

2009 SENATE EDUCATION

SCR 4027

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 4027

Senate Education Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9898

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on SCR 4027. All members were present.

Senator Taylor introduced the resolution. He distributed a handout prepared by legislative council that compares the leasing of state lands in North Dakota and surrounding states. The intent of re

examining the procedures is not to reduce the amount of rent that is paid. It is to look at changes in the cattle industry in how land is managed. There is a five year lease now. With rotational grazing, there is a need for cross fencing and the cost of fencing can't be recouped in 5 years. Water development is another cost that is difficult to recoup in 5 years. The board pays half the cost of controlling noxious weeds but they are expensive to control and ranchers would like more time to utilize the pasture once the weeds have been eradicated. There may be some constitutional amendments and a vote of the people necessary to accomplish this as we will hear in testimony. The study will be a learning experience, and will help support schools and ranchers that contribute the dollars to the schools and students.

Senator Flakoll asked if most agreements are static in terms of fees.

Senator Taylor said no, they are awarded in a competitive bidding process that takes place at the court house. Once a rancher has the bid, that is the price for 5 years. If the lease was for a longer period of

time, there could be an inflator or the opportunity for the current lessee to meet the high bid as is done in Montana.

Senator Freborg asked if the land is open for all bids or if preference is given to the current lessee, does the land department negotiate with the lessee at the end of the term of the lease?

Senator Taylor said there is no preference, the lessee bids with everyone else in the court room.

Julie Ellingson, North Dakota Stockmen's Association, testified in favor of the bill. See written testimony.

Neil Effertz, rancher from Burleigh County, testified in favor of the bill. See written testimony.

Senator Lee asked if there is much turnover in the leases of these lands.

Neil Effertz said if you do a good job of managing the pasture, there is more competitive bidding. It is almost a negative incentive.

Senator Lee asked if the leases turn over often.

Neil Effertz said it depends.

Senator Flakoll asked if there is an option to sublease.

Neil Effertz said he did not know.

Senator Flakoll said many ranchers are getting older and might not like a 10 year lease. Would some rancher's prefer a shorter lease option?

Neil Effertz said he had not thought of that and it could be a good idea.

Senator Bakke asked why the land is opened for bids so often. What is the point?

Neil Effertz said it used to be a three year lease and that was even worse.

Senator Bakke asked if the land is owned by the state, why is it not sold to the ranchers.

Senator Freborg said he assumes it is rebid to adjust the price. In most cases, the person with the lease usually gets it again.

Senator Bakke asked what happens if you lose the lease, where to you go with your cattle.

Neil Effertz said the school lands are not always fenced away from the surrounding land so if a rancher loses the lease, he has to build a fence to separate the school land from his own land.

Sandy Clark, North Dakota Farm Bureau, testified in favor of the bill. She said their policy is that all state land should be sold to an active producer. They do, however, support the study.

Linda Fisher, North Dakota Land Department, testified in a neutral position. See written testimony.

The lands turn over very little. The vast majority stays in the family, some for more than 50 years.

There are some variations geographically. The culture still exists where neighbors do not want to bid against their neighbors. The non-incentive for good management does not exist anymore. The EQUIP people understand the low turnover and allow EQUIP contracts on school lands. Sub leasing is not allowed. There is an assignment policy that goes through the land department. All school lands are open for hunting so they cannot be leased for hunting. They go through the bidding process to adjust the price. It also offers an opportunity for people to get their foot in the door. It is becoming harder and harder to get land on the private market and the bidding process allows new producers to get their hands on some land.

Senator Flakoll asked the total acres of lands that are leased.

Linda Fisher said 708,000 acres.

Senator Flakoll asked the cost of the auctions.

Linda Fisher said there is the cost of advertizing in the county newspaper and their travel expenses.

They have synchronized some leases and now every 5th year, there are no auctions. The cost is fairly minimal.

Senator Flakoll asked the average lease fee per acre.

Linda Fisher said it varies hugely.

Senator Bakke asked if a lessee can be from out of state.

Linda Fisher said their policy is to lease in the name of the person operating the ranch. Some checks come in from out of state. When they receive an out of state check, they call the person to find out the situation.

Senator Taylor asked about the 10 year depreciation schedule, is it a rent credit for improvement expenses over 10 years? What if they lose the lease after 5 years?

Linda Fisher said in that case, the new lessee has to pay the prior lessee in cash for the remaining amount and it is advertized that way. The out of pocket expense is depreciated over 10 years. There is no depreciation on fences but there is on water projects.

Senator Taylor asked if the lease term used to be 3 years, was that by statute.

Linda Fisher said there are a number of different lease terms. They try to keep all leases in a section synchronized. From time to time, there are shorter lease terms than 5 years. The lease on cropland used to be 4 years, for the most part; it was legislatively changed to 5 years.

Senator Taylor said other surrounding states wrote their constitutions about the same time as North Dakota. Have they undergone constitutional amendments to allow longer lease terms? Would that be the process to extend the lease period?

Linda Fisher said to the best of her knowledge, yes.

Roger Effertz, Effertz Key Ranch, McHenry County, testified in favor of the bill. He said the turnover in leases may be low but there is now an influx of smaller operations from different parts of the state.

There can be a new bidding person that no one knows who bids up the price of the lease then leaves the court house without identifying himself. There is more temporary in and out of leases, not a sustainable situation. This causes the lease to cost considerably more. There are no qualifications to bid. There is a frustration from the ranchers' perspective. Some of these quarters are sitting in the middle of an operating ranch.

Chairman Freborg closed the hearing on SCR 4027.

Senator Taylor moved a Do Pass on SCR 4027, seconded by Senator Bakke. The motion passed 5 – 0.

Senator Taylor will carry the bill.

Date: 3/2/09 :
Roll Call Vote #: 1 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4027

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Taylor Seconded By Sen. Bakke

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor	✓	
Senator Gary Lee	✓		Senator Bakke	✓	
Senator Flakoll	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Taylor

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

REPORT OF STANDING COMMITTEE

SCR 4027: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4027 was placed on the
Eleventh order on the calendar.

2009 HOUSE EDUCATION

SCR 4027

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4027

House Education Committee

Check here for Conference Committee

Hearing Date: March 16, 2009

Recorder Job Number: 10976

Committee Clerk Signature

Carmen Hart

Minutes:

Senator Ryan Taylor, District 7, appeared. (See Attachment 1.) The attachment is some research done by Legislative Council on the nature of school land leases and the other surrounding states and proximities of North Dakota. The reason that some of my constituents wanted us to at least examine the leases and the terms as some of the improvements that they put upon the land is our industry has changed a fair bit since statehood in terms of how he mans the land. If we are going to rotationally graze the land, there are investments that need to be done. The cost of fencing these lands has doubled in the last several years. If we had a longer term instead of five years that it currently is, say it was to go to seven years or ten years, you would have time to recoup those investments whether it is water development to facilitate that rotational grazing plan. One of the things that we think will be discovered in the study, of course, is that some of these are tied to constitutional changes. If this was a study that was picked up and used by Legislative Council and resulting in legislation making constitutional amendments, that would have to go before the people to extend it.

Rep. Lyle Hanson: When was the last time the lease lengthened or was changed?

Senator Taylor: I have had a little bit conflicting information about that, because I heard at one time it had been as little as three years, but maybe that was on certain classifications of

property. We have been at five years for some time. The Land Department may be able to talk about that to some extent too.

Rep. Phillip Mueller: Can you talk a bit about the fees charged, the rents received by the Land Department?

Senator Taylor: I will defer that question. As I understand, they do some survey work in terms of what competitive land leases are in a certain geographical area say on a certain classification of land. They will come up with a starting bid. Then when it is presented to the folks in, say that county, that is the starting bid and then it is competitive from there on up.

Sheyna Strommen, North Dakota Stockmen's Association, appeared. (See Attachment 2.)

Rep. Jerry Kelsh: I was just wondering it refers to school lands and state lands. Were all the lands originally school lands? Are we just using those definitions or intermingling those descriptions?

Sheyna Strommen: I do not know the answer to that question, but I certainly defer to the Land Department to say.

Rep. John Wall: Do you see any problem if this is extended trying to project accurate cash rents out seven to ten years? For instance, rent in a lot of places, cash rent has gone up a lot in the last two years. Would there be a chance the state could lose considerable money if we extend to seven to ten years?

Sheyna Strommen: I don't think that would necessarily be a problem. It could probably be written into the contracts.

There was no opposition.

Neutral

Linda Fisher, Leasing Coordinator, ND State Land Department, appeared. (Attachment 3.) Dr. Mike Brand, Director of Surface Management Division, was with her. Between the two of them, she will give the testimony and if there are any questions that she cannot answer she will defer to Mike. She told Rep. Kelsch that they refer to what they manage as school trust land and not state land because there is a difference.

Rep. Lyle Hanson: Do you know the length of the federal lands in North Dakota, the forest service and the other federal lands? Are they five years?

Linda Fisher: The lease terms you mean?

Rep. Lyle Hanson: Yes.

Linda Fisher: I am not sure. Do you know, Mike? We don't know what the federal lease terms are currently. It might be in the handout that Ryan Taylor provided.

Rep. David Rust: This talks about state lands which was said is different from school lands. This would be more encompassing than school lands.

Linda Fisher: This is school lands. What we are talking here are about school trust lands, very specifically school trust lands. These are the lands that were granted to the state for the purpose of funding education, and they are controlled by the Board of University and School Lands as the governing body for its management.

Chairman Kelsch: What it says on Lines 2 and 3 that state lands in North Dakota are managed by the Board of University and School Lands with the Land Department. Then what they do is they shorten that up to call them state lands, but they are still...

Rep. David Rust: school lands.

Linda Fisher: There is a lot of, I wouldn't say bad information, but misunderstood information out there because school trust lands are very different. They are managed very differently

than other state lands are because they have a very specific purpose. What we are talking about in this study resolution are the school trust lands.

Rep. David Rust: That is Sections 16 and 36 then?

Linda Fisher: For the most part.

Rep. Phillip Mueller: How does it work in a bid process? Can the renter of the school land in a bidding process match the bid of the one who maybe ultimately gets the bid and then retain the rental rights?

Linda Fisher: Currently the way it works is like any public auction down the street. We come to the auction with our auctioneers, myself being one of them. We start the tract at the minimum bid that has been advertised ahead of time. We take bids to raise that and whoever has the highest bid gets it.

Rep. Lee Myxter: Just a matter of my own curiosity, approximately how much money is taken in per year from these leases?

Linda Fisher: \$5.5 million annual

Attachment 4, Fact Sheet by ND State Land Department, was handed out.

The hearing was closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4027

House Education Committee

Check here for Conference Committee

Hearing Date: March 17, 2009

Recorder Job Number: 11106

Committee Clerk Signature

Carmen Hart

Minutes:

Rep. David Rust moved a **Do Pass**. **Rep. Jerry Kelsh** seconded the motion.

Rep. Lyle Hanson: I think I am going to oppose this resolution because it isn't extended to five to seven—I remember when they changed it to two or three to five—I think the state could be losing money by extending that over a longer period of time, because cash rent varies a lot. It is not going down, it is going up. Because of the revenue part, I oppose the bill.

Rep. Phillip Mueller: It is a study. It certainly has listed the five of the seven. I think he is right about that and things change quite a bit in that business in those kind of time frames, but again it is a study. I think that it may very well talk about, say it is a five-year contract or seven-year contract, in that process there can be provisions built into an arrangement on a cash rent deal. Those of us who farm understand how that works. That then could begin to reflect improvements that someone might make out there on that land they don't own. I think a look at it is deserved and I will support the Do Pass.

Vice Chair Lisa Meier: This is actually a mandated study, correct?

Chairman Kelsch: Yes. It directs. It is not a shall consider. It is a mandated study. I am also going to oppose this. The biggest reason is that I think that currently what we have on the five-year leases for school lands is working very well. We only have about 6% of the producers out there that are actually leasing state lands. I don't know that it is an issue. I

never heard that it is an issue. I almost feel it is more of a local issue, not necessarily a statewide issue.

Rep. Jerry Kelsh: It can happen that it goes the other way, the lessee would drop. I think one of the reasons for this is that you have a five-year lease and you go out and build a bunch of new fence on there and at the end of that lease, if the guy doesn't retain control of it, the State Land Department has to pay back a certain percentage of the improvements on that land. They probably won't lease for any more the next time. That is where they are coming from on this.

Rep. David Rust: Up until my father retired from farming, we rented a quarter section of school land. We owned a quarter also. As I see it, it is a study to see is there a better way to do things? Maybe it is looking well. It was a great thing for our family farm, that quarter we rented. We tried to buy it and requested to purchase it about a year after they put a nix on selling that land. I have really positive feelings about public school lands and school lands trust fund, but maybe there are some things in there that you could do a little better, study, and look at it.

Rep. Corey Mock: I was going to make a suggestion. Is it possible to amend the resolution so that it is a may study, not a directive study?

Chairman Kelsch: We can certainly do whatever amendments anybody would like.

Rep. Phillip Mueller: Visiting with Senator Taylor he suggested that if the requirement was the heartburn that he wouldn't have a problem with making it a shall consider.

Rep. Corey Mock: I would move to amend the resolution to make it a shall consider.

Rep. Phillip Mueller seconded the motion.

Pam Crawford, Law Intern: I think it is shall consider studying.

A voice vote was taken. The motion carries.

Chairman Kelsch: We do have a **Do Pass** motion on the bill. Now it would be a **Do Pass as amended**.

Rep. Lyle Hanson: My partner over here (referring to Rep. Phillip Mueller) rents land, but his is only for three years, but he wants seven on this one.

Chairman Kelsch: I rent my land out, and I wanted to lock in at a five-year lease. I have some things in there where it was ratcheted up every year or every two years. I almost went with a different renter because of it. I know how hard that is to go to five years even, and seven to ten years is going to be something that is extremely difficult given the volatility of the price of our grain in the ag market.

Rep. Jerry Kelsh: Another reason for the operator and this is almost 50 prairie or pasture land is that if someone has rented that for several three- or five-year terms and has built a herd that is based on his having that and then all of a sudden doesn't have it, it makes it pretty difficult because you are going to change your whole operation because you didn't get it.

Chairman Kelsch: Did anyone ask that question how often that happens, that they can take the lease away from them?

Rep. Jerry Kelsh: You don't take the lease away when somebody outbids it.

Rep. Mike Schatz: I might vote for this study but I would never vote to raise this to ten years on the floor, and I don't think you could ever get it passed. That is the only reason I am thinking well why even study it then. What do the land auctions cost? You go to the county courthouse. That is free. You bring in the State Land Department. They drive out there. That is not a whole lot of cost, but I mean your revenues are going to be more because you are doing it every five years rather than every ten. I don't know.

Rep. Dennis Johnson: We have had this legislation before as far as the cost of auctions where they went with the auction in Bismarck rather than go to the other counties. They even

bring them to the counties. The state land is a little different from renting from your neighbor.

The state land that I am familiar with and have rented, you will find it is probably two or three generations of the same people renting that state land. It is common courtesy to not bid against your neighbor and let them keep renting it because it is part of their operation.

DO PASS AS AMENDED. 9 YEAS, 5 NAYS. Rep. Jerry Kelsh is the carrier of this bill.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SCR 4027

House Education Committee

Check here for Conference Committee

Hearing Date: April 1, 2009

Recorder Job Number: 11608

Committee Clerk Signature

Carmen Hart

Minutes:

On 3-17-09 Legislative Council informed the intern that the amendment was not necessary. All study resolutions are automatically optional for the Legislative Council. Only when a study is in a bill, does the language make a difference.

Chairman Kelsch: The reason we have to reconsider that bill is we amended it and then passed it out of here. We amended it because we felt as though the wording meant that it was a mandated study. Legislative Council changed the way that they do their study resolutions, and when you see the ones that say directing, it is the old version of shall consider study, and so we do not need the amendment and felt that we should probably bring it back and just take the amendment off of it and pass it out clean. I would need a motion to reconsider our actions whereby we passed senate concurrent resolution 2087 as amended.

Vice Chair Lisa Meier: So moved.

Rep. Phillip Mueller seconded the motion.

A voice vote was taken. Motion carries.

Chairman Kelsch: We now have amended senate concurrent resolution 4027 before us, and so what we would need to do is remove the amendment. It didn't get put on, but that is the way technically it should have read when it came out of here. We need a new motion without the amendment. We need a **Do Pass** motion so that we have that correctly on tape.

Vice Chair Lisa Meier moved a **Do Pass**. **Rep. John Wall** seconded the motion.

Rep. Karen Karls: I don't remember how I voted on this.

Chairman Kelsch: I know I voted No.

The committee clerk told how each committee member voted earlier on a Do Pass as amended.

DO PASS. 8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING. **Rep. Jerry Kelsh** is the carrier of this resolution.

Date: 3-17-09
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4027

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep Mock Seconded By Rep Mueller

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					

Vote to accept amendment

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

Motion carries

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

Date: 3-17-09
 Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4027

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep Rust Seconded By Rep. Kelsch

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch		✓	Rep. Lyle Hanson		✓
Vice Chairman Lisa Meier		✓	Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsch	✓	
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) 9 No 5

Absent 0

Floor Assignment Rep. Kelsch

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

Date: 4-1-09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4027

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. Meier 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) 8 No 5

Absent _____

Floor Assignment Rep. Kelsh

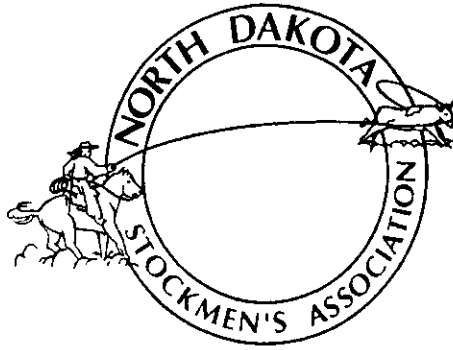
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4027: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS
(8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). SCR 4027 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SCR 4027



SCR 4027

Good morning, Senator Freborg and members of the Senate Education Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The North Dakota Stockmen's Association would like to go on record in support of SCR 4027. Several of our members are state school land lessees and rely on the land to support their cattle herds and, ultimately, to feed a hungry world.

Some of those members have indicated that, if they had longer leases, they would be more apt to invest in improvements for the property, knowing that their money and effort would stretch across a longer time period. A longer time period may also give some cattle ranching lessees more peace of mind, not having to risk losing key parcels every five years.

For these reasons, we believe there would be value in studying the concept of 7- and 10-year leases and whether or not lessees should be given preference when school lands come up for sale. We ask that you give this resolution favorable consideration.

Testimony in support of Senate resolution #4027 to study the leasing of agricultural state land.

1. Current regulations and policy does not incent good stewardship, in fact in many cases it stimulates land abuse in the final year of the lease to limit bidding for lease renewal.
2. Many USDA/NRCS programs require control of the property for 7 to 10 years.
3. Good soil health can be enhanced by practices such as the implementation of cover crop planting, interseeding and short duration rotational grazing which requires a longer term investment by the operator/tenant in cross fencing and water development which is not able to be recovered in less than a ten year lease.
4. These good conservation practices not only are rewarded by cost share programs (Conservation Security Program CSP, EQUIP, and others) funded by the USDA/NRCS, they enhance soil health, promote increased plant species diversification and foster more carbon sequestration.
5. These practices that would be allow and encouraged by longer term leases would bring dollars to our state not only from USDA incentives but also through increased productivity of the land.
6. Many other nearby states have a provision for the current lease holder of surface rights of state owned land to be able to match the high bid to renew the lease currently held by that operator. This policy allows an operator the opportunity to hold onto the lease on property that they have spent a lot of time, money and effort on to improve thus not penalizing them for good stewardship.

Neil Effertz

TESTIMONY OF

LINDA FISHER
Leasing Coordinator

North Dakota State Land Department

SENATE CONCURRENT RESOLUTION NO. 4027

Senate Education Committee
March 2, 2009

In our capacity as fiduciaries for the educational trusts of our state, and as on-the-ground land management professionals, we fully support the notion that "promoting policies that encourage good land stewardship would be beneficial to the state". As such, we appreciate this opportunity to provide information related to the land management and leasing program currently in place at the North Dakota State Land Department.

We don't intend to take a lot of your time this morning, but rather would like to highlight some information in a couple of key areas that we believe may be of value to the Committee.

As you know, the lands that are the subject of this proposed study were granted to the State of North Dakota at statehood for the purpose of generating revenue to fund public education in the State. The Enabling Act which granted the land to North Dakota as a condition of statehood, and our state Constitution, which further governs its management, set out some very specific guidelines as to what could and could not be done with the land.

As stated in the resolution, much of the land granted to the State was sold in earlier years to providing funding for the trust accounts. In the late 70s the Board of University and School Lands adopted a land retention policy, leaving us with the 708,000 acres that are currently leased and managed as part of an investment portfolio for the benefit of our 14 constitutional trusts.

Language in SC 4027 suggests that extending our current five-year maximum lease terms to seven or ten years could reduce auction costs and encourage lessees to make improvements they may not make within the current 5-year maximum. It further recommends a review of what, if any, preference is given to an existing lessee in the lease renewal process.

Both of these issues are specifically addressed in Article IX, Section 8 and Article IX, Section 9 of our State Constitution, and read as follows:

"Section 8. The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years...." (Emphasis added)

“Section 9. No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish either directly or indirectly, the purchase price of said lands.” (Emphasis added)

These are the constitutional reasons for our current maximum lease terms and non-preferential leasing process.

With respect to improving school trust lands, we believe in good management. In fact, as stated in our biennial report and agency budget, the objective of the Surface Management Division is to “obtain a “fair market” return from the lands while maintaining or improving their condition and value. The reality is that for over 100 years we have been bound to the constitutional maximum 5-year term and as such, the Land Department has a long history of putting policies into place that help lessees manage and improve the trust assets regardless of the length of lease terms. For instance:

- We offer cost share assistance and rental adjustments for noxious weed control effectively paying 100% of the cost of noxious weed control.
- We organize bio-control collection days where lessees gather beetles for redistribution.
- We provide rent credits and cost share assistance for water developments.
- N.D.C.C. 15-08-26 provides for protection of a lessee’s investment in permanent improvements. Under this statute, we maintain depreciation schedules (up to 10 years) to protect the out-of-pocket costs of producers who make improvements should they happen to lose a lease at public auction. Incidentally, only 6% of the producers in the state lease school trust land.

Beyond policy-making, the Land Department is committed to providing our “customers” with land management resources and assistance – again, to encourage and enable them to be good stewards, not only on the lands they lease, but on their private land as well. We maintain a fully-functional website where producers can access a variety of Land Department Fact Sheets, drought-management tools, stocking rate calculators, aerial photos of trust land tracts, and much more. We also provide on-the-ground assistance with a staff of trained land management professionals.

For more detailed information about the State Land Department and our land management initiatives, please visit our web site at www.land.nd.gov.

October 2008

LEASING OF STATE LANDS

*Attachment 1
4027*

This memorandum discusses the leasing of state lands in North Dakota and the surrounding states of Minnesota, Montana, South Dakota, and Wyoming.

NORTH DAKOTA

State lands in North Dakota are managed by the Board of University and School Lands or the Land Department. These lands are leased at public auction for a maximum lease term of five years. A fair market value leasing system sets the minimum bid for each tract so it compares to what private landowners in the area are receiving for their leases. Private rental rates are obtained from an annual statewide survey of farmers and ranchers compiled on a county-by-county basis and adjusted for tract quality and other factors. The Land Department has over 4,500 leases held by approximately 2,200 lessees. School trust lands are found in all 53 counties, but concentrated in the state's livestock-producing regions, and consist of 97 percent pasture and 3 percent crop or hay.

MINNESOTA

Minnesota Statutes Section 89.17 provides that the Commissioner of Natural Resources has the power to grant and execute, in the name of the state, leases and permits for the use of any forest lands under the authority of the commissioner for any purpose that, in the commissioner's opinion, is not inconsistent with the maintenance and management of the forest lands. Leases or permits are revocable at the discretion of the commissioner at any time subject to such conditions as may be agreed on in the lease. Leases are for a maximum of 10 years with no automatic right of renewal, but the lessee does have an option to renew.

MONTANA

State lands are under the control of the Board of Land Commissioners. Administrative Rules of Montana Section 36.25.103 provides that the board has the authority to direct, control, lease, exchange, and sell school lands and other lands granted for the support of education. The board may issue leases for agriculture, grazing, and mineral production; cabin sites; and other uses under such terms and conditions as best meet the duties of the board to various trusts and the state. In general, a lease or license for agricultural or grazing lands is for 5 years or 10 years and expires on February 28, 10 years or less from the beginning date of the lease or license. Leases are issued on a competitive bid basis subject to a preference right of the current lessee to match the highest bidder.

Concerning the preference right, Administrative Rules of Montana Section 36.25.117 provides that the board retains the right to select the best lessee

possible to fulfill the operating obligations under any lease. In the exercise of the board's discretion to select the best lessee possible for agriculture and grazing leases, the board recognizes that retention of stable, long-term lessees who are familiar with the operating history and characteristics of the lease promotes good stewardship of the land. This security of land tenure encourages the lessee to place and develop improvements which, in turn, increases the productivity of the land and improves its management. Consequently, it is the board's policy to allow an incumbent lessee in good standing, a preference right to meet the high bid and retain the lease.

SOUTH DAKOTA

South Dakota Codified Laws Section 5-5-4 provides that all common school, indemnity, and endowment lands must be leased for pasture, meadow, farming, the growing of crops and grain, and general agricultural purposes at public auction. Section 5-5-6.1 requires the Commissioner of School and Public Lands to establish a minimum annual rental rate per acre on all agricultural lands administered by the commissioner. The minimum annual rental rate per acre is the rate at which the bidding is started. Section 5-5-10.4 requires the commissioner to establish a minimum annual rental rate per acre for all grazing lands. The minimum annual rental rate per acre is the rate at which bidding commences. The section establishes a formula to determine the minimum annual rental per acre. Section 5-5-11 provides that the term of the lease may not exceed five years; however, at the expiration of the initial five-year term, the lessee is entitled, at the lessee's option, to a new lease for the land included in the lessee's original lease for a period of five years.

WYOMING

State lands in Wyoming are governed by the State Board of Land Commissioners and the Office of State Lands and Investments. Section 1 of Chapter 4 of the Rules and Regulations of the Wyoming Board of Land Commissioners provides that leases for grazing or agricultural purposes are for a term of 10 years. Section 36-5-105 of the Wyoming Statutes Annotated provides that in leasing vacant lands, preference must be given to applicants who are bona fide resident citizens of Wyoming and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land, and who are the owners, lessees, or lawful occupants of adjoining lands who offer to pay an annual rental not less than fair market value as determined by economic analysis for the use of the forage and other commodity available annually on the land for a period of 10 years. This section provides further that an applicant that is the holder of an expiring lease, has paid the rental

when due, and has not violated the provisions of the lease is qualified to have a preferred right to renew the lease by meeting the highest bid offered by another qualified applicant who has actual and necessary use for the land and available forage and whose bid is based on the fair market value using a formula developed by the board.

North Dakota



STOCKMEN'S ASSOCIATION

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Attachment 2

SCR 4027

Good morning, Madam Chairman and members of the House Education Committee. For the record, my name is Sheyna Strommen and I represent the North Dakota Stockmen's Association.

The Stockmen's Association would like to go on record in support of Senate Concurrent Resolution 4027. Many of our members are state school land lessees and rely on the land to support their cattle herds and, ultimately, feed a hungry world.

Some of our members have indicated that, if they had slightly longer leases, they would be more apt to invest in improvements for the property, knowing that their money and effort would stretch across a longer time period. Longer contracts may also give some cattle ranching lessees more peace of mind, not having to risk losing key parcels as often.

For these reasons, we believe there would be value in studying the concept of 7- and 10-year leases and whether or not lessees should be given preference when school lands come up for sale. We understand that the results of this study may result in a recommendation for constitutional changes, but we do support the concept of the study to build upon the programs provided by the Land Department and ask that you give this resolution favorable consideration.

TESTIMONY OF

LINDA FISHER
Leasing Coordinator

North Dakota State Land Department

SENATE CONCURRENT RESOLUTION NO. 4027

House Education Committee
March 16, 2009

In our capacity as fiduciaries for the educational trusts of our state, and as on-the-ground land management professionals, we fully support the notion that "promoting policies that encourage good land stewardship would be beneficial to the state". As such, we appreciate this opportunity to provide information related to the land management and leasing program currently in place at the North Dakota State Land Department.

We don't intend to take a lot of your time this morning, but rather would like to highlight some information in a couple of key areas we believe may be of value to the Committee.

As you know, the lands that are the subject of this proposed study were granted to the State of North Dakota at statehood for the purpose of generating revenue to fund public education in the State. The Enabling Act which granted the land to North Dakota as a condition of statehood, and our state Constitution, which further governs its management, set out some very specific guidelines as to what could and could not be done with the land.

As stated in the resolution, much of the land granted to the State was sold in earlier years to providing funding for the trust accounts. In the late 70s the Board of University and School Lands adopted a land retention policy, leaving us with the 708,000 acres that are currently leased and managed as part of an investment portfolio for the benefit of our 14 constitutional trusts.

Language in SC 4027 suggests that extending our current five-year maximum lease terms to seven or ten years could reduce auction costs and encourage lessees to make improvements they may not make within the current 5-year maximum. It further recommends a review of what, if any, preference is given to an existing lessee in the lease renewal process.

Both of these issues are specifically addressed in Article IX, Section 8 and Article IX, Section 9 of our State Constitution, and read as follows:

"Section 8. The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years...." (Emphasis added)

“Section 9. No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish either directly or indirectly, the purchase price of said lands.” (Emphasis added)

These are the constitutional reasons for our current maximum 5-year lease term and non-preferential leasing process. In fact, in comparison with private leases which are generally year to year, the 5-year lease term on school trust lands is a “long term lease”.

With respect to improving school trust lands, we believe in good management. In fact, as stated in our biennial report and agency budget, the objective of the Surface Management Division is to “obtain a “fair market” return from the lands while maintaining or improving their condition and value. The Land Department has a long history of putting policies into place that help lessees manage and improve the trust assets regardless of the length of lease terms. For instance:

- We offer cost share assistance and rental adjustments for noxious weed control effectively paying 100% of the cost of noxious weed control.
- We organize bio-control collection days where lessees gather beetles for redistribution.
- We provide rent credits and cost share assistance for water developments.
- N.D.C.C. 15-08-26 provides for protection of a lessee’s investment in permanent improvements. Under this statute, we maintain depreciation schedules (up to 10 years) to protect the out-of-pocket costs of producers who make improvements should they happen to lose a lease at public auction. Incidentally, only 6% of the producers in the state lease school trust land.

Beyond policy-making, the Land Department is committed to providing our “customers” with land management resources and assistance – again, to encourage and enable them to be good stewards, not only on the lands they lease, but on their private land as well. We maintain a fully-functional website where producers can access a variety of Land Department Fact Sheets, drought-management tools, stocking rate calculators, aerial photos of trust land tracts, and much more. We also provide on-the-ground assistance with a staff of trained land management professionals.

For more detailed information about the State Land Department and our land management initiatives, please visit our web site at www.land.nd.gov.

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FACT SHEET

Gary D. Preszler, Commissioner

HOW ARE MINIMUM BIDS CALCULATED?

The Fair Market Value Method (FMVM) of calculating the minimum opening bid on school trust grasslands was initiated in 1990. The FMVM is based on cash rents for grassland in your region (see map), adjusted for those factors which make school land different from private leased land. (Crop and hay tracts use similar methods.)

Where do we get the cash rent in your region?

Each year the U.S. Department of Agriculture does a county-by-county cash rent survey (results at www.nass.usda.gov/nd). Using the USDA survey, we find the lowest average county rent in your region, average the last 5 years of those lowest average rents, and reduce that figure by 10%.

What other adjustments to the lowest county average rent do we make?

- ◆ We deduct barren acres and other non-productive acres.
- ◆ We deduct \$1.50/acre for a fencing allowance since the State does not provide fences.

- ◆ We deduct 1/2 of the cost of leafy spurge control from the minimum opening bid if the tract has spurge. (The other 1/2 of the control costs are eligible for cost share consideration once the work has been completed.)
- ◆ We adjust each tract up or down to account for its potential forage productivity.

By using this method, we are trying to be fair to our lessees, while fulfilling our constitutional duty to use this land to generate income for public schools in North Dakota. The following table shows the difference between the Land Department's average minimum opening bid per acre for the 2007 lease year, compared with the range of private market rents for your region. Keep in mind that unless you have an "average" tract, your rent will be either somewhat higher or lower than the average minimum opening bid we've shown for your region.

As always, if you have any questions or think that we have made a mistake in evaluating the tract that you lease, and wish to request a field review, contact the Land Department. For more information regarding this topic, contact Mike Brand at mbrand@nd.gov or call (701) 328-2800.

\$/ACRE RENTAL CHART (GRASS)		
	<u>*USDA Survey</u>	<u>**Land Dept.</u>
Region 1	\$11.80 - \$14.00	\$7.90
Region 2	\$11.20 - \$18.00	\$8.15
Region 3	\$11.50 - \$12.10	\$8.01
Region 4	\$7.90 - \$9.70	\$5.63
Region 5	\$9.40 - \$12.80	\$6.21
Region 6	\$11.60 - \$15.30	\$8.23
Region 7	\$14.50 - \$18.30	\$9.97
Region 8	\$15.40 - \$16.00	\$10.69

* Identifies the range of averages for all counties within the region for 2007 year.
 ** Identifies the Land Dept. average minimum opening bid on grassland for the 2008 year in your region.