

2009 SENATE EDUCATION

SB 2085

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2085

Senate Education Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7684

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on SB 2085. All members were present.

Jeff Engleson, Investment Director, North Dakota State Land Department, testified in favor of the bill. See written testimony.

Chairman Freborg closed the hearing on SB 2085.

Senator Lee moved a Do Pass on SB 2085, seconded by Senator Bakke. Motion passed 5-0-0. Senator Flakoll will carry the bill.

FISCAL NOTE
Requested by Legislative Council
12/22/2008

Bill/Resolution No.: SB 2085

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2085 amends state statutes to correspond with Constitutional Measure No. 1 as approved by the voters. The Measure changes the methodology for calculating distributions to trust fund beneficiaries from an interest and income approach to a formula based on average assets.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The changes proposed in SB2085 are related to the passage of Constitutional Measure No. 1 in November, 2006 and are designed to be revenue neutral in the short-term. Consequently, there is no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The intent is to be revenue neutral.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The intent is to be expenditure neutral.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The intent is to be appropriation neutral.

Name:	Gary D. Preszler	Agency:	Land Department
Phone Number:	328 2800	Date Prepared:	12/29/2008

REPORT OF STANDING COMMITTEE

SB 2085: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2085 was placed on the
Eleventh order on the calendar.

2009 HOUSE EDUCATION

SB 2085

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2085

House Education Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10168

Committee Clerk Signature

Carmen Hart

Minutes:

Jeff Engleson, Investment Director, ND State Land Department, appeared in support of SB 2085. **(See Attachment 1.)**

Rep. Karen Karls: Would you go over again what was Measure 1 in the 2006 election?

Jeff Engleson: Right now the land board pays out the interest in income earned on the trust funds. This was in the Enabling Act. It was in the constitution. It was also in the state law. When we became a state all endowments and foundations invested in bonds and spent income which was what the land board did for pretty much a 100 years. Modern investment theory says a person, to keep up with inflation, you need to invest in stocks and bonds and grow the trust fund so that you are fair to all generations. If you spend all the income, the bottom line the trust fund is going to lose ground to inflation. Under the current constitution measurement 1 changes the distribution method. It says distributions will be based on the value of the trust funds and the growth of those trust funds over time. As the trust funds grow, you will pay out more income. As the trust funds dip, they shrink, and they have a little bit in the current markets but not as much as many others. Right now it is very hard for us to generate income with interest rates as low as they are. Earning the income we need to pay out interest in income has been very difficult for the last nine years. Rather than focusing on income which we now have to do first and then grow the trust funds, under constitutional

measure 1 changes, we will focus our whole investment strategy on growing the trust funds and growing them at a steady rate. As we grow those trust funds, distributions will naturally grow with it.

Chairman Kelsch: That was a constitutional revision that Rep. Meier carried to the floor in 2005 and was on the ballot in 2006.

Rep. Karen Karls: Could we ask Pam to look up what the actual ballot wording was on this?

Chairman Kelsch: It passed handedly. It was pretty well written. It was very easy to understand what the intent was.

Rep. Karen Karls: Did we realize that it was going to create this much havoc with federal law?

Jeff Engleson: We understood from the beginning because the Enabling Act has the same language as state constitution so we knew that was part of it. Other states have done this. New Mexico would be the main one or biggest one.

Rep. Dennis Johnson: You talk about going to ___. Are you selling land up here?

Jeff Engleson: No, the land board had set a policy of not selling land for quite awhile. We believe it is a good asset. It generates consistent earnings for us. It earns us about 4%-4 ½% a year.

Rep. Dennis Johnson: You do have a process in place so where one could request the land to be sold?

Jeff Engleson: Yes, we do. We don't wholesale sell land, but there are occasions where we do and a person can always ask.

Rep. Phillip Mueller: You talked about the split I assume we are talking stocks and bonds and interest bearing accounts. Do you have a percentage that you strive to keep?

Jeff Engleson: Right now our target allocation is about half stocks, half bonds. The primary reason for that is we need at least half bonds to generate the amount of income we tell you we are going to distribute. With the turmoil in the markets we are probably right now at about 60% bonds, 40% stocks. That target is about 50-50 right now.

Rep. Phillip Mueller: Can you adjust that ratio as you see fit? Do you have something that says that you have to do 50-50 or 60-40?

Jeff Engleson: Yes. The board has discussion on that. They have to act as a prudent investor. They have policy which states 50-50 right now. Once all this happens if US Congress passes this and implements this, we will be doing another S&L allocation study to determine now with our new mandate that doesn't include interest and income of what is the best way to do it. We have already had a couple studies over time. Right now we don't invest in anything like private equity or anything like that because it doesn't generate income so we would probably be looking at some of that stuff to become more sophisticated investors. Although I think the board will always be very conservative. Consistency is as important as huge gains. We are not looking for huge gains. We want to just keep growing the trust steadily.

Rep. Phillip Mueller: A short definition or explanation of the reason that we have to have some approval from the folks in Washington, DC? Is it the Morrill Act creates that? Why are we dependent on those folks doing what they have to do?

Jeff Engleson: The Enabling Act with us and Montana, Washington, and Oregon came into this altogether had specific language that also said we could only spend the interest and income. The Morrill Act also had similar language and that is the grant for agricultural colleges for NDSU. Both of those have that similar limiting interest and income language. That is the way that everything was done 120 years ago investment wise.

There was no opposition.

The hearing was closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2085

House Education Committee

Check here for Conference Committee

Hearing Date: March 17, 2009

Recorder Job Number: 11104

Committee Clerk Signature

Carmen Hart

Minutes:

Chairman Kelsch: Rep. Karls, did I give you the copy of how the measure read?

Rep. Karen Karls: Yes.

Chairman Kelsch: This is the bill regarding the distribution of trust fund and their control of the board of university and school lands. This bill primarily is to update the language and the various laws that govern the operations of the land boards, that they do not conflict with the changes that were made to Article 9 of the North Dakota Constitution once those changes became effective. It pretty much is a cleanup bill from the constitutional measure that was passed in the 05 session and was on the ballot and was approved by a vote of the people.

Rep. Mike Schatz moved a **Do Pass**. **Rep. John Wall** seconded the motion.

Rep. Karen Karls: I found that measure and just wanted to read the wording to the committee. This constitution measure would amend Sections 1 and 2 of Article 9 of the North Dakota Constitution. This measure would require that the common schools and other permanent trust funds be managed to preserve purchasing power and to provide stable distribution to beneficiaries. It would change trust fund distributions based on interest and income earned that based on the fund's average value require all revenue produced by a trust fund to be deposited into the fund and provide for paying administrative costs from the

respective trust. A yes vote means you approve the measure. A no vote means you reject. It passed by 128,800 yes votes to 62,700 no votes.

DO PASS. 14 YEAS, 0 NAYS. Rep. Mike Schatz is the carrier of this bill.

Date: 3-17-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2085

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep Schatz Seconded By Rep Wall

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Schatz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 17, 2009 12:28 p.m.

Module No: HR-48-5092
Carrier: Schatz
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2085: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2085 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2085

TESTIMONY OF JEFF ENGLESON
Investment Director
North Dakota State Land Department

IN SUPPORT OF SENATE BILL NO. 2085

Senate Education Committee
January 26, 2009

SB 2085 was introduced at the request of the Board of University and School Lands (Land Board). The primary purpose of SB 2085 is to update language in various laws that govern the operations of the Land Board so that they do not conflict with changes to Article IX of the North Dakota Constitution, once those changes become effective. To do so, we have attempted to eliminate the word "income" whenever possible and replace it with more all encompassing words such as "proceeds". In addition to the changes related to Article IX, there are few changes that clean up language in existing law that is either outdated or irrelevant at this time.

In November 2006, the voters of North Dakota approved Constitutional Measure No. 1. Approximately 67% of voters voted "Yes" on the measure, while 33% voted "No". Constitutional Measure No 1 changes the method used to determine distributions from the permanent trusts under the Land Board's control from a method that is based on the "interest and income" earned by each trust fund to a method that is based on the value of trust fund financial assets and the growth of those assets over time. The changes to Article IX, once implemented, will help protect the trusts from inflation, provide for more stable distributions to trust beneficiaries, and allow the Land Board to better manage the trust funds for both current and future beneficiaries.

Because the changes to Article IX conflict with both North Dakota's Enabling Act and the First Morrill Act (agricultural college land grant), federal legislation is needed before the changes can go into effect. Legislation was introduced in the U.S Congress in late-2007 to eliminate the conflicts. Unfortunately, this legislation was stuck in committee for all of 2008 due to a filibuster; there have been no objections to this legislation. I am happy to report that last week the U.S Senate passed an omnibus public lands bill (S 22, 111th Congress) which includes the language needed to implement Constitutional Measure No. 1. The bill has been sent to the U.S. House for action and we are still hoping that it will be signed by the President so that it can be implemented for the 2009-2011 biennium.

I will now go over SB 2085 section by section to explain the proposed changes.

SECTION 1:

This section of SB 2085 amends NDCC Section 15-01-02.1 by removing the word "other" from the last sentence. This change is not a result of the changes to Article IX. All fees collected by the Land Department are put into the Land Department maintenance fund, which is used to pay for the operations of the office. The use of the word "other" in this case just doesn't make sense.

SECTION 2:

This section of SB 2085 amends NDCC Section 15-02-08 by striking out the words "hectares" and "interest" and replacing the word "interest" with "proceeds". The Land Department's land and minerals records are all maintained as acres, not hectares. There is no need for the word hectares in this law, and probably never was.

NDCC Section 15-02-08 requires the Commissioner to maintain records of the funds under the Land Board's control. The trust funds have many sources of revenue, including mineral revenues, rents from surface rentals, interest income, dividend income, capital gains and others. The word "interest" is very limiting. The word "proceeds" is more inclusive, and makes it clear that the Commissioner must maintain records of all sources of revenues received, not just interest income.

SECTION 3:

The changes proposed in this section of SB 2085 attempts to clarify language related to the maintenance fund the Land Board uses to pay the expenses of the Land Department. Current law states that 10% of the income derived from states assets constitutes a fund known as the state lands maintenance fund. The fact is; the department has never used anywhere near this amount to manage the trust assets under its control. The proposed changes state that there is a maintenance fund that will be funded by the assets under control of the Land Board and that those expenses must be appropriated by the legislature.

SECTION 4:

Changes proposed in this section of SB 2085 relate directly to Constitutional Measure No. 1. Under current law, the Land Board is limited to paying out the "interest and income" earned by each trust. Once Constitutional Measure No. 1 is implemented, the words "interest and income" are irrelevant. The changes proposed for NDCC Section 15-03-02 are to make this language consistent with the changes included in Constitutional Measure No. 1. As proposed, Section 15-03-02 will now say that all "proceeds" received for any trust fund must be deposited in that trust fund and must be pledged specifically to that trust fund. It also clarifies that the cost of administering each trust fund may be paid out of that trust fund, subject to legislative appropriation.

SECTION 5:

This section of SB 2085 removes the word "income" from NDCC Section 15-03-04 and replaces it with the words "investment returns". The reason for this change is to clarify that when making investment decisions, the Land Board must consider expected "investment returns" (both income and capital appreciation), not just "income".

SECTION 6:

This section of SB 2085 changes NDCC Section 15-03-05.1 by eliminating the words "permanent funds" and replacing them with the words "coal development trust fund". The reason for this change is that once Constitutional Measure No. 1 is implemented, the method of determining distributions from the permanent trust funds will be in Article IX of the Constitution. Thus, there is no need for this section of law, at least as it relates to the permanent trust funds. NDCC 15-03-05.1 has always applied to the Coal Development Trust Fund and will continue to apply to it once Constitutional Measure No. 1 is implemented. The proposed changes make that clear.

SECTION 7:

This section of SB 2085 eliminates the words "interest and income fund of the" from NDCC Section 15-06-40. The Land Board can hire the state forester to manage forest lands under the control of the Land Board. We have not done so for many years, if ever. However, if we ever do, the proposed change states that the net proceeds of any revenue generated by such lands must be deposited in the appropriate permanent trust fund.

SECTION 8:

This section of SB 2085 repeals NDCC Sections 15-03-05.2 and 15-08-01. I have attached copies of both of these sections of North Dakota law to my testimony for your reference.

NDCC 15-03-05.2 directs the Land Board as to how distributions from the permanent trust funds should be determined and provides for a method to retain a portion of previously earned income for distribution in future years. As stated previously, once Constitutional Measure No. 1 is implemented, the method of determining distributions from the permanent trust funds will be in Article IX of the Constitution. At that time, there will be no need for NDCC Section 15-03-05.2.

NDCC Section 15-08-01 states that certain revenues earned by the permanent trust funds must be deposited into a permanent fund while other revenues must be deposited into an interest and income fund. Once Constitutional Measure No. 1 becomes law, all revenues will be deposited into the appropriate permanent trust fund and distributions will be made based on the value of the trust funds and the growth of those trust funds over time. There will be no need for Section 15-08-01.

SECTION 9:

This section provides for an effective date for SB 2085. Constitutional Measure No. 1 does not become effective until the U.S. Congress removes all inconsistencies between federal law and North Dakota's Constitution and the Attorney General certifies to the Secretary of State that all such inconsistencies have been removed. As proposed, SB 2085 would not become effective until such time that Constitutional Measure No. 1 becomes law. At the present time it is our expectation that the effective date of both Constitutional Measure No. 1 and SB 2085 will be July 1, 2009.

The fiscal note attached to this bill shows that there is no fiscal impact as a result of the proposed changes in SB 2085.

With those explanations, I respectfully request a "do pass" recommendation on SB 2085 and would be more than happy to answer any questions committee members may have.

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE CONCURRENT RESOLUTION NO. 3037
(Representatives R. Kelsch, Boucher, Kasper)
(Senators Grindberg, O'Connell)

A concurrent resolution for the amendment of sections 1 and 2 of article IX of the Constitution of North Dakota, relating to distributions from and management of the common schools trust fund and the trust funds of other educational or charitable institutions; and to provide a contingent effective date.

STATEMENT OF INTENT

This measure requires that the permanent trust funds be managed to preserve their purchasing power, to provide stable distributions to fund beneficiaries, and to benefit fund beneficiaries. The measure changes trust fund distributions from interest and income earned by a fund to distributions based on a fund's average value, requires that all revenue produced by a trust fund be deposited in the fund, and provides for paying the costs of administration.

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

That the following proposed amendments to sections 1 and 2 of article IX of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2006, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 1 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 1. All proceeds of the public lands that have ~~heretofore~~ been, or may hereafter be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that shall fall to the state by escheat; all gifts, donations, or the proceeds thereof that come to the state for support of the common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, ~~shall~~ must be and remain a perpetual trust fund for the maintenance of the common schools of the state. ~~Only the interest and income of the fund may be expended and the principal shall be retained and devoted to the trust purpose.~~ All property, real or personal, received by the state from whatever source, for any specific educational or charitable institution, unless otherwise designated by the donor, ~~shall~~ must be and remain a perpetual trust fund for the creation and maintenance of such institution, and may be commingled only with similar funds for the same institution. ~~Should~~ If a gift ~~be is~~ made to an institution for a specific purpose, without designating a trustee, ~~such~~ the gift may be placed in the institution's fund; provided that such a donation may be expended as the terms of the gift provide. Revenues earned by a perpetual trust fund must be deposited in the fund. The costs of administering a perpetual trust fund may be paid out of the fund. The perpetual trust funds must be managed to preserve their purchasing power and to maintain stable distributions to fund beneficiaries.

~~The interest and income of each institutional trust fund held by the state shall, unless otherwise specified by the donor, be appropriated by the legislative assembly to the exclusive use of the institution for which the funds were given.~~

~~The proceeds of all bonuses, or similar payments, made upon the leasing of coal, gas, oil, or any other mineral interests under, or reserved after sale of, grant lands for the common schools or institutional lands shall be deposited in the appropriate permanent trust fund as created by this section.~~

SECTION 2. AMENDMENT. Section 2 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. ~~The interest and income of this fund~~ Distributions from the common schools trust fund, together with the net proceeds of all fines for violation of state laws and all other sums which may be added thereto by law, shall ~~shall~~ must be faithfully used and applied each year for the benefit of the common schools of the state and no part of the fund ~~shall~~ must ever be diverted, even temporarily, from this purpose or used for any ~~other purpose whatever~~ other than the maintenance of common schools as provided by law. Distributions from an educational or charitable institution's trust fund must be faithfully used and applied each year for the benefit of the institution and no part of the fund may ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of the institution, as provided by law.

For the biennium during which this amendment takes effect, distributions from the perpetual trust funds must be the greater of the amount distributed in the preceding biennium or ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. Thereafter, biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.

SECTION 3. CONTINGENT EFFECTIVE DATE. If approved by the voters, this measure becomes effective on the July first following the date on which the attorney general certifies to the secretary of state that the United States Congress has by amendment removed all inconsistent provisions found in the 1889 Enabling Act [Act of Feb. 22, 1889, ch. 180, 25 Stat. 676] and the 1862 Morrill Act [Act of July 2, 1862, ch. 130, 12 Stat. 503; 7 U.S.C. §§ 301- 308].

Those sections of NDCC repealed under Section 8 of SB 2085

*Same
handout given
to House.*

15-03-05.2. Distribution of fund income. The board shall distribute only that portion of a fund's income that is consistent with the long-term goals of preserving the purchasing power of the fund and maintaining income stability to the fund beneficiary. If the amount of income earned by a fund in a fiscal year is greater than the amount distributed to the fund beneficiary in the preceding fiscal year, the board shall:

1. Distribute to the fund beneficiary all or a portion of the income in excess of the previous fiscal year's distribution;
2. Retain for distribution in future years all or a portion of the income in excess of the preceding fiscal year's distribution in an amount not to exceed ten million dollars; or
3. Add to the permanent fund all or a portion of the income in excess of the preceding fiscal year's distribution.

No income may be retained for future distribution or added to a permanent fund if it would result in a decrease in distributions to the fund beneficiary from the amount distributed during the preceding fiscal year. Actual cash distributed during a fiscal year must be based on the estimated income of each fund. If the board's determination of the amount to be distributed for a fiscal year is different than the actual cash distributed, an adjustment must be made to distributions during the following fiscal year. For the purpose of this section, any such adjustment must be considered part of the prior fiscal year's distribution.

15-08-01. Permanent and interest and income funds. The principal accruing from any sale of school, university, or other state lands under the control of the board of university and school lands must become a part of the permanent fund to which it belongs and may not be reduced by any means whatever. Moneys received for interest, rents, penalties, permits, or from any source other than from the principal of sales must become a part of the interest and income fund to which they respectively belong and must be distributed as directed by law.

TESTIMONY OF JEFF ENGLESON
Investment Director
North Dakota State Land Department

IN SUPPORT OF SENATE BILL NO. 2085

House Education Committee
March 4, 2009

SB 2085 was introduced at the request of the Board of University and School Lands (Land Board). The primary purpose of SB 2085 is to update language in various laws that govern the operations of the Land Board so that they do not conflict with changes to Article IX of the North Dakota Constitution, once those changes become effective. To do so, we have attempted to eliminate the word "income" whenever possible and replace it with more all encompassing words such as "proceeds". In addition to the changes related to Article IX, there are few changes that clean up language in existing law that is either outdated or irrelevant at this time.

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Because the changes to Article IX conflict with both North Dakota's Enabling Act and the First Morrill Act (agricultural college land grant), federal legislation is needed before the changes can go into effect. Legislation was introduced in the U.S Congress in late-2007 to eliminate the conflicts. Unfortunately, this legislation was stuck in committee for all of 2008 due to a filibuster; there have been no objections to this legislation. I am happy to report that in January 2009 the U.S Senate passed an omnibus public lands bill (S 22, 111th Congress) which includes the language needed to implement Constitutional Measure No. 1. This bill has now been sent to the U.S. House for action. Based on a conversation with a member of Representative Pomeroy's staff, we expect it to be passed by the U.S. House in the near future and are hoping that it will be signed by the President so that it can be implemented for the 2009-2011 biennium.

I will now go over SB 2085 section by section to explain the proposed changes.

SECTION 1:

This section of SB 2085 amends NDCC Section 15-01-02.1 by removing the word "other" from the last sentence. This change is not a result of the changes to Article IX. All fees collected by the Land Department are put into the Land Department maintenance fund, which is used to pay for the operations of the office. The use of the word "other" in this case just doesn't make sense.

SECTION 2:

This section of SB 2085 amends NDCC Section 15-02-08 by striking out the words "hectares" and "interest" and replacing the word "interest" with "proceeds". The Land Department's land and minerals records are all maintained as acres, not hectares. There is no need for the word hectares in this law, and probably never was.

NDCC Section 15-02-08 requires the Commissioner to maintain records of the funds under the Land Board's control. The trust funds have many sources of revenue, including mineral revenues, rents from surface rentals, interest income, dividend income, capital gains and others. The word "interest" is very limiting. The word "proceeds" is more inclusive, and makes it clear that the Commissioner must maintain records of all sources of revenues received, not just interest income.

SECTION 3:

The changes proposed in this section of SB 2085 clarify language related to the maintenance fund the Land Board uses to pay the expenses of the Land Department. Current law states that 10% of the income derived from state assets constitutes a fund known as the state lands maintenance fund. The fact is; the department has never used anywhere near this amount to manage the trust assets under its control. The proposed changes state that there is a maintenance fund that will be funded by the assets under control of the Land Board and that those expenses must be appropriated by the legislature.

SECTION 4:

Changes proposed in this section of SB 2085 relate directly to Constitutional Measure No. 1. Under current law, the Land Board is limited to paying out the "interest and income" earned by each trust. Once Constitutional Measure No. 1 is implemented, the words "interest and income" are irrelevant. The changes proposed for NDCC Section 15-03-02 are to make this language consistent with the changes included in Constitutional Measure No. 1. As proposed, Section 15-03-02 will now say that all "proceeds" received for any trust fund must be deposited in that trust fund and must be pledged specifically to that trust fund. It also clarifies that the cost of administering each trust fund may be paid out of that trust fund, subject to legislative appropriation.

SECTION 5:

This section of SB 2085 removes the word "income" from NDCC Section 15-03-04 and replaces it with the words "investment returns". The reason for this change is to clarify that when making investment decisions, the Land Board must consider expected "investment returns" (both income and capital appreciation), not just "income".

SECTION 6:

This section of SB 2085 changes NDCC Section 15-03-05.1 by eliminating the words "permanent funds" and replacing them with the words "coal development trust fund". The reason for this change is that once Constitutional Measure No. 1 is implemented, the method of determining distributions from the permanent trust funds will be in Article IX of the Constitution. Thus, there is no need for this section of law, at least as it relates to the permanent trust funds. NDCC 15-03-05.1 has always applied to the Coal Development Trust Fund and will continue to apply to it once Constitutional Measure No. 1 is implemented. The proposed changes make that clear.

SECTION 7:

This section of SB 2085 eliminates the words "interest and income fund of the" from NDCC Section 15-06-40. The Land Board can hire the state forester to manage forest lands under the control of the Land Board. We have not done so for many years, if ever. However, if we ever do, the proposed change states that the net proceeds of any revenue generated by such lands must be deposited in the appropriate permanent trust fund.

SECTION 8:

This section of SB 2085 repeals NDCC Sections 15-03-05.2 and 15-08-01. I have attached copies of both of these sections of North Dakota law to my testimony for your reference.

NDCC 15-03-05.2 directs the Land Board as to how distributions from the permanent trust funds should be determined and provides for a method to retain a portion of previously earned income for distribution in future years. As stated previously, once Constitutional Measure No. 1 is implemented, the method of determining distributions from the permanent trust funds will be in Article IX of the Constitution. At that time, there will be no need for NDCC Section 15-03-05.2.

NDCC Section 15-08-01 states that certain revenues earned by the permanent trust funds must be deposited into a permanent fund while other revenues must be deposited into an interest and income fund. Once Constitutional Measure No. 1 becomes law, all revenues will be deposited into the appropriate permanent trust fund and distributions will be made based on the value of the trust funds and the growth of those trust funds over time. There will be no need for Section 15-08-01.

SECTION 9:

This section provides for an effective date for SB 2085. Constitutional Measure No. 1 does not become effective until the U.S. Congress removes all inconsistencies between federal law and North Dakota's Constitution and the Attorney General certifies to the Secretary of State that all such inconsistencies have been removed. As proposed, SB 2085 would not become effective until such time that Constitutional Measure No. 1 becomes law. At the present time it is our expectation that the effective date of both Constitutional Measure No. 1 and SB 2085 will be July 1, 2009.

The fiscal note attached to this bill shows that there is no fiscal impact as a result of the proposed changes in SB 2085.

With those explanations, I respectfully request a "do pass" recommendation on SB 2085 and would be more than happy to answer any questions committee members may have.