

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/09/2019**

Bill/Resolution No.: HB 1350

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

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

House Bill 1350 relates to a common schools revolving loan fund to provide a continuing appropriation.

- 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.*

House Bill 1350 creates the new Common Schools Revolving Loan Fund within the Common Schools Trust Fund and provides guidance into how loans will be made from the new Common Schools Revolving Loan Fund. HB 1350 does not provide for the transfer of any funds from the Common Schools Trust Fund to the Common Schools Revolving Loan Fund, thus there is no fiscal impact.

Because the bill does not provide for the transfer of funds, there is no fiscal impact. Even if this bill did provide for the transfer of funds to the new Common Schools Revolving Loan Fund, due to the nature of the permanent trust distribution formula in Article IX, Section 2, of the North Dakota Constitution there would be no impact on distributions from the Common Schools Trust Fund until the 2023-25 biennium.

Based on related bill House Concurrent Resolution 3008, it is estimated that approximately \$1 billion could be made available for loans. Once the full impact of HB 1350 is felt, it will reduce the growth of the Common Schools Trust Fund by approximately \$50 million per year. In time this will result in the reduction of distributions from the Common Schools Trust Fund by approximately \$10 million during the 2023-25 biennium, with that amount increasing by another \$10 million each biennium going forward in perpetuity.

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.*

- 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.*
- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Jodi Smith

**Agency:** Department of Trust Lands

**Telephone:** 701-328-2807

**Date Prepared:** 01/16/2019

**2017 HOUSE EDUCATION**

**HB 1350**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau Room, State Capitol

HB 1350  
1/22/2019  
31197

- Subcommittee  
 Conference Committee

Committee Clerk: Bev Monroe

## **Explanation or reason for introduction of bill/resolution:**

Relating to common schools revolving loan fund; relating to legal investments; to provide a continuing appropriation; and to provide for a contingent effective date

## **Minutes:**

Attachment 1, 2, 3

**Chairman Owens:** Opened the hearing on HB 1350.

**Rep. Bob Paulson:** (See Attachment 1) 00:30-5:40

**Chairman Owens:** Anyone else in support of 1350?

**Nick Klemisch, Superintendent, Garrison Public School District:** I am in support of this bill, although if I had a preference I would prefer the Legacy Fund as opposed to the Common School Trust Fund. The Foundation Aid and Per Pupil Payment, which I know people will speak to in opposition towards this, but it makes sense. Garrison Public Schools are 0/5 on bond referendums. We are also 0/1 on extending our building fund levy from 10 mills to 20 mills. Bonds range anywhere between \$5.5M to \$11.2M. The challenges we face are no different than a lot of school districts, but we are unique in that we are a retirement community/lake community/up-and-coming community/little bit of everything. When looking at the demographics as to why our bonds are failing, the finger may be pointed at the farmer. When looking at family farms, there aren't enough to vote down a bond referendum. In our community, there are sixty more water meters in the countryside than there are in the community of Garrison. Right now, there are 15-17 lake developments surrounding the lake and a lot of people claim that as their primary residence as historically our taxes are cheaper than most. The makeup of our tax base is such that most people go south for the winter. Our telephone cooperative representative, who also provides internet service to a lot of those homes along the lake, reported that internet usage drops to about 5% in the winter. These people are voting members in our community because they have a primary residence there.

Our ag sector has also taken a beating. We are right in the middle between Bismarck and Minot. We have events that bring people in but we are unable to use our sales and use dollars given past legislation that has passed. As a district we are facing \$8.6M in capital maintenance of the next ten years. We have done very conservative approaches over the

past 30 years, but now it has caught up to us. We have 80-year-old buildings, one of which has had a fire in it. When it comes to this bill, it gives us the opportunity to fund against something, using our building fund for these purposes. The 30-year bank note is a huge sell for us. The one-percent interest is a huge sell. Our last bond referendum shows that if we were to borrow up to the \$10M mark, that would have been a savings of almost \$2M in interest for us. The one-percent at 30 years, I'm anticipating that is much more significant. Garrison Public Schools stand in support of HB 1350. 10:00

**Chairman Owens:** Any questions from the committee?

**Rep. Brandy Pyle:** Has your school board done any research on the private/public partnerships in funding portions of your school?

**Mr. Klemisch:** One of the dominant businesses is CHS. We have Garrison Memorial Hospital and Garrison Public Schools is the second largest employer in town. When it comes to reaching out to our community partners we hit them up for a variety of different things, but when it comes to the extent of millions of dollars it is just not feasible. We get on the average of \$20,000 to \$30,000 a year in donations, but we don't have the business structure that we can reach out to. 11:25

**Rep. Hoverson:** Is it common that smaller rural schools are conservative in spending and run into issues with maintenance?

**Nick Klemisch:** Yes. When looking at a lot of districts with failed referendums and you look at the age of the buildings, they are all pretty similar in age. During the time those buildings were built, those generations took care of the maintenance whether they had the money or not. My constituents say there are billions of dollars in the Legacy Fund and billions sitting in the Common School Trust Fund - why are we continuing to get hampered? My emphasis would be that, because we haven't established a principal use for that. When does the Legacy start and stop and who decides what, when and where. 14:00

**Rep. Brandy Pyle:** At Central Cass we had quite a few failed referendums. Our superintendent and school board actually reached out to the community and beyond. We even have companies from out of states who donated. I know it is a lot of work and is put on your back.

**Nick Klemisch:** It is a great idea. Parts of some things with STEM and everything else, we have started to target those as far as bringing more STEM-like activities within our communities as opposed to building structures with those partnerships. We don't want to rob Peter to pay Paul. Until we can get one fully funded, then we can go after the next part of that.

**Chairman Owens:** Anyone else in support of HB 1350?

**Mr. Dustin Gawrylow, Managing Director, ND Watchdog Network:** 15:45 In 2014, for a local bond issue were able to help some Mott-Regent area landowners. They were concerned the cost of a project that was being pushed on them. With our help, they ended up defeating that initial bond measure that was \$18M/60% against. It came back the second

time and it passed with about \$10M. In 2015, we supported SB 2178, which used the Bank of North Dakota to do this sort of thing and we have supported these concepts. Creating new ways through the state through low interest loans or a grant program that looks at all of the facility needs of these schools without huge tax increases. We support any of these concepts this session. If there is an entity that can divvy out the money in an equitable way that exists rather than creating it from scratch, then that is preferred.

**Chairman Owens:** Any questions from the committee? Any others in support? Any in opposition?

**Aimee Copas, NDCEL:** (19:00-23:30) (See Attachment 2)

**Chairman Owens:** Any questions from the committee?

**Rep. Hoverson:** Isn't a school building one of the best ways to invest in the future of the children? Buildings are built to last 100 years and now we've hit that. That's one of the investments that goes to the future of the students.

**Aimee Copas:** What we are looking at now is the easy solution. During the last interim our organization was asked to find a fix in the funding formula. There is no silver bullet and with building construction there is no silver bullet either.

**Rep. Hoverson:** It seems to me the only other option is to affect landowners, there are no other options coming up.

**Aimee Copas:** I can almost guarantee that not next session, but the following session we will be back here talking about how we will be backfilling the gaps that we don't have from our Common Schools Trust Fund. 26:00

**Chairman Owens:** Anyone else in opposition? Any neutral testimony?

**Jodi Smith, Commissioner, ND Department of Trust Lands:** (27:00-29:00) (See Attachment 3)

**Rep. Pat D. Heinert:** In reference to the second paragraph of Page 4, you're saying there will be a reduction in 2023-2025 of \$10M and that would be perpetual. In today's figures that in seven sessions we will be getting nothing from the common schools trust fund?

**Jodi Smith:** It would just continue to reduce those funds. We manage the Strategic Investments and Improvement Fund and during the last session \$150M was an appropriated through that fund to go through the Bank of North Dakota to have loans go out to the schools at a 2% interest rate. There are a couple other school loan programs currently in play. Sometimes we participate and sometimes we do not. 31:15

**Rep. Hoverson:** When looking at the constitutional use funds, it says for this purpose, other than the maintenance of common schools. When I read that, what I'm reading is that the only or main purpose of this fund is to be for maintenance for schools. Wouldn't this bill be exactly that?

**Jodi Smith:** 32:00-32:50 When we see this we see multiple purposes of what this can be used for and we try to ensure that when the legislative body is pushing bills through, we are in line with the constitution. We don't disagree that this measure is unconstitutional, we would challenge it that we would be able to make low interest rate loans and below market loans, which is why there is the concurrent resolution going through which would allow us to do that. The Bank of North Dakota, through those taxes, can do that and through the Common Schools Trust Fund we cannot unless the constitution is altered for us.

**Rep. Hoverson:** Help me understand – 'not for any purpose other than' – I'm just not seeing multiple purposes in the use of this fund.

**Jodi Smith:** Once we release those funds to the Department of Public Instruction, we do not direct them as to how that is spent per school. If Mr. Klemisch had those funds available, he could use those funds for the purposes of maintenance and construction.

**Chairman Owens:** Any further questions from the committee? Any further neutral testimony? We will close the hearing on HB 1350.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1350  
1/30/2019  
31767

- Subcommittee  
 Conference Committee

Committee Clerk: Bev Monroe

## **Explanation or reason for introduction of bill/resolution:**

Relating to common schools revolving loan fund; relating to legal investments; to provide a continuing appropriation; and to provide for a contingent effective date

## **Committee work**

**Chairman Owens:** Open discussion on HB 1350. This is a bill to create a construction loan program out of the common schools trust fund. It seeks to create a low interest school construction loan program at one percent. A half percent is what it takes to administer a loan program. Basically, it's a half percent interest it would be earning and that they would be paying. It's designed to take money out of the common schools trust fund.

**Rep. Brandy Pyle:** (Inaudible 1:00-2:00)

**Chairman Owens:** When you see these ads on cars with zero interest, it's not really zero interest. They have it built in. Ninety-five percent of the time the cash they give you is more than the interest you would pay at low interest on a loan for 36 months. That's why they limit it to 36 months. We already have a school construction loan at two percent that was established. The Bank of North Dakota is just one of the avenues. Doesn't this limit the amount the loan is?

**Rep. Johnston:** \$100M.

**Chairman Owens:** That's the limit of the total funds. Correct?

**Rep. Ron Guggisberg:** On the Fiscal Note its states that approximately \$1 Billion could be made available for loans.

**Rep. Longmuir:** My concern is that tapping into a constitutionally established fund. The fund right now provides, it takes money out of one pocket and puts it into the other pocket. We are not helping with this. I would vote for a **Do Not Pass on HB 1350.**

**Rep. Zubke: Seconded.**

**Chairman Owens:** Any further discussion from the committee?

**Rep. Andrew Marschall:** If we are to pass this, do we run into some constitutional issue as far as the Legacy Fund in pulling money out of there for those purposes?

**Chairman Owens:** It's not the Legacy Fund, it's the Common Schools Trust Fund and yes, unless that resolution is passed and voted on by the people successfully, there is a problem. Then we have another problem dealing with prudent investment. One-half percent on your investments is not a prudent investment. What Rep. Longmuir stated was accurate, you are only robbing Peter to pay Paul. The theory that it is going to reduce property taxes would be very short-lived because instead of just under \$1000 per pupil across the entire state being paid out by this fund, it would be cut almost in half according to the people that manage the fund. Even the fiscal note dealing with the concurrent resolution talks about reducing it from what's just under \$1000 to \$446 payment. It is two years from now where it is reduced and then it disappears.

**Vice Chairman Cynthia Schreiber-Beck:** My concern is that we're basing the income into the Common Schools Trust Fund on what? It's coming from oil revenues and once you start spending you don't know what it's going to be. If you're depending on that and have depleted all the funds, someone is going to have to pay the bill. Whether you do it through an increase in property taxes or oil revenue, the bill is going to have to be paid. We aren't going to have the funds either with the oil revenues. Right now we're paying a lot in oil revenues and in states where our commodity prices are low as well, I don't understand how we're going to sustain any of that.

**Chairman Owens:** The Common Schools Trust Fund was established in 1889, at the beginning of the State. It was designed to maintain the system of K-12. Extraction tax money is not going in here. The only oil money going in here would be if the oil wells would be on the land trust themselves and they are getting royalties from that. There is not a large influx of oil money going in.

**Rep. Hoverson:** It wasn't that long ago it was at \$1 Billion and it is already up to \$4 Billion.

**Chairman Owens:** What we heard in testimony was that it was \$1.2 Billion in 2009 at the bottom of the market. The only time before that was 1973. During that time a lot of people made money because the market was cut in half.

**Rep. Hoverson:** (inaudible) (8:55) There was plenty of oil money coming in.

**Rep. Dennis Johnson:** I cash rent state land and five years ago I was paying \$20,000 for my contract and now I am paying \$40,000 for that contract. It's up for bids next fall, so I'm hoping for depressed commodities prices. That's where some of the income comes from. The funds from this agency for foundation aid are a great avenue that we have been able to fund foundation aid and I would hate to see that brought back over.

**Vice Chairman Cynthia Schreiber-Beck:** Compared to the other Common School Trust Fund, if we were in line to pass anything this would be the likely one. It is better done than the other two.

**Rep. Ron Guggisberg:** This money is from rent on public lands. Whether the rent is making us oil money or actual rent from farmers, it's not oil tax, just fluctuating.

**Chairman Owens:** The law actually stated that in the first five years they could only sell so much and up to ten years they could only sell so much. After the first ten years of being a state, the constitution laid out what they could do with it and how much they could sell. They did sell some of it in the beginning, but they quit selling it. Any further discussion?

**Rep. Mary Johnson:** inaudible 12:25-12:45

**Chairman Owens:** We will eat up the fund, the fund will be earning one-half percent interest over a number of years and the foundation aid payments (just under \$1,000 per student) across the state will dwindle to nothing - in five or six biennium - and the per pupil payment will stay the same for ten years (which we know won't happen). That is the concern on one side and those on the other side who want to use it for school's construction funds because there are some needs out there and they can't get a bond levy passed by the taxpayers. The taxpayers don't want to pay any more taxes and they don't want to do a bond levy, so they keep voting against it.

**Rep. Hoverson:** I think it's unfair to say "all the people". There are people in our communities where if property taxes are raised one more time, they are moving out. Right now our state has \$14 Billion the government is sitting on. We are government rich and people poor. We are overtaxed and we have a constitutional obligation to provide public schools in (inaudible).

**Chairman Owens:** I'll reserve the right to disagree with you.

**Rep. Hoverson:** You sure can.

**Chairman Owens:** Is there any further discussion? A Roll Call Vote was taken: **Yes 11, No 3, Absent 0.** **Do Not Pass carries.** **Rep. Zubke** will carry HB 1350.

Date: 1-30-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1350**

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. D. Longmuir Seconded By Rep. D. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens	✓		Rep. Guggisberg	✓	
V. Chair. Schreiber-Beck	✓		Rep. Hager	✓	
Rep. Heinert	✓				
Rep. Hoverson		✓			
Rep. D. Johnson	✓				
Rep. M. Johnson		✓			
Rep. Johnston		✓			
Rep. Longmuir	✓				
Rep. Marschall	✓				
Rep. Pyle	✓				
Rep. Strinden	✓				
Rep. Zubke	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. D. Zubke

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

**REPORT OF STANDING COMMITTEE**

**HB 1350: Education Committee (Rep. Owens, Chairman)** recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1350 was placed on the Eleventh order on the calendar.

**2017 TESTIMONY**

**HB 1350**

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1-22-19  
#1

Good morning, Mr. Chairman. For the record, my name is Rep. Bob Paulson, and I represent District 3 in Minot and the surrounding areas to the east.

Mr. Chairman and members of the committee. I'm here to submit House Bill 1350 for your consideration.

HB 1350 would create a common schools revolving loan fund to be administered by the Board of University and School Lands (Land Board) for the purpose of providing low interest loans for school districts to use to construct new schools, or expand/remodel existing school buildings.

This bill is contingent on passage of House Concurrent Resolution 3008, a copy of which I have included in your packet, so I will speak to that resolution and then follow up with remarks on the bill. HCR 3008 would amend the North Dakota Constitution relating to allowable uses of the Common Schools Trust Fund.

Specifically, it makes available for low interest school construction loans the portion of the Common Schools Trust Fund (CSTF) that exceeds four billion dollars plus one half of the oil extraction tax revenue deposited into the fund after June 30, 2021.

As of June 30<sup>th</sup>, 2018, the balance of the Common Schools Trust Fund (CSTF) was approximately \$4.32B. This fund was established "for the support of common schools."

The Land Board is tasked with managing the CSTF, and has argued that they can't touch the principle in that fund, nor revenues to the fund coming from mineral rights royalties, because the law prohibits them.

In 2014, Rep. Louser asked the ND Attorney General for an opinion on whether or not the Land Board could use the principle of the trust fund to finance school buildings. The following statements were contained within the Attorney General's opinion in response to that question:

**"Any investments must comply with N.D.C.C. § 15-03-04, the "prudent investor rule," which requires the trustee to exercise reasonable care, skill, and caution, in making investments with a view both to safety of principal and securing a reasonable return."**

**"Past opinions indicate the Land Board could make loans without violating N.D. Const. art.X, § 18 because loans do generate returns."**

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**"When considering any loan, the Land Board must consider its constitutional and fiduciary duties as trustee of the common schools trust fund. This means the Land Board could not agree to offer loans at an interest rate lower than the current market rate or without regard to the quality of security pledged."**

**"It is my opinion that the Land Board has investment authority but must comply with the prudent investor rule and the constitutional limits of the Fund. "**

The ND AG has determined that using the CSTF to finance school buildings is appropriate, but loans must be made at the market rate.

HCR 3008 would change the ND Constitution to allow the use of the CSTF assets in excess of \$4B to be used for low interest construction loans. This would ensure that the 5 year average balance of the fund, 10% of which goes to fund the education budget each year, would grow at a relatively stable rate, allowing for consistent budgeting by the DPI and school districts, growing at a market rate of return. The amount to be borrowed from would be the amount of the principle that exceeds \$4.0B. In addition, the amount of the oil extraction tax added to the CSTF each year would be split 50/50, with half going to the baseline amount, and the other half being added to the amount available for school districts to borrow against.

In discussing this with Superintendent Baesler, it came to light that it would be a good idea to ensure that there was a limit in growth of the construction portion of the CSTF. Consequently, I worked with Legislative Council to prepare an amendment to the resolution. On a percentage basis, the portion exceeding \$4B right now represents 7.4% of the CSTF. The amendment would permanently limit the construction portion to 10% of the total value of the CSTF. That amendment is included in your packet.

HB 1350 would establish a Common Schools revolving loan fund, managed by the Land Board. The interest rate for the loan would be 1%, enabling school districts to undertake capital projects in keeping with the purpose of the CSTF, in support of common schools. The maximum amount of a loan would be \$100M, and the term would be 30 years.

Again, the purpose of the CSTF is "for the support of common schools." If anyone has the thought, "1% interest is too low", my comment would be that the CSTF

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should not be trying to profit from the school districts. If it seems like a good deal for them, it should be. The CSTF is for their benefit!

This is not intended to be the end all, be all for funding schools in North Dakota. It would simply be another tool in the toolbox for school districts who are struggling to address the unprecedented growth within their districts.

The process of loan prioritization and approval would be handled by the Land Board in coordination with DPI and along the lines of SB 2272 from last session, when a similar concept was applied to the coal development trust fund. Legislative Council used language from that bill to develop the language of 1350.

To highlight the specifics, the school board will need to:

1. Propose new construction, expansion or remodeling of at least \$1M with expected utilization of 30 years.
2. Have had a bond issue fail with the voters within the past 5 years
3. Identify the funding source for repayment
4. Obtain the approval of the Superintendent of DPI, and
5. Submit a completed application to the Land Board

Mr. Chairman and members of the committee, I believe that the resource that this concept would provide could be of great benefit to the education of North Dakota students for many years to come. Thank you for the opportunity to present this to you today.

I ask that you give this bill a Do Pass out of your committee, and I will stand for any questions.

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#1

19.3069.01000

Sixty-sixth  
Legislative Assembly  
of North Dakota

**HOUSE CONCURRENT RESOLUTION NO. 3008**

Introduced by

Representatives Paulson, Hoverson, Johnston, M. Nelson, M. Ruby, Simons

Senators Kannianen, O. Larsen

1 A concurrent resolution to amend and reenact section 2 of article IX of the Constitution of North  
2 Dakota, relating to allowable uses of the common schools trust fund.

**STATEMENT OF INTENT**

4 This measure would allow the use of common schools trust fund assets in excess of four billion  
5 dollars to be used for low interest school construction loans.

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

8 That the following proposed amendment to section 2 of article IX of the Constitution of  
9 North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the  
10 general election to be held in 2020, in accordance with section 16 of article IV of the  
11 Constitution of North Dakota.

12 **SECTION 1. AMENDMENT.** Section 2 of article IX of the Constitution of North Dakota is  
13 amended and reenacted as follows:

14 **Section 2.** Distributions from the common schools trust fund, together with the net  
15 proceeds of all fines for violation of state laws and all other sums which may be added by law,  
16 must be faithfully used and applied each year for the benefit of the common schools of the  
17 state, which includes the provision of low interest school construction loans to school districts as  
18 provided by law, and no part of the fund must ever be diverted, even temporarily, from this  
19 purpose or used for any purpose other than the maintenance or construction of common  
20 schools as provided by law. Distributions from an educational or charitable institution's trust fund  
21 must be faithfully used and applied each year for the benefit of the institution and no part of the  
22 fund may ever be diverted, even temporarily, from this purpose or used for any purpose other  
23 than the maintenance or construction of the institution, as provided by law.

24 ~~For the biennium during which this amendment takes effect, distributions from the perpetual~~  
25 ~~trust funds must be the greater of the amount distributed in the preceding biennium or ten-~~

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#1

Sixty-sixth  
Legislative Assembly

1 ~~percent of the five-year average value of trust assets, excluding the value of lands and~~  
2 ~~minerals. Thereafter, biennial~~      The legislative assembly may make available common  
3 schools trust fund assets for low interest school construction loans only to the extent that  
4 common schools trust fund assets, not including the value of land and minerals, exceed an  
5 amount equal to four billion dollars plus one half of the oil extraction tax revenue deposited into  
6 the fund after June 30, 2021. Low interest school construction loans may be made in a manner  
7 and upon the terms provided for by the legislative assembly. Biennial distributions from the  
8 perpetual trust funds must be ten percent of the five-year average value of trust assets,  
9 excluding the value of lands and minerals. The average value of trust assets is determined by  
10 using the assets' ending value for the fiscal year that ends one year before the beginning of the  
11 biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must  
12 be distributed during each year of the biennium.

(5)

(5)

19.3069.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Paulson  
January 18, 2019

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1-22-19  
#1

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3008

Page 2, line 7, after the underscored period insert "Total low-interest school construction loans may not exceed ten percent of the value of common schools trust fund assets, not including the value of land and minerals."

Renumber accordingly

HB 1350 Common Schools Trust Fund Revolving Grant  
NDCEL Testimony in Opposition

Good morning Chair Owens and members of the House Education Committee, I am here in opposition to HB 1350. This bill if enacted would turn the commons schools trust fund into a school construction revolving grant fund that schools could qualify for to access a 1% loan for amounts up to 80-100M dollars. One of the additional criteria as well includes a piece where the district may be able to qualify to apply for these loans with an unsuccessful bond referendum (page 2 lines 17-19).

While this move may provide a modality for low interest loans for school construction, again, it systematically deconstructs a fund that currently provides a shot in the arm to the school-funding model that is not easily replaced.

Those of us that work with and in the ND public school system are tremendously grateful for funds like the Common Schools Trust Fund. As a reminder, in the past biennium the fund provided for K12 education **\$288,264,000**. These funds are not additional funds for K12 education – rather – they are a very large piece of the puzzle as to how we fund the formula for K12 education. This upcoming biennium the fund is projected to provide **\$366,362,000**. This is more than \$78M more than the last biennium. We've watched this fund provide a mechanism for the state to be able to cover the cost to continue in K12 education at least two sessions in a row.

While we recognize the need to find relief to our school construction needs in our state, we do not believe that by doing so by taking money from a fund that is providing such an economic benefit to our schools. Which of the current asks for this biennium are folks ready to let go of – and to continue to understand that the revenue will not be there probably EVER again. Are we willing to go on without increases to the per-pupil payment? What if we are unable to maintain our cost to continue? Are we ready to tip the scales back on the investment in K12 education? We believe that our leaders that came before us were wise in their strong investment through this fund and we are reaping the benefits of that investment – taking that fund apart is not in the best interest in our state in the long run. We tell our schools that they must receive a 60% vote to gain access to additional mills to build a school building or handle large scale deferred maintenance, but we are willing then to take from a fund that is providing true taxpayer relief – spend it on construction grants? Isn't that still sending cost to the taxpayers of our state through the loss of the ability to have the many millions of dollars to infuse into the system through the CCTF modality?

If this is to answer to an inability to get to a 60% bond referendum, perhaps the question might be redirected. Is the answer to attempt at a loan fund like this, or is the answer to

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find a way to be a bit more flexible and perhaps reasonable about % of the vote needed to build a school or to tackle large scale deferred maintenance and renovation. All other political subs including parks, cities, etc., only require a 50% majority. Only schools live in the world of the 60% majority. I realize that this conversation is one that is typically not terrifically popular with the legislative body, but perhaps this is a good time to bring that potential solution to the table. Again and again we've seen communities get far over 50% and fall short of their 60% mark by just a few votes.

Back to the issue at hand...

Current enrollment projections have us growing our K12 enrollment in this state at about 5% over the next 3 years. That means that we will need to continue to cover a growing cost to continue in our state and to do so appropriately means needing to rely on this trust fund to continue to do its job.

We strongly believe as an organization that to continue to allow the Common Schools Trust fund to do its job and continue to infuse more dollars into the funding formula is a great choice for our state. We ask that you recommend a DO NOT PASS on HB1350 and HCR 3008 and a subsequent constitutional measure, which would need to be enacted for this bill to come to fruition.

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Jodi A. Smith, Commissioner

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

**House Bill 1350**

House Education Committee  
January 22, 2019

Chairman Owens and members of the House Education Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on House Bill 1350.

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 and 13 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 four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

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 Common Schools Trust Fund.

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.

Distributions from the CSTF are based upon the growth in value of the trusts' financial assets over time, rather than on the amount of interest and income earned by each trust during the year. Biennial distributions from the permanent trust funds must be 10% of the five-year average value of trust assets, excluding the value of lands and minerals. Equal amounts are distributed during each year of the biennium. With the substantial growth in trust assets over the past 10 years, distributions to beneficiaries have significantly increased.

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The key to a successful endowment type investment program is to maintain spending levels at sustainable rates. That was the objective of the constitutional spending formula implemented in 2009.

For many of the previous 40 years, distributions were made at unsustainable rates. The combination of constitutional language, legislative appropriation of distributions, and an objective to increase distributions made it difficult to manage the spending rate.

In 2003, the Board accepted investment consultant DiMeo-Schneider's asset allocation study, leading to its 2005 legislative resolution and 2006 ballot measure amending Article IX distributions. That law became effective July 1, 2009.

Per Article IX, Section 2 of the North Dakota Constitution:

Distributions from the [CSTF], together with the net proceeds of all fines for violation of state laws and all other sums which may be added by law, must be faithfully used and applied each year for the benefit of the common schools of the state and no part of the fund must ever be diverted, even temporarily, from this purpose or used for any purpose 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.

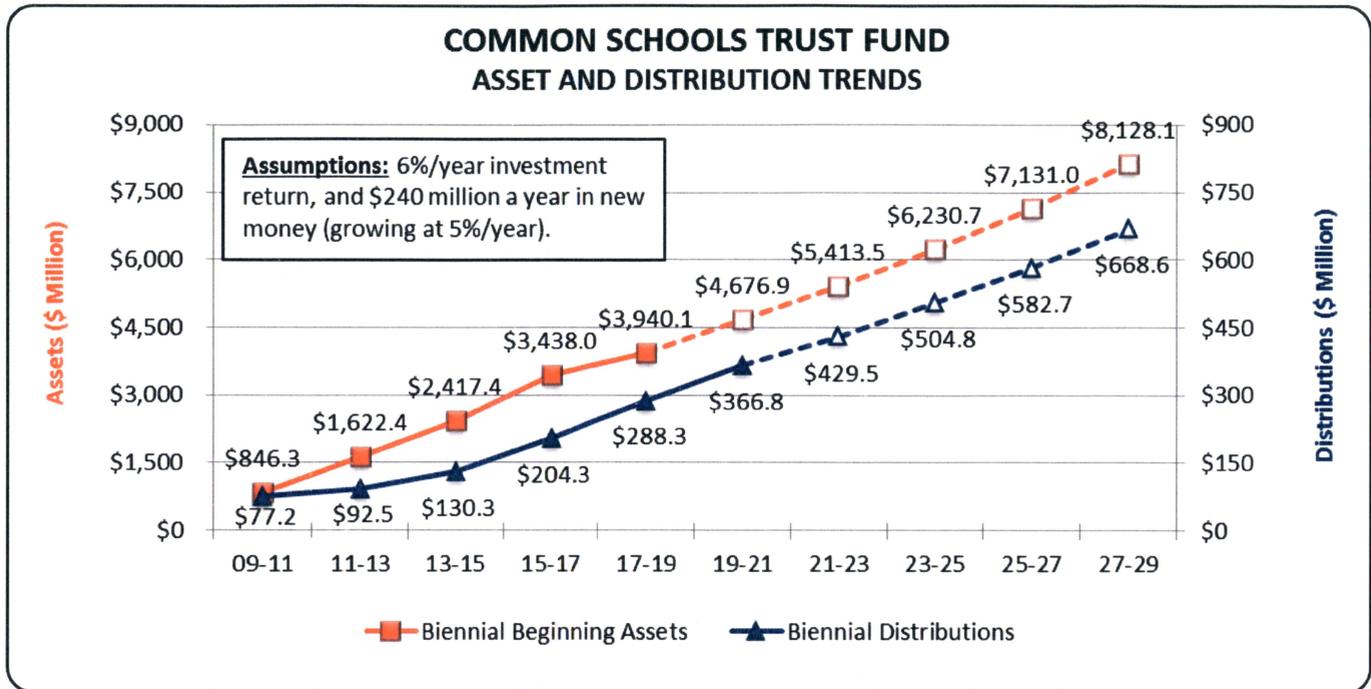
For the biennium during which this amendment takes effect, distributions from the perpetual trust funds must be the greater of the amount distributed in the preceding biennium or ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. Thereafter, biennial 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.

Since changes to the Constitution became effective in 2009, trust growth, and trust distributions to beneficiaries, have increased at historic rates. As the table below shows, per pupil distributions to K-12 education have increased from approximately \$400 per pupil per year during the 2009-11 biennium to a projected \$1,319 per student during the 2019-21 biennium. During that same period of time, distributions from the CSTF grew from approximately 4.0% of the cost of education to a projected 13.9% of the cost of education.

Biennium	Amount Distributed	CS % of Cost of Education	CS \$/Pupil Distribution
2009-11 bi.	\$ 77,178,000	4.0%	\$ 400.96
2011-13 bi.	\$ 92,514,000	4.5%	\$ 461.33
2013-15 bi.	\$ 130,326,000	6.0%	\$ 643.27
2015-17 bi.	\$ 206,134,000	8.6%	\$ 971.69
2017-19 bi.	\$ 288,264,000	11.5%	\$ 1,318.88
2019-21 bi.	\$ 366,756,000	13.9%	\$ 1,592.35

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The chart below shows growth in the assets held by the CSTF and distributions from the CSTF since the 2009-11 biennium, as well as projected future balances and distributions. Biennial distributions have increased from approximately \$77.2 million during the 2009-11 biennium to \$366.8 million during the 2019-21 biennium. Distributions are projected to increase an additional \$300 million per biennium by the 2027-29 biennium.



As the table and chart above illustrate, the distribution formula adopted by the people of North Dakota in 2006 is working. If the current formula is left unchanged, distributions from the CSTF could grow to 25% or more of the cost of education in the near future. Every dollar distributed from the CSTF is one less dollar that needs to be generated by property or other taxes. The proposed changes to the distribution formula will have a major impact on trust distributions going forward.

The table below is another look at the CSTF's impact education. With the inclusion of the 2019-21 contribution, the CSTF will have supplied nearly \$1 billion (\$991,480,000) to the schools in the last eight years.

Biennium	Formula Payment	Common Schools	Percentage of Formula	Common Schools Increase
2013-15	\$ 1,752,100,000	\$ 130,326,000	7.4%	\$ 37,812,000
2015-17	\$ 1,916,640,000	\$ 206,134,000	10.8%	\$ 75,808,000
2017-19	\$ 1,935,204,163	\$ 288,264,000	14.9%	\$ 82,130,000
2019-21	\$ 2,050,702,333	\$ 366,756,000	17.9%	\$ 78,492,000

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Testimony of Jodi Smith  
January 22, 2019

House Bill 1350 is proposing the Board of University and Schools Lands set aside funds within the CSTF for a revolving loan fund, from which loans of up to \$100 million could be made to school districts, for up to 30 years, with a maximum interest rate of 1%. Loans would be awarded with approval by the Superintendent of Public Instruction.

Based on related bill House Concurrent Resolution 3008, it is estimated that approximately \$1 billion could be made available for loans initially. Once the full impact of HB 1350 is felt, it will reduce the growth of the CSTF by approximately \$50 million per year. In time this will result in the reduction of distributions from the CSTF by approximately \$10 million during the 2023-25 biennium, with that amount increasing by another \$10 million each biennium going forward in perpetuity.

Due to the nature of the permanent trust distribution formula in Article IX, Section 2, of the North Dakota Constitution, there will be no impact on distributions from the CSTF until the 2023-25 biennium. Once the full impact of House Bill 1350 is felt, it will reduce distributions from the CSTF by \$50 million or more per year (or \$100 million per biennium) in perpetuity. This is a reduction of over \$446 per student per year that will no longer be funded through the CSTF.

Additionally, House Concurrent Resolution 3008 recognizes under Section 2 of Article IX of the Constitution of North Dakota the proposed distribution of funds is not permitted.

A complete copy of a 2014 Attorney General Opinion related to the CSTF has been attached for further review. This opinion deals with the legal use of the CSTF for providing grants and loans to school districts to finance capital projects.

We look forward to working with the committee on these issues and would be happy to answer any questions.

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Jodi A. Smith, Commissioner

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To: Representative Mark Owens, Chairman

cc: Education Committee Members

From: Jodi Smith, Commissioner

Date: January 28, 2019

Re: House Bill 1350 Testimony

At the January 22, 2019, Committee hearing regarding House Bill 1350 the Department reported on page four:

Based on related bill House Concurrent Resolution 3008, it is estimated that approximately \$1 billion could be made available for loans initially. Once the full impact of HB 1350 is felt, it will reduce the growth of the CSTF by approximately \$50 million per year. In time this will result in the reduction of distributions from the CSTF by approximately \$10 million during the 2023-25 biennium, with that amount increasing by another \$10 million each biennium going forward in perpetuity.

Due to the nature of the permanent trust distribution formula in Article IX, Section 2, of the North Dakota Constitution, there will be no impact on distributions from the CSTF until the 2023-25 biennium. Once the full impact of House Bill 1350 is felt, it will reduce distributions from the CSTF by \$50 million or more per year (or \$100 million per biennium) in perpetuity. This is a reduction of over \$446 per student per year that will no longer be funded through the CSTF.

The Department would like to submit a corrected statement:

Based on related bill House Concurrent Resolution 3008, it is estimated that approximately \$1 billion could be made available for loans initially. Once the full impact of HB 1350 is felt, it will reduce the growth of the CSTF by approximately \$50 million per year. In time this will result in the reduction of distributions from the CSTF by approximately \$10 million during the 2023-25 biennium, with that amount increasing by another \$10 million each biennium going forward in perpetuity.

Due to the nature of the permanent trust distribution formula in Article IX, Section 2, of the North Dakota Constitution, there will be no impact on distributions from the CSTF until the 2023-25 biennium.

If you have any questions, I can be reached at (701)328-2807 or [jodi.smith@nd.gov](mailto:jodi.smith@nd.gov).

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2014 N.D. Op. Atty. Gen. No. L-09 (N.D.A.G.), 2014 WL 2559218

Office of the Attorney General

State of North Dakota  
Letter Opinion No. 2014-L-09  
June 3, 2014

\*1 The Honorable Scott Louser  
State Representative  
1718 Birch PL SW  
Minot, ND 58701-7097

Dear Representative Louser:

Thank you for your letter asking whether the North Dakota Land Board is authorized to use interest and principal of the common schools trust fund to finance capital projects through the use of loans or grants. You also ask whether the common schools trust fund revenues from royalties should be categorized as “income” instead of “principal.”

#### ANALYSIS

##### I.

You ask about the Board of University and School Lands (Land Board) and whether it has either discretion or authority to access interest and principal of the Common Schools Trust Fund (Fund) to finance public school district capital projects through the use of grants and loans.

The Fund is a result of the Enabling Act (Act) passed on February 22, 1889, by Congress to facilitate the admission of Washington, Montana, North Dakota, and South Dakota into the Union.<sup>1</sup> Under the Act, the United States government granted the State of North Dakota more than three million acres to be used for the support of common schools.<sup>2</sup> Since the Act established the Fund as a permanent fund, the way the state may use the proceeds from the land is restricted.<sup>3</sup>

North Dakota accepted the land grant “under the conditions and limitations” set out in the Act,<sup>4</sup> and the Act directs that “proceeds” from these lands “constitute permanent funds” to support “the public schools.”<sup>5</sup> The North Dakota Constitution provides that “[a]ll proceeds of the public lands that have been ... granted by the United States for the support of the common schools ... must be and remain a perpetual trust fund for the maintenance of the common schools of the state.”<sup>6</sup>

The Fund's distribution method is set forth in N.D. Const. art. IX, § 2, which provides that “biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of the lands and mineral.”<sup>7</sup> Once the Fund's distribution is determined, the Legislature is able to implement the transfer and disbursement of the money to the schools.<sup>8</sup> By statute, the distribution is transferred to the state treasury where it constitutes the state tuition fund.<sup>9</sup> The money is then provided to the state's school districts in the form of state aid payments.<sup>10</sup> Depending on the amount of the distribution, the state aid payments are adjusted by the Legislature.<sup>11</sup>

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You explain that school districts would like assistance from the Land Board in the financing of capital projects through grants or loans.

\*2 The Land Board is created by N.D. Const. art. IX, § 3 and “[s]ubject to the provisions of this article and any law that may be passed by the legislative assembly, the board has control of the appraisement, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law.”<sup>12</sup> The Land Board also has full control of the investment of the permanent funds derived from the sale of any of the lands.<sup>13</sup> The Land Board has a fiduciary duty to manage and safeguard the trust property because the Board “acts ... on behalf of the state” and as the state’s “trustee.”<sup>14</sup> Any investments must comply with N.D.C.C. § 15-03-04, the “prudent investor rule,” which requires the trustee to exercise reasonable care, skill, and caution, in making investments with a view both to safety of principal and securing a reasonable return.<sup>15</sup>

The Land Board could not gift or grant funds because grants deplete the fund with no possibility of a return. This would be a violation, not only of the terms of the permanent fund as set forth in the Act and the state constitution, but also of N.D. Const. art. X, § 18, commonly referred to as the “anti-gift” clause.<sup>16</sup>

Past opinions indicate the Land Board could make loans without violating N.D. Const. art. X, § 18 because loans do generate returns.<sup>17</sup> However, the state constitution states that “no part of the fund must ever be diverted, even temporarily, from this purpose”<sup>18</sup> or used for any other purpose which prevents the Land Board from entering into an unfair exchange. When considering any loan, the Land Board must consider its constitutional and fiduciary duties as trustee of the common schools trust fund. This means the Land Board could not agree to offer loans at an interest rate lower than the current market rate or without regard to the quality of security pledged.

To a degree the Land Board is subject to legislative authority. But the “source of authority of the board is the constitution itself and not the legislature.”<sup>19</sup> Previous opinions have explained that “constitutional language<sup>20</sup> and judicial comment<sup>21</sup> do not give the legislature carte blanche to do what it wishes with the school trust.”<sup>22</sup> Were it otherwise, “a potentially self-defeating incompatibility [would exist] between the stated purpose and objective of the trust on the one hand, and the alleged unbridled authority granted the State Legislature to defeat the strategy by means of creative rules and regulations on the other hand.”<sup>23</sup> Any legislative control over the Fund must be “within the limits of the constitution” and compatible with the Land Board’s fiduciary duties.<sup>24</sup>

\*3 It is my opinion that the Land Board has investment authority but must comply with the prudent investor rule and the constitutional limits of the Fund. Whether a specific investment in bonds related to a school district’s capital project complies with these limits is a question of fact which must be addressed in the first instance by the Land Board itself, taking into consideration its investment strategies and its portfolio of investments.<sup>25</sup>

It is my opinion that the Land Board is not authorized to provide grants from the Fund without legislative authority subject to the constraints of the state constitution. Loans or a loan program may be reasonable, but only if such loans are consistent with the limits of the constitution and the Board’s fiduciary duty to secure reasonable returns. Whether a particular loan or program complies with the prudent investor rule and the constitutional limits of the Fund is a question of fact that I am unable to answer without knowing the particulars of the proposed loan or program.

## II.

You next ask whether the common schools trust fund revenues from royalties should be categorized as “income” instead of “principal?”

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I assume you are referring to mineral royalties. Generally, when a trust asset is sold, the proceeds from the sale of the asset remains characterized as “principal.” Royalties are compensation for the one time depletion of a trust asset and would continue to be considered “principal.”

In this instance, the characterization of royalties is irrelevant because N.D. Const. art. IX, § 2 does not make a distinction between “income” and “principal.” Instead, the state constitution only requires that “[r]evenues earned by a perpetual trust fund must be deposited in the fund.”<sup>26</sup> “Revenue” is “a broad and general term, including all public moneys which the state collects and receives, from whatever source and in whatever manner.”<sup>27</sup> Therefore, regardless of how royalties are categorized, the trust receives the revenues.<sup>28</sup> There is no authority in either the Act or the state constitution to treat royalty revenue from trust lands differently than other kinds of revenue.

Once revenue from sources such as royalties, proceeds of asset sales, income earned by the land, or interest earned by the Fund is deposited into the permanent fund it becomes part of the Fund and is subject to the restrictions on the Fund's use, as I have discussed above.<sup>29</sup> I note that because the distribution method for the Fund calculates ten percent of the five year average value of trust assets, any increase in revenue from royalties will increase the amount distributed to the trust beneficiaries.<sup>30</sup>

It is my opinion that royalties from mineral leases on land in the common schools trust fund constitute revenue from the trust lands and as such, constitute permanent funds.

\*4 This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>31</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

#### Footnotes

- 1 25 Stat. 676 (1889); State Highway Comm'n v. State, 297 N.W. 194, 195 (N.D. 1941).
- 2 Sections 16 and 36 of every township in the state were granted for the support of common schools. See also N.D.A.G. 86-4.
- 3 25 Stat. 676, §§ 10, 11 (1889).
- 4 N.D. Const. art. XIII, § 3.
- 5 N.D. Enabling Act § 11. See also N.D.A.G. 2012-L-02. See also Kanaly v. State by and through Janklow, 368 N.W.2d 819, 823 (S.D. 1985) (the trust relationship created by Federal Enabling Legislation and state acceptance is an “irrevocable compact”).
- 6 N.D. Const. art. IX, § 1. See also N.D. Const. art. IX, § 2 (trust fund proceeds “must be faithfully used ... for the benefit of the common schools ... and no part of the fund must ever be diverted ... or used for any purpose other than the maintenance of common schools.”); Moses v. Baker, 299 N.W. 315, 316 (N.D. 1941) (“The permanent school fund is a trust fund. It must be preserved intact. If there is any loss, the State is required to make it good.”); State ex rel. Bd. of Univ. & Sch. Lands v. McMillan, 96 N.W. 310, 314 (N.D. 1903) (Enabling Act's land grant “was in trust,” with “the state as trustee to maintain the permanency of the funds”).
- 7 N.D. Const. art. IX, § 2. During the 2005 Legislative session, the Legislature passed a resolution to change the distribution method of the common schools trust fund from an “interest and income” approach to a “total return” approach. 2005 N.D. Sess. Laws ch. 624 (H.C.R. 3037).
- 8 N.D. State Const. Art. IX, § 3, 5, & 11; N.D.A.G. 88-23.
- 9 N.D.C.C. § 15.1-28-01.
- 10 These state aid payments have traditionally been used for the operational costs of the schools. Currently, the state provides an estimated 85% of operation costs to North Dakota school districts.



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- 11 See Dep't of Trust Lands 60th Biennial Report (July 1, 2011 to June 30, 2013) (Total distributions to K-12 education for the  
12 2011-2013 biennium were \$92,514,000, which equaled approximately \$462 per year for each K-12 grade student in the state).  
13 N.D. Const. art. IX, § 3. See also N.D.A.G. 94-L-73 (Mar. 30, 1994).  
14 N.D.C.C. § 15-01-02(2).  
15 N.D.A.G. 2012-L-02; Fuller v. Bd. of Univ. & Sch. Lands, 129 N.W. 1029, 1031 (N.D. 1911).  
16 N.D.A.G. 1992-L-13.  
17 N.D. Const. art. X, § 18 (“neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make  
18 donations to or in aid of any individual, association or corporation except for reasonable support of the poor”).  
19 N.D.A.G. 67-220 (State Employee's Retirement Fund could make investments without violating N.D. Const. art. X, § 18  
20 because through the Retirement Fund, the state was “engaged in the investing business for its employees which is a lawful  
21 business or enterprise.”). N.D.A.G. 92-13 ( investment activities by the Land Board concerning the coal severance tax trust  
22 fund under N.D. Const. art. X, § 21, and later, the Myron G. Nelson Fund constituted a lawful enterprise engaged in for a  
23 public purpose).  
24 N.D. Const. art. IX, § 2.  
25 State ex rel. Rausch v. Amerada Petroleum Corp., 49 N.W.2d 14, 23 (N.D. 1951) (when the legislature acts with respect to the  
26 powers of the board, it acts in a restrictive capacity and not as a conferrer of authority).  
27 N.D. Const. art. IX, §§ 3 and 5.  
28 State ex rel. Bd of Univ. & Sch. Lands v. Hanson, 256 N.W. 201, 204 (N.D.1934) (“it has been the legislative policy to control  
29 the ... [land] board.”).  
30 N.D.A.G. 88-23.  
31 Okla. Ed. Ass'n, Inc. v. Nigh, 642 P.2d 230, 237 (Okla.1982). See also Fox v. Kniep, 260 N.W.2d 371, 374 (S.D.1977), cert.  
denied, 436 U.S. 918 (1978); State ex rel. Interstate Stream Comm'n v. Reynolds, 378 P.2d 622, 627 (N.M.1963).  
State, 256 N.W. at 204. (“The provision in [art. IX, § 3] of the Constitution, giving to the board the power to ‘direct the  
investment of the funds’ subject to ‘any law that may be passed by the legislative assembly,’ contemplates legislative control of  
the school funds, within the limits of the Constitution.”). See also State Hwy. Comm'n v. State, 297 N.W. 194, 195 (N.D.1941);  
State v. Towner Cnty., 283 N.W. 63, 66 (N.D.1938); State ex rel. Sathre v. Bd. of Univ. and Sch. Lands, 262 N.W. 60, 65-66  
(N.D.1935) (any diversion of the trust's principal, interest, or income to purposes other than those for which the land grants  
were made is unconstitutional); State Bd. of Educ. Lands and Funds v. Jarchow, 362 N.W.2d 19, 26 (Neb.1985) (the legislature  
is without power to bestow a special benefit upon any public or private entity at the expense of the beneficiary, the public  
school system of the state); N.D.A.G. 88-23.  
See sources cited supra n. 24.  
N.D. Const. art. IX, § 1. See also Enabling Act § 11 (The Enabling Act directs that “proceeds” from trust lands “constitute  
permanent funds” to support “the public schools); N.D.A.G. 2012-L-02.  
Black's Law Dictionary, 1318 (6th ed. 1990).  
In a trust, the money received from the sale of any asset remains a principal asset, although in a different form. Here, the  
royalty interests are trust assets so the money received from the royalties would be considered principal rather than income.  
Enabling Act § 2; N.D. Const. art. IX, §§ 1 & 2. See also N.D.A.G. 88-23 (lands later acquired by the school and institutional  
trusts become part of the fund).  
N.D. Const. art. XI, § 2.  
See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

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