

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/14/2019**

Bill/Resolution No.: HB 1525

- 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 1525 relating to a common schools building and renovation grant fund.

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

The Department of Trust Lands is unable to determine the amount of debt or value of all of the public school buildings. The Department of Trust Lands is also unable to determine the funds necessary for acquisition, construction, and maintenance of all common school facilities within the State. The Department of Trust Lands is unable to determine all outstanding school bonds and outstanding debt encumbering common schools in the State. The Department of Trust Lands is unable to determine the costs necessary for the maintenance of existing common school facilities, including the land on which the facilities are constructed.

House Bill 1525 has potential to completely expend the Common Schools Trust Fund. If half of the Common Schools Trust Fund is expended for the purposes of HB 1525, then trust distributions will be half of the 2019-21 biennium distribution rate in perpetuity (at least \$183 million reduction per biennium.)

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:** 01/17/2019

**2019 HOUSE EDUCATION**

**HB 1525**

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

HB1525  
1/29/2019  
31661

- Subcommittee  
 Conference Committee

Committee Clerk: Bev Monroe
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## Explanation or reason for introduction of bill/resolution:

Relating to common schools building and renovation grant fund; relating to legal investments and school district tax levies for building funds; to provide a continuing appropriation; to provide for report to legislative management

## Minutes:

Attachment 1, 2, 3, 4, 5, 6
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**Chairman Owens:** Opened the hearing on HB 1525.

**Rep. Bellew:** This bill directs the university and school lands Trust Board to use a common schools trust fund to return outstanding common schools funds. This would fund all new or expanded common school real property facilities from the assets in the common schools trust fund. This would provide for facility maintenance and upkeep for all common school facilities use of the common schools trust fund. This would provide property tax relief for the people of North Dakota. There would be money for the students, not just foundation aid. It would be for building and maintenance also.

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

**Vice Chairman Cynthia Schreiber-Beck:** What are the approximate costs versus what relationship is in the common schools trust fund right now? Is there any way to determine that?

**Rep. Bellew:** When this bill was drafted, we didn't have an accurate estimate of the outstanding bonds. There was an estimate between \$850K and \$1.2B and they would be paid off if this bill was passed. That would be immediate property tax relief to those districts who have bond issues. The common schools trust fund is increasing \$400-500M per year at the current market rate and what the oil prices are doing.

**Vice Chairman Cynthia Schreiber-Beck:** With the use of the funds would there be a lack of funds available use for the formula. Are we imbalancing the property tax or actually reducing the tax if it is going to cost the locals more on the formula side?

**Rep. Bellew:** I don't think it would because there is adequate funding in the common schools trust fund.

**Chairman Owens:** Any further questions? Anyone else in support?

**Robert Hale, Minot:** I'm speaking today in favor of HB 1525. Another gentleman who was going to testify here today was unable to be here for medical reasons. I will submit his testimony (**See Attachment 1**). The common schools trust fund is completely and totally unrelated to the Legacy Fund. There has been a lot of confusion as I've talked to people about this bill or any other trust fund. This last year we paid more than \$18.3M in investment fees to Wall Street fund managers. Since 1911 we have spent more than \$100M paying management fees for Wall Street fund managers. The state finance department told Mr. Bellew that they were estimating those fees to be \$25M for the current year 2019. None of those fees go to our schools, buildings or what is called foundation aid. Money in this trust fund is not being used for foundation aid. In 2008-2009 when the stock market crashed, this fund had about \$1.2B in it. Within one week it lost about 40% of the value of that fund. The securities weren't lost but the values dropped. It took ten years to recoup that dropped value. In this bill we have several dozen categories of investment. One is real estate securities. 7:50 At the end of last year, \$695M in Wall Street real estate securities is of those securities (approx. 15% of total fund value). That particular fund paid almost 50% of the management fees. It's grown over the last six years from just over \$400M to almost \$700M. These fund managers are moving our money around that are taking large fees. Over four years there will be \$100M spent on fund managers. I think it is prudent if we take some of those funds and retire our common school debt. We will then own these and it doesn't matter what happens to the stock market. Also, it takes it off the property tax bills. 8:56

I received an email from a superintendent which states that all three common school trust fund bills (HBs 1525, 1350 and 1352) were shared at our last meeting. Our board did not take any action on these. Personally, I stand neutral on this particular bill as it does provide needed capital, maintenance, buildings, but leaves too much on certainty. Not to mention, that school foundation aid payments would be nearly eliminated. We are then left wondering how these dollars will be recouped. Projections of this fund continuing as they are would fully fund public school state payments in twenty years or less. There needs to be a push for using Legacy Fund. I will be working with Sen. Bekkedahl and others because the feeling is that none of the current bills will pass. For the last five years, the Garrison School District has attempted to pass a bond issue to get a new grade school and an addition to the agriculture portion of their high school. It has been defeated five consecutive years. Not because people don't want it, but because they are unwilling to support this expense. When it comes to school buildings, there is no local control. For funding to be available and float a bond, you must establish a need. Need is established the same for every district in this state. After need is established, you need to meet the requirements to get the authorization from the DPI. Common school funding is in two blocks. Someone to watch over these is what is needed. This bill sets us on this course. I don't want superintendents, principals or teachers going out raising money to build schools. The Legacy Fund keeps getting brought up, but that money everyone would like to get into to use. The Legislature is obligated to provide for this education (both schools and operation costs). The Legislative Assembly's obligation is to provide a free, uniform system of common school statewide.

In 2011, the common schools trust fund had \$1.5B in it. The following year it went up \$317M; the year after that \$467M, in 2014 - \$574M, in 2015 - \$499M. With the drop in 2016, \$16M was lost, in 2017 - \$442M, 2018 - \$396M. More of these dollars are being invested in Wall Street securities. If the \$4.2B we currently sit on takes the same hit taken in 2008-2009 it would be reduced by \$1.6B+. Whatever is out of there will not be lost. That is why I am urging you to support this bill and vote for a Do Pass on HB 1525. 20:00

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

**Joanna Baltes, School Board President, Williston Public School District #1: (See Attachment 2)** end 28:40

**Chairman Owens:** Any questions of the committee? You stated the balanced approach. Currently the mantra for so long had been that the state wasn't providing enough for education PPP. Then we went to 80% and because of the way the formula operates it has deteriorated to 72%. We are trying to fix it to get it back up. Is 80/20 equitable?

**Joanna Baltes:** The way the current formula works doesn't work for our district. We receive \$1,700 in tuition payment from our neighboring district for our high school students. We have to deduct that tuition, so we end up getting \$400. If all the funding bills pass currently in the Senate and the House that would change the funding formula and change the subtraction for all of our country revenue, it only increases the revenue about \$600,000/year for our district. We are looking at a project right now that costs \$75M. The funding formula is one issue, but it doesn't necessarily help us on the building fund side. We still need operational funding and would like to see the increase. Our taxpayers are frustrated by the property taxes and frustrated that the oil and gas revenue we generate in our part of the state contributes a huge portion across the state. We don't see any of that coming back to benefit our schools. We still see additional people moving into the community, but we don't have any place to put them. It doesn't look good for our community when we can't pass a bond. Property values have gone up by 50% over the last ten years so their taxes continue to go up. 31:30

**Chairman Owens:** Any further questions? Any others in support?

**Steve Seidler, Garrison: (See Attachment 3)** 32:00-33:25

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

**Charles Tuttle, Minot:** 33:30 I am in support of this bill because of the constitution issue of the schools. This is the most important committee of all the legislature. Going to DPI online you can look at each school in our system and see a high school with a 67% graduation rate. A proficiency rating (actually common core) in this school only has a 30% proficiency in all those categories. I urge this committee to look at this elementary schools and high schools. They are going into the 20% level, so it won't matter what financing and money we do for our schools. These kids are not going to read or write by the time we are done with them and we need to get the money situated as a back side and start focusing on education. We are spending more money on our pre-K students than we are with our other students. 38:10

**Chairman Owens:** Any others in support of HB 1525?

**Orly Piehls, Garrison:** 38:45 I have watched the failures that have occurred with our bond issues again and again and I think the failure is because of oil. Going before the county commissioners and county auditor on this, time and time again, I think we failed because over a three-year period oil revenues dropped off, they taxed us on property tax to replace it. We were averaging about 26%-27% every year in property tax increases to replace oil money that had been lost. The way we are funding is not working. To us, oil is not a benefit, it is an expense. After that happened over that number of years, people continually observed this and we expect it to happen again next year from the county. Every time there is a spike, everything is going to grow in the sectors that benefit from oil (the public sector, businesses and others like that) It increases revenue in the county, but when the oil revenue goes away they are obligated to continue that revenue stream. The only place to get it is off of the tax revenue. Doing some research in the century code, I found the legislature is a bit culpable in this. The law that requires that taxable value be within 10% of market value has caused a hand in hand circle, so when oil is there everyone wanted evaluations done. Garrison did it two years in a row. Now property values are going down and when they do, we adjust. No one wants to do property reviews or assessment reviews. It seems like a one-sided argument. I would argue that the way we fund this school construction on the back of property tax is not a good idea since the oil revenue is based on global commodity. I think the trust fund is the way to go. I hope you will support.

**Chairman Owens:** Are there any questions from the committee? I wanted to let you know that the 10% is from the result of a lawsuit in 1981. The legislature's hands were tied from the judiciary in that as well.

**Mr. Piehls:** 42:00 Laws are made by people, so they can be changed by people. 42:55

**Chairman Owens:** Anyone else in support of HB 1525?

**Riley Kuntz, Dickinson:** I have been watching the bills coming out this session and I hail this as one of the top five. In 2008, this fund lost 40% and it only recently recovered. My real property is in Dickinson, but it has doubled its value since that same time. Bring back the money invested on Wall Street back to North Dakota. Invest in our children's future. Do pass HB 1525.

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

**Charles Cartier, Williston:** 45:45 I've checked with most of the school districts in Williams County and questioned them as to whether they have enough classrooms for all the children in attendance. The answer was no. According to our constitution it is the legislator's responsibility to fully fund everything, which includes facilities. I asked my legislator why our legislature wasn't holding up the law. He replied that we have always done it this way. Senator Rust has initiated a bill, SB 2161, that will take state money and help out the school districts that are in need of more facilities. The problem is that it is only going to affect five school districts. 48:10

**Chairman Owens:** Any others in support?

**Scott Decker, Mayor, Dickinson:** 48:40 Debt cripples individuals, families, and communities. It is starting to cripple some of our school districts. What this bill would do is provide for school districts across the state to alleviate some of the property tax burden and allow communities to focus on what is one of the largest issues coming to the state. That issue is our workforce. When we try to attract our workforce, what are we selling. We are selling those communities. One of the primary factors is our public school system. When we are trying to attract a work force for the growing energy sector in western ND, which continues to contribute to all these funds, we have to sell our community, healthcare, parks and recreations, the infrastructure, neighborhoods and our school districts. This is something you must consider and Do Pass. 50:00

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

**Alexis Baxley, NDSBA:** 50:45 (See Attachment 4)

**Lisa Feldner, NDCEL:** (See Attachment 5)

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

**Jodi Smith, Commissioner, ND Department of State Lands:** 54:45 (See Attachment 6)  
59:00

**Rep. Hoverson:** I know you haven't calculated what the costs of what the current bonds would be on these schools, but Rep. Bellew did guesstimate between \$850M and \$1.2B. Do you think that is close?

**Jodi Smith:** It would be remiss of me to speak on this at this time. If that is something of interest our department can start working on this a bit further to garner how much of the funds are necessary to meet the needs of this bill.

**Rep. Pat D. Heinert:** 1:00:12 If the state were to do this, you said there would be not rent to the school districts. Where would we come up with the funding for heat, lights, other utilities and incidental costs?

**Jodi Smith:** If I interpret the bill accurately, we would use common schools trust fund maintenance fund that is set up. It would be up to our department or board to determine which of those needs got met first or another avenue is actually funding those operational needs.

**Rep. Pat D. Heinert:** Have you thought about an FTE pool to operate this at that time?

**Jodi Smith:** For our board and my department to take this on, we would need considerable resources. I don't want to create a bottleneck for the work for the rest of the state. We try to do a quick turnaround in the work that we provide for the state. This would definitely would require additional FTE for us to management the requests. 1:02:00

**Chairman Owens:** Any further questions? The common schools trust fund currently provides x amount of dollars every year for every student in the state, is that correct?

**Jodi Smith:** Yes sir. In the 2013-2015 biennium, that was 7.4% of the formula and 2015-2017 is 10.8%. In 2017-2019, it is 14.9% and 2019-2021, it's 17.9%. This next biennium we are calculating around \$1,500 per student will be coming from the common schools trust fund. That would be reduced if we use the \$2.2B estimate of needed funds. We would reduce that down to about \$800 per student.

**Chairman Owens:** Any further questions? Any other neutral testimony? The hearing on HB 1525 is closed.

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1525  
1/30/2019  
31781

- Subcommittee  
 Conference Committee

Committee Clerk: Bev Monroe by Kathleen Davis

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

Relating to common schools building and renovation grant fund; relating to legal investments and school district tax levies for building funds; to provide a continuing appropriation; to provide for report to legislative management

## Minutes:

**Chairman Owens:** We have a Do Not Pass by Rep Vice Chairman- Cynthia Schreiber-Beck and seconded by Gugasberg. Any discussion?

**Vice Chairman- Cynthia Schreiber-Beck** My motion was related to the fact that to purchase, communities will give their buildings. They've already paid for them. I think there would have to be a business arrangement and build all the new schools, then maintain everything for how many districts? 178 districts. How many buildings? This is massive. I don't know that the state knows, look at all the buildings they're supposed to maintain and control. Then coming out of these funds, there would be no funds.

**Chairman Owens:** This is the state school buildings.

**Vice Chairman- Cynthia Schreiber-Beck** yes, the state taking over.

**Chairman Owens:** My favorite part was if something went wrong they get to just call their landlord to say fix it.

**Rep. Ron Guggisberg:** Is the state going to decide what kind of school each school district gets? Can they just say we want this Taj Mahal school and the state pays for it? When there's no money to do it how are you going to maintain the building?

**Rep. Longmuir:** My concern is in taking over buildings. What about all the school districts that have no debt, have built their own buildings, because that's what the patrons of the district have wanted to do, and now they're going to be owned by the state? To me that is a fairness issue. You're rewarding schools that have debt situations which will really help but in my opinion your punishing those that have not taken on debt and have paid for everything.

**Rep. Hoverson:** I do support this bill strongly. The benefit to all communities is the massive property tax relief this provides plus it gets us back in line with the constitution. We are not supposed to be using property tax for schools, either direct or indirect. Right now, it applies indirectly as well. It uses funds for what they were intended for. It is clear that the state has a basic provision for schools. No the state is not going to build a Taj Mahal for each school. If the local community wants to build above that, they are supposed to do that on their own. It won't drain the fund with the calculations already done in earlier testimony. I think these are unfounded fears.

**Rep. Zubke:** There is absolutely no way you could fairly implement HB1525 across the state of ND with the variety of buildings, the variety of different property tax mill levies, the variety of regional differences and add to that, once you take over all those buildings, there'll be a parade every session of people complaining about how the state is managing those buildings and taking care of those buildings. This is very poorly thought out idea and bill.

**Rep. Hoverson:** You have to look at the unfairness today already as it is right now. This would be a huge improvement on that.

6:45

**Rep. Guggesberg:** If the state should pick up all the funding for schools, then we should just have one school, the ND School, and the state builds all the schools, hires all the teachers, pays for everything. That's what they did at the founding of our state. The state did take responsibility for free and public education. That's the constitution. We can pull that out.

7:20

**Rep M Johnson::** Page 3 114 requiring a fair market value, a facility that you cannot sell, even the assets, just an accounting impossibility. It has zero value, it's a liability, not an asset.

**Chairman Owens:** That's what they told us.

**Rep M Johnson:** Right, it's like savings accounts to bank, a liability.

**Chairman Owens:** that's Trights, that's a simple gap procedure.

**Vice Chairman Cynthia Schreiber-Beck:** Rep. Hoverson indicated there was a spread sheet on this as far as the work out on the dollars. If that was done it was not made available.

**Rep. Hoverson:** Yes what I said was enough people have looked at this, smarter than me.

**Chairman Owens:** Taking over the buildings as reported in here would then become their assets. In accounting, which is called gap, generally accepted accounting principles, an asset that pays no rent or doesn't generate any income is no longer an asset but a liability.

**Rep. Hoverson:** If you're a business that's how you look at things but we're a government. So the tax dollars, that's not money we earn as a government, that's money we take as taxes

so it's supposed to be a liability. That's how it was set up constitutionally, the state is liable to provide free and public education.

**Rep. M Johnson:** Accounting standards provide for certain things. Maybe they didn't 150 years ago but they do now. Buildings that don't generate any revenue are a liability and not an asset. Intuitively without even accounting standards, intuitively it's a liability.

**Rep Hoverson:** That's not the part I was reading. Of course it's a liability. What I'm saying is the whole point of providing free education from tax dollars is going to be a liability to the state. Constitutionally that's what the state agreed to in 1889 when it agreed to become a state to accept 2 townships of land and provide free education money. The state is not in the money making business, the money taking business. So it's going to be a liability. I'm saying the point is mute.

**Chairman Owens:** To clarify the issue of property tax school levies came up in 1976 and the Supreme Court ruled that counties levying property tax is not a subversive move to get around the fact that the state is restricted from levying any property tax and they're free to do so under Article 10. That's not unconstitutional to levy property tax for school levies according to ND Supreme Court.

**Rep Hoverson:** That was for above and beyond the basics of what.

**Chairman Owens:** that's not what it says.

**Rep Hoverson:** I'd like to see it.

**Chairman Owens:** It's right here in the book, in the Constitution. Here's the Supreme Court reference.

**Rep M Johnson:** Was there any discussion about the insurance reserve fund and the effects on that versus liability plus bond rating?

**Chairman Owens:** no there was not.

**Rep M Johnson:** The theory of bond rating? You can raise tax revenue to cover your bonds and that's why the government specifically has a good bond rating? You start throwing a bunch of liability into your funds, you can imagine your bond rating is going to plummet. You accumulating all that liability and how are you going to tax the tax payer to cover salary?

**Chairman Owens:** That's a good point, what Rep Heinert brought up too. Every time we look to steal money from this trust fund, the locals are going to have to pay more. If you're in a small town the locals will pay less. All you're doing is siphoning off of the bigger towns. Now you're affecting equity as well. So for all the fight we've gone through, over the 24 years I've lived in ND, it's amazing how equity and advocacy has been focused to the point we finally get a formula that comes close and there's a bunch of small bills to move more people on the formula now, we're still a long way off and a lot of work to be done, we keep coming up with bills that seek to alter that. Sometimes we focus on our local problems so much we don't see the big picture.

**Vice Chairman- Cynthia Schreiber-Beck** Do away with (16:00 inaudible)

**Chairman Owens:** bond rating and local control. Interesting.

**Rep Hoverson:** I remember in testimony addressing local control and they had an answer for it. I remember partially it was that right now, a big part of superintendents' role is coming to Bismarck and raising funds. Not just establishing a budget which is their role, but whether it's a school board, or if the state basically becomes a landlord for the property like we used to be, then they can actually focus more on their local issues that relate to education instead of constantly, this out of control perpetual need for more money, more money.

**Chairman Owens:** I don't see my superintendent down here.

**Rep Hoverson:** I was making a point.

**Rep Pyle:** I think if relate this to higher ed, all the issues we have, what are the 2 buildings (inaudible) to renovate? Either one you can't even use. They keep coming to the state and asking for help to fix them. We keep saying no.

**Chairman Owens:** Those are state buildings.

**Rep Pyle:** They're multiple issues at NDSU that we have been informed of, they need help and have put off for so many years.

**Chairman Owens:** There was one in Valley City we refused to fix because it just keeps getting flooded.

**Rep Pyle:** yes

19:31 Unknown: We're back to the same thing. How are they going to be able to take away the funds that we have been relying on somewhat for educating our students on the non building side here. So we start taking away those funds, which it looks like eventually that would pay for our complete formula problem. The locals are going to have to have more funds inputted. We have to raise taxes, either personal income tax, property tax, whatever eventually to cover this. Taxes are going to have to pay for it.

**Rep Hoverson:** Could I offer a Do Pass

**Chairman Owens:** We already have a motion on the floor for a Do Not Pass. If that fails, you're welcome to do so. Further discussion?

Clerk called the roll. 11 Yes 3 No 0 Absent. Motion carried.

**Rep. Zubke:** Will carry the bill. Hearing closed.

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

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1525**

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. C. Schreiber-Beck Seconded By Rep. R. Guggisberg

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 1525: Education Committee (Rep. Owens, Chairman)** recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1525 was placed on the Eleventh order on the calendar.

**2019 TESTIMONY**

**HB 1525**

Submitted by Rbt. Hale

HB 1525  
1-29-19  
#1

**House Education Committee**  
**RE: HB 1525**  
**January 29, 2019**

Hello .....

My name is Martin John Riske. I am a businessman and lifelong resident of North Dakota.

A little while ago I purchased a property. When I thought about borrowing the money to buy it I also thought about the stock market recovery since the low on Christmas Eve. I looked at my portfolio and I decided that if I borrowed money to buy the property I was really borrowing the money in order to continue to own the stocks.

Here's why I sold the stocks and paid for the property instead of borrowing.

- 1.) Markets go up and down. From 1945 to 2001, there were 10 recessions or about every 5 years 6 months.
- 2.) You may remember the huge drop in 2007 yourselves. I had friend who lost serious money.
- 3.) The current bull market is 10 years old.
- 4.) Ray Dalio, the co-owner and co-chief investment officer of the largest hedge fund in the world, Bridgewater Associates with \$160 Billion at risk, says that "the next downturn will be more difficult to handle socially and politically".
- 5.) The world is awash in hundreds of trillions worth of debt. Trade wars, economic sanctions on 13 countries all take their toll on free trade.
- 6.) Currently the **Common Schools Trust Fund has more than \$4 Billion at risk on Wall Street**. Last year the fees we paid to have it managed alone cost over \$18 million. Even in a severe downturn management fees must be paid by stocks sold at a loss.
- 7.) Assume a 40% drop like 2007 and the loss would be more than \$1.6 Billion, or more than twice the \$781 million it would take to pay off every school bond in North Dakota.
- 8.) Two scenarios will definitely happen during the 2020 election cycle. One scene is an incumbent going to voters to admit that twice the amount to pay off all North Dakota School bonds was lost in the most recent downturn. Another scene would be an incumbent going back to constituents and saying "Good thing we burned all our school mortgages! Every school building in North Dakota is paid for."

We saved for a rainy day and that rainy day is on its way.

**Thank you - if you choose to do the prudent thing.**  
**Please Vote for a DO-PASS on HB 1525!**

HB 1525  
1-29-19  
#2

House Education Committee

- To: Chairman Owens  
Vice-Chairman Schreiber-Beck  
Representative Guggisberg  
Representative Hager  
Representative Heinert  
Representative Hoverson  
Representative Johnson  
Representative Johnson  
Representative Johnston  
Representative Longmuir  
Representative Marschall  
Representative Pyle  
Representative Strinden  
Representative Zubke

My name is Joanna Baltes and I serve as School Board President for Williston Public School District #1. I am here to testify about two principals put forth in HB 1525: the property tax burden that our community faces and the imminent need for new schools in our area.

Enrollment in K-12 schools in Williston has grown by 100% from 2185 in 2009 to 4386 today. Williston has been fortunate to invest in infrastructure that has improved the quality of life for Williston residents and has provided stability for the oil and gas industry. Major facility investments include over 28 miles of water main, 22 miles of new sewer, 33 miles of new street construction and renewal, new fire stations, a new water resource recovery facility, a water treatment plan expansion, improvements to City Hall and the Law Enforcement Center, and a new recreation facility. Arguably, schools have been impacted as much as any other category of infrastructure or social service in Williston, but our K-12 schools have not received the same type of financial benefit. Schools in our District have seen a massive influx of students over the past decade and for several years struggled with educating children who followed their parents' schedule of 2 weeks on and 1 week off in the oil field. Many of our teachers finish the school year with a completely different group of students that they started the year with. Although that trend has dissipated in the last three years, we continue to experience record annual growth.

Our District's 5 elementary schools were constructed between 1951 and 1983. They currently house our K-4 students and 120 Pre-Kindergarten special needs children. The K-4 buildings have a capacity of 1,580 students. We currently educate 1,821 K-4 students and 121 Pre-Kindergartners for a total of 1,942. Those buildings are now 23% over capacity. Without counting growth, we will be overcapacity by 27% for the 2019 school year for our K-4 population. None of our aging elementary schools are

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ADA compliant, and they are either too expensive to remodel or are in areas where we can't significantly increase the square footage for educational space. Accordingly, we have increasingly relied on modular classrooms. Overall our District educates 33% of our K-4 population in modular classrooms and for one lucky school that number rises to 83%. None of the elementary schools have increased common space despite the increase in modular so our gym, cafeteria, and kitchen spaces are grossly inadequate for the students they serve. At Wilkinson Elementary, our dedicated staff cooks lunch on the stage in the gym while students at McVay Elementary perform PE in modular classrooms. At our high school, we are over capacity after opening just two years ago and we have students that eat lunch sitting on the floor. These are just a few of the many examples of how our students and staff are impacted by our overcrowded facilities.

Williston needs to continue to provide excellent education for all children in our District for our entire community or we will not sustain our economic growth. We know that a major factor that influences whether companies will continue to expand production in the Bakken is whether they can convince their employees and management teams to move their families to Williston. The perceived quality of education is one of the top three factors and our current school infrastructure does not paint a pretty picture. Our schools are overenrolled and aging and within two years of opening, our new high school is already overcapacity. Our voters rejected a \$77 million bond in March of 2018 and a \$60 million bond on January 8, 2019. No one in the State of North Dakota will benefit if oil and gas companies determine that other parts of the United States offer better infrastructure and more attractive options for their employees. As a growing city, Williston needs to be able to attract professionals and those who provide specialty services. We are aware of at least two specialty-health care providers who cited the current state of our overcrowded schools as the primary reason for declining employment in Williston.

Revenue generated in the Williston area through the oil & gas industry directly benefits residents across North Dakota. In fiscal year 2018, Williams County was responsible for contributing over 16% of the State's total oil and gas tax revenue collections. Together with McKenzie County, our area contributes 50% of the State's total oil and gas tax revenues. From 2008 to 2018, oil and gas production tax revenue was \$18 billion. That represents 44% of all taxes collected through the State and over the past five years it accounts for 50% of the tax collected. This revenue has directly benefitted residents across the State.

During the third quarter of 2018, Williston contributed \$430 million in sales tax revenue, second only to Fargo at \$671 million. Williston's sales tax revenue has increased 28.8% from the third quarter last year. Watford City's sales tax revenue also has double digit increases over the past year.

Williston Public School District #1 is the smallest school district in North Dakota, covering just 16 square miles, but we have the 6<sup>th</sup> largest enrollment and are the second-fastest district in the State in terms of growth. We are surrounded by a K-8 district, District 8, and over 90% of their high school age students attend our high school. At 240

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students, that makes up 20% of our high school population. Although we do receive the operational funding for all our out-of-district students, we receive no corresponding benefit for capital construction projects. This means that we receive no building fund revenue for each and every one of the 240 District 8 students in our high school. The issue of property tax is a divisive issue in our community, as District 8 property taxes remain much lower due to their larger size and taxable valuation. The taxable value per pupil in District 8 is 279,000 while District 1's per pupil taxable value is 27,900.

The size of our district and the impact of our neighboring K-8 district have disproportionately impacted our District's residents. For example, in West Fargo a recent \$100 million bond cost taxpayers \$15 per year per \$100,000 of true and full residential property value, while a proposed \$60 million bond with a mil levy increase will cost Williston taxpayers \$214 per \$100,000 of true and full residential property value. Our voters repeatedly cite the cost of their property taxes as a significant factor in their decision to support school building construction.

State Legislature's approach to school funding has not really taken into account the cost of actually building schools – most legislative efforts were during a time of declining population but since 2009, we have more than doubled our enrollment – that's a 100% increase in 10 years. Our most recent enrollment analysis projects a continued increase of 5-6% each year for the next ten years and within the first year of that study, our actual numbers exceeded the projections.

Our Districts' schools have been impacted more than many others by the oil and gas industry and yet our schools do not receive on-time funding nor do we receive funding adequate to build schools without having to dramatically increase property taxes in our 16 square mile district.

We understand that the Commons Schools Trust Fund currently subsidizes the per pupil aid payment and acknowledge that the amount sought by this bill from that fund would affect students across the State. We are in favor of a balanced approach when it comes to the amount the State invests in education and what is left untouched for future growth but respectfully request alternative options for funding school construction.

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## Education Committee

Steve Seidler

Farmer/rancher near Garrison

Currently serving on our Township board ( 28 years)

Served on Garrison School Board for 5 years. ( 2008 -2012)

Currently a committee member at the McLean County Farm Service Agency.

Currently a member of the ND FFA Alumni and the Garrison FFA Alumni

I support HB1525.

The bill follows the constitution.

It will provide building funds for schools.

Doesn't require additional taxes because it accesses the Common Schools Trust Fund.

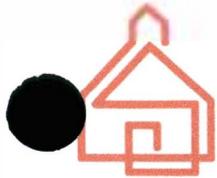
It will reduce the property tax burden on patrons within school districts.

The students of this state will benefit. That's what matters.

Please vote yes on this bill.

Thank you.

Steve Seidler



**NDSBA**  
NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

P.O. Box 7128  
Bismarck ND 58507-7128  
1-800-932-8791 • (701)255-4127  
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**HB 1525**  
**Testimony of Alexis Baxley**  
**House Education**  
**January 29, 2019**

Chairman Owens and members of the House Education, my name is Alexis Baxley. I am the executive director of the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today in opposition to HB 1525.

While we appreciate this bill's attempt to be helpful to districts by buying out existing building debt with funds from the Common Schools Trust Fund, NDSBA is concerned with the effect this bill would have on the fund. While the Department of Trust Lands was unable to determine the fiscal impact of the bill, Jodi Smith wrote in the fiscal note, "HB 1525 has the potential to completely expend the Common Schools Trust Fund. If half of the Common Schools Trust Fund is expended for the purposes of HB 1525, then trust distributions will be half of the 2019-21 biennium distribution rate in perpetuity – at least a \$183 million reduction per biennium." Clearly, HB 1525 has the potential to significantly damage a valuable source of state revenue that supports education funding by reducing the principle balance of the fund, significantly impacting future investment earnings.

Additionally, we believe it is best to retain ownership and property maintenance at the local level. School facilities have been entirely funded by locally-levied property taxes, and we believe district patrons expect districts to own and maintain those facilities to local standards. While we understand that some districts have a debt service cost, and others have difficulty levying bonds to upgrade their facilities, a state takeover is not the answer. Putting the funding that supports the learning inside the facilities at such great risk to pay for the facilities is short-sighted.

For these reasons, NDSBA stands in opposition to HB 1525 and encourages this committee to give it a do not pass recommendation. Thank you for your time, and I will stand for any questions.



HB 1525 Common Schools Trust Fund Maintenance Fund  
NDCEL Testimony in Opposition

Good morning Chair Owens and members of the House Education Committee, I am here in opposition to HB 1525 – our opposition is very similar to what you heard us say last week regarding the bills that attempt to utilize the Common Schools Trust fund outside of its current modality (*HB 1350, 1353, and HCR 3008*).

This bill goes even further to **limit the governing authority** of a school board over their district as well. This bill if enacted would turn the common schools trust fund into a school building maintenance & construction fund. It also removes local decision-making regarding building, deferred maintenance and renovation away from a local community thereby in essence making these buildings state buildings. It goes so far as to truly take control of all K12 school buildings. An effort as expansive as this would completely destroy the common schools trust fund and would further shift the responsibility of funding the formula completely to the general fund of ND – a move that we do not would be wise fiscal decision making for ND. Finally, a piece added that is very concerning is that a building fund of a school district (which when voter approved is the key method by which schools maintain their buildings) then discontinued.

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.



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While we recognize the need to find relief to our school construction and deferred maintenance 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 EVER again as has been outlined by the Jodi Smith from the ND Department of Trust Lands last week. 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.

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 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 this bill – HB 1525, HB1350, 1353 and HCR 3008 – all bills targeted at the repurposing the Common Schools Trust Fund. Thank you for your time.

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Jodi A. Smith, Commissioner

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

**House Bill 1525**

House Education Committee  
January 29, 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 1525.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 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 CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

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.

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.

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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.

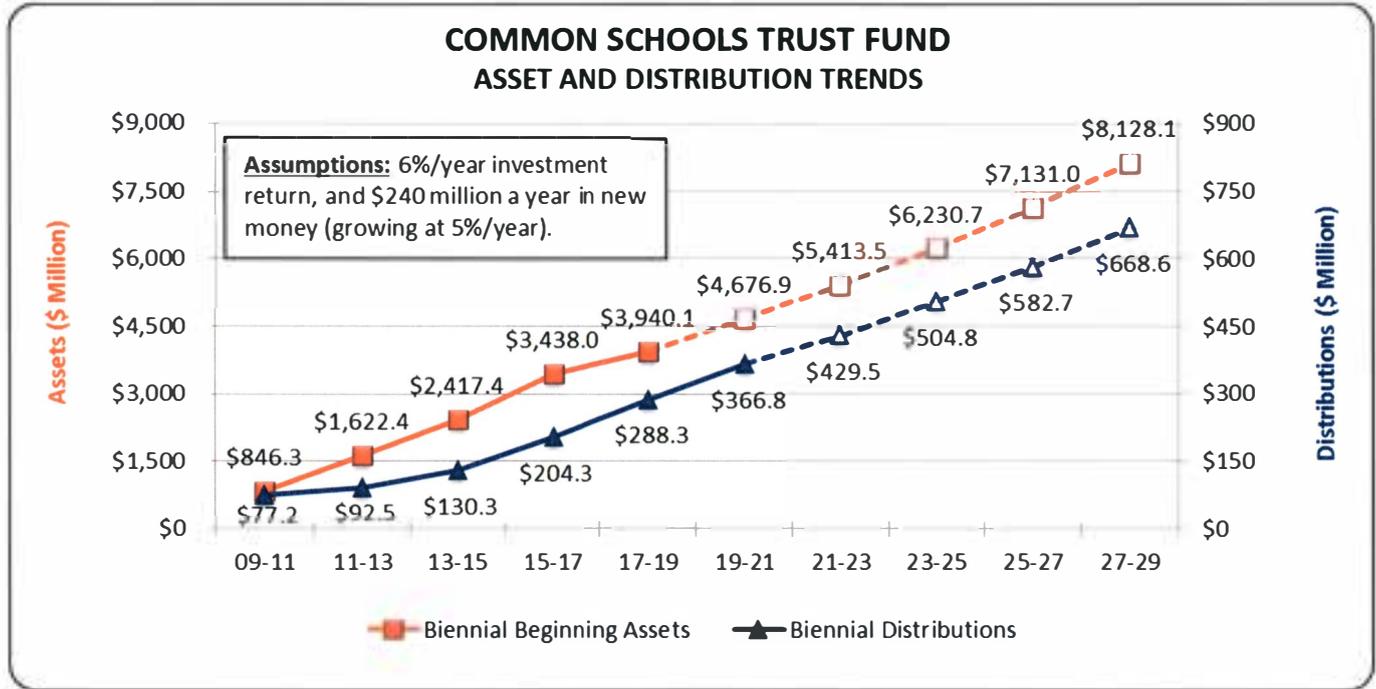
For the biennium during which this amendment takes effect, distributions from the perpetual trust funds must be the greater of the amount distributed in the preceding biennium or ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. Thereafter, biennial 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 \$1,592 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 on 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

House Bill 1525 is proposing the Board transfer funds from the CSTF to the Common Schools Building and Maintenance Fund for acquisition, construction, and maintenance of all common school facilities in

the state. Additionally, the Board would need to identify all outstanding school bonds encumbering common schools in the state and school districts would transfer all real property of the school district to the Board. The Board would provide funding for the construction or renovation project and take ownership of the property.

The fiscal impact of House Bill 1525 is challenging to articulate as the Board has been unable to identify how much money would be needed to pay off all outstanding schools bonds. It is possible that the bonds and funding necessary to acquire all of the common schools exceeds the funding available in the CSTF.

The estimated fiscal impact of reallocating half of the trust (\$2.2 billion) will result in half of the 2019-21 biennium distributions; amounting to \$183 million less per biennium in perpetuity. This would be a reduction of close to \$800 per student per year that will no longer be funded through the CSTF, forever, for each of North Dakota's 112,000 school children.

House Bill 1525 proposes any school building purchased or built will be valued annually and these values included in the assets of the CSTF. I believe the intention of this provision is for the value of the buildings to be included in the value upon which the constitutional formula is applied each biennium to determine distributions. However, the acquired buildings will not generate rent. Capital assets that generate no rent, but for which the CSTF is still responsible for maintenance, cannot be categorized as an asset of the CSTF; rather these buildings would be liabilities to the CSTF. Additionally, the purchasing of any building that does not generate rental income at market rates would not be a prudent investment for the CSTF.

As stated in North Dakota Attorney General Opinion 2014 -L-09, 2014 WL 2559218, at \*2 (June 3, 2014)(footnotes omitted):

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.

Past opinions indicate the Land Board could make loans without violating N.D. Const. art. X, § 18 because loans do generate returns. However, the state constitution states that "no part of the fund must ever be diverted, even temporarily, from this purpose" 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.

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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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 appraisal, 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  
2011-2013 biennium were \$92,514,000, which equaled approximately \$462 per year for each K-12 grade student in the state).
- 12 N.D. Const. art. IX, § 3. See also N.D.A.G. 94-L-73 (Mar. 30, 1994).
- 13 N.D.C.C. § 15-01-02(2).
- 14 N.D.A.G. 2012-L-02; Fuller v. Bd. of Univ. & Sch. Lands, 129 N.W. 1029, 1031 (N.D. 1911).
- 15 N.D.A.G. 1992-L-13.
- 16 N.D. Const. art. X, § 18 (“neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make  
donations to or in aid of any individual, association or corporation except for reasonable support of the poor”).
- 17 N.D.A.G. 67-220 (State Employee's Retirement Fund could make investments without violating N.D. Const. art. X, § 18  
because through the Retirement Fund, the state was “engaged in the investing business for its employees which is a lawful  
business or enterprise.”). N.D.A.G. 92-13 ( investment activities by the Land Board concerning the coal severance tax trust  
fund under N.D. Const. art. X, § 21, and later, the Myron G. Nelson Fund constituted a lawful enterprise engaged in for a  
public purpose).
- 18 N.D. Const. art. IX, § 2.
- 19 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  
powers of the board, it acts in a restrictive capacity and not as a conferrer of authority).
- 20 N.D. Const. art. IX, §§ 3 and 5.
- 21 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  
the ... [land] board.”).
- 22 N.D.A.G. 88-23.
- 23 Okla. Ed. Ass'n Inc. v. Nighth, 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).
- 24 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.
- 25 See sources cited supra n. 24.
- 26 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.
- 27 Black's Law Dictionary, 1318 (6th ed. 1990).
- 28 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.
- 29 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).
- 30 N.D. Const. art. XI, § 2.
- 31 See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

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