007.” **Rep. Stemen** seconded. **Voice vote. Motion carries.**

Rep. Stemen moved **Do Pass as amended.** **Rep. Ostlie** seconded.

Representatives	Vote
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	Y
Representative Jeff A. Hoverson	A
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Greg Stemen	Y
Representative Steve Vetter	Y

House Government and Veterans Affairs Committee
SB 2282
4/1/2021
Page 2

Motion passes. 13-0-1. **Rep. Louser** is the carrier.

Chairman Kasper ended at 9:31 a.m.

Carmen Hart, Committee Clerk

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4/1/21

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2282

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding the memberships of the board of university and school lands and the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - MEMBERSHIPS OF BOARD OF UNIVERSITY AND SCHOOL LANDS AND INDUSTRIAL COMMISSION.

During the 2021-22 interim, the legislative management shall study the membership of the board of university and school lands and the membership of the industrial commission. The study must include consideration of potential conflicts of interest relating to the memberships, possible changes to the composition of the memberships of the board of university and school lands and the industrial commission, and possible changes to article IX of the Constitution of North Dakota. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2282, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2282 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding the memberships of the board of university and school lands and the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - MEMBERSHIPS OF BOARD OF UNIVERSITY AND SCHOOL LANDS AND INDUSTRIAL COMMISSION. During the 2021-22 interim, the legislative management shall study the membership of the board of university and school lands and the membership of the industrial commission. The study must include consideration of potential conflicts of interest relating to the memberships, possible changes to the composition of the memberships of the board of university and school lands and the industrial commission, and possible changes to article IX of the Constitution of North Dakota. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly