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{ REPORT
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NORTH DAKOTA ENABLING ACT AND FIRST MORRILL ACT AMENDMENTS ACT OF 2007

APRIL 10, 2008.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 1740]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1740) to amend the Act of February 22, 1889, and the Act of July 2, 1862, to provide for the management of public land trust funds in the State of North Dakota, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1740 is to amend the Act of February 22, 1889, and the Act of July 2, 1862, to provide for the management of public land trust funds in the State of North Dakota.

BACKGROUND AND NEED

The Federal government has generally provided a series of benefits to new States as part of the statehood admission process. For example, the North Dakota Statehood Act set aside land in every township for the support of schools in the State and also provided further land grants to support colleges and universities (“the trust funds”). In total, the grant from the Federal government to the State of North Dakota was approximately 3.2 million acres.

Since statehood, much of the original grant land has been sold. As of 2006, the trust funds consist of the following assets:

- 714,000 surface acres (leased to ranchers and farmers across the state);
- 2.5 million mineral acres (leased for oil, gas, coal and gravel exploration and development); and

- \$807 million of financial assets (invested in a diverse portfolio of stocks, bonds, farm loans and other instruments).

Pursuant to the Morrill Act and the North Dakota Statehood Act, the State can only spend funds derived from interest and income from the trust funds (i.e., surface and mineral rentals, loan income, and interest earnings) and may not expend funds derived from permanent trust additions (i.e., mineral royalties, mineral bonuses, and proceeds of land sales). The North Dakota State Land Department, which administers the trust funds, contends that this restriction creates unnecessary fluctuations in distributions and creates incentives for investment decisions that create short term income at the expense of long term value.

As a result, the Land Department proposed an amendment to the North Dakota Constitution to eliminate the restriction. The amendment was endorsed by the state legislature in 2005 and passed as a ballot measure in 2006. In order to take effect, the change requires amendments to the North Dakota Statehood Act and the Morrill Act.

LEGISLATIVE HISTORY

S. 1740 was introduced by Senator Conrad and Senator Dorgan on June 28, 2007. The Subcommittee on Public Lands held a hearing on the bill on September 20, 2007 (S. Hrg. 110–216). At its business meeting on January 30, 2008, the Committee on Energy and Natural Resources ordered S. 1740 favorably reported without amendment.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 1740.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill.

Section 2 amends the North Dakota Statehood Act (25 Stat. 676, chapter 180) by adding a new provision to effectuate the changes approved by the State of North Dakota regarding distributions from its educational trust funds. Specifically, the new provision requires that all proceeds from sales of public land be deposited into the trust funds and managed so as to preserve the purchasing power of the fund and maintain stable distributions to beneficiaries in accordance with North Dakota's constitution, as amended by the 2006 ballot measure.

Section 3 amends the Morrill Act (7 U.S.C. 301 et seq.) by adding a new provision to effectuate the changes approved by the State of North Dakota regarding distributions from its educational trust funds. Specifically, the new provision requires that all proceeds from sales of public land be deposited into the trust funds and managed so as to preserve the purchasing power of the fund and maintain stable distributions to beneficiaries in accordance with North Dakota's constitution, as amended by the 2006 ballot measure.

Section 4 states that, effective July 1, 2009, Congress consents to the amendments to the Constitution of North Dakota proposed by

House Concurrent Resolution No. 3037 of the 59th Legislature of the State of North Dakota and approved by the voters of the State of North Dakota on November 7, 2006.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

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S. 1740 would amend provisions of federal law that regulate how North Dakota may invest and spend proceeds from the sale and management of certain public lands. CBO estimates that enacting S. 1740 would have no effect on the federal budget and would not affect direct spending or revenues.

S. 1740 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would make federal law consistent with an amendment to the state's constitution and provide Congressional consent to that amendment. The change in federal law and the amendment to the state constitution would allow the state to make distributions from state-held trust funds based on a rolling valuation of assets rather than on current income. Those distributions are currently limited by federal law that went into effect when North Dakota became a state.

The CBO staff contact for this estimate is Melissa Merrell. The estimate was approved by Theresa Gullo, Deputy Assistant Director of the Budget Analysis Division.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1740. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1740, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1740, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

STATEMENT OF MICHAEL NEDD, ASSISTANT DIRECTOR, MINERAL, REALTY & RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on S. 1740, the North Da-

kota Enabling Act and First Morrill Act Amendments Act of 2007.

S. 1740 would amend the Act of February 22, 1889 and the Act of July 2, 1862 to provide for changes to the management and distribution of North Dakota trust funds into which proceeds from the sale of public land are deposited. It also includes language providing for Congress's consent to amendments to the Constitution of North Dakota proposed by House Concurrent Resolution No. 3037 of the 59th Legislature of the State of North Dakota and approved by the voters on November 7, 2006. This resolution requires permanent trust funds to be managed to preserve their purchasing power, to provide stable distributions to fund beneficiaries and to benefit fund beneficiaries.

The Office of Legal Counsel of the Department of Justice has advised us that Congress may amend State enabling acts. As S. 1740 relates to North Dakota's use of its trust funds, the Administration has no comments on or objections to the bill.

Thank you for the opportunity to testify.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1740 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF FEBRUARY 22, 1889 (25 STAT. 676, CHAPTER 180)

CHAP. 180.—An Act to provide for the division of Dakota 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as a present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

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SEC. 26. NORTH DAKOTA TRUST FUNDS.

(a) *DISPOSITION.*—Notwithstanding section 11, the State of North Dakota shall, with respect to any trust fund in which proceeds from the sale of public land are deposited under this Act (referred to in this section as the 'trust fund')—

(1) *deposit all revenues earned by a trust fund into the trust fund;*

(2) *deduct the costs of administering a trust fund from each trust fund; and*

(3) manage each trust fund to—

(A) preserve the purchasing power of the trust fund; and

(B) maintain stable distributions to trust fund beneficiaries.

(b) *DISTRIBUTIONS.*—Notwithstanding section 11, any distributions from trust funds in the State of North Dakota shall be made in accordance with section 2 of article IX of the Constitution of the State of North Dakota.

(c) *MANAGEMENT OF PROCEEDS.*—Notwithstanding section 13, the State of North Dakota shall manage the proceeds referred to in that section in accordance with subsections (a) and (b).

(d) *MANAGEMENT OF LAND AND PROCEEDS.*—Notwithstanding sections 14 and 16, the State of North Dakota shall manage the land granted under that section, including any proceeds from the land, and make distributions in accordance with subsections (a) and (b).

* * * * *

ACT OF JULY 2, 1862 (12 STAT. 503, CHAPTER 30)

AN ACT donating Public Lands to the several States and Territories which may provide Colleges for the Benefit of Agriculture and the Mechanic Arts

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be granted to the several States, for the purposes of hereinafter mentioned, an amount of public land, to be apportioned to each State a quantity equal to thirty thousand acres for each senator and representative in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty: *Provided,* That no mineral lands shall be selected or purchased under this Act.

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SEC. 9. LAND GRANTS IN THE STATE OF NORTH DAKOTA.

(a) *EXPENSES.*—Notwithstanding section 3, the State of North Dakota shall manage the land granted to the State under the first section, including any proceeds from the land, in accordance with this section.

(b) *DISPOSITION OF PROCEEDS.*—Notwithstanding section 4, the State of North Dakota shall, with respect to any trust fund in which proceeds from the sale of land under this Act are deposited (referred to in this section as the ‘trust fund’)—

(1) deposit all revenues earned by a trust fund into the trust fund;

(2) deduct the costs of administering a trust fund from each trust fund; and

(3) manage each trust fund to—

(A) preserve the purchasing power of the trust fund; and

(B) maintain stable distributions to trust fund beneficiaries.

(c) *DISTRIBUTIONS.*—Notwithstanding section 4, any distributions from trust funds in the State of North Dakota shall be made in accordance with section 2 of article IX of the Constitution of the State of North Dakota.

(d) MANAGEMENT.—Notwithstanding section 5, the State of North Dakota shall manage the land granted under the first section, including any proceeds from the land, in accordance with this section.

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