

HOUSE BILL NO. 1252

Introduced by

Representatives Kempenich, K. Koppelman, Louser, Olson

Senators Klein, D. Larson, Unruh

1 A BILL for an Act to create and enact chapters 28-36, 28-37, and 28-38 of the North Dakota
2 Century Code, relating to the sale and lease of grant and nongrant lands and the condemnation
3 of public lands and sales; to amend and reenact sections 6-09-37 and 54-30-17.1 of the North
4 Dakota Century Code, relating to the sale and lease of grant and nongrant lands and the
5 condemnation of public lands and sales; and to repeal chapters 15-06, 15-07, and 15-09 of the
6 North Dakota Century Code, relating to the sale and lease of grant and nongrant lands and the
7 condemnation of public lands and sales.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 6-09-37 of the North Dakota Century Code is amended
10 and reenacted as follows:

11 **6-09-37. Sale and leasing of acquired agricultural real estate.**

12 The sale and leasing of agricultural real estate with an appraised value of ten thousand
13 dollars or more acquired by the Bank of North Dakota through foreclosure or deed in lieu of
14 foreclosure must be done in accordance with chapter ~~45-0728-37~~ or ~~45-0928-38~~ and policies
15 adopted by the industrial commission. The sale and leasing of agricultural real estate with an
16 appraised value of less than ten thousand dollars, acquired by the Bank of North Dakota
17 through foreclosure or deed in lieu of foreclosure, may be done in a manner as the Bank
18 determines is appropriate given the circumstances. In the case of a lease by the party holding
19 the right of redemption, that party has the right to purchase at any time.

20 **SECTION 2.** Chapter 28-36 of the North Dakota Century Code is created and enacted as
21 follows:

22 **28-36-01. Original grant lands defined.**

23 The term "original grant lands" means all of the public lands that have been or may be
24 granted to the state by the United States for the support and maintenance of the common

1 schools or for the support and maintenance of the university, the school of mines, the North
2 Dakota youth correctional center, North Dakota state university, the school for the deaf, any
3 normal school, or any other educational, penal, or charitable institution, and any lands which
4 have been obtained by the state through a trade of any such lands for other lands. Original
5 grant lands that have been sold on contract retain their character as such grant lands until the
6 contract has been paid and a patent issued therefor.

7 **28-36-02. County board of appraisers - How composed.**

8 The county superintendent of schools, the chairman of the board of county commissioners,
9 and the county auditor of each county constitutes the county board of appraisers of the original
10 grant lands of the state in their respective counties. The county director of tax equalization shall
11 serve as an assistant in making the appraisals.

12 **28-36-03. Resale to original contractholder or heirs or assigns - Condition and terms.**

13 When land has been sold on contract as provided in this chapter and the purchaser, or the
14 purchaser's heirs or assigns, have been unable to pay for the land purchased within twenty
15 years after the date of purchase and the contract is in default and subject to cancellation, and
16 when the inability to pay under the contract has been caused by successive crop failures, the
17 board of university and school lands, if requested to do so by the purchaser, or the purchaser's
18 heirs or assigns, after it has declared the contract terminated, may resell the land to the
19 purchaser, or to the purchaser's heirs or assigns, for the amount of the unpaid principal of the
20 original purchase price plus the amount of unpaid accrued interest, except the resale price may
21 not be more than the original sale price. Upon the resale, a contract of resale must be issued to
22 the purchaser upon the same terms as were contained in the original contract except the
23 contract of resale may provide the purchaser may pay the first one-fifth of the resale price in five
24 equal successive annual installments, the first to be paid at the time of execution of the
25 contract, and the contract must bear interest at the rate of three percent per annum payable
26 annually.

27 **28-36-04. Reconveyance to the United States of lands improperly conveyed.**

28 When lands have been certified or conveyed erroneously or improperly to the state of North
29 Dakota for school or other purposes by the United States, the governor may reconvey or
30 relinquish the title the state may have to the lands by the execution, with the seal of the state, of
31 the conveyances as may be necessary.

1 **28-36-05. Exchange of lands with the United States.**

2 Original grant school or institutional lands and any other lands controlled by the board of
3 university and school lands may be exchanged for lands of like character and value belonging
4 to the United States government when it appears the exchange will be advantageous to the
5 state and will effect an increase in the value of the lands by consolidation or by making lands
6 more accessible. The exchange is subject to the approval of the proper department of the
7 federal government, and the lands must be appraised as provided by law in the case of sale of
8 real property owned by the state. The state also may execute and deliver proper conveyances
9 of the land in the manner and form provided by law without the necessity of complying with any
10 statute requiring the giving of notice of exchange or competitive bidding, and may accept in
11 return a proper instrument of conveyance to the state of the land for which the lands are
12 exchanged, and the lands acquired are subject to the trust to which the lands exchanged were
13 subject.

14 **28-36-06. Offer to purchase original grant land - Appraisal - Continuing appropriation.**

15 When an offer to purchase any particular tract of original grant land has been made to the
16 board of university and school lands, the commissioner shall request the county board of
17 appraisers to appraise the tract. Upon receipt of the request by the county auditor, the auditor
18 immediately shall notify the members of the county board of appraisers, who shall, within ten
19 days, proceed to view and appraise the tract. There is appropriated annually the amounts
20 necessary to pay all expenses under this section. Each payment must be made from the trust
21 fund for which the land is held.

22 **28-36-07. Certification and verification of appraisal.**

23 The county board of appraisers shall certify to the correctness of the appraisal and file the
24 appraisal with the county auditor who immediately shall transmit the appraisal to the
25 commissioner of university and school lands. The appraisal must be verified by each of the
26 appraisers and must disclose any real or contingent interest any of the appraisers has in the
27 tract appraised.

28 **28-36-08. When reappraisal unnecessary in land remaining unsold.**

29 If any tract appraised is not sold immediately, it may again be offered and sold without
30 reappraisement if sold within two years of the appraisement.

1 **28-36-09. Notice of sale - Contents - Publication.**

2 The board of university and school lands shall publish a notice of sale of the tract once each
3 week for a period of three weeks before the day of sale in the official county newspaper where
4 the land is situated and in any other newspapers as the board deems appropriate. The notice
5 must describe the land to be sold, and must state the amount bid therefor, and the terms and
6 conditions of sale.

7 **28-36-10. Manner of sale - Purchase price.**

8 At the time appointed for the sale, the commissioner of university and school lands, the
9 commissioner's deputy, or any other individual appointed by the commissioner shall sell or offer
10 for sale the land advertised to be sold at public auction to the highest bidder. The sale must be
11 held at the county seat, in the county in which the land is situated. A tract may not be sold for
12 less than the fair market value or for less than ten dollars per acre [.40 hectare].

13 **28-36-11. Terms of sale - Sale to highest bidder - Penalty for failure to make first**
14 **payment.**

15 The board of university and school lands may sell original grant land either for cash or
16 under contract. The highest bidder for any tract of land offered for sale under this chapter must
17 be declared the purchaser. A purchaser under contract shall pay twenty percent of the purchase
18 price at the time the contract is executed; thereafter, annual payments must be made of not less
19 than six percent of the original purchase price. An amount equal to not less than three percent
20 per annum of the unpaid principal must be credited to interest and the balance must be applied
21 as payment on principal as credit on the purchase price. If the purchaser fails to pay the amount
22 required to be paid at the time of sale, the commissioner or other individual conducting the sale
23 may reoffer the tract for sale immediately, but no bid may be received from the person failing to
24 pay. Any person refusing or neglecting to make the initial payment after purchase shall forfeit an
25 amount equal to ten percent of the purchase price or final bid to be recovered for the benefit of
26 the fund to which the land belongs by civil suit in the name of the state.

27 **28-36-12. Execution of contract - Failure.**

28 Immediately upon the sale by the board of university and school lands, the purchaser shall
29 execute a purchase agreement for a cash sale or a contract in the form prescribed by the
30 board. The failure of a purchaser to execute a purchase agreement or a contract constitutes a

1 forfeiture of the payment made at or before the sale. When a purchase agreement or contract is
2 executed properly by the commissioner, a copy must be delivered to the purchaser.

3 **28-36-13. Subdivision of land into small tracts or lots.**

4 Whenever the interests of the state will be promoted by dividing any portion of the land
5 under its control into small parcels or city lots, the board of university and school lands may
6 order the commissioner to do so and to have the land appraised in the manner prescribed in
7 this chapter.

8 **28-36-14. Sale of lots and parcels - New appraisal - Terms of sale.**

9 All parcels or lots appraised in accordance with sections 28-36-06 and 28-36-07 are subject
10 to sale in the same manner, upon the same terms and conditions, and at the prices not less
11 than that at which the parcels or lots are appraised severally until a new appraisal is made, and
12 the contract of purchase has the same effect. The board of university and school lands may
13 order a new appraisal of the lands to be made at any time in the manner provided in this
14 chapter and with like effect. No lots or parcels so appraised may be sold for less than the
15 minimum price of the land established in this chapter.

16 **28-36-15. Recording of correct map when tract divided into parcels or lots.**

17 When the commissioner of university and school lands divides any tract of land into small
18 parcels or lots as provided in this chapter, the commissioner shall enter of record in the county
19 where the land is situated a map of the land.

20 **28-36-16. Prepayments on contracts permitted.**

21 The purchaser may pay all or any installments of principal not yet due to any interest-paying
22 date. The purchaser may pay the entire balance due on the contract, plus accrued interest to
23 date of payment, at any time, and the purchaser will then be entitled to proper conveyance.
24 Payment for school or institutional lands purchased under chapter 28-38 may be made at any
25 time.

26 **28-36-17. Contracts - Renegotiation.**

27 The board of university and school lands may renegotiate the terms of any contract made
28 under this chapter when requested by a purchaser that has paid at least thirty percent of the
29 purchase price and is unable to make the payments as required by the contract. The
30 renegotiation may include restructuring and reamortization so long as the resulting contract is
31 consistent with the fiduciary responsibilities of the board.

1 **28-36-18. Forest management authorized - Discontinuance.**

2 The board of university and school lands may designate any original grant lands more
3 readily suitable for forestry than for agricultural purposes and suitable for forest management,
4 and may direct the state forester to assume full control over those land and apply accepted
5 good forestry practices in the care, reforestation, fire control, and management of the lands. The
6 board, at the end of any five-year period of that control, may discontinue that control and
7 assume sole control of any lands so placed in the control of the state forester, if the return of
8 control to the board of university and school lands does not interrupt a program of forest
9 management already in progress for which additional time is needed.

10 **28-36-19. State forester to control lands designated for forest management.**

11 The state forester shall assume control over all lands designated for forest management
12 and develop and improve the lands by applying accepted good forestry practices in the
13 management and improvement of the lands for the purpose of protecting and improving the
14 forest potential of the lands and producing income through sustained yield management by the
15 sale of forest products produced on the land through sales under the direction of the state
16 forester. The state forester may issue permits for the cutting and removal of hay on and from the
17 land under the state forester's control at a price to be determined by the board of university and
18 school lands, subject to the rules adopted by the state forester and board of university and
19 school lands.

20 **28-36-20. Application of income.**

21 The state forester shall apply the income derived from the lands first to the payment of the
22 cost of all care and development of the land, and second, the net annual income must be paid
23 to the board of university and school lands for the credit of the permanent school funds properly
24 apportioned among the several funds.

25 **28-36-21. Reports by state forester to board of university and school lands.**

26 The state forester shall report annually to the board of university and school lands the
27 nature of the improvements, the conditions of the forest, the number of trees cut and the
28 disposition of the trees, the proceeds derived from the sale of forest products and the
29 disposition of the proceeds, the amount of forest products undisposed of, and all expenses paid
30 or incurred. The state forester also shall report such other matters pertaining to the lands as the
31 board of university and school lands requires. The report must be made with respect to each

1 separate school section controlled by the state forester. **SECTION 2.** Chapter 28-37 of the
2 North Dakota Century Code is created and enacted as follows:

3 **28-37-01. Definitions.**

4 The terms "other than original grant lands" or "nongrant lands" mean all lands obtained by
5 the board of university and school lands in any manner other than that described in section
6 28-36-01.

7 **28-37-02. Rules for sale of nongrant lands - Powers of board.**

8 The board of university and school lands may adopt rules relating to the manner, place, and
9 time of payment of principal and interest; the conduct of the business of selling and disposing of
10 lands other than original grant lands; and the terms and conditions of those sales. The board
11 may sell nongrant lands on amortized payment contracts, and renegotiate the terms of those
12 contracts, so long as the purchaser, at the time renegotiation is requested, has paid at least
13 thirty percent of the purchase price and the resulting contract is consistent with this chapter and
14 with the board's fiduciary responsibilities.

15 **28-37-03. Sale of nongrant lands authorized.**

16 The board of university and school lands may sell nongrant land at either private or public
17 sale as provided in this chapter. Any sale is subject to any existing lease of the land.

18 **28-37-04. Sale requirements.**

19 Any land sold under this chapter must be by public auction or sealed bids, except
20 purchases under section 28-37-07.

21 **28-37-05. Conveyance to purchaser upon payment in full of purchase price.**

22 When the purchase price of any nongrant land sold under this chapter, together with any
23 interest on deferred payments due under the contract, has been paid in full, the lands
24 purchased must be conveyed to the purchaser, or the purchaser's heirs or assigns, by quitclaim
25 deed executed in the name of the state of North Dakota by the commissioner of university and
26 school lands, attested by the secretary of state, with the great seal of the state affixed.

27 **28-37-06. Former conveyances confirmed.**

28 In all cases where nongrant lands have been conveyed by conveyances executed
29 otherwise than is provided by section 28-37-05, the conveyances are hereby ratified and
30 confirmed.

1 **28-37-07. Mortgagor has right to repurchase.**

2 If any mortgagor or a member of the mortgagor's immediate family, including a father,
3 mother, son, daughter, brother, sister, or spouse, desires to repurchase land lost through
4 foreclosure or by a deed given in lieu of foreclosure, the repurchase may be made by matching
5 the highest bid within one hour after public sale. The terms and conditions of any sale under this
6 section must be established by the board of university and school lands, consistent with law and
7 the fiduciary responsibilities of the board.

8 **28-37-08. Leasing of nongrant lands.**

9 The board of university and school lands may lease nongrant lands under reasonable rules
10 as it may establish. The rules may provide for leasing with or without advertisement or
11 competitive bidding. Leases made under this section must be for cash only, and the rental must
12 be collected in advance, except the board may collect a share of a conservation reserve
13 program payment paid by the federal government. A lease of nongrant lands may not extend for
14 more than five years, except any land accepted into the conservation reserve program may
15 have a lease term that coincides with the term of the conservation reserve program contract if
16 provided in the lease. The board may renew a lease. When nongrant lands are leased without
17 advertisement or competitive bidding, the board shall determine the rental by taking into
18 consideration the nature and adaptability of the lands and the improvements on the lands.

19 **28-37-09. Cancellation of leases of nongrant lands.**

20 Leases of nongrant lands are subject to cancellation upon like conditions and in like manner
21 as leases of original grant lands.

22 **28-37-10. Appropriation for expenses - Continuing appropriation.**

23 There is appropriated annually the amounts necessary to pay expenses for trust land
24 controlled by the board of university and school lands, including appraisal fees, survey costs,
25 cleanup or demolition costs, weed and insect control costs, rural fire district reimbursements for
26 fire protection, and expenses determined by the board as necessary to manage, preserve, and
27 enhance the value of the trust asset. Each payment must be made from the trust fund for which
28 the land is held.

29 **SECTION 3.** Chapter 28-38 of the North Dakota Century Code is created and enacted as
30 follows:

1 **28-38-01. Public lands - Application to acquire for public or quasi-public purpose.**

2 1. The state or any person may apply in writing to the board of university and school
3 lands to acquire any school or institution lands of the state for:

4 a. Townsite purposes;

5 b. Schoolhouse sites;

6 c. Church sites;

7 d. Cemetery sites;

8 e. Sites for other educational or charitable institutions;

9 f. Sites for public parks;

10 g. Sites for fairgrounds;

11 h. Public highway purposes;

12 i. Fish hatcheries;

13 j. Airports;

14 k. Railroad right of way or other railroad uses and purposes;

15 l. Reservoirs for the storage of water for irrigation;

16 m. Drainage ditches;

17 n. Irrigation ditches; or

18 o. Any of the other purposes for which the right of eminent domain may be
19 exercised under the constitution and laws of the state.

20 2. The application must state briefly the purposes for which the land is required, describe
21 the land as accurately as practicable, and be accompanied by a map showing the land
22 desired. The application must be verified by the applicant, or, if the applicant is a
23 public or private corporation, by an officer of the corporation, or, if the applicant is a
24 limited liability company, by a manager of the company, or, if the applicant is the state,
25 by an officer of the commission, board, or department desiring to acquire the land.

26 **28-38-02. Appraisal of lands described in application.**

27 Unless the land described in an application made under this chapter has been appraised
28 within two years before the filing of the application, the board of university and school lands
29 shall have the land appraised, and if the land described in the application is a fractional part of
30 an appraised tract, an appraisal of that portion must be made.

1 **28-38-03. Notice of hearing on application - Publication - Hearing and right to appear.**

2 The board of university and school lands shall publish public notice of the time and place
3 where it will hear an application made under this chapter. The notice must describe the land
4 involved and must state the purpose for which it is sought to purchase the land. The notice must
5 be published in the official newspaper of the county in which the land is situated once each
6 week for three consecutive weeks before the date set for hearing the application. At the time
7 and place set for the hearing, the board shall consider the application. Any citizen may appear
8 and show cause why the land should not be sold or why the price fixed is insufficient.

9 **28-38-04. Board to fix price for lands described in application - Conveyance.**

10 The board of university and school lands may sell the property described in the application
11 to the applicant at a price not less than the appraised value if the board concludes the land
12 described in the application is required for the purposes stated in the application and a
13 conveyance of the property is consistent with law and the fiduciary responsibilities of the board.
14 If the land described in the application is less than an entire tract, the board, in fixing the price at
15 which the partial tract will be conveyed, shall take its value into consideration together with all
16 detriment caused to the remaining portions of the tract by the conveyance of the partial tract. If
17 the applicant agrees to the price fixed by the board for the land described in the application and
18 pays the full purchase price, the board shall convey the tract to the applicant.

19 **28-38-05. Disagreement as to purchase price - Condemnation - Procedure - Fixing**
20 **values.**

21 If the applicant is unwilling to pay the price for a conveyance fixed by the board of university
22 and school lands, the applicant may maintain an action in the district court against the state to
23 condemn the land under chapter 32-15. The amount awarded by the court or jury as damages
24 for the taking of an entire tract; however, may not be less than the appraised value thereof, and
25 the board, court, or jury, in fixing the amount to be paid for an entire tract or a part of the tract,
26 shall take into consideration the appraised value of the land, its actual value for all ordinary
27 purposes, and any increased value it may have for any special and unusual purpose by reason
28 of the existence of the facts authorizing the exercise of the power of eminent domain. If the land
29 is desired for a gravel pit, its value may be estimated with reference to the existence of a
30 demand for gravel, taking into consideration the necessities of the person seeking to acquire
31 the land. If the land is desired for townsite purposes, consideration must be given to the value of

1 the land to the state if it were used by the state for that purpose, and consideration also must be
2 given to the necessity for a townsite at the place in question warranting the exercise of the
3 power of eminent domain for that purpose. If the land is desired for other purposes, similar
4 elements of value must be considered.

5 **SECTION 4. AMENDMENT.** Section 54-30-17.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-30-17.1. Land acquired by state treasurer - Sale or lease by the Bank of North**
8 **Dakota or board of university and school lands - Deposit of net proceeds in bond sinking**
9 **fund.**

10 The Bank of North Dakota or the board of university and school lands, as agent of the state
11 treasurer as trustee for the state of North Dakota, shall manage all lands acquired in the name
12 of the state treasurer as trustee for the state of ~~North Dakota~~ under this chapter and, with the
13 approval of the state treasurer, ~~shall have full power to~~ may sell or lease such the lands. All
14 instruments executed by the Bank or board in furtherance of this authority must be executed by
15 an authorized officer or employee of the Bank or board in the name of "The Bank of North
16 Dakota or the board of university and school lands as agent for the state treasurer as trustee for
17 the state of North Dakota". The Bank or board may charge a fee and may be reimbursed for all
18 actual costs incurred in the management and sale of these lands. The net proceeds from the
19 sale or lease of these lands must be deposited in the real estate bond sinking fund established
20 by this chapter. The sale and leasing of these lands must be done in accordance with chapter
21 ~~45-0728-37~~. In the case of a lease by the party holding the right of redemption, that party has
22 the right to buy at any time.

23 **SECTION 5. REPEAL.** Chapters 15-06, 15-07, and 15-09 of the North Dakota Century
24 Code are repealed.