

STATE-OWNED REAL ESTATE - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3005 (attached as Appendix A) directs the Legislative Council to seek information identifying state-owned real estate and study the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate.

There are several state agencies that own real estate. In November 2003 the Legislative Council office received the following information from state agencies that own real estate, excluding the University System:

State Agency	Acres Owned by Agency	Acres Leased to Other Entities
Office of Management and Budget	132	N/A
Land Department	713,635	701,119
School for the Deaf	27	N/A
North Dakota Vision Services - School for the Blind	10	Parking lot - 46,826 square feet
Veterans Home	90	N/A
Department of Human Services		
State Hospital	3,054	2,456
Developmental Center	350	310
Aeronautics Commission	64	N/A
Mill and Elevator	46	N/A
Department of Corrections and Rehabilitation	2,697	1,457
Adjutant General	10,586	N/A
State Fair Association	157	Varies ¹
State Historical Society	1,301	Varies ²
Game and Fish Department	81,465	25,192
Parks and Recreation Department	9,797	251 ³
State Water Commission	See Foot-note 4	N/A
Department of Transportation	199,517	106

¹The State Fair Association leases areas of the fairgrounds on a per day or per event basis.

²The State Historical Society only leases sites for haying that are in critical need of cleanup.

³The Parks and Recreation Department has approximately 150 acres of hay land leased at three different parks, 21 acres leased to the city of Wishek for Doyle Memorial Park, and an operating lease for 80 acres at Sully Creek.

⁴The State Water Commission owns a seven-acre lot where its shop is located and also owns the state sovereign land along waterways. The acreage of the state sovereign land is unknown and it is not salable or leasable.

NOTE: The following state agencies own the land only where their buildings/facilities are located:

- State Department of Health.
- Job Service North Dakota.
- Bank of North Dakota.
- Workforce Safety and Insurance.
- State Seed Department.

The 2003-04 interim committees that conducted budget tours of state facilities and institutions received information from each of the entities toured regarding the land and buildings owned and utilized by each entity. This information received by the budget tour groups has been compiled and included at the end of the *North Dakota Legislative Council 2003-04 Budget Section Tour Group Reports to the 59th Legislative Assembly* report and is attached as Appendix B.

STATE-OWNED TRUST LANDS

The Enabling Act of Congress, which provided for the division of Dakota Territory into North Dakota and South Dakota, granted the 16th and 36th sections of land in each township to the state "for the support of common schools." Generally, original grant lands are governed by Article IX of the Constitution of North Dakota and North Dakota Century Code (NDCC) Chapters 15-04 and 15-06. Article IX, Section 3, of the Constitution of North Dakota provides that subject to Article IX and any law passed by the Legislative Assembly, the Board of University and School Lands 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.

Article IX, Section 5, of the Constitution of North Dakota provides that school lands or original grant lands may be sold at any time after the first 10 years of statehood and that the Legislative Assembly is required to provide for the sale of all school lands subject to the provisions of Article IX, which the Legislative Assembly has done in NDCC Chapter 15-06. North Dakota Century Code Section 15-06-01 provides the definition for the term "original grant lands" as "all of the public lands which heretofore have been or hereafter may be granted to the state by the United States for the support and maintenance of the common schools or for the support and maintenance of the university, the school of mines, the North Dakota youth correctional center, North Dakota state university, the school for the deaf, any normal school, or any other educational, penal, or charitable institution, and any lands which have been obtained by the state through a trade of any such lands for other lands." Another constitutional provision governing the sale of original grant lands is Article IX, Section 6, which prohibits original grant school or institutional lands from being sold for less than fair market value or for less than \$10 per acre.

SALE OR EXCHANGE OF STATE-OWNED LAND

North Dakota Century Code Section 54-01-05.2 (attached as Appendix C) provides for the sale of

state-owned land. This section provides that except as provided by Section 54-01-05.5, whenever any department or agency of the state other than the Board of University and School Lands, the Housing Finance Agency, and the Bank of North Dakota is authorized to sell real property, the property must be sold for cash by the county auditor or other person designated by the department or agency concerned at public auction at the front door of the courthouse in the county in which the property lies. This section also provides the requirements for notification of the sale of state-owned land and provides that no land may be sold at auction for less than the appraised value. If no bid is received on the land at public auction, then the land may be sold for not less than 90 percent of the appraised value. For land sale or exchange when the value of the land is not more than \$100,000, one appraisal must be obtained, and when the value of the land is in excess of \$100,000, two appraisals must be obtained. If more than one appraisal is obtained, the appraised value of the land is the average of the two appraisals.

North Dakota Century Code Section 54-01-05.5 (attached as Appendix D) provides the requirements for bills introduced in the Legislative Assembly for the sale or exchange of state-owned land. This section provides that the supervising agency, board, commission, department, or institution owning or controlling land proposed by a bill to be sold or exchanged shall prepare a written report that includes an analysis of the type of land involved; a determination whether the land is needed for present or future uses of the agency, board, commission, department, or institution; a description of the party or parties interested in the land, if known, and the purposes for which the land is desired; and a map showing the boundaries of the land proposed to be sold or exchanged and the purposes for which adjacent lands are used. This section also provides that the commissioner of University and School Lands shall review each legislative bill proposing the sale or exchange of state-owned land and the written report from the supervising agency, board, commission, department, or institution, and that the commissioner shall then issue a written opinion to the standing committee of the Legislative Assembly to which the bill is initially referred concerning the proposed land sale or exchange and, in doing so, shall consider the "highest and best use" of the land as defined by Section 15-02-05.1.

North Dakota Century Code Section 15-02-05.1 defines "highest and best use" as the use of a parcel of land which will most likely produce the greatest benefit to the state and its inhabitants and which will best meet the needs of the people. This section also provides that the considerations of the commissioner in making this determination shall include soils capability; vegetation; wildlife use; mineral characteristics; public use; recreational use; commercial or industrial use; aesthetic values; cultural values; surrounding

land use; nearness to expanding urban areas; and any other resource, zoning, or planning information relevant to the determination.

GAME AND FISH DEPARTMENT LAND ACQUISITIONS

North Dakota Century Code Section 20.1-02-05.1 provides that the director of the Game and Fish Department shall establish a comprehensive state-wide land acquisition plan that must be approved by the Budget Section and that every land acquisition made by the department exceeding 10 acres or \$10,000 must be approved by the Budget Section.

RECENT SALES AND PURCHASES OF STATE-OWNED PROPERTY

Although no bills were passed during the 2005 legislative session relating to the sale or purchase of state-owned property, the following related bills (attached as Appendix E) were passed during the 2001 and 2003 legislative sessions:

2001 House Bill No. 1114 - This bill authorized the Department of Human Services to sell certain land in Stutsman County and to convey certain land in Stutsman County to the city of Jamestown.

2001 Senate Bill No. 2420 - This bill authorized the State Historical Society to reimburse Pembina County for certain land in Pembina County.

2001 House Bill No. 1200 - This bill authorized the North Central Research Extension Center to purchase certain land in Ward County and authorized the Williston Research Extension Center to purchase certain land in Williams County.

2003 Senate Bill No. 2383 - This bill authorized the State Board of Higher Education to convey certain land in Ramsey County to the city of Devils Lake.

PREVIOUS STUDIES 1975-76 Interim

During the 1975-76 interim, the Legislative Council's Natural Resources Committee studied state land disposition. All state agencies owning land reported to the committee on their respective holdings, which indicated that the state, through its agencies, owned 809,187.29 acres of land in North Dakota. The committee introduced 1977 Senate Bill No. 2063 which passed and provided an orderly procedure for the sale of lands when the sale requires legislative action and places the principal responsibility for determining the appropriateness of a sale, including price, on the commissioner of University and School Lands. The committee also introduced Senate Concurrent Resolution No. 4011 to amend Section 161 of the Constitution (now Article IX, Section 8) to provide that lands under the control of the Board of University and School Lands may be leased for such purposes, periods, and upon such terms and conditions as the

legislature may provide. This concurrent resolution failed.

1979-80 Interim

During the 1979-80 interim, the Legislative Council's State and Federal Government "B" Committee studied state-owned land. The study included a review of the North Dakota Constitution and Century Code regarding state-owned land, the Board of University and School Lands responsibility regarding state-owned lands, and the remaining "original grant land" in the state. The committee concluded it was satisfied with the methods of executive land transfer and concentrated its efforts on the procedure for transferring state-owned land by legislative enactment.

The committee introduced 1981 House Bill No. 1086, which passed, requiring every legislative bill which authorizes the sale, lease, or exchange of state-owned land to be prefiled by the first day of the legislative organizational session and to require the sale or lease of state-owned land to be at public auction. A written report from the supervising agency controlling the land is to accompany each legislative bill and include an analysis of the type of land involved; a title opinion and an updated abstract of title for land sales or exchanges; a determination of whether the land is needed for present or future agency uses; a description of the party or parties, if known, who are interested in the land and the purposes for which the land is desired; a determination of whether it is or is not in the best interests of the state to sell, lease, or exchange the land; one appraisal for land sales or exchanges when the land value is \$50,000 or less, and two or more appraisals when the land value is in excess of \$50,000; a map showing the boundaries of the land proposed to be sold, leased, or exchanged; the present ownership of land adjacent to such lands; and the purposes for which the adjacent lands are used. The commissioner of University and School Lands is to review each legislative bill along with the written report from the supervising agency prior to the beginning of the regular legislative session. The commissioner is to issue a written opinion on the proposed transfer and, in doing so, is to consider the "highest and best use" of the land. If a proposed legislative transfer is approved and becomes law, land to be sold or leased is to be offered at public auction conducted by the Land Department, pursuant to department rules. No land is to be sold at auction for less than appraised value and the buyer or buyers are to pay additionally the cost of preparing the land for sale as determined by the Land Department. If more than one appraisal is provided, the appraised value of the land to be sold is to be determined by the commissioner of University of School Lands. The value is not to be less than the lowest appraisal or higher than the highest appraisal.

North Dakota Century Code Section 54-01-05.3, which provided the procedure for legislative sale of state land, was repealed. The legislation included in House Bill No. 1086 has been amended since it was passed in 1981, resulting in its current form as Sections 54-01-05.2 (Appendix C) and 54-01-05.5 (Appendix D).

1989-90 Interim

During the 1989-90 interim, the Legislative Council's Political Subdivisions Committee studied state and federal government ownership of land. The study included state and federal law regarding property tax on government-owned land and the determination of the amount of land in North Dakota owned by the state and federal governments. According to statistics published by the United States Bureau of Land Management in 1987, the federal government owned approximately two million acres of land in North Dakota, which accounted for approximately 4 percent of the total acreage in the state. The amount of land owned by the state was difficult to determine, but the committee received information from four state agencies that owned and leased a total of approximately 880,000 acres. The committee received testimony supporting 100 percent payments in lieu of taxes be made for federal government-owned land in North Dakota. The committee expressed support for efforts to obtain 100 percent funding from the federal government for payments in lieu of taxes.

SUGGESTED STUDY APPROACH

The committee may wish to approach this study as follows:

1. Receive information from all state agencies and institutions that own real estate regarding the number of acres owned, how the state real estate was acquired, an explanation of the use of the real estate, including whether the real estate is utilized by a state entity or another entity, and any statutory provisions relating to the agencies' ability to use, lease, sell, or acquire property.
2. Review the value of establishing and maintaining a detailed, statewide inventory of state-owned and institution-owned real estate and the appropriate agency to maintain the inventory.
3. Develop committee recommendations and prepare legislation necessary to implement the recommendations.
4. Prepare a summary of the committee's study for inclusion in the final report to the Legislative Council.

ATTACH:5