

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HCR 3016

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HCR 3016
2/4/2021

Relating to the membership of the board of university and school lands

Chairman Kasper opened the hearing on HCR 3016 at 8:00 a.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 a member
- State treasurer membership

Rep. Schmidt introduced and testified in favor.

Rep. Dennis Johnson testified in favor.

Doug Goehring, Agriculture Commissioner, testified in favor, #5287.

Elizabeth Neshem, ND Stockmen's Association, testified in favor.

Thomas Beadle, State Treasurer, testified in opposition, #5297.

Jodi Smith, Commissioner, ND Dept. of Trust Lands, testified in opposition, #5379.

Additional written testimony: #5323, #5338

Chairman Kasper closed the hearing at 9:08 a.m.

Carmen Hart, Committee Clerk

COMMISSIONER
DOUG GOEHRING



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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
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**Testimony of Doug Goehring
Agriculture Commissioner
House Concurrent Resolution 3016
House Government and Veterans Affairs Committee
February 4, 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 House Concurrent Resolution 3016.

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 of an agricultural perspective on the Board of University and School Lands.

If the legislative assembly chooses to forward HCR 3016 to the general election, I am willing to serve on the Board should the people of

North Dakota support the proposed change. Chairman Kasper and committee members, thank you and I will stand for any questions.



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

February 4, 2021

Chairman Kasper and members of the House 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 HCR 3016.

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**

House Concurrent Resolution 3016

**House Government and Veterans Affairs Committee
February 4, 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 on House Concurrent Resolution 3016.

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.

HCR 3016 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.



Contact:
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**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
House Government and Veterans Affairs Committee
February 4, 2021**

Mr. Chairman and members of the committee,

Thank you for the opportunity to submit testimony on House Concurrent Resolution No. 3016. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members.

NDFU supports HCR 3016. If approved by voters, this change would give farmers and ranchers a stronger voice in the management of the state's university and school lands.

The State of North Dakota currently manages more than 700,000 surface acres. The vast majority of these acres are rented by farmers and ranchers, primarily for grazing purposes. As a result, the major source of income derived from these lands comes from the state's farmers and ranchers, making them an important stakeholder in trust lands management.

As a major stakeholder group, the agriculture community should be represented in management of university and school lands. To that end, we support giving the agriculture commissioner a seat on the Board of University and School Lands.

We urge a "Do Pass" on HCR 3016. Thank you for your consideration.





**North Dakota Grain Growers Association
Testimony in Support of HB 3016
House Government and Veterans Affairs
Committee
February 4, 2021**

Chairman Kasper, members of the House 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 providing testimony for you today on behalf of NDGGA in support of HCR 3016.

HCR 3016, as the Committee is well aware, puts on the North Dakota ballot a Constitutional measure which places the North Dakota Commissioner of Agriculture onto the Board of University and School Lands replacing the North Dakota State Treasurer on the Board. 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 is the Agriculture Commissioner. Allowing the voters to decide the issue would, to North Dakota Grain Growers Association, be the prudent course of action.

Therefore the North Dakota Grain Growers Association respectfully requests that the House Government and Veterans Affairs Committee give HCR 3016 a Do Pass recommendation and would ask for the full North Dakota House concur.

"You Raise; We Represent"

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2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HCR 3016
2/11/2021

Relating to the membership of the board of university and school lands

Chairman Kasper opened the committee work meeting at 10:46 a.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	A
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:

- Ag commissioner on lands board
- Amendment discussion

Vice Chair B. Koppelman presented amendment, **21.3020.01001**, #6453.

Vice Chair B. Koppelman moved to adopt amendment, **21.3020.01001**. **Rep. Ostlie** seconded the motion. **Vice Chair B. Koppelman** moved to further amend adding "this appointment may not be the same individual that serves on the state investment board."

Rep. Ostlie seconded the motion. **Voice vote. Motion carries.**

Rep. Schauer moved **Do Pass** as amended. **Rep. Vetter** seconded the motion.

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

Representative Vicky Steiner	N
Representative Greg Stemen	N
Representative Steve Vetter	Y

Motion fails. 5-8-1.

Rep. Karls moved **Do Not Pass as amended.** **Rep. Hoverson** seconded the motion.

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

Motion passes. 8-5-1. **Rep. Steiner** is the carrier.

Chairman Kasper ended the meeting at 11:02 a.m.

Carmen Hart, Committee Clerk

February 11, 2021

DE 2/11/21
1041

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3016

Page 1, line 4, replace "replaces the state treasurer with" with "adds"

Page 1, line 4, replace "on" with "and one member of the legislative assembly to"

Page 1, line 15, overstrike "and"

Page 1, line 15, remove the overstrike over "~~state treasurer~~" and insert immediately thereafter
an underscored comma

Page 1, line 15, after "commissioner" insert ", and one member of the legislative assembly
appointed by the chairman of the legislative management, who may not be the same
member of the legislative assembly who serves on the state investment board."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HCR 3016: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HCR 3016 was
placed on the Sixth order on the calendar.

Page 1, line 4, replace "replaces the state treasurer with" with "adds"

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Renumber accordingly

21.3020.01001
Title.

Prepared by the Legislative Council staff for
Representative B. Koppelman
February 4, 2021

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