

2021 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4007

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SCR 4007
2/4/2021

Relating to the membership of the Board of University and School Lands.

Chair Vedaa opened the hearing at 9:00 a.m. with Sen Vedaa, Meys, Elkin, K Roers, Wobbema, Weber, and Marcellais present.

Discussion Topics:

- State school land lessees
- Voice for farmers/ranchers
- Supporting ND agriculture

Rep Schmidt introduced the bill.

Doug Goehring, Agriculture Commission – testified in support. #5288

Thomas Beadle, State Treasurer – testified opposed. #5299

Additional written testimony:

Jodi Smith - University & School Lands – Opposed - #5380

Dan Wogsland – ND Grain Growers – Support -#5339

Matt Perdue – ND Farmers Union – support -#5324

Elizabeth Neshem – ND Stockman’s Assoc - #5417

Adjourned at 9:14 a.m.

Pam Dever, Committee Clerk

COMMISSIONER
DOUG GOEHRING



#5288

ndda@nd.gov
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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

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

**Testimony of Doug Goehring
Agriculture Commissioner
Senate Concurrent Resolution 4007
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 Senate Concurrent Resolution 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 of an agricultural perspective on the Board of University and School Lands.

If the legislative assembly chooses to forward SCR 4007 to the general election, I am willing to serve on the Board should the people of North

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



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

#5299

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 Concurrent Resolution 4007

**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 Concurrent Resolution 4007.

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.

SCR 4007 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.



#5339

**North Dakota Grain Growers Association
Testimony in Support of Senate Concurrent
Resolution 4007
Senate Government and Veterans Affairs
Committee
February 4, 2021**

Chairman Veda, 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 providing testimony for you today on behalf of NDGGA in support of Senate Concurrent Resolution 4007.

Senate Concurrent Resolution 4007, 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. 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 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 Senate Concurrent Resolution 4007 a Do Pass recommendation and would ask for the full North Dakota Senate concur.

"You Raise; We Represent"

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#5324

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

Mr. Chairman and members of the committee,

Thank you for the opportunity to submit testimony on Senate Concurrent Resolution No. 4007 and Senate Bill No. 2282. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members.

NDFU supports SCR 4007 and SB 2282. 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 SCR 4007 and SB 2282. Thank you for your consideration.



North Dakota
STOCKMEN'S ASSOCIATION



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North Dakota Stockmen's Association
Testimony to the
Senate Government and Veteran Affairs Committee on SCR 4007
Feb. 4, 2021

Good morning, Chairman Vedaa and members of the Senate Government and Veterans Affairs Committee. For the record, my name is Elizabeth Neshem. I appear here this morning on behalf of the North Dakota Stockmen's Association. For those of you who aren't familiar with the Association, it is a 91-year-old beef cattle trade organization representing approximately 3,000 North Dakota cattle-ranching families, including many who are state school land lessees and the day-to-day stewards of this North Dakota resource.

The North Dakota Stockmen's Association rises in support of Senate Concurrent Resolution 4007, which would add the agriculture commissioner to the North Dakota Board of University and School Lands. The board oversees more than 700,000 surface acres, which are leased to agricultural producers. It makes sense to us to include the agriculture commissioner on the board to bring industry expertise to the table as the board makes decisions regarding the management and leasing of these acres. The agriculture commissioner would be an appropriate liaison to the agricultural community, an important constituency of the board.

For these reasons, we encourage your do-pass recommendation on this resolution and

North Dakota
STOCKMEN'S ASSOCIATION



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hope that the citizens of North Dakota can have a chance to vote of this logical addition.

Thank you for your time this morning.

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SCR 4007
2/11/2021

Relating to the membership of the Board of University & School Lands

Chair Vedaa called to order 11:20 a.m. with Sen Vedaa, Meyer, Elkin, K Roers, Wobbema, Weber, and Marcellais present.

Discussion Topics:

- Committee Work – 21.3074.01001

Sen Eklin: I move amendment 21.3074.01001

Sen Weber: I second

A Voice Vote was taken. Motion Passed

Sen Elkin: I move a **Do Pass as Amended.**

Sen Meyer: 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 11:27 a.m.

Pam Dever, Committee Clerk

February 11, 2021

Ch
1/2/21
10/4

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4007

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

Page 1, line 4, replace "on" with "to"

Page 1, line 15, overstrike "and"

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

Renumber accordingly

REPORT OF STANDING COMMITTEE

SCR 4007: Government and Veterans Affairs Committee (Sen. Veda, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SCR 4007 was
placed on the Sixth order on the calendar.

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

Page 1, line 4, replace "on" with "to"

Page 1, line 15, overstrike "and"

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

Renumber accordingly

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SCR 4007

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SCR 4007
3/25/2021

Relating to membership of the board of university and school lands

Chairman Kasper opened the hearing at 3:50 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:

- Ag Commissioner representation on board

Rep. Schmidt introduced and testified in favor.

Julie Ellingson, ND Stockmen's Association, appeared to answer questions.

Jodi Smith, Commissioner, ND Department of Trust Lands, testified in opposition, #10797.

Al Jaeger, Secretary of State, testified in opposition.

Additional written testimony: #10730, #10761, #10763, #10773

Chairman Kasper ended at 4:11 p.m.

Carmen Hart, Committee Clerk



#10797

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

Senate Concurrent Resolution 4007

**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 Concurrent Resolution 4007.

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

SCR 4007 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 Senate Concurrent
Resolution 4007
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 in renting 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 Senate Concurrent Resolution 4007.

Senate Concurrent Resolution 4007, as the Committee is well aware, places on the North Dakota ballot a Constitutional measure which places the North Dakota Commissioner of Agriculture onto the Board of University and School Lands. To NDGGA this 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 through the Agriculture Commissioner is a part of the Board makeup. 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 Senate Concurrent Resolution 4007 a Do Pass recommendation and would ask for the full North Dakota House concur.

"You Raise; We Represent"

Troy Coons
Northwest Landowners Association
House Government and Veterans Affairs Committee
Testimony for SCR4007
March 25, 2021



Good afternoon Chairman Kasper and members of the committee, thank you for taking my testimony into consideration today. My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 560 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

I am here to testify in opposition to Senate Concurrent Resolution 4007. Our organization would normally find ourselves aligned with all of the agricultural groups because our members are primarily farmers and ranchers. But over the past several years, our organization has learned first hand the importance of maintaining the foundational structures of our constitution and the checks and balances it provides.

We have been engaged in numerous debates about the issue of use of a landowners' pore space by the energy industry. We strive to work in cooperation with industry to reach a fair result. We are not always successful. And in these debates, we have often found ourselves on the other side of the table from the Industrial Commission. For that reason, it is concerning that we would place the entire Industrial Commission on this Board, because this Board is a surface owner, just like we are. In our own litigation, we ended up dismissing the Dept. of Trust Lands because the Attorney General determined it had a conflict of interest representing both the Department and the Industrial Commission given they had potentially opposing interests. If one of these Boards sits on the other Board, these conflicting interests would be difficult or impossible to separate out.

Because of these concerns, we urge a do not pass on this resolution. If the makeup of the various boards is a concern, we do support the idea of more comprehensively studying and considering the makeup of the various boards and attempting a comprehensive solution to the extent there are any concerns.

Thank you for taking the time to consider our comments.

Sincerely,

Troy Coons, Chairman
Northwest Landowners Association



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
House Government and Veterans Affairs Committee
March 25, 2021**

Mr. Chairman and members of the committee,

Thank you for the opportunity to provide testimony on Senate Concurrent Resolution No. 4007 and Senate Bill No, 2282. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members.

NDFU supports SCR 4007 and SB 2282, which adds the agriculture commissioner to the Board of University and School Lands. If approved by voters, this change would give farmers and ranchers a stronger voice in the management of the state's trust 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 surface leases 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 SCR 4007 and SB 2282. Thank you for your consideration.



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

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2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SCR 4007
3/26/2021

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

Chairman Kasper opened the committee work meeting at 10:21 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:

- Study preference

After much discussion of this resolution a subcommittee was formed consisting of **Rep. Louser, Chair; Rep. P. Anderson, Rep. Rohr, and Rep. Stemen.**

Chairman Kasper ended at 10:40 a.m.

Carmen Hart, Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SCR 4007 (AM)
3/31/2021
Subcommittee

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

Chairman Louser opened the subcommittee meeting at 11:01 a.m.

All subcommittee members were present: Chairman Louser, Rep. P. Anderson, Rep. Rohr, and Rep. Stemen.

Discussion Topics:

- Study possibility
- Number of board members

Rep. Stemen moved to draft an amendment to make it a study. **Rep. P. Anderson** seconded.

Chairman Louser: Yes
Rep. P. Anderson: Yes
Rep. Rohr: Yes
Rep. Stemen: Yes

Motion passes. 4-0-0.

Chairman Louser ended the subcommittee meeting at 11:40 a.m.

Carmen Hart, Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

SCR 4007 (PM)
3/31/2021
Subcommittee

Relating to the membership of the board of university and school lands
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Chairman Louser opened the subcommittee meeting at 2:32 p.m.

All subcommittee members were present: Rep. Louser, Chair; Rep. Rohr, Rep. Stemen, and Rep. P. Anderson

Discussion Topics:

- Proposed amendment
- Changing resolution to study

Chairman Louser presented proposed amendment 21.3074.02001, #11227. **Rep. Stemen** moved **amendment 21.3074.02001**. **Rep. P. Anderson** seconded. **Roll call vote to bring proposed amendment to full committee.**

Chairman Louser: Yes
Rep. Rohr: No
Rep. Stemen: Yes
Rep. P. Anderson: Yes

Motion passes. 3-1-0.

Chairman Louser adjourned at 2:40 p.m.

Carmen Hart, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO.
4007

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with "directing the Legislative Management to consider studying the memberships of the Board of University and School Lands and the Industrial Commission.

WHEREAS, the membership of the Board of University and School Lands overlaps partially with the membership of the Industrial Commission; and

WHEREAS, potential conflicts of interest may arise for members of the board and commission; and

WHEREAS, the membership of the Board of University and School Lands and the membership of the Industrial Commission have not been studied or addressed for many years;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH
DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying the membership of the Board of University and School Lands and the membership of the Industrial Commission as the memberships relate to any potential conflicts of interest; and

BE IT FURTHER RESOLVED, that the study include consideration of possible changes to the composition of the membership of the Board of University and School Lands and membership of the Industrial Commission relating to potential conflicts of interest, and include consideration of possible changes to Article IX of the Constitution of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-eighth Legislative Assembly."

Renumber accordingly

21.3074.02001
Title.

Prepared by the Legislative Council staff for
Representative Louser
March 31, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO.
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Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

**ENGROSSED SENATE CONCURRENT
RESOLUTION NO. 4007**

Introduced by

Senators Schaible, Klein, Luick

Representatives D. Johnson, Schmidt

1 A concurrent resolution ~~to amend and reenact section 3 of article IX of the Constitution of North~~
2 ~~Dakota, relating to the membership of the board of university and school lands.~~directing the
3 Legislative Management to consider studying the memberships of the Board of University and
4 School Lands and the Industrial Commission.

5 STATEMENT OF INTENT

6 ~~This measure adds the agriculture commissioner to the board of university and school lands.~~

7 ~~**BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF**~~
8 ~~**REPRESENTATIVES CONCURRING THEREIN:**~~

9 ~~— That the following proposed amendment to section 3 of article IX of the Constitution of~~
10 ~~North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the~~
11 ~~general election to be held in 2022, in accordance with section 16 of article IV of the~~
12 ~~Constitution of North Dakota.~~

13 ~~— **SECTION 1. AMENDMENT.** Section 3 of article IX of the Constitution of North Dakota is~~
14 ~~amended and reenacted as follows:~~

15 ~~— **Section 3.** The superintendent of public instruction, governor, attorney general, secretary of~~
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18 ~~article and any law that may be passed by the legislative assembly, the board has control of the~~
19 ~~appraisement, sale, rental, and disposal of all school and university lands, and the proceeds~~
20 ~~from the sale of such lands shall be invested as provided by law.~~

21 **WHEREAS,** the membership of the Board of University and School Lands overlaps partially
22 with the membership of the Industrial Commission; and

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13 recommendations, together with any legislation required to implement the recommendations, to
14 the Sixty-eighth Legislative Assembly.

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SCR 4007
4/1/2021

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

Chairman Kasper opened the committee work meeting at 9:16 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 presented and moved amendment 21.3074.02001, #11227.

It was decided to go on to a similar bill (2282) and come back to this later on. We ended temporarily on this resolution at 9:26 a.m.

The committee resumed at 9:31 a.m. **Rep. Louser** had moved to **adopt amendment 21.3074.02001**. **Rep. B. Koppelman** seconded. **Voice vote. Motion carries.**

Rep. B. Koppelman moved **Do Not Pass as amended**, and if it passes unanimously, it would be placed on the consent calendar. **Rep. Stemen** seconded. (9:34 a.m.) **The motion and second were withdrawn.**

Rep. B. Koppelman moved **Do Pass as amended**. **Rep. Stemen** 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

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

Chairman Kasper ended at 9:37 a.m.

Carmen Hart, Committee Clerk

March 31, 2021

ja
4/1/21

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO.
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BE IT FURTHER RESOLVED, that the Legislative Management 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

SCR 4007, 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 SCR 4007 was placed on the Sixth order on the calendar.

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Representative Louser
March 31, 2021

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