



# North Dakota Legislative Council

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## BOARD OF UNIVERSITY AND SCHOOL LANDS AND THE INDUSTRIAL COMMISSION

[Senate Bill No. 2282 \(2021\)](#) directs the Legislative Management to study the membership of the Board of University and School Lands and the Industrial Commission. The study must include consideration of potential conflicts of interest relating to the addition of the Agriculture Commissioner to the membership of the board and possible changes to Section 3 of Article IX of the Constitution of North Dakota.

### BACKGROUND

Senate Bill No. 2282 was introduced to amend North Dakota Century Code Section 15-01-01, relating to the membership of the Board of University and School Lands, by replacing the State Treasurer with the Agriculture Commissioner subject to the electors approving the change to Section 3 of Article IX of the Constitution of North Dakota at the next general election. Ultimately, the House amended the bill to provide for a study.

#### Board of University and School Lands

The Department of Trust Lands is the administrative arm of the Board of University and School Lands, serving under the direction and authority of the board. Section 3 of Article IX of the Constitution of North Dakota and Section 15-01-01 set the membership of the board as 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 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The department also manages the strategic investment and improvements fund, the coal development trust fund, the Capitol building fund, the Indian cultural education trust, and the Theodore Roosevelt Presidential Library and Museum endowment fund and the department administers the responsibilities outlined in the Uniform Unclaimed Property Act. As the administrator, the department collects "unclaimed property," such as uncashed checks and unused bank accounts, 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.

#### History

Upon the passage of the Northwest Ordinance of 1785, the United States Congress established a policy of granting land to a state when it entered the Union as an asset to generate funding to support the public education system, a fundamental state responsibility. Starting with Ohio in 1785 and ending with Arizona and New Mexico in 1910, each new state received a set of federal lands that, under federal enabling legislation and the corresponding state constitution, were to be held in trust for the benefit of the public schools. The trust mandates the states are to use the lands to generate revenue to support the public schools and other institutions. That singularity of purpose continues today and distinguishes state trust lands and the state programs that administer the state trust lands from other types of public lands.

In the 1780s, America's founders were preparing for westward expansion at the conclusion of the Revolutionary War. Thomas Jefferson developed a system, often referred to as the Jeffersonian Grid, to orderly track and divide land into 36-square-mile townships, ranges, and sections. Each state that joined the Union after the war received a certain number of 1-mile sections to be held in a trust and used for public beneficiaries, usually public schools.

In 1889, Congress passed the Enabling Act "to provide for the division of the Dakota Territory into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Section 10 of the Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases in which portions of sections 16 and 36 had been sold prior to statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled nearly 2.6 million acres.

The Enabling Act also provided land grants to North Dakota for the support of colleges, universities, the State Capitol, and other public institutions. Revenues are generated through the prudent management of trust assets, which include approximately 706,600 surface acres and nearly 2.6 million mineral acres. The Board of University and School Lands is a result of the Enabling Act, making it an agency that predates statehood.

### **Membership**

Only once in the past 130 years has the membership of the Board of University and School Lands been changed. The 49<sup>th</sup> Legislative Assembly created a Government Reorganization Committee that was assigned several studies, including the study of the financial management and administrative services of state government, including the functions and services of the State Treasurer, Office of Management and Budget, State Tax Commissioner, Bank of North Dakota, State Auditor, Board of University and School Lands, and Director of Institutions as provided for in Senate Concurrent Resolution No. 4043 (1983). Among other things, the committee determined having the State Auditor on both the Board of University and School Lands and the Public Employees Retirement Board created a conflict of interest as it related to the State Auditor's duties, and the State Treasurer was recommended to fill the State Auditor's position on both the Board of University and School Lands and the Public Employees Retirement Board. Senate Bill No. 2072 (1985) and Senate Concurrent Resolution No. 4006 (1985) replaced the State Auditor with the State Treasurer on the Board of University and School Lands and the Public Employees Retirement Board. In 1987, nearly 100 years after the Board of University and School Lands was created, the membership was changed after the passage of the ballot measure to amend Section 3 of Article IX of the Constitution of North Dakota.

### **Conflict of Interest**

Testimony in opposition to Senate Bill No. 2282 (2021) indicated adding the Agriculture Commissioner to the Board of University and School Lands would create several conflicts of interest because the Agriculture Commissioner's mission is to serve, advocate, protect, and promote agriculture to benefit everyone, and because the placement of the Agriculture Commissioner on the board places the entire Industrial Commission on the board and the Industrial Commission oversees the Bank of North Dakota.

## **INDUSTRIAL COMMISSION**

In 1919, House Bill No. 17 created the North Dakota Industrial Commission to conduct and manage, on behalf of the state, certain utilities, industries, enterprises, and business projects established by state law. The membership of the Industrial Commission has not changed since 1919 and consists of the Governor, the Attorney General, and the Agriculture Commissioner. The Oil and Gas Division of the Industrial Commission regulates the drilling and production of oil and gas in North Dakota. Its mission is to encourage and promote the development, production, and utilization of oil and gas in the state to prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from vital natural resources.

## **SUGGESTED STUDY APPROACH**

The committee may wish to proceed with the study by receiving testimony and information from representatives of the Board of University and School Lands, the Industrial Commission, the Agriculture Commissioner, and the State Treasurer to provide a review of the potential conflicts of interest relating to membership and possible changes to Section 3 of Article IX of the Constitution of North Dakota.