

# **ANALYSIS OF MAJOR SPECIAL FUNDS FOR THE 2019-21 AND 2021-23 BIENNIUMS REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER**



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February 2021**

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**ANALYSIS OF THE ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$22,139,680		\$10,683,180
Add estimated revenues				
Fees, forfeitures, transfers, and recoveries penalties <sup>1</sup>	\$3,022,500		\$2,000,000	
Oil and gas tax collections (2019 HB 1014) <sup>2,3</sup>	10,880,000		9,370,000	
Total estimated revenues		13,902,500		11,370,000
Total estimated available		\$36,042,180		\$22,053,180
Less estimated expenditures and transfers				
Reclamation of well sites placed into service after July 31, 1983 (2019 SB 2123) <sup>4</sup>	\$301,000		\$6,000,000	
Reclamation of well sites placed into service on or before July 31, 1983 (2017 HB 1347)	850,500		5,000,000	
Orphaned well plugging and reclamation costs <sup>5</sup>	18,282,000		0	
Brine pond and soil remediation studies (2017 HB 1347)	315,500		0	
Transfer to the environmental quality restoration fund <sup>6</sup>	400,000		400,000	
Pipeline restoration and reclamation oversight program - Agriculture Commissioner (2019 SB 2009; 2021 HB 1009;) <sup>7</sup>	200,000		200,000	
Oil database information technology project (2019 HB 1014)	5,000,000		0	
Miscellaneous <sup>8</sup>	10,000		15,000	
Total estimated expenditures and transfers		25,359,000		11,615,000
Estimated ending balance		<u>\$10,683,180</u>		<u>\$10,438,180</u>

<sup>1</sup>Revenues to the fund include:

- Fees collected by the Oil and Gas Division of the Industrial Commission for permits or other services;
- Funds received from the forfeiture of drilling and reclamation bonds;
- Funds received from any federal agency or from donations related to well plugging and site reclamation;
- Transfers or grant awards from the oil and gas impact fund; and
- Funds recovered from the sale of confiscated equipment and oil and from certain civil penalties.

<sup>2</sup>House Bill No. 1014 (2019) decreases the allocation limit related to the fund balance by \$50 million, from \$100 million to \$50 million.

<sup>3</sup>Estimated revenues - The estimated allocations are based on actual oil and gas tax revenue allocations through December 2020 and the January 2021 legislative revenue forecast for the remainder of the 2019-21 biennium and for the entire 2021-23 biennium.

<sup>4</sup>Senate Bill No. 2123 (2019) clarifies the fund may be used for the reclamation of saltwater handling facility sites and treating plant sites.

<sup>5</sup>This amount reflects costs for plugging and reclaiming orphaned oil wells which are in addition to the federal coronavirus relief funding authorized by the Emergency Commission and Budget Section during the 2019-20 interim.

<sup>6</sup>For the 2019-21 biennium to date through January 31, 2021, the State Department of Health has not requested any transfers. As amended by Senate Bill No. 2190 (2015), North Dakota Century Code Section 38-08-04.5 allows for transfers from the abandoned oil and gas well plugging and site reclamation fund with the requirement that any transfers into the environmental quality restoration fund will be returned by the State Department of Health to the abandoned oil and gas well plugging and site reclamation fund.

<sup>7</sup>The Legislative Assembly appropriated \$200,000 in Senate Bill No. 2009 (2019). House Bill No. 1009 (2021) includes an appropriation of \$200,000 from the fund for the program.

<sup>8</sup>Miscellaneous expenditures include credit card merchant fees and audit fees.

#### **FUND HISTORY**

The fund was established in 1983 under Section 38-08-04.5. The purpose of the fund is to defray the costs of plugging or replugging oil wells, the reclamation of well sites, and all other related activities for wells or pipelines. The money in the fund may be spent, pursuant to a continuing appropriation, for contracting for the plugging of abandoned wells; contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads; paying mineral owners their royalty share of confiscated oil; and paying any contract-related expenses. House Bill No. 1358 (2015) expanded the use of the fund allowing up to \$1.5 million per biennium to be spent on the reclamation of well sites placed into service on or before July 31, 1983, and demonstration projects related to reclamation. House Bill No. 1347 (2017), increased the amount available for the expanded uses to \$5 million per biennium. The Industrial Commission is to report to the Budget Section each biennium on the expenditures of the fund and the fund balance.

The Legislative Assembly, in House Bill No. 1333 (2013), established an allocation of 4 percent, up to \$5 million per fiscal year, from 1 percent of the 5 percent oil and gas gross production tax to the fund and limited the allocation based on the fund balance. House Bill No. 1032 (2015) increased the oil and gas tax allocation to the fund by \$2.5 million per fiscal year, from \$5 million to \$7.5 million, and increased the allocation limit based on the fund balance by \$25 million, from \$75 million to \$100 million. In Senate Bill No. 2013 (2017), the Legislative Assembly decreased the oil and gas tax allocations to the fund by \$3.5 million per fiscal year, from \$7.5 million to \$4 million; however, the decrease was effective only for the 2017-19 biennium. House Bill No. 1014 (2019) decreased the allocation limit based on the fund balance by \$50 million, from \$100 million to \$50 million.

**ANALYSIS OF THE ATTORNEY GENERAL REFUND FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$11,446,254		\$10,599,168
Add estimated revenues				
Refunds of consumer protection and antitrust expenditures, attorney's fees, and civil penalties <sup>1</sup>	\$4,000,000		\$2,500,000	
Cash deposit bonds				
Tribal gaming, licensing, and investigation fees	350,000		350,000	
Background checks	30,000		30,000	
Interest on investments <sup>2,3</sup>	36,462		40,000	
Lawsuit proceeds <sup>3</sup>	1,160,896			
Total estimated revenues		5,577,358		2,920,000
Total available		\$17,023,612		\$13,519,168
Less estimated expenditures and transfers authorized in North Dakota Century Code Section 54-12-18				
Refunds to specifically named consumers (Section 54-12-18(1)) <sup>4</sup>				
Claims against cash deposit bonds (Section 54-12-18(2))				
Refund of cash deposit bond balance (Section 54-12-18(3))				
Consumer Protection and Antitrust Division expenditures (Section 54-12-18(4))	\$2,295,650		\$2,335,000	
Tribal gaming background investigations (Section 54-12-18(5))	50,000		50,000	
Tribal gaming licensing expenditures (Section 54-12-18(5))	58,800		58,800	
Tribal gaming enforcement expenditures (Section 54-12-18(5))	850,000		850,000	
Less other estimated expenditures and transfers <sup>5</sup>				
Bureau of Criminal Investigation (BCI) salaries and operating expenses	640,000		640,000	
State Crime Laboratory operating expenditures	360,560		360,560	
Information technology contractual program maintenance	944,000		950,000	
Information technology operating expenditures	100,500		100,500	
Criminal justice information sharing system improvements (2019 SB 2003) <sup>6</sup>	190,000		200,300	
Automated fingerprint identification system replacement project (2019 SB 2003)	158,000			
Attorney salary equity increases (2019 SB 2003) <sup>2</sup>	376,934		376,934	
Medicaid Fraud Control Unit (MFCU), BCI, and Fire Marshal office salary equity increases (2021 HB 1003) <sup>3</sup>			1,133,232	
Criminal history improvement system (2019 SB 2003; 2021 HB 1003) <sup>7</sup>	400,000		400,000	
Total estimated expenditures and transfers		6,424,444		7,455,326
Estimated ending balance <sup>8</sup>		\$10,599,168		\$6,063,842
Restricted fund income				
Reserve relating to attorney salary increases (2019 SB 2003) <sup>2</sup>		875,089		534,617
Reserve relating to MFCU, BCI, and Fire Marshal office salary equity increases (2021 HB 1003) <sup>3</sup>				1,133,232
Estimated balance - Unobligated		\$9,724,079		\$4,395,993

<sup>1</sup>The Attorney General has indicated that it is not possible to separately identify refunds, attorney's fees, and civil penalties received, as a court judgement often includes a lump sum amount awarded for the payment of attorney's fees, investigation costs, or payment in lieu of civil penalties.

<sup>2</sup>In April 2019, the Consumer Protection Division of the Attorney General's office received a \$1,215,561 settlement for a Wells Fargo lawsuit related to Wells Fargo's automobile gap insurance, the company opening accounts without consumers knowledge, and its mortgage interest rate extension fees. The funding was deposited in the Attorney General refund fund.

In Senate Bill No. 2003 (2019), the Legislative Assembly appropriated \$425,000, of which \$25,000 relates to anticipated interest and earnings of the settlement amount, of this funding to the Attorney General for the 2019-21 biennium. In Section 14 of the bill, the Legislative Assembly provided legislative intent that the Attorney General use up to \$425,000 from the April 2019 settlement for providing salary equity increases to attorney positions in the Attorney General's office for the 2019-21 biennium. Further intent was provided that the remaining settlement proceeds and investment earnings on the remaining proceeds be retained in the Attorney General refund fund and be used for the cost to continue the salary equity increases provided in the 2019-21 biennium during the 2021-23 and 2023-25 bienniums, subject to legislative appropriations. Section 15 of the bill allows the Attorney General to invest up to \$1,215,561 of the settlement proceeds under the supervision of the State Investment Board for the period beginning July 1, 2019, and ending June 30, 2025.

Estimated revenue available for attorney salary equity increases during the 2019-21 biennium totals \$1,252,023, of which \$1,215,561 is from lawsuit settlement proceeds and \$36,462 is from anticipated interest earned from lawsuit proceed investments.

In September 2019, the Attorney General invested \$1.1 million with the State Investment Board. Through January 2021, the Attorney General has provided \$298,406 of salary equity raises to 29 full-time equivalent (FTE) attorney positions. The Attorney General anticipates spending \$376,934 of the \$425,000 appropriation during the 2019-21 biennium, of which approximately \$340,472 will be paid directly from lawsuit settlement proceeds in the fund and approximately \$36,462 will be paid from anticipated interest earned from lawsuit proceed investments. After the expenditure of \$376,934 from lawsuit settlement proceeds during the 2019-21 biennium, \$875,089 remains in the Attorney General refund fund to be used for the cost to continue attorney salary equity increases during the 2021-23 and 2023-25 bienniums.

<sup>3</sup>In January 2021, the Consumer Protection Division of the Attorney General's office received a \$1,160,896 settlement from Apple, Inc. regarding Apple's 2016 decision to adjust the speed of consumer iPhones to address unexpected shutdowns in some devices and Apple's concealment of the issue, which led to a software update in December 2016 that reduced iPhone performance. The funding was deposited in the Attorney General refund fund.

House Bill No. 1003 (2021) includes an appropriation of \$1,133,232 of this funding to the Attorney General for providing salary equity increases during the 2021-23 biennium, including \$1,007,326 for 55 FTE BCI positions and 2 FTE MFCU positions and \$125,906 for 7 FTE Fire Marshal office positions. Section 8 of the engrossed bill allows the Attorney General to invest up to \$2,266,464 of funding in the Attorney General refund fund, including the \$1,160,896 of settlement proceeds, under the supervision of the State Investment Board for the period beginning July 1, 2021, and ending June 30, 2025. Section 8 of the engrossed bill includes legislative intent that \$2,266,464 in the Attorney General refund fund and any investment earnings on the funding be retained in the Attorney General refund fund for the purpose of providing the salary equity increases provided for in Sections 1 and 7 of the engrossed bill and for the cost to continue the salary equity increases during the 2023-25 biennium, subject to legislative appropriations.

<sup>4</sup>The Attorney General has indicated that a court rarely awards refunds to specific consumers, instead awarding refunds to organizations such as the Housing Finance Agency.

<sup>5</sup>The other expenditures are not specifically authorized in Section 54-12-18 but are appropriated as part of the Attorney General's biennial appropriation.

<sup>6</sup>In Senate Bill No. 2003 (2019), the Legislative Assembly appropriated ongoing funding of \$140,000 from the Attorney General refund fund to the Attorney General for criminal justice information sharing improvements during the 2019-21 biennium. The Attorney General anticipates spending \$190,000 during the 2019-21 biennium, including \$50,000 of other funding available in the fund. The Attorney General anticipates spending \$200,300 during the 2021-23 biennium, including \$60,300 of other funding available in the fund.

<sup>7</sup>The criminal history repository replacement project began in the 2011-13 biennium to rewrite the existing criminal history repository system. The criminal history repository replacement project consists of various smaller projects. The Attorney General budgeted \$450,000 on the project during the 2011-13 biennium, \$2,300,000 during the 2013-15 biennium, and \$970,000 during the 2015-17 biennium, totaling \$3,720,000, all from the Attorney General refund fund. Actual project expenditures during the 2015-17 biennium totaled \$1,293,452, of which \$188,608 was for general information technology operating expenditures and

\$1,104,844 was from project carryover authority from the 2013-15 biennium. Of the total \$3,720,000 approved for the project since the 2011-13 biennium, actual expenditures through the 2017-19 biennium totaled \$3,400,595. The project has been substantially completed, although upgrades to the criminal history improvement system are periodically requested. The Attorney General anticipates spending an additional \$400,000 during the 2019-21 biennium and an estimated \$400,000 during the 2021-23 biennium, resulting in a total estimated system cost of \$4,200,595.

<sup>8</sup>Section 54-12-18 provides at the end of each biennium, any balance in the Attorney General refund fund in excess of the amount necessary to fulfill the requirements of the fund must be deposited in the general fund. Section 3 of Senate Bill No. 2003 (2019) authorizes the Attorney General to retain the June 30, 2019, balance in the Attorney General refund fund rather than transferring the balance to the general fund. As a result, no funding from the Attorney General refund fund was transferred to the general fund at the end of the 2017-19 biennium, allowing the Attorney General to use the remaining balance in the Attorney General refund fund during the 2019-21 biennium.

House Bill No. 1003 (2021) authorizes the Attorney General to retain the June 30, 2021, balance in the Attorney General refund fund rather than transferring the balance to the general fund. As a result, it is anticipated that no funding from the Attorney General refund fund will be transferred to the general fund at the end of the 2019-21 biennium, allowing the Attorney General to use the remaining balance in the Attorney General refund fund during the 2021-23 biennium. See the **FUND HISTORY** section for additional information on exemptions granted to the Attorney General.

### FUND HISTORY

Section 54-12-18, created by House Bill No. 1141 (1989), establishes the Attorney General refund fund. The section was amended by the 1991, 1993, 1999, and 2001 Legislative Assemblies and currently provides when the Attorney General's Consumer Protection Division recovers funding for cases involving the violation of consumer fraud laws, the Attorney General is required to deposit the funding in the Attorney General refund fund. Funding recovered by the Consumer Protection Division for the following costs must also be deposited in the fund:

1. Refunds related to Consumer Protection Division expenditures, attorney's fees, and civil penalties regarding consumer protection or antitrust matters;
2. Cash deposit bonds paid by applicants for a transient merchant's license when surety bonds are not provided; and
3. Funds and fees collected by the gaming section for licensing tribal gaming and the investigation of gaming employees, applicants, organizations, manufacturers, distributors, or tribes involved in state or tribal gaming.

Funding in the Attorney General refund fund is appropriated to the Attorney General on a continuing basis for the following purposes:

1. Provide refunds from funds recovered by the Consumer Protection Division to specifically named consumers;
2. Pay valid claims against cash deposit bonds posted by transient merchant licensees;
3. Refund the balance of any cash deposit bond remaining after the payment of valid claims. Refunds will be issued 2 years after the expiration of the transient merchant's license;
4. Pay expenditures, attorney's fees, and salaries incurred in the operation of the Consumer Protection Division; and
5. Pay the actual costs of background investigations, licensing, and enforcement of gaming in the state or pursuant to Indian gaming compacts.

At the end of each biennium, any money in the fund in excess of the amounts required for numbers 1, 2, 3, and 5 above must be deposited in the general fund. The Attorney General and director of the Office of Management and Budget are required to establish accounting procedures for the Attorney General refund fund.

Since the 2001 legislative session, each Legislative Assembly has provided the Attorney General with an exemption to allow unexpended funds from the Attorney General refund fund to continue to be spent in each subsequent biennium. The following table provides information regarding these exemptions:

Biennium	Bill No.	Section	Exemption Limitation <sup>1</sup>
2001-03	1003	8	\$100,000
2003-05	2003	4	No limitation specified
2005-07	1003	11	No limitation specified
2007-09	2003	15	No limitation specified

2009-11	1003	13	No limitation specified
2011-13	2003	9	No limitation specified
2013-15	1003	3	No limitation specified
2015-17	2003	4	No limitation specified
2017-19	1003	16	No limitation specified
2019-21	2003	3	No limitation specified
2021-23	1003 <sup>2</sup>	11	No limitation specified

<sup>1</sup>Section 8 of House Bill No. 1003 (2001) allowed the Attorney General to continue up to \$100,000 of unexpended funds from the Attorney General refund fund to be spent during the 2001-03 biennium while any remaining amount in excess of \$100,000 was required to be returned to the general fund at the end of the 1999-2001 biennium. Exemptions granted in subsequent bienniums have not been limited to a specific dollar amount, allowing the Attorney General to continue using the full balance of the Attorney General refund fund each biennium.

<sup>2</sup>Information for the 2021-23 biennium reflects action approved by the House through crossover.



**ANALYSIS OF THE BEGINNING FARMER REVOLVING LOAN FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium <sup>1</sup>		2021-23 Biennium <sup>1</sup>	
Beginning cash balance		\$5,944,481		\$5,183,381
Add estimated revenues				
Transfers of Bank of North Dakota profits (2019 HB 1014; 2021 SB 2014)	\$6,000,000		\$8,000,000	
Transfers from partnership in assisting community expansion (PACE) funds <sup>2</sup>	0		0	
Recoveries from loans previously written-off	0		0	
Investment interest	20,900		13,200	
Total estimated revenues		6,020,900		8,013,200
Total estimated available		\$11,965,381		\$13,196,581
Less estimated expenditures and transfers				
Interest rate buydowns	\$6,700,000		\$8,000,000	
Transfers to PACE funds <sup>2</sup>	70,000		0	
Transfers to the value-added agriculture equity loan program <sup>3</sup>	0		0	
Public Service Commission rail rate complaint case (2019 SB 2008; 2021 HB 1008) <sup>4</sup>	0		0	
Intermodal container transportation shipping fees (2019 HB 1018) <sup>5</sup>	0		0	
Administrative expenses including audit fees	12,000		13,000	
Total estimated expenditures and transfers		6,782,000		8,013,000
Estimated ending cash balance		\$5,183,381		\$5,183,581

<sup>1</sup>The beginning and ending cash balances do not include the value of the outstanding loans because the loans are reflected on the Bank of North Dakota's balance sheet.

<sup>2</sup>North Dakota Century Code Sections 6-09.13-04 and 6-09-15.5 authorize the Bank of North Dakota to transfer any unobligated funds that have been appropriated for interest rate buydowns between the beginning farmer revolving loan fund, the Ag PACE fund and other PACE funds. The Bank transferred \$70,000 for the 2019-21 biennium through March 2020. No other transfers are anticipated for the 2019-21 and 2021-23 bienniums.

<sup>3</sup>Section 6-09-15.5 authorizes the Bank of North Dakota to transfer up to \$1 million per biennium of unobligated funds from the beginning farmer revolving loan fund to the value-added agriculture equity loan program. No transfers are anticipated for the 2019-21 and 2021-23 bienniums.

<sup>4</sup>Senate Bill No. 1009 (2019) and Senate Bill No. 1009 (2021) authorize transfers of up to \$900,000 from the beginning farmer revolving loan fund to the Public Service Commission to pay for costs associated with a rail rate complaint case. Any amounts spent by the Public Service Commission must be reimbursed to the beginning farmer revolving loan fund using the amounts available from damages or proceeds received, net of legal fees, from a successful outcome of a rail rate complaint case. No transfers are anticipated during the 2019-21 and 2021-23 bienniums.

<sup>5</sup>House Bill No. 1018 (2019) provides up to \$1.3 million from the beginning farmer revolving loan fund to the Department of Commerce to pay intermodal container transportation shipping fees if the containers are unable to be shipped resulting in fees to transport the containers to new locations. No transfers are anticipated during the 2019-21 biennium.

**FUND HISTORY**

The beginning farmer revolving loan fund was established in Senate Bill No. 2220 (1983) and is maintained to provide interest rate buydowns on loans to beginning farmers for the first purchase of farm real estate or chattels. The beginning farmer revolving loan fund is administered by the Bank of North Dakota pursuant to Section 6-09-15.5.

## ANALYSIS OF THE BUDGET STABILIZATION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$666,415,898		\$760,085,139
Add estimated revenues				
Investment income	\$23,500,000 <sup>1</sup>		\$14,000,000 <sup>1</sup>	
Oil and gas tax collections	48,431,258 <sup>2</sup>		0 <sup>2</sup>	
Transfer from general fund	21,737,983 <sup>3</sup>		0	
Total estimated revenues		93,669,241		14,000,000
Total available		\$760,085,139		\$774,085,139
Less estimated expenditures and transfers				
Transfer to general fund	\$0		\$14,000,000 <sup>1</sup>	
Total estimated expenditures and transfers		0		14,000,000
Estimated ending balance		<u>\$760,085,139</u>		<u>\$760,085,139</u>

<sup>1</sup>Interest earnings are retained in the fund unless the balance of the fund is at the maximum amount allowed under North Dakota Century Code Section 54-27.2-01. The fund is estimated to be at its maximum amount during the 2021-23 biennium; therefore, interest earnings will be transferred to the general fund at the end of each fiscal year.

<sup>2</sup>Section 57-51.1-07.5 provides for the deposit of up to \$75 million of the state share of oil and gas tax collections into the budget stabilization fund each biennium. The entire \$75 million amount is not anticipated to be deposited into the fund during the 2019-21 biennium due to the fund reaching its fund limit. No oil tax collections are anticipated to be deposited into the fund during the 2021-23 biennium due to the fund being at its maximum balance.

<sup>3</sup>Chapter 54-27.2 provides any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund, except that the balance in the budget stabilization fund may not exceed 15 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The amount shown is based on a general fund appropriations amount of \$5,067,234,262 which reflects legislative action through crossover.

### FUND HISTORY

The budget stabilization fund was established by the Legislative Assembly in House Bill No. 1596 (1987). Major provisions include:

- Section 54-27.2-01 establishes the budget stabilization fund and provides any interest earned on the balance of the budget stabilization fund must be retained in the fund. The section originally provided any money in the fund in excess of 10 percent of the general fund budget, as approved by the most recently adjourned Legislative Assembly, must be deposited in the general fund. House Bill No. 1451 (2011) decreased the maximum balance allowed in the fund from 10 to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. House Bill No. 1155 (2017) increased the maximum balance allowed in the fund from 9.5 to 15 percent of the general fund budget, as approved by the most recently adjourned Legislative Assembly.
- Section 54-27.2-02 provides any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund.
- Section 54-27.2-03 provides the Governor may order a transfer from the budget stabilization fund to the general fund if the director of the Office of Management and Budget projects a general fund revenue shortfall. The section originally limited the transfer to the difference between an amount 2.5 percent less than the original legislative general fund revenue forecast and the revised forecast prepared by the Office of Management and Budget. House Bill No. 1155 (2017) revised the section to allow for transfers from the budget stabilization fund to the general fund as follows:

After general fund allotments totaling at least 3 percent have been made under Section 54-44.1-12, the Governor may order a transfer of up to an amount equal to 3 percent of general fund appropriations;

After the previous transfer has been made and an additional 1 percent general fund budget allotment has been made, the Governor may order a transfer of up to 2 percent of general fund appropriations;

After the previous transfer has been made and an additional 1 percent general fund budget allotment has been made, the Governor may order a transfer of up to 3 percent of general fund appropriations; and

After the previous transfer has been made and an additional 1 percent general fund budget allotment has been made, the Governor may order a transfer of any remaining funds in the budget stabilization fund.

The amount of transfers from the budget stabilization fund to the general fund may not exceed the difference between the original and revised general fund revenue forecasts less general fund allotments made under Section 54-44.1-12. For purposes of the transfers, total general fund allotment percentages must be based on allotments made after any allotment exemption granted by the director of the budget.

## ANALYSIS OF THE CAPITOL BUILDING FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS<sup>1</sup> (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$6,548,609		\$3,194,632
Add revenues				
Investment income	\$260,652		\$116,249	
Governor's residence fundraising	0		0	
Rentals, royalties, and bonuses	2,075,617		1,770,000	
Total revenues		2,336,269		1,886,249
Total available		\$8,884,878		\$5,080,881
Less expenditures and transfers				
Administrative expenses	\$78,449		\$75,000	
Income payments to counties <sup>2</sup>	6,797		6,700	
Capitol Grounds Planning Commission continuing appropriation (North Dakota Century Code Section 48-10-02) <sup>3</sup>	250,000		250,000	
Capitol Grounds Planning Commission operating expenses (2019 SB 2015; 2021 HB 1015)	25,000		25,000	
Facility Management Projects (2021 HB 1015)			518,800	
Facility Management Extraordinary Repairs (2019 SB 2015; 2021 HB 1015)	1,900,000		600,000	
Facility consolidation study (2021 HB 1015)			350,000	
Legislative Assembly digital signage and voting system upgrades (2019 HB 1001)	140,000		0	
Judicial branch Supreme Court law library space remodel (2019 HB 1002)	970,000		0	
Special Assessments (2019 SB 2015; 2021 HB 1015)	320,000		300,000	
Interior and exterior signs (2021 HB 1015)			500,000	
Accessibility improvements (2021 HB 1030)			750,000	
Accessibility improvements (2021 SB 2146)			750,000	
Capitol South Entrance Project (2019 SB 2015)	2,000,000		0	
Total expenditures and transfers		5,690,246		4,125,500
Ending balance		<u>\$3,194,632</u>		<u>\$955,381</u>

<sup>1</sup>The analysis reflects the legislative appropriations for the 2019-21 and 2021-23 bienniums and does not include the land owned by the fund.

<sup>2</sup>Section 15-04-23 provides the Board of University and School Lands is to pay a fee to the board of county commissioners of each county in which the state retains original grant lands. The total fees paid may not exceed 5 percent of the net revenue generated from the original grant lands in that county during the year preceding the payments. The board of county commissioners is to forward a prorated portion of any fees received to the organized townships in which the original grant lands are located. The funds are to be used for the repair, maintenance, and construction of roads and bridges. Any remaining funds are to be used by the county for repair, maintenance, and construction of roads and bridges in unorganized townships in which the original grant lands are located.

<sup>3</sup>Section 20 of Senate Bill No. 2015 (2019) amended Section 48-10-02 to increase a continuing appropriation to the Capitol Grounds Planning Commission from \$175,000 per biennium to \$250,000 per biennium of income and interest of the Capitol building fund. The amount that may be spent may not exceed 50 percent of the unencumbered balance of the fund on the 1<sup>st</sup> day of the biennium.

### **FUND HISTORY**

The Capitol building fund was established at the time of statehood by the Enabling Act of 1889. Section 12 of the Enabling Act provided 32,000 acres to North Dakota upon statehood to be sold and the proceeds used to finance the construction of buildings for legislative, executive, and judicial use. The proceeds from the sale make up the Capitol building fund along with any investment proceeds from that fund.

In 1957 Congress amended Section 12 of the Enabling Act to expand the fund's use for construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvements of public buildings at the Capitol.

In Senate Bill No. 388 (1967) the Legislative Assembly created Section 48-10-02 to provide that all money, properties and income from the fund, unless otherwise appropriated, are dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing. The Capitol Grounds Planning Commission is to take steps to accumulate and conserve the money and property in the Capitol building fund for this purpose.

In House Bill No. 1117 (1979) the Legislative Assembly amended Section 48-10-02 to provide that the Board of University and School Lands invest and manage the fund on behalf of the Capitol Grounds Planning Commission. The section was further amended to provide a continuing appropriation to the Capitol Grounds Planning Commission from the interest and income from the Capitol building fund not to exceed 50 percent of the unencumbered balance. Expenditures made under the continuing appropriation may be made after consideration of the Capitol grounds master plan for projects or planning but may not exceed \$50,000 per biennium. Expenditures may be made only upon approval by two-thirds of the total membership of the commission. The Legislative Assembly in Senate Bill No. 2090 (2007) increased the continuing appropriation to the Capitol Grounds Planning Commission limit from \$50,000 to \$100,000.

In House Bill No. 1015 (2013) the Legislative Assembly amended Section 48-10-02 to increase the continuing appropriation to the Capitol Grounds Planning Commission from \$100,000 to \$175,000 per biennium beginning with the 2013-15 biennium.

In Senate Bill No. 2015 (2019) the Legislative Assembly amended Section 48-10-02 to increase the continuing appropriation to the Capitol Grounds Planning Commission from \$175,000 to \$250,000 per biennium.

**ANALYSIS OF THE COAL DEVELOPMENT TRUST FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium <sup>1</sup>		2021-23 Biennium <sup>1</sup>	
Beginning balance		\$83,795		\$8,678
Add estimated revenues				
Investment income <sup>2</sup>	\$709,648		\$649,500	
School construction loan income <sup>2</sup>	1,201,240		1,162,500	
Total estimated revenues		1,910,888		1,812,000
Total estimated available		\$1,994,683		\$1,820,678
Less estimated expenditures and transfers				
Investment expense	\$47,176		\$25,980	
Administrative expenses	8,861		10,000	
Transfer to the general fund <sup>2</sup>	1,929,968		1,780,000	
Total estimated expenditures and transfers		1,986,005		1,815,980
Estimated ending balance		\$8,678		\$4,698

<sup>1</sup>The beginning and ending balances do not include the value of permanent assets of the coal development trust fund, which must be maintained pursuant to North Dakota Century Code Section 57-62-02 and Section 21 of Article X of the Constitution of North Dakota. As of June 30, 2020, the total value of permanent fund assets was \$70.75 million, of which \$39.09 million was school construction loans receivable, \$10.54 million was coal impact loans receivable, and \$21.12 million was either cash or short-term investments.

Senate Bill No. 2014 (2017) reduces the allocation of coal severance tax allocations to the coal development trust fund from 30 to 15 percent and provides an allocation of 15 percent to the lignite research fund. The coal severance tax allocations become part of the fund assets which are not reflected in the amounts shown in the table. Senate Bill No. 2272 (2017) amends Section 15.1-36-02 to make available up to \$60 million from the fund for loans of up to \$2 million for unanticipated school construction projects or emergency repairs.

<sup>2</sup>Section 57-62-02 and Section 21 of Article X of the Constitution of North Dakota, provide that the income from the coal development trust fund must be used first to replace any uncollectible loans made from the fund and any remaining income must be deposited in the general fund. The amounts shown on this analysis include only the income in excess of any allowance for uncollectible loans made from the fund and do not include any revenues or expenses affecting the permanent fund balance.

In Senate Bill No. 2039 (2015), the Legislative Assembly created a new school construction assistance loan fund and identified the income from the coal development trust fund as income to the new fund. However, the income from the coal development trust fund will not be transferred to the school construction assistance loan fund because Section 57-62-02 and Section 21 of Article X of the Constitution of North Dakota require the income to be transferred to the general fund. The provisions to continue to transfer the income to the general fund are included in Senate Bill Nos. 2101 and 2272 (2017).

**FUND HISTORY**

The coal development trust fund originated with the passage of House Bill No. 1257 (1979), now codified as various sections of Chapter 57-62. In 1980 the voters of North Dakota approved Constitutional Measure No. 5, Section 21 of Article X of the Constitution of North Dakota, and establishing the coal development trust fund as a constitutional trust fund.

Section 57-62-02 provides 30 percent of the coal severance tax must be deposited in the coal development trust fund. Section 57-62-02 provides the Board of University and School Lands shall administer the fund and use money in the fund for loans to coal-impacted counties, cities, and school districts, and for loans to school districts for school construction. Section 15.1-36-02 limits the outstanding principal balance of school construction loans from the coal development trust fund to \$50 million. Section 57-61-01.5 provides that 70 percent of the money deposited in the coal development trust fund must be transferred to the lignite research fund. Consequently, 30 percent of the coal severance taxes deposited in the fund (9 percent of total coal severance taxes collected) remains in the coal development trust fund to be used for the purposes provided in Section 57-62-02.

## ANALYSIS OF THE COMMON SCHOOLS TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

### ASSETS, DISTRIBUTIONS, AND INVESTMENT RETURNS FOR THE COMMON SCHOOLS TRUST FUND

The following is a summary of actual and estimated assets, distributions, and investment returns for the common schools trust fund for the 1997-99 through 2021-23 bienniums:

Biennium	Fiscal Year	Beginning Assets (Excluding Land and Mineral Values)	Distributions	Total Average Investment Return (Interest Income and Capital Gains)
1997-99	1998	\$400,689,879	\$23,200,000	13.57%
	1999	\$444,823,559	\$23,200,000	7.50%
1999-2001	2000	\$467,059,293	\$23,775,000	11.05%
	2001	\$521,509,978	\$23,775,000	2.03%
2001-03	2002	\$533,360,593	\$28,896,500	(1.34%)
	2003	\$522,905,814	\$28,896,500	4.57%
2003-05	2004	\$547,047,877	\$30,000,000	12.60%
	2005	\$614,738,548	\$30,000,000	8.58%
2005-07	2006	\$686,273,875	\$31,100,000	7.51%
	2007	\$761,901,287	\$31,100,000	12.82%
2007-09	2008	\$887,092,909	\$33,400,000	(4.22%)
	2009	\$908,928,685	\$33,400,000	(13.75%)
2009-11	2010	\$846,314,086	\$38,589,000	14.48%
	2011	\$1,221,501,801	\$38,589,000	17.99%
2011-13	2012	\$1,622,412,984	\$46,257,000	2.42%
	2013	\$1,917,135,220	\$46,257,000	10.65%
2013-15	2014	\$2,417,363,782	\$65,163,000	13.85%
	2015	\$3,128,315,233	\$65,163,000	.50%
2015-17	2016	\$3,437,988,002	\$103,067,000	(0.63%)
	2017	\$3,512,355,582	\$103,067,000	9.50%
2017-19	2018	\$3,940,114,988	\$144,132,000	6.50%
	2019	\$4,318,989,728	\$144,132,000	3.87%
2019-21 <sup>1</sup>	2020	\$4,651,515,837	\$183,378,000	(1.87%)
	2021	\$4,819,013,877	\$183,378,000	<sup>2</sup>
2021-23	2022	<sup>2</sup>	\$210,510,000	<sup>2</sup>
	2023	<sup>2</sup>	\$210,510,000	<sup>2</sup>

<sup>1</sup>The Legislative Assembly approved Senate Bill No. 2362 (2019), which changed the method of allocating oil extraction tax revenue related to the state's share of revenue associated with production on tribal lands, increasing the allocation to the common schools trust fund. In addition, Senate Bill No. 2362 provides, if the actual legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium in accordance with Section 26 of Article X of the Constitution of North Dakota exceed the estimate made by the 66<sup>th</sup> Legislative Assembly by at least \$64,370,000, the State Treasurer must immediately transfer \$64,370,000 from the general fund to the common schools trust fund, for the biennium beginning July 1, 2019, and ending June 30, 2021.



<sup>2</sup>Section 2 of Article IX of the Constitution of North Dakota was amended in November 2006 through voter approval of Measure No. 1 (House Concurrent Resolution No. 3037 (2005)). The measure changed the way distributions from the common schools trust fund and other permanent educational trust funds are determined. The amendment became effective July 1, 2009, and distributions are no longer based on interest and income earned by the fund. Distributions from the common schools trust fund are now based on a percentage of the 5-year average value of trust assets, excluding the value of lands and minerals. Therefore, the Board of University and School Lands does not project asset values, income, or investment return because it is no longer relevant to the calculation of distribution amounts. **The unaudited fund balance of the common schools trust fund was \$5,202,811,971 as of December 31, 2020.**

## **MONEY DEPOSITED IN THE COMMON SCHOOLS TRUST FUND**

### **Select Constitutional Provisions**

#### **Article IX, Section 1**

This section provides the following money must be deposited in a permanent trust fund, known as the common schools trust fund, and used to support the common schools of the state:

- All proceeds relating to public lands granted to the state by the federal government for the support of the common schools.
- All proceeds relating to property acquired by the state through escheat (property reverting to the state in the absence of legal heirs).
- All gifts, donations, and other property acquired by the state for the support of the common schools.
- The proceeds of all bonuses relating to the leasing of coal, gas, oil, or other mineral interests relating to common schools lands.

This section was included in the original Constitution of North Dakota enacted in 1889. In 1982 the section was amended to provide that bonuses relating to the leasing of coal, gas, oil, or other mineral interests relating to common schools lands were to be deposited in the common schools trust fund. Measure No. 1 (2006), approved by voters, removed the reference to bonuses related to leasing and provided that revenues earned by a perpetual trust fund must be deposited in the fund.

#### **Article IX, Section 5**

This section provides that in all sales of common schools lands, the state must retain the mineral interests. Leases may be executed for the extraction and sale of the minerals.

This section was included in the original Constitution of North Dakota enacted in 1889. As originally enacted, the section prohibited the sale of common schools lands that were "coal lands" and did not address other minerals. In 1960 the section was amended to its current form which allows the sale of lands containing minerals, but requires that the state retain the mineral interests. Minerals are defined to include oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ores, and colloidal or other clays.

#### **Article X, Section 24**

This section provides that 10 percent of oil extraction tax revenue must be deposited in the common schools trust fund.

This section was enacted in 1994 through voter approval of Measure No. 1 (Senate Concurrent Resolution No. 4011 (1993)). In November 2016 voters approved Senate Concurrent Resolution No. 4003 (2015), which provided for a constitutional amendment to Section 24. The amendment allows the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for education-related purposes and simplifies other language in the section. However, the amendment does not change deposits to the fund or limit the balance in the common schools trust fund, which has not been changed since enactment.

The Legislative Assembly approved Senate Bill No. 2362 (2019), which changed the method of allocating oil extraction tax revenue related to the state's share of revenue associated with production on tribal lands, increasing the allocation to the foundation aid stabilization fund.

## Select North Dakota Century Code Provisions

### Section 47-30.1-23

This section provides that all funds received by the state under the Uniform Unclaimed Property Act, except amounts deducted for the payment of claims and certain administrative costs, must be deposited in the common schools trust fund.

### Section 54-27-25

This section, which was enacted by the 1999 Legislative Assembly, creates a tobacco settlement trust fund to be used to deposit tobacco settlement money received by the state. The Legislative Assembly, in Senate Bill No. 2003 (2015), amended Section 54-27-25 related to the tobacco settlement trust fund to provide the principal and interest of the fund may be appropriated to the Attorney General for the enforcement of the Master Settlement Agreement and any disputes with the agreement. Appropriations made to the Attorney General for enforcement of the Master Settlement Agreement reduce the amount available for transfer from the tobacco settlement trust fund to the common schools trust fund.

Until July 1, 2017, 45 percent of the tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement and deposited in the tobacco settlement trust fund was transferred to the common schools trust fund and became a part of the principal of the fund. In House Bill No. 1012 (2017), the Legislative Assembly amended Section 54-27-25 to suspend transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increase transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.

In Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-27-25 to remove authorization for appropriation to the Attorney General for enforcement of the Master Settlement Agreement and to provide all money in the fund must be transferred within 30 days of receipt to the community health trust fund. As a result, no additional tobacco settlement proceeds will be deposited into the common schools trust fund.

Tobacco settlement money received by the state and transferred to the common schools trust fund totaled \$189,745,840. The following is a summary of actual transfers to the common schools trust fund from the tobacco settlement trust fund, net of funds appropriated from the tobacco settlement trust fund to the Attorney General's office for the enforcement of the Master Settlement Agreement.

Biennium	Total Transfers
1999-2001	\$23,805,353
2001-03	23,998,745
2003-05	20,977,122
2005-07	19,722,653
2007-09	27,672,929
2009-11	18,248,834
2011-13	18,108,052
2013-15	19,003,716
2015-17	18,208,436
Total	\$189,745,840

## DISTRIBUTIONS FROM THE COMMON SCHOOLS TRUST FUND Select Constitutional Provisions

### Article IX, Section 1

This section provides that revenues earned by the perpetual trust fund must be deposited in the fund, the costs of administering the fund may be paid out of the fund, and the perpetual trust funds must be managed to preserve their purchasing power and to maintain stable distributions to fund beneficiaries.

### Article IX, Section 2

This section provides that payments to the common schools of the state include:

- Biennial distributions from each educational trust fund must be 10 percent of the 5-year average value of the trust assets, excluding the value of lands and minerals. This section was amended in November 2006 through voter approval of Measure No. 1 (House Concurrent Resolution No. 3037 (2005)). The

measure changed the way distributions from the common schools trust fund and other permanent educational trust funds are determined. Previously, distributions were based on the amount of interest and income earned by each trust during a fiscal year. The amendment became effective July 1, 2009, and distributions from the common schools trust fund for the 2009-11 biennium and all subsequent bienniums are based on the distribution formula.

- All fines for violation of state laws. (This money is not added to the trust fund, but is added to the distributions from the common schools trust fund and distributed to schools.)
- All other amounts provided by law.

This section was included in the original Constitution of North Dakota enacted in 1889. The original law contained the following two provisions that were removed through voter approval of Measure No. 3 in June 1982:

- Payments to the common schools must be distributed in proportion to the number of school-age children in each district.
- Any portion of the interest or income of the common schools trust fund not distributed during a fiscal year must be added to the permanent balance of the trust fund.

### **Select North Dakota Century Code Provisions**

#### **Section 15-01-02**

This section provides the Board of University and School Lands has full control of:

- The selection, appraisalment, rental, sale, disposal, and management of common schools lands.
- The investment of any funds derived from the sale of common schools lands.
- The proceeds of any other property required by law to be used for the support of the common schools.

### **INVESTMENT OF THE COMMON SCHOOLS TRUST FUND**

Section 15-03-04 provides the Board of University and School Lands is to apply the prudent investor rule in investing the permanent funds under its control, including the common schools trust fund. The prudent investor rule means that in making investments, the board is to exercise the same judgment and care that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it.

## ANALYSIS OF THE COMMUNITY HEALTH TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$19,858,323		\$21,147,592
Add estimated revenues				
Transfers to date from the tobacco settlement trust fund	\$21,435,674 <sup>1</sup>		\$0	
Projected remaining transfers from the tobacco settlement trust fund	18,000,000 <sup>2</sup>		36,000,000 <sup>2</sup>	
Total estimated revenues		39,435,674 <sup>2</sup>		36,000,000 <sup>2</sup>
Total available		\$59,293,997		\$57,147,592
Less estimated expenditures and adjustments				
State Department of Health (2019 HB 1004; Executive budget recommendation)				
Tobacco prevention and control program grants to local public health units for tobacco prevention and control	\$6,500,000 <sup>3</sup>		\$6,250,000 <sup>3</sup>	
Tobacco prevention and control, including the Tobacco Quitline, cessation grants, other program grants, and operating expenses	3,200,000 <sup>4</sup>		5,043,000 <sup>4</sup>	
Women's Way program	322,405		329,500	
Behavioral Risk Factor State Survey	200,000		200,000	
Dentists' loan repayment program	324,000 <sup>5</sup>		360,000 <sup>5</sup>	
Behavioral health loan repayment program	200,000 <sup>6</sup>		234,500 <sup>6</sup>	
Cancer programs			580,324 <sup>7</sup>	
Domestic violence prevention			300,000 <sup>7</sup>	
Local public health state aid			525,000 <sup>7</sup>	
One-time local public health pandemic response grants			4,515,296 <sup>8</sup>	
Department of Human Services - Medical Services Division (2019 SB 2012; 2021 HB 1012)	27,400,000		24,000,000	
Total estimated expenditures and adjustments		38,146,405		42,337,620
Estimated ending balance		<u>\$21,147,592</u>		<u>\$14,809,972</u>

<sup>1</sup>Through December 2020 the state has received tobacco settlement payments totaling \$21,280,388 for the 2019-21 biennium, all of which has been transferred from the tobacco settlement trust fund to the community health trust fund for the 2019-21 biennium. In addition, the community health trust fund received a transfer of \$155,286 from the tobacco settlement trust fund related to funding returned to the tobacco settlement trust fund from an appropriation to the Attorney General for the 2017-19 biennium. Total transfers of \$104,319,518, including funding returned by the Attorney General, have been made from the tobacco settlement trust fund to the community health trust fund.

<sup>2</sup>Revenues - Interest earned on the community health trust fund is deposited in the general fund. Community health trust fund revenues have been estimated based on actual revenues received through December 2020 and estimated revenues for remainder of the 2019-21 biennium and for the 2021-23 biennium, based on the December 2020 executive budget revenue forecast.

Initiated Measure No. 3 (2008) resulted in the allocation shown below of the revised estimated collections for tobacco settlement payments through 2025. In House Bill No. 1012 (2017), the Legislative Assembly amended North Dakota Century Code Section 54-27-25 to suspend transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increase transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund. Transfers from the tobacco settlement trust fund to the water development trust fund remained at 45 percent. In Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-27-25 to provide all money

in the tobacco settlement trust fund must be transferred within 30 days of receipt to the community health trust fund. Therefore, the following are estimated allocations of tobacco settlement payments through 2025, based on reallocations approved by the 2017 and 2019 Legislative Assemblies:

	Actual and Estimated Total Tobacco Settlement Proceeds, Including Attorney General Costs	Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(2) Deposited in the Tobacco Prevention and Control Trust Fund	Allocation of Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(1)		
			Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Actual payment April 2008	\$36.4 million	N/A	\$16.4 million	\$16.4 million	\$3.6 million
Actual payment April 2009	39.2 million	\$14.1 million	11.3 million	11.3 million	2.5 million
Actual payments 2009-11 biennium	64.0 million	23.5 million	18.2 million	18.2 million	4.1 million
Actual payments 2011-13 biennium	63.0 million	22.8 million	18.1 million	18.1 million	4.0 million
Actual payments 2013-15 biennium	64.6 million	22.4 million	19.0 million	19.0 million	4.2 million
Actual payments 2015-17 biennium	63.5 million <sup>1</sup>	22.9 million	18.2 million	18.2 million	4.0 million
Actual payments 2017-19 biennium	74.1 million <sup>1</sup>	N/A	0	33.3 million	40.7 million
Estimated 2019-21 biennium	39.2 million	N/A	0	0	39.4 million <sup>2</sup>
Estimated 2021-23 biennium	36.0 million	N/A	0	0	36.0 million
Estimated 2023-25 biennium	52.5 million	N/A	0	0	52.5 million
<b>Total</b>	<b>\$532.5 million</b>	<b>\$105.7 million</b>	<b>\$101.2 million</b>	<b>\$134.5 million</b>	<b>\$191.0 million</b>

<sup>1</sup>This amount includes \$200,000 made available from the tobacco settlement trust fund to the Attorney General for enforcement of the Master Settlement Agreement and any disputes with the agreement, net of unspent funds returned by the Attorney General.

<sup>2</sup>This amount includes unspent funding returned to the tobacco settlement trust fund by the Attorney General.

<sup>3</sup>In 2019 the Legislative Assembly provided \$6.5 million from the community health trust fund for grants to local public health units for tobacco prevention and control programs during the 2019-21 biennium. Senate Bill No. 2004 (2021) provides a total of \$6.25 million for grants to local public health units for tobacco prevention and control programs.

<sup>4</sup>Section 54-27-25 provides money in the community health trust fund may be appropriated for community-based public health programs and other public health programs, including programs with an emphasis on preventing or reducing tobacco usage. The 2003 Legislative Assembly authorized the establishment of a telephone "Tobacco Quitline." The 2007 Legislative Assembly increased the funding for the Tobacco Quitline to provide nicotine replacement therapy and cessation counseling. In 2019 the Legislative Assembly appropriated \$3.2 million from the community health trust fund for tobacco prevention and control programs during the 2019-21 biennium. Senate Bill No. 2004 (2021) provides a total of \$5,043,000 for tobacco prevention and control programs including \$2,833,504 for operating expenses and \$2,209,496 for other grants, including cessation.

<sup>5</sup>In 2019 the Legislative Assembly provided a total of \$740,000 for the dental loan repayment program, of which \$324,000 is from the community health trust fund and \$416,000 is from the general fund. Senate Bill No. 2004 (2021) provides a total of \$360,000 from the community health trust fund for the dental loan repayment program, \$380,000 less than the total funding provided during the 2019-21 biennium.

<sup>6</sup>In 2019 the Legislative Assembly provided a total of \$364,000 for the behavioral health loan repayment program, of which \$200,000 is from the community health trust fund and \$164,000 is from the general fund. Senate Bill No. 2004 (2021) provides a total of \$248,125 for the behavioral health loan repayment program, of which \$234,500 is from the community health trust fund and \$13,625 is from the general fund.

<sup>7</sup>In 2019 the Legislative Assembly changed the funding source for cancer programs and domestic violence offender treatment grants to the tobacco prevention and control trust fund. A total of \$880,324 was provided from the tobacco prevention and control trust fund for cancer programs (\$580,324) and domestic violence offender treatment grants (\$300,000) during the 2019-21 biennium. In addition, the Legislative Assembly provided a total of \$5,250,000, of which \$4,725,000 is from the general fund and \$525,000 is from the tobacco prevention and control trust fund, for grants to local public health units during the 2019-21 biennium. Senate Bill No. 2004 (2021) changes the funding source for cancer programs (\$580,324) and domestic violence offender treatment grants (\$300,000) from the tobacco prevention and control trust fund to the community health trust fund. In addition, Senate Bill No. 2004 (2021) provides \$5,250,000 for local public health unit grants, of which \$4,725,000 is from the general fund and \$525,000 is from the community health trust fund.

<sup>8</sup>Senate Bill No. 2004 (2021) includes one-time funding for local public health pandemic response grants totaling \$10,000,000, of which \$5,484,704 is from federal funds and \$4,515,296 is from the community health trust fund.

## FUND HISTORY

Section 54-27-25, created by House Bill No. 1475 (1999), established the community health trust fund. This section created a tobacco settlement trust fund for the deposit of all tobacco settlement money obtained by the state. Money in the fund must be transferred within 30 days of its deposit in the fund as follows:

- 10 percent to the community health trust fund. In House Bill No. 1012 (2017), the Legislative Assembly suspended transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increased transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.
- 45 percent to the common schools trust fund. In House Bill No. 1012 (2017), the Legislative Assembly suspended transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increased transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.
- 45 percent to the water development trust fund.

Section 54-27-25, as amended in Senate Bill No. 2012 (2019), provides all money in the fund must be transferred within 30 days of receipt to the community health trust fund.

In the November 2008 general election, voters approved Initiated Measure No. 3 that amended Section 54-27-25 to establish a tobacco prevention and control trust fund. The measure provides for a portion of tobacco settlement funds received by the state to be deposited in this new fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continues in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated pursuant to Section 54-27-25. In 2009, tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, relating to strategic contribution payments, which began in 2008 and continued through 2017, was deposited into the tobacco prevention and control trust fund. The measure also provided 80 percent of the funds allocated to the community health trust fund from the tobacco settlement trust fund be used for tobacco prevention and control. However, in Senate Bill No. 2004 (2017), the Legislative Assembly amended Section 54-27-25 to remove the 80 percent restriction on transfers to the community health trust fund.

The Legislative Assembly, in Senate Bill No. 2003 (2015), amended Section 54-27-25 related to the tobacco settlement trust fund to provide the principal and interest of the fund may be appropriated to the Attorney General for the enforcement of the Master Settlement Agreement and any disputes with the agreement. Appropriations made to the Attorney General for enforcement of the Master Settlement Agreement reduce the amount available for transfer from the tobacco settlement trust fund to the community health trust fund. The Legislative Assembly, in Senate Bill No. 2012 (2019), removed this authorization.

**ANALYSIS OF THE STATE DISASTER RELIEF FUND FOR THE  
2015-17, 2017-19, 2019-21, AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2015-17 Biennium Actual		2017-19 Biennium Actual		2019-21 Biennium Estimated		2021-23 Biennium Estimated	
Beginning balance		\$75,867,942		\$36,687,549		\$21,987,295		\$14,866,320
Add revenues								
Interest income	\$50,723		\$73,130		\$65,000		\$65,000	
Miscellaneous reimbursements	2,716,118		698,534		75,000		75,000	
Oil and gas tax collections	3,482,364 <sup>1</sup>		0 <sup>9</sup>		0 <sup>12</sup>		17,544,852 <sup>16</sup>	
Total revenues		6,249,205		771,664		140,000		17,684,852
Total available		\$82,117,147		\$37,459,213		\$22,127,295		\$32,551,172
Less estimated expenditures								
2009 flooding	\$247,214 <sup>4</sup>		\$57,462 <sup>10</sup>					
2010 flooding	269,007 <sup>4</sup>		1,199,702 <sup>10</sup>					
April 2010 ice storm	102,560 <sup>4</sup>							
2011 flooding	6,366,153 <sup>4</sup>		2,923,747 <sup>10</sup>		\$2,417,926 <sup>13</sup>			
2011 ice storm	925 <sup>4</sup>							
Disaster response coordination contract	200,000 <sup>2</sup>							
State disasters and flood mitigation efforts (road grade raising projects)	2,562 <sup>4</sup>		18,620 <sup>10</sup>					
Flood-impacted housing assistance grant program	1,088,468 <sup>4</sup>							
Disaster recovery planning and technical services	34,810 <sup>3</sup>							
Fargo interior flood protection	30,000,000 <sup>5</sup>							
Chronic flooding relief	2,000,000 <sup>6</sup>							
2013 Red River Valley flood	589,741 <sup>4</sup>		912,450 <sup>10</sup>					
2013 winter storm	59,539 <sup>4</sup>		628,258 <sup>10</sup>		113 <sup>13</sup>			
2014 rain storms	84,122 <sup>4</sup>		72,201 <sup>10</sup>		100,126 <sup>13</sup>			
2017 flooding					759,449 <sup>13</sup>		\$99,163 <sup>17</sup>	
Federal Emergency Management Agency (FEMA) mitigation programs					652,821 <sup>13</sup>		847,411 <sup>17</sup>	
Double Ditch Historic Site repairs	384,497 <sup>7</sup>		1,694,478 <sup>7</sup>					
Bismarck area flood protection	4,000,000 <sup>8</sup>							
Dickey County FEMA repayment					200,000 <sup>13</sup>			

Non-oil-producing township road maintenance and improvement		7,965,000 <sup>11</sup>			8,100,000 <sup>11</sup>	
Emergency township road repairs					500,000 <sup>18</sup>	
2019 flooding			1,829,780 <sup>14</sup>		2,132,578 <sup>17</sup>	
2020 flooding			1,300,760 <sup>14</sup>		872,020 <sup>17</sup>	
Total estimated expenditures and transfers	45,429,598	15,471,918		7,260,975 <sup>15</sup>		12,551,172
Estimated ending balance	<u>\$36,687,549</u>	<u>\$21,987,295</u>		<u>\$14,866,320</u>		<u>\$20,000,000</u>

<sup>1</sup>This amount reflects actual oil tax revenue allocations for the 2015-17 biennium. House Bill No. 1377 (2015) amended North Dakota Century Code Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues designated for deposit in the general fund under Chapters 57-51 and 57-51.1 as follows:

- The first \$700 million is deposited in the general fund, tax relief fund, and strategic investment and improvements fund;
- The next \$22 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$25 million; and
- Any additional revenues:
  - 70 percent into the strategic investment and improvements fund; and
  - 30 percent into the political subdivision allocation fund.

<sup>2</sup>Senate Bill No. 2016 (2015) provided a \$200,000 appropriation from the state disaster relief fund to contract for services to coordinate disaster response organizations with state and political subdivision disaster response efforts, including all aspects of disaster recovery from preparedness training through cleanup for declared or undeclared disasters.

<sup>3</sup>Senate Bill No. 2016 (2015) appropriated \$1 million for contracted services to provide technical assistance and support to state and local government agencies with emergency management needs associated with preparedness, mitigation, and response and recovery.

<sup>4</sup>Section 1 of Senate Bill No. 2016 (2015) included spending authority of \$17.8 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2015-17 biennium.

<sup>5</sup>Section 11 of Senate Bill No. 2020 (2015) appropriates \$30 million from the state disaster relief fund to the State Water Commission for flood protection projects within the city limits of Fargo.

<sup>6</sup>Section 3 of Senate Bill No. 2016 (2015) appropriates \$2 million from the state disaster relief fund to the Adjutant General to provide for repair and replacement of infrastructure and for removal of debris and other health hazards in organized service districts that are experiencing chronic flooding. The Adjutant General is required to consult with the Environmental Division of the State Department of Health regarding the process of environmental cleanup.

<sup>7</sup>Section 5 of Senate Bill No. 2018 (2015) appropriates \$2 million from the state disaster relief fund for Double Ditch Historic Site repairs. Section 6 of House Bill No. 1018 (2017) appropriates \$500,000 from the state disaster relief fund for Double Ditch Historic Site repairs.

<sup>8</sup>Section 15 of Senate Bill No. 2020 (2015) appropriates \$4 million from the state disaster relief fund to the State Water Commission for levee projects for the Missouri River Correctional Center (\$1.2 million) and for Lincoln Township's Fox Island area (\$2.8 million).

<sup>9</sup>This amount reflects actual oil tax revenue allocations for the 2017-19 biennium. House Bill No. 1152 (2017) amended Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues designated for deposit in the general fund under Chapters 57-51 and 57-51.1 as follows:

- The first \$775 million is deposited in the general fund, tax relief fund, budget stabilization fund, strategic investment and improvements fund, and lignite research fund;



- The next \$20 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$20 million; and
- Any additional revenues are deposited in the strategic investment and improvements fund.

<sup>10</sup>Section 1 of House Bill No. 1016 (2017) includes spending authority of \$8.5 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2017-19 biennium. Section 13 of House Bill No. 1016 (2017) includes carryover authority for amounts related to disaster costs for road grade raising projects. The amount of carryover was estimated to be approximately \$100,000.

<sup>11</sup>Section 4 of Senate Bill No. 2016 (2019) provides a 2017-19 biennium appropriation of \$8.1 million from the state disaster relief fund to the State Treasurer for the purpose of providing distributions to townships in non-oil-producing counties for maintenance and improvement of township roads and bridges. Section 4 of House Bill No. 1015 (2021) provides a 2021-23 biennium appropriation of \$8.1 million from the state disaster relief fund to the State Treasurer for the purpose of providing distributions to townships in non-oil-producing counties for maintenance and improvement of township roads and bridges.

<sup>12</sup>This amount reflects estimated oil tax revenue allocations for the 2019-21 biennium based on the 2021 legislative revenue forecast. House Bill No. 1066 (2019) and Senate Bill No. 2016 (2019) amend Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues under Chapters 57-51 and 57-51.1. As amended, the allocation provides that after \$685 million is deposited in the general fund, tax relief fund, budget stabilization fund, and lignite research fund, then the next \$15 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$15 million.

<sup>13</sup>Section 1 of Senate Bill No. 2016 (2019) includes spending authority of \$7.1 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2019-21 biennium.

<sup>14</sup>Section 1 of House Bill No. 1025 (2021) includes a deficiency appropriation of \$3,130,540 from the state disaster relief fund for expenses related to flooding in the spring of 2019, fall of 2019, and spring of 2020.

<sup>15</sup>This amount is an estimate based on actual expenditures through December 31, 2020, and agency estimated expenditures through June 30, 2021.

<sup>16</sup>This amount reflects estimated oil tax revenue allocations for the 2021-23 biennium based on the 2021 legislative revenue forecast. House Bill No. 1015 (2021) and Senate Bill No. 2249 (2021) amend Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues under Chapters 57-51 and 57-51.1. As amended, the allocation provides that after \$685 million is deposited in the general fund, tax relief fund, budget stabilization fund, and lignite research fund, then the next \$20 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$20 million.

<sup>17</sup>Section 1 of House Bill No. 1016 (2021) includes spending authority of \$4 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2021-23 biennium.

<sup>18</sup>Section 4 of Senate Bill No. 2012 (2021) provides a 2021-23 biennium appropriation of \$500,000 from the state disaster relief fund to the Department of Transportation to provide grants to townships for emergency township road repairs.

#### **FUND HISTORY**

Section 37-17.1-27 (Section 4 of Senate Bill No. 2012 (2009)) establishes a state disaster relief fund. Any interest or other fund earnings must be deposited in the fund. In Senate Bill No. 2369 (2011), the Legislative Assembly amended Section 37-17.1-27 to limit use of money in the fund for only the required state share of funding for expenses associated with presidentially declared disasters in the state and to require Emergency Commission and Budget Section approval of the use of money in the fund. In Senate Bill No. 2292 (2013), the Legislative Assembly further amended the section to allow money in the fund to be used for wide area search and rescue activities. Section 6 of Senate Bill No. 2055 (2019) further amends Section 37-17.1-27 to allow the fund to be used for the state share of FEMA disaster response, recovery, and mitigation grants, to remove the requirement for Emergency Commission and Budget Section approval of the use of money that has been appropriated by the Legislative Assembly, and to provide for the Adjutant General to report to the Budget Section on fund expenditures.

**ANALYSIS OF THE ELECTRONIC HEALTH INFORMATION EXCHANGE FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance <sup>1</sup>		\$2,418,517		\$2,042,200
Add estimated revenues				
Funds from health information network participants	\$1,225,442		\$1,400,000	
Funds from the Department of Human Services (DHS) <sup>2</sup>	13,029,055		0	
eHealth Summit	0		11,500	
Total estimated revenues		14,254,497		1,411,500
Total available		\$16,673,014		\$3,453,700
Less estimated expenditures and transfers				
Statewide health information technology and exchange network <sup>2</sup>	\$14,630,814		\$3,153,866	
Total estimated expenditures and transfers		14,630,814		3,153,866
Estimated ending balance		\$2,042,200		\$299,834

<sup>1</sup>Section 8 of Senate Bill No. 2332 (2009) provided the Industrial Commission transfer, during the 2009-11 biennium, as requested by the director of the Health Information Technology Office, up to \$8 million from the Bank of North Dakota's profits to the health information technology loan fund to meet any required match for federal funds or to the electronic health information exchange fund to meet any required match for federal funds.

Section 6 of House Bill No. 1021 (2011) amended Section 8 of Senate Bill No. 2332 (2009) to provide the Industrial Commission transfer, during the 2009-11 or 2011-13 biennium, up to \$8 million from the Bank of North Dakota's profits to the information technology loan fund or to the electronic health information exchange fund to meet any required match for federal funds or for ongoing operating expenditures of the health information exchange. During the 2009-11 biennium, \$500,000 was transferred to the electronic health information exchange fund, and during the 2011-13 biennium, \$7.5 million was transferred to the electronic health information exchange fund.

<sup>2</sup>Section 2 of Senate Bill No. 2021 (2017) provided a special funds appropriation of \$43,555,133 to the Information Technology Department for a project to expand the North Dakota health information network. The purpose of the funding is to enhance the overall functionality of the North Dakota health information network by providing comprehensive interoperability between all Medicaid providers throughout the state. The project will allow for statewide repositories for analytics, care coordination, credentialing, and advanced directives.

The Department of Human Services anticipated receiving federal Medicaid funding of \$40.8 million for the project, which was included in House Bill No. 1012 (2017) and was to be provided to payers, providers, and existing state health information network. Funds were expected to be used through the 2021-23 biennium; however, due to funding changes made by the federal government, DHS and the Information Technology Department do not anticipate receiving the entire amount for the project.

The Information Technology Department received \$125,100 during the 2015-17 biennium from DHS for advanced planning documents, a state Medicaid plan, and to conduct a care coordination study for the North Dakota health information network. The Information Technology Department received \$6,333,134 in the 2017-19 biennium and anticipates receiving \$13,029,055 in the 2019-21 biennium from DHS for the network. Expenditures for the network totaled \$2,193,908 during the 2015-17 biennium and \$7,929,767 during the 2017-19 biennium. The Information Technology Department anticipates total expenditures for the North Dakota health information network of \$14,630,814 during the 2019-21 biennium and \$3,153,866 during the 2021-23 biennium for a total of \$27,908,355. It is unknown how much funding will be available from the federal government for the project during the 2023-25 biennium.

### **FUND HISTORY**

North Dakota Century Code Section 54-59-27 (Senate Bill No. 2332 (2009)) establishes the electronic health information exchange fund. The fund consists of the money deposited in the fund from federal or other sources or money transferred into the fund as directed by the Legislative Assembly. The Health Information Technology Office is to administer the fund. The money in the fund is to be used to facilitate and expand the electronic health information exchange. Money in the fund may be used, subject to legislative appropriations, to provide services directly for grants and for costs of administration of the fund.

An application for a grant must be made to the Health Information Technology Office. The Health Information Technology Office is to determine the applicant's eligibility based upon criteria established by the director of the Health Information Technology Office, in collaboration with the Health Information Technology Advisory Committee.

**ANALYSIS OF THE ENVIRONMENT AND RANGELAND PROTECTION FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$3,655,681		\$3,490,382
Add estimated revenues				
Pesticide registration fees (North Dakota Century Code Section 4.1-34-03) <sup>1</sup>	\$4,900,000		\$4,900,000	
Weed seed-free forage (Section 4.1-14-04) <sup>2</sup>	38,000		38,000	
Fertilizer registration, inspection, and tonnage fees (Sections 4.1-40-02, 4.1-40-03, and 4.1-40-07) <sup>3,4</sup>	1,350,000		1,400,000	
Commercial feed registration, inspection, and tonnage fees (Section 4.1-41-19) <sup>5</sup>	727,500		727,500	
Total estimated revenues		7,015,500		7,065,500
Total available		\$10,671,181		\$10,555,882
Less estimated expenditures and transfers				
Agriculture Commissioner (2019 SB 2009; 2021 HB 1009)				
Administrative Services Division	\$333,953		\$333,953	
Business, Marketing, and Information Division	325,947		325,947	
Wildlife Services program	433,800		433,800	
Animal Health Division (State Veterinarian)	108,666		108,666	
Plant Industries Division	1,458,934		1,762,163	
Emergency feed operation loan repayment <sup>6</sup>	253,229			
Pesticide and Fertilizer Division	3,279,018		3,523,520	
Grain Inspection and Feed Division	337,252		337,252	
Crop Protection Product Harmonization and Registration Board (2019 SB 2009; 2021 HB 1009)				
Crop protection product registration, labeling, and grants <sup>7</sup>	75,000		75,000	
Minor use pesticide registration	325,000		325,000	
Department of Environmental Quality (2019 HB 1024; 2021 SB 2024)				
Ground water testing, including a \$50,000 grant for the North Dakota Stockmen's Association environmental services program	250,000		250,000	
Total estimated expenditures and transfers		7,180,799		7,475,301
Estimated ending balance		\$3,490,382		\$3,080,581

<sup>1</sup>The Legislative Assembly approved Senate Bill No. 2009 (1999), which amended Section 19-18-04, increased the biennial pesticide registration fee by \$50, from \$300 to \$350. House Bill No. 1009 (2009) further amended Section 19-18-04 to deposit all pesticide registration fees in the environment and rangeland protection fund rather than a portion in the general fund. In Senate Bill No. 2027 (2017), Section 19-18-04 was repealed and rewritten as Section 4.1-34-03 as part of the rewrite of agriculture statutes.

<sup>2</sup>Chapter 4.1-14 allows the Agriculture Commissioner to certify forage acreage as being free of certain weeds and weed seed. Section 4.1-14-04 provides the Agriculture Commissioner a continuing appropriation to certify forage acreage using fees charged for certifications. The Agriculture Commissioner may set and charge the fees. All weed seed-free forage fee revenue must be deposited in the environment and rangeland protection fund.

<sup>3</sup>House Bill No. 1321 (2011) repealed Section 19-20.2-08.1 that provided for the deposit of certain inspection fees in the anhydrous ammonia storage facility inspection fund. The bill provided that the fee collections are to be deposited in the environment and rangeland protection fund, and anhydrous ammonia inspection storage facility inspection duties are to be transferred from the Insurance Commissioner to the Agriculture Commissioner.

<sup>4</sup>Senate Bill No. 2009 (2011) amended Sections 19-20.1-03, 19-20.1-03.1, and 19-20.1-06 to deposit fertilizer distribution registration, licensing, and inspection fees in the environment and rangeland protection fund rather than the general fund. House Bill No. 1321 (2011) also amended Section 19-20.1-06 to deposit a portion of fertilizer distribution inspection fees in the environment and rangeland protection fund rather than the general fund. In Senate Bill No. 2017 (2017), Sections 19-20.1-03, 19-20.1-03.1, and 19-20.1-06 were rewritten as Sections 4.1-40-02, 4.1-40-03, and 4.1-40-07, respectively.

<sup>5</sup>Section 4.1-41-19 provides for the deposit of the first \$727,500 of commercial feed inspection, licensing, and registration fees in the environment and rangeland protection fund rather than the general fund.

<sup>6</sup>In December 2019, the Emergency Commission authorized the Adjutant General to borrow \$250,000 from the Bank of North Dakota, which was then provided to the Agriculture Commissioner to administer an emergency feed transportation assistance program to reimburse a portion of transportation costs to livestock producers that lost feed supplies or lost access to feed supplies due to excessive rain, snow, and flooding which resulted in the purchase of supplemental livestock feed between September 30, 2019, and December 31, 2019. The Agriculture Commissioner reviewed 119 applications and approved 116 applications. The entire \$250,000 was distributed to eligible applicants in March 2020. The Agriculture Commissioner repaid the loan in December 2020, using funding from the environment and rangeland protection fund, which included \$3,229 of interest for a total repayment of \$253,229.

<sup>7</sup>Section 4-35-30, as created by House Bill Nos. 1009 (2001) and 1328 (2001), created the Crop Protection Product Harmonization and Registration Board. In Senate Bill No. 2027 (2017), Section 4-35-30 was rewritten as Section 4.1-39-02. The duties of the board relate to crop protection product labeling and registration. In Senate Bill No. 2009 (2019), the Legislative Assembly appropriated \$75,000 from the fund for the board for the 2019-21 biennium. House Bill No. 1009 (2021), as approved by the House, appropriates \$75,000 from the fund for the board for the 2021-23 biennium.

#### **FUND HISTORY**

Section 19-18-02.1, created by Senate Bill No. 2451 (1991), established the environment and rangeland protection fund. The fund contains collections from pesticide registration fees. During the 2007-09 biennium, the biennial fee was \$350 per pesticide product registered in the state. Of this amount, \$300 was deposited in the environment and rangeland protection fund and \$50 in the general fund. Pursuant to Section 19-18-04, as amended by House Bill No. 1009 (2009), beginning with the 2009-11 biennium, the entire pesticide registration fee is deposited in the environment and rangeland protection fund rather than a portion in the general fund.

In Senate Bill No. 2027 (2017), Sections 19-18-02.1 and 19-18-04 were repealed and rewritten as Sections 4.1-39-07 and 4.1-34-03, respectively, as part of the rewrite of agriculture statutes.

## ANALYSIS OF THE FOUNDATION AID STABILIZATION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$422,117,621		\$378,297,621
Add estimated revenues				
Oil extraction tax allocations	\$146,180,000 <sup>1</sup>		\$127,510,000 <sup>1</sup>	
Total estimated revenues		146,180,000 <sup>2</sup>		127,510,000
Total available		\$568,297,621		\$505,807,621
Less estimated expenditures and transfers				
Department of Public Instruction - State school aid	\$110,000,000		\$110,000,000 <sup>3</sup>	
Department of Public Instruction - One-time funding to rewrite the state automated reporting system application (2019 SB 2013)	1,200,000			
Department of Public Instruction - One-time funding for rapid enrollment grants (2019 SB 2265)	3,000,000 <sup>3</sup>			
Department of Public Instruction - One-time funding for music education grants (2019 SB 2265)	800,000 <sup>3</sup>			
Transfer to the school construction assistance revolving loan fund (2019 SB 2214)	75,000,000 <sup>3</sup>			
Total estimated expenditures and transfers		190,000,000 <sup>4</sup>		110,000,000 <sup>4</sup>
Estimated ending balance		\$378,297,621		\$395,807,621
Less required reserve of 15 percent of the general fund appropriation for state school aid and career and technical education grants to school districts and area centers during the prior biennium		214,831,704 <sup>5</sup>		257,328,933 <sup>6</sup>
Estimated ending balance available		\$163,465,917		\$138,478,688

<sup>1</sup>Estimated revenues - Estimated allocations for the remainder of the 2019-21 biennium and the estimated allocations for the 2021-23 biennium are based on the January 2021 revenue forecast and legislative action through crossover.

<sup>2</sup>Section 24 of Article X of the Constitution of North Dakota provides the interest income of the foundation aid stabilization fund must be transferred to the general fund on July 1 of each year. However, the State Treasurer's office allocates the interest income to the general fund on a monthly basis. For the period July 1, 2019, through January 31, 2021, \$1,061,997 of interest has been allocated to the general fund.

<sup>3</sup>The Legislative Assembly approved Senate Bill No. 2265 (2019) which provides \$3 million from the foundation aid stabilization fund for rapid enrollment grants to qualifying school districts during the 1<sup>st</sup> year of the 2019-21 biennium and \$800,000 from the foundation aid stabilization fund for music education grants for grades kindergarten through grade five. Senate Bill No. 2214 (2019) provides for a transfer of \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund and legislative intent that the 67<sup>th</sup> Legislative Assembly appropriate \$110 million from the foundation aid stabilization fund to the Department of Public Instruction to provide ongoing funding for state school aid and transfer an additional \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund. House Bill No. 1013 (2021) provides \$110 million from the foundation aid stabilization fund to the Department of Public Instruction to provide ongoing funding for state school aid.

<sup>4</sup>Expenditures - Prior to December 8, 2016, Section 24 of Article X of the Constitution of North Dakota provided the principal of the foundation aid stabilization fund could only be used to offset foundation aid reductions made by executive action due to a revenue shortfall. Senate Concurrent Resolution No. 4003 (2015), approved by voters in November 2016, amended Section 24 of Article X of the Constitution of North Dakota to allow the Legislative Assembly to appropriate or

transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for education-related purposes.

<sup>5</sup>Amendments to the constitution approved by the voters, as provided in Senate Concurrent Resolution No. 4003 (2015), require the balance in the foundation aid stabilization fund be at least 15 percent of the general fund appropriation for state aid to school districts for the most recently completed biennium as determined by the Office of Management and Budget. Any excess balance in the fund is available for education-related purposes. The Legislative Assembly, in Senate Bill No. 2272 (2017) and House Bill No. 1155 (2017), amended North Dakota Century Code Section 54-44.1-12 to provide any reductions to the general fund appropriation to the Department of Career and Technical Education for grants to school districts due to allotment are also to be offset by funding from the foundation aid stabilization fund. Senate Bill No. 2272 also created a new section to Chapter 54-27 indicating that state school aid includes general fund appropriations for state school aid, transportation aid, and special education aid in the Department of Public Instruction as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education. The appropriation for integrated formula payments, transportation aid, and special education grants totals \$2,009,904,163 during the 2017-19 biennium, of which \$305,546,905 is provided from the state tuition fund, \$295,000,000 is from the foundation aid stabilization fund, and \$1,409,357,258 is provided from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education totaled \$22,854,100 during the 2017-19 biennium. Based on this level of funding from the general fund during the 2017-19 biennium, the Office of Management and Budget, in its 2019-21 executive budget documents, reported a required reserve balance of \$214,831,704 for the 2019-21 biennium.

<sup>6</sup>In 2019, the Legislative Assembly provided \$2,178,702,429 for integrated formula payments, transportation aid, and special education grants during the 2019-21 biennium, of which \$377,764,000 is provided from the state tuition fund, \$110,000,000 is from the foundation aid stabilization fund, and \$1,690,938,429 is provided from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education, totaled \$24,587,780 during the 2019-21 biennium. Based on this level of funding from the general fund during the 2019-21 biennium, the required reserve balance for the 2021-23 biennium is \$257,328,933, \$42,497,229 more than the reserve required for the 2019-21 biennium.

#### **FUND HISTORY**

The foundation aid stabilization fund was created in 1994 when the voters of North Dakota approved a constitutional amendment--now Section 24 of Article X of the Constitution of North Dakota--to provide that 20 percent of oil extraction tax revenue be allocated as follows:

- 50 percent (of the 20 percent) to the common schools trust fund; and
- 50 percent (of the 20 percent) to the foundation aid stabilization fund.

In November 2016 voters approved Senate Concurrent Resolution No. 4003 (2015), which amended the Constitution of North Dakota to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for education-related purposes. In addition, the Legislative Assembly approved Senate Bill No. 2039 (2015), which included certain provisions effective December 1, 2016, based on the approval of Senate Concurrent Resolution No. 4003 by voters. Those provisions of Senate Bill No. 2039 established a scholarship endowment fund and a school construction assistance loan fund and provided for transfers from the foundation aid stabilization fund to the school construction assistance loan fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016), and to the scholarship endowment fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016). Other provisions of Senate Bill No. 2039 provided any accessible funds that remain in the foundation aid stabilization fund, after completion of the required transfers to other funds, must be used for education-related purposes, including state aid to school districts and education-related property tax relief to school district patrons. The Legislative Assembly approved Senate Bill No. 2272 (2017), which provided for uses of the foundation aid stabilization fund and repealed Sections 9 and 10 of Chapter 153 of the 2015 Session Laws related to the transfers to the scholarship endowment fund and the school construction assistance loan fund.

Prior to December 8, 2016, the principal of the foundation aid stabilization fund was only available upon order of the governor to offset foundation aid reductions made by executive action due to a revenue shortfall. Section 54-44.1-12 provides the director of the budget may order an allotment to control the rate of expenditures of state agencies. This section provided that an allotment must be made by a specific fund and all departments and agencies that receive money from a fund must be allotted on a uniform percentage basis, except that appropriations for foundation aid, transportation aid, and special education aid may only be allotted to the extent the allotment can be offset by transfers from the foundation aid stabilization fund. The Legislative Assembly approved Senate Bill No. 2272 (2017) and House Bill No. 1155 (2017), which amended Section 54-44.1-12 to provide any reductions to the general fund appropriation to the Department of Career and

Technical Education for grants to school districts due to allotment are offset by funding from the foundation aid stabilization fund. Senate Bill No. 2272 also created a new section to Chapter 54-27 indicating that state school aid includes general fund appropriations for state school aid, transportation aid, and special education aid in the Department of Public Instruction, as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education.

The Legislative Assembly approved Senate Bill No. 2362 (2019), which changed the method of allocating oil extraction tax revenue related to the state's share of revenue associated with production on tribal lands, increasing the allocation to the foundation aid stabilization fund.

Section 24 of Article X of the Constitution of North Dakota provides the interest income of the foundation aid stabilization fund must be transferred to the general fund on July 1 of each year. However, the State Treasurer's office allocates the interest income to the general fund on a monthly basis.



**ANALYSIS OF THE HEALTH CARE TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$189,101		\$219,713
Add revenues				
Investment earnings	\$1,600		\$0	
Loan repayments - Principal and interest	1,029,012		0 <sup>1</sup>	
Total estimated revenues		1,030,612		219,713
Total available		\$1,219,713		\$219,713
Less expenditures and transfers				
Department of Human Services nursing facility operating margin increases (2019 SB 2012; 2021 HB 1012)	1,000,000		1,000,000	
Total estimated expenditures and transfers		1,000,000		1,000,000
Estimated ending balance		<u>\$219,713</u>		<u>(\$780,287)</u>

<sup>1</sup>Senate Bill No. 2014 (2021) removes the transfer of principal and interest from loan repayments from the long-term care facility fund to the health care trust fund.

**FUND HISTORY**

The health care trust fund was established by the Legislative Assembly in Senate Bill No. 2168 (1999) for providing nursing alternative loans or grants. The Legislative Assembly in House Bill No. 1196 (2011) provided that money in the fund may be transferred to the long-term care facility loan fund for nursing facility renovation projects and used for other programs as authorized by the Legislative Assembly. Money was generated for the health care trust fund as a result of the Department of Human Services making government nursing facility funding pool payments to two government nursing facilities--McVille and Dunseith. Payments were made based on the average amount Medicare rates exceeded Medicaid rates for all nursing care facilities in the state multiplied by the total of all Medicaid resident days of all nursing homes. Federal Medicaid funds were available for these payments and required a state match. Payments were made to the two government nursing facilities and were subsequently returned to the state, less a \$50,000 transaction fee retained by each of the two government nursing facilities. Once returned to the state, the state's matching share was returned to its source, and the federal funds were deposited in the health care trust fund. Money in the fund is invested by the State Investment Board, and any investment earnings are retained in the fund. The federal government has eliminated this intergovernmental transfer program. As a result, North Dakota's final intergovernmental transfer payment was received in July 2004. The Legislative Assembly, in House Bill No. 1012 (2009), amended North Dakota Century Code Section 50-30-02 to preclude the Governor from recommending spending from the health care trust fund in draft appropriation acts under Section 54-44.1-06, except for the operation and maintenance of the nurse aide registry.

**ANALYSIS OF THE HEALTH INFORMATION TECHNOLOGY PLANNING LOAN FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
	Beginning balance <sup>1</sup>		\$4,717,323	
Add estimated revenues				
Loan repayments - Principal	\$2,554,829		\$1,520,656	
Loan repayments - Interest and miscellaneous income	75,609		69,948	
Total estimated revenues		2,630,438		1,590,604
Total estimated available		\$7,347,761		\$8,900,853
Less estimated expenditures and transfers				
Loans to health care entities <sup>2</sup>	\$0		\$750,000	
Bank of North Dakota fees	37,512		41,019	
Transfer - Information Technology Department operating service fund (2021 SB 2021) <sup>3</sup>	0		6,000,000	
Total estimated expenditures and transfers		37,512		6,791,019
Estimated ending balance		\$7,310,249		\$2,109,834

<sup>1</sup>Section 9 of Senate Bill No. 2332 (2009) provided for a transfer of up to \$5 million of Bank of North Dakota profits to the health information technology planning loan fund, which was transferred during the 2009-11 biennium. Section 4 of House Bill No. 1021 (2011) provided for a transfer of up to \$5 million of Bank profits to the health information technology planning loan fund in the 2011-13 biennium. During the 2011-13 biennium, approximately \$4.3 million of Bank profits were transferred to the fund.

<sup>2</sup>The Health Information Technology Advisory Committee has approved \$14,227,024 of loans since the program's inception in the 2009-11 biennium through January 31, 2021:

St. Andrew's Health Center (Bottineau)	\$625,000	Nelson County Health System	\$305,000
Cooperstown Medical Center	396,996	Southwest Healthcare System	605,000
Wishek Hospital	761,149	CHI St. Alexius Medical Center	1,250,000
Towner County Medical Center (Cando)	924,018	Pediatric Therapy Partners	100,000
Presentation Medical Center (Rolla)	625,000	Valley Health	72,155
West River Health Services (Hettinger)	1,250,000	Knife River Care Center	125,000
Ashley Medical Center	815,652	Golden Acres Manor	98,648
Tioga Medical Center	931,320	St. Luke's Home	115,053
St. Luke's Community Hospital and Clinics (Crosby)	874,542	Richard P. Stadter Psychiatric Center	463,000
Midgarden Family Clinic (Park River)	101,590	Elm Crest Manor	74,500
7-Day Clinic Walk-In Express Care (Fargo)	50,000	Northwood Deaconess	920,125
Linton Hospital	1,073,012	Pharmacists Association	120,070
McKenzie County Health Care System	600,000	St. Gerard's Community of Care	150,194
Garrison Memorial Hospital	800,000		
		Total	\$14,227,024

<sup>3</sup>Senate Bill No. 2021 (2021) provides for a transfer of \$6 million, as requested by the chief information officer, from the health information technology planning loan fund to the Information Technology Department operating service fund for the purpose of defraying the expenses of the Health Information Technology Office and the health information network during the 2021-23 biennium. Section 3 of the engrossed bill provides legislative intent that the funding be transferred only to

the extent federal funding is not available to defray the expenses of the Health Information Technology Office and the health information network during the 2021-23 biennium.

#### **FUND HISTORY**

North Dakota Century Code Section 6-09-43 (Senate Bill No. 2332 (2009)) established a health information technology planning loan fund at the Bank of North Dakota for providing low-interest loans to health care entities to assist those entities in improving health information technology infrastructure. This fund is a revolving loan fund. Pursuant to Section 9 of the bill, \$5 million was transferred from the Bank to this fund during the 2009-11 biennium. All money transferred into the fund, interest upon money in the fund, and collections of interest and principal on loans made from the fund are appropriated for disbursement. Annually, the Bank may deduct a service fee for administering the revolving loan fund.

Section 4 of House Bill No. 1021 (2011) provided the Industrial Commission transfer up to \$5,000,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota to the health information technology planning loan fund or the health information technology loan fund in the 2011-13 biennium. The director of the Health Information Technology Office was to request transfers from the Bank only as necessary to meet cashflow needs of the funds and only upon certification by the director of a demonstrated need for health information technology planning loans. During the 2011-13 biennium, \$4,280,219 was transferred by the Bank to the health information technology loan fund.

An application for a loan must be made to the Health Information Technology Office. The director of the Health Information Technology Office, in collaboration with the Health Information Technology Advisory Committee, may approve the application of a qualified applicant that meets the criteria established by the director of the Health Information Technology Office. The Health Information Technology Office is to forward approved applications to the Bank of North Dakota. Upon approval of the application by the Bank, the Bank is to make the loan from the revolving loan fund.

Loans are provided at a fixed interest rate of 1.00 percent. Of the 1.00 percent of interest collected, 0.50 percent is deposited in the fund and 0.50 percent is retained by the Bank as the service fee for administering the loans.

## ANALYSIS OF THE HIGHWAY TAX DISTRIBUTION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2019-21 Biennium		2021-23 Biennium	
		\$0		\$0
Beginning balance		\$0		\$0
Add estimated revenues <sup>1,2</sup>				
Motor vehicle fuel tax	\$186,500,000		\$200,429,292	
Special fuels taxes	173,700,000		186,000,000	
Motor vehicle registration fees	176,700,000		186,500,000	
House Bill No. 1464 (2021) increases fuel tax rates and road use fees for electric and hybrid automobiles and electric motorcycles			43,830,000 <sup>3</sup>	
Total estimated revenues		536,900,000		616,759,292
Total available		\$536,900,000		\$616,759,292
Less estimated deductions and transfers				
Highway Patrol	\$7,204,043		\$8,538,213	
Motorboat safety account	200,000		200,000	
State snowmobile fund	200,000		200,000	
Rail safety fund	589,018		0	
Administrative assistance to transferees	5,500,000		5,500,000	
Ethanol production incentives	4,700,000		4,700,000	
Total estimated deductions before distributions		18,393,061		19,138,213
Total available for distributions and transfers		\$518,506,939		\$597,621,079
Less estimated distributions and transfers				
State highway fund	\$317,856,785		\$366,341,721	
Counties	114,064,687		131,954,734	
Cities	64,809,481		74,224,538	
Townships	13,998,848		16,135,769	
Transit	7,777,138		8,964,317	
Total estimated distributions and transfers		518,506,939		597,621,079
Estimated ending balance		\$0		\$0

<sup>1</sup>Revenues do not include funds collected and disbursed for the administration of the Department of Transportation's (DOT) Motor Vehicle Division, through tribal agreements, or funds collected for vanity license plates and disbursed to nonprofit organizations.

<sup>2</sup>The amounts shown reflect actual revenue collections deposited in the fund through September 2020. The estimated revenue for the remainder of the 2019-21 biennium and the estimated collections for the 2021-23 biennium are based on DOT's revenue forecast.

<sup>3</sup>House Bill No. 1464 (2021) increases the road use fee for electric vehicles from \$120 to \$200, for plug-in hybrid vehicles from \$50 to \$100, and for electric motorcycles from \$20 to \$50. The bill also increases the motor vehicle fuel and special fuels taxes from 23 cents per gallon to 26 cents per gallon.

## FUND HISTORY

Section 11 of Article X of the Constitution of North Dakota provides:

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair, and maintenance of public highways.

The majority of funds received from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund. North Dakota Century Code Section 54-27-19 provides the highway tax distribution fund consists of the "moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes." This section provides after the first \$5.5 million per biennium is transferred to the state highway fund for the purpose of providing administrative assistance to other transferees, the money in the fund must be distributed by the State Treasurer as follows:

1. Sixty-one and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formulas in this subsection using the incorporated cities' populations as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
  - a. For counties having no cities with a population of ten thousand or more, twenty-seven percent of the total county allocation must be distributed to all of the incorporated cities within the county on a countywide per capita basis. The remaining county allocation amount must be transferred into the county highway tax distribution fund.
  - b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
    - (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
    - (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
    - (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.
    - (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from

the total incorporated cities' share in the state as computed under paragraph 1 and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.

5. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Section 54-27-19(1) provides for 61.3 percent of the funds from the highway tax distribution fund be transferred to DOT for deposit in the state highway fund. Section 24-02-37(1) provides, except for investment income, the money of the state highway fund must be applied in the following priority:

- a. The cost of maintaining the state highway system.
- b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota. Notwithstanding any other provision of law, the department of transportation may repay the United States department of transportation for previous related expenditures from current biennium appropriations to allow the department to reobligate the federal aid to other federal aid projects.
- c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

Section 54-27-19(2) requires 2.7 percent of the funds from the highway tax distribution fund to be deposited in the township highway fund. Section 54-27-19.1 directs the State Treasurer to distribute the money to the counties of the state based on the length of township roads in each county compared to the length of all township roads in the state. To receive any funds, organized townships must provide 50 percent matching funds. Each county treasurer is required to allocate the funds received to the organized townships in the county which provide 50 percent matching funds based on the length of township roads in each of those organized townships compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for highway and bridge purposes. If a county does not have organized townships, or has some organized and some unorganized townships, the county is required to retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county.

Section 54-27-19(3) allocates 1.5 percent of the funds from the highway tax distribution fund to the public transportation fund. Section 39-04.2-04 provides money in the public transportation fund must be disbursed under guidelines issued by the director of DOT and must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped. In addition, the money may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the director.

#### **Motor Vehicle Fuel Tax**

Prior to 1983, the motor vehicle fuel excise tax was 8 cents per gallon on motor vehicle fuel sold. The 1983 Legislative Assembly repealed Chapter 57-54 relating to motor vehicle fuel tax and created Chapter 57-43.1 to consolidate the provisions of the motor fuel tax law and the importers for use tax law. Section 1 of House Bill No. 1539 (1983) imposed a 13 cents per gallon tax for all motor vehicle fuel sold except on motor vehicle fuel sold containing a minimum of 10 percent agricultural ethyl or methanol, which was taxed as shown in the following table:

Exception Effective Dates	Tax Rate Per Gallon
Through December 31, 1983	\$0.09
January 1, 1984, through December 31, 1984	\$0.08
January 1, 1985, through December 31, 1985	\$0.07
January 1, 1986, through June 30, 1992	\$0.09
July 1, 1992	\$0.13

The Legislative Assembly, in Section 1 of Senate Bill No. 2296 (1985), changed the language from agricultural ethyl or methanol to "a qualifying alcohol," adjusted the motor fuel tax on motor vehicle fuel sold containing a minimum of 10 percent agricultural ethyl or methanol as shown in the following table:

Exception Effective Dates	Tax Rate Per Gallon
July 1, 1985, through June 30, 1987	\$0.05
July 1, 1987, through December 31, 1992	\$0.09
January 1, 1993	\$0.13

The Legislative Assembly, in Section 9 of Senate Bill No. 2557 (1987), increased the motor vehicle fuel tax from 13 cents per gallon to 17 cents per gallon for all motor vehicle fuel sold.

The Legislative Assembly, in Section 2 of Senate Bill No. 2029 (1989), increased the motor vehicle fuel tax from 17 cents per gallon to 20 cents per gallon for all motor vehicle fuel sold. The referred measure was disapproved on December 5, 1989, leaving the motor vehicle fuel tax rate at 17 cents per gallon.

The Legislative Assembly, in Section 2 of House Bill No. 1575 (1991), removed Section 57-43.1-02(2) relating to the exception from the motor vehicle fuel tax for motor vehicle fuels containing a minimum of 10 percent of qualifying alcohol.

The Legislative Assembly, in Section 1 of House Bill No. 1163 (1997), increased the motor vehicle fuel tax from 17 cents per gallon to 20 cents per gallon for all motor vehicle fuel sold.

The Legislative Assembly, in Section 2 of House Bill No. 1183 (1999), increased the motor vehicle fuel tax from 20 cents per gallon to 21 cents per gallon for all motor vehicle fuel sold.

The Legislative Assembly, in Section 12 of Senate Bill No. 2012 (2005), increased the motor vehicle fuel tax from 21 cents per gallon to 23 cents per gallon for all motor vehicle fuel sold. Section 2 of House Bill No. 1478 (2005), created a new subsection to Section 57-43.1-02, imposing a 1 cent per gallon motor vehicle fuel tax on E85 fuel effective after June 30, 2005, through the month in which a cumulative total of 1.2 million gallons of E85 fuel has been reported to the Tax Commissioner and after that date is ineffective.

#### Special Fuels Excise Tax

The 1983 Legislative Assembly also repealed Chapter 57-52, relating to special fuels excise tax and created Chapter 57-43.2 to consolidate the provisions of the Special Fuels Tax Act, the special fuels tax levy, the Importers for Use Tax Act, and the aviation fuel tax. Section 1 of House Bill No. 1072 (1983) created Chapter 57-43.2 related to special fuels taxes and imposed an excise tax of 8 cents per gallon on the sale or delivery of special fuel with some exceptions and an excise tax of 2 cents per gallon on the exempt items in Section 57-43.2-02. Section 1 of House Bill No. 1539 (1983) amended Section 1 of House Bill No. 1072 to increase the special fuels excise tax from 8 cents per gallon to 13 cents per gallon.

The Legislative Assembly, in Section 1 of House Bill No. 1248 (1985), amended the definition of special fuel to include compressed natural gas.

The Legislative Assembly, in Section 10 of Senate Bill No. 2557 (1987), increased the special fuels excise tax from 13 cents per gallon to 17 cents per gallon.

The Legislative Assembly, in Section 3 of Senate Bill No. 2029 (1989), increased the special fuels excise tax from 17 cents per gallon to 19 cents per gallon. The referred measure was disapproved on December 5, 1989, leaving the special fuels excise tax rate at 17 cents per gallon.

The Legislative Assembly, in Section 12 of House Bill No. 1311 (1997), removed exemptions from the 17 cents per gallon on special fuels. Section 2 of House Bill No. 1163 (1997), increased the special fuels excise tax from 17 cents per gallon to 20 cents per gallon.

The Legislative Assembly, in Section 3 of House Bill No. 1183 (1999), increased the special fuels excise tax from 20 cents per gallon to 21 cents per gallon.

The Legislative Assembly, in Section 3 of Senate Bill No. 2454 (2001), amended Section 57-43.2-02 regarding special fuels excise taxes to authorize a reduction of one and five-hundredths cents per gallon on the sale or delivery of diesel fuel that contains at least 2 percent biodiesel fuel by weight.

The Legislative Assembly, in Section 14 of Senate Bill No. 2012 (2005), amended Section 57-43.2-02 regarding special fuels excise taxes to increase the special fuels excise tax from 21 cents per gallon to 23 cents per gallon effective after June 30, 2005.

### **Motor Vehicle Registration Fees**

Motor vehicle registration fees are assessed based on Chapter 39-04 and vary by vehicle type and vehicle weight. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of an initial fee of \$10 for plates. Motor vehicle registration fees were last changed in 2005, which increased fees for all weight classes by \$10.



**ANALYSIS OF THE LEGACY FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$6,093,018,603		\$7,908,018,603
Add estimated revenues				
Oil and gas gross production and extraction tax collections (30 percent of collections) (2019 SB 2312) <sup>1</sup>	\$930,000,000		\$780,330,000	
Investment earnings (losses) (2021 HB 1425) <sup>2,3,4</sup>	1,385,000,000		996,000,000	
Total estimated revenues		2,315,000,000		1,776,330,000
Total estimated available		\$8,408,018,603		\$9,684,348,603
Less estimated expenditures and transfers				
Transfer of realized earnings to the general fund (2019 SB 2015) <sup>3,5,6</sup>	\$500,000,000		\$0	
Transfer of realized earnings to special funds (2021 HB 1380) <sup>6</sup>	0		0	
Expenditure of principal <sup>5</sup>	0		0	
Total estimated expenditures and transfers		500,000,000		0
Estimated ending balance		<u>\$7,908,018,603</u>		<u>\$9,684,348,603</u>

<sup>1</sup>The oil and gas tax revenues reflect allocations for August through July (24 months). These amounts reflect actual allocations through December 2020. The estimated allocations for the remainder of the 2019-21 biennium and the estimated allocations for the 2021-23 biennium are based on the January 2021 legislative revenue forecast.

Senate Bill No. 2312 (2019) amended the oil and gas tax revenue sharing agreement between the state and the Three Affiliated Tribes of the Fort Berthold Reservation increasing the revenue allocated to the Three Affiliated Tribes and decreasing the revenue allocated to the state. As a result, less revenue is available for allocations to the legacy fund.

<sup>2</sup>Based on the provisions of Section 26 of Article X of the Constitution of North Dakota, investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. North Dakota Century Code Section 21-10-12 provides that the investment earnings are the realized earnings of the fund. Unrealized earnings remain in the fund. The schedule below provides more detail on the investment earnings since the 2013-15 biennium.

	2013-15 Biennium Actual	2015-17 Biennium Actual	2017-19 Biennium Actual	2019-21 Biennium Estimated	2021-23 Biennium Estimated
Realized earnings (losses)	\$145,255,008	\$273,064,100	\$502,243,356	\$500,000,000 <sup>3</sup>	N/A
Unrealized earnings (losses)	67,871,752	252,305,388	167,170,302	885,000,000 <sup>3</sup>	N/A
Total investment earnings (losses)	\$213,126,760	\$525,369,488	\$669,413,658	\$1,385,000,000 <sup>3</sup>	\$996,000,000 <sup>3</sup>

**The investment earnings (losses) for the legacy fund for the 2019-21 biennium through January 31, 2021, were approximately \$1,521 million, including realized earnings (losses) of \$636 million and unrealized earnings (losses) of \$885 million.**

<sup>3</sup>The estimated investment earnings shown for the 2019-21 biennium include June 2019 realized earnings of \$46,980,140 due to the timing of the transfer and the reporting of earnings at the end of the 2017-19 biennium. The estimated earnings for the 2019-21 biennium reflect actual earnings through December 2020. The estimated earnings for the 2021-23 biennium reflect 6 percent per year of the forecasted average balance of the fund (\$8.36 billion).

**NOTE: The actual earnings may differ significantly from these estimates based on actual investment performance.**

<sup>4</sup>House Bill No. 1425 (2021) designates a portion of the legacy fund investments to in-state fixed income investments and in-state equity investments. The performance of these investments may affect the earnings of the legacy fund.

<sup>5</sup>The principal and earnings of the legacy fund may not be spent until after June 30, 2017, pursuant to Section 26 of Article X of the Constitution of North Dakota. After June 30, 2017, the principal and earnings may be spent as follows:

- Up to 15 percent of the principal of the legacy fund may be spent during a biennium subject to approval by at least two-thirds of the members elected to each house of the Legislative Assembly.
- The realized earnings accruing after June 30, 2017, are transferred by the State Treasurer to the general fund at the end of the biennium and may be spent from the general fund pursuant to legislative appropriation.

Senate Bill No. 2362 (2019) provides a contingent transfer of \$64.37 million from legacy fund earnings deposited in the general fund to the common schools trust fund if the legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium are at least \$164.37 million. The 2019 Legislative Assembly approved the contingent transfer to correct a shortfall of oil extraction tax collections to the common schools trust fund in prior bienniums.

<sup>6</sup>House Bill No. 1380 (2021) establishes a percent of market value (POMV) calculation to determine the amount of legacy fund earnings available for spending each biennium and creates a legacy earnings fund. The POMV is based on 6 percent of the 5-year average of legacy fund assets. The earnings available for spending would be transferred to special funds and other purposes designated by the Legislative Assembly, and any excess earnings would be transferred to special funds, including a portion to the legacy fund to become part of the principal.

#### **FUND HISTORY**

The legacy fund was created in 2010 when the voters of North Dakota approved a constitutional amendment--now Section 26 of Article X of the Constitution of North Dakota--to provide 30 percent of oil and gas gross production and oil extraction taxes on oil and gas produced after June 30, 2011, be transferred to the legacy fund. The principal and earnings of the legacy fund may not be spent until after June 30, 2017, and any expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the Legislative Assembly. Not more than 15 percent of the principal of the legacy fund may be spent during a biennium. The Legislative Assembly may transfer funds from any source to the legacy fund, and such transfers become part of the principal of the fund. The State Investment Board is responsible for investment of the principal of the legacy fund. Investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium.

Prior to July 1, 2015, if the unobligated balance of the strategic investment and improvements fund exceeded \$300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund were deposited instead into the legacy fund in the subsequent month. In House Bill Nos. 1176 and 1377 (2015), the Legislative Assembly amended Section 15-08.1-08 to remove the provision related to the additional deposits of revenue in the legacy fund from the strategic investment and improvements fund.

**ANALYSIS OF THE LIGNITE RESEARCH FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$29,908,588		\$2,631,526
Add estimated revenues				
Separate two-cent coal severance tax	\$1,140,000		\$1,120,000	
50 percent of coal severance taxes deposited in the coal development trust fund <sup>1</sup>	1,730,000		1,700,000	
20 percent of coal severance taxes deposited in the coal development trust fund for clean coal projects <sup>1</sup>	710,000		695,000	
15 percent of coal severance taxes <sup>1</sup>	3,205,000		3,155,000	
5 percent of the general fund share of coal conversion tax	2,310,000		0	
Lignite research tax (2021 HB 1412) <sup>1</sup>	0		2,310,000	
Oil and gas tax allocation (2019 HB 1066) <sup>1</sup>	10,000,000		10,000,000	
Investment income on Dakota Gasification Company ammonia plant and Spiritwood plant	180,000		180,000	
Revenue bonds/short-term loan <sup>2</sup>	0		0	
Interest income, return of funds, and litigation contributions	569,465		20,000	
Total estimated revenues		19,844,465		19,180,000
Total estimated available		\$49,753,053		\$21,811,526
Less estimated expenditures and transfers <sup>3,4</sup>				
Administration	\$875,000		\$900,000	
Lignite feasibility studies (nonmatching grants)	1,515,625		1,515,625	
Small research grants	10,418,224		3,475,000	
Lignite marketing	1,800,000		1,800,000	
Lignite litigation <sup>5</sup>	500,000		1,500,000	
Demonstration projects	1,367,678		0	
Advanced energy technology development	30,645,000		12,555,000	
Total estimated expenditures and transfers <sup>6</sup>		47,121,527		21,745,625
Estimated ending balance		\$2,631,526		\$65,901

<sup>1</sup>House Bill No. 1066 (2019) increases the allocation of oil and gas tax revenue to the lignite research fund by \$7 million, from \$3 million to \$10 million. House Bill No. 1412 (2021) exempts 100 percent of the generation tax and 60 percent of the capacity tax from the coal conversion tax and creates a new lignite research tax to maintain the current level of allocations to the lignite research fund.

<sup>2</sup>Pursuant to North Dakota Century Code Section 54-17.5-04, the Industrial Commission may issue revenue bonds or borrow short-term funds from the Bank of North Dakota.

<sup>3</sup>The Industrial Commission has a policy stating that 18 percent of lignite research fund income will be used for small research projects, 56 percent for large demonstration research projects, 21 percent for marketing projects, and 5 percent for administration. The commission has further directed that no single large demonstration research project can receive more than 37.5 percent of available funds.

<sup>4</sup>The Industrial Commission has waived the fund allocation policy. The commission has committed \$22 million through the 2011-13 biennium to three projects. In January 2015 the commission learned one of the projects is not proceeding and released the project's commitment of \$8,732,503. Expenditures for Lignite

Vision 21 Project have been \$1,360,750 during the 2003-05 biennium, \$2,243,391 during the 2005-07 biennium, \$2,200,000 during the 2007-09 biennium, \$3,972,090 during the 2009-11 biennium, \$678,851 during the 2011-13 biennium, \$110,000 during the 2013-15 biennium, \$914,663 during the 2015-17 biennium, \$1,290,525 during the 2017-19 biennium, and anticipated expenditures of \$1,367,678 in subsequent bienniums. The objective of the Lignite Vision 21 Project is to construct new lignite-fired power plants in North Dakota. (These amounts are net of funds that were distributed but later returned when projects did not proceed.)

<sup>5</sup>Lignite litigation - House Bill No. 1093 (2007) provides that \$500,000 of the amount appropriated to the lignite research fund for the 2007-09 biennium is to be used to pay for fees associated with lignite litigation that may be brought by the state to protect and promote the continued development of lignite resources. Activities associated with the litigation have been initiated with \$83,379 spent during the 2007-09 biennium, \$153,907 spent during the 2009-11 biennium, \$652,519 spent during the 2011-13 biennium, \$983,288 during the 2013-15 biennium with \$451,555 of that amount paid by industry, \$259,159 during the 2015-17 biennium with \$122,866 of that amount paid by industry, and \$44,962 spent during the 2017-19 biennium with \$14,760 of that amount paid by industry. From nonmatching funds within the lignite research fund, \$500,000 is designated for litigation expenses in the 2019-21 biennium and \$1,500,000 is designated for the 2021-23 biennium.

The State of North Dakota was successful in its litigation against the State of Minnesota during the 2017-19 biennium and will be receiving a total of \$1,410,000. Of the \$1,410,000, \$670,000 will be paid to industry partners, and the remaining \$740,000 will be deposited in the lignite research fund during the 2017-19 and 2019-21 bienniums. The original \$500,000 was spent by the end of the 2011-13 biennium with additional funding being provided from nonmatching program funds in subsequent bienniums.

House Bill No. 1014 (2019) provides legislative intent that at least \$500,000 from the lignite research fund, including proceeds from successful litigation, is available for fees associated with lignite litigation brought by the state to protect and promote the continued development of lignite resources.

<sup>6</sup>The Industrial Commission has continuing appropriation authority for all money deposited in the lignite research fund pursuant to Section 57-61-01.6.

#### **FUND HISTORY**

Section 57-61-01.5(2) and Section 21 of Article X of the Constitution of North Dakota provide for up to 70 percent of the taxes collected and deposited in the coal development trust fund to be deposited in the lignite research fund. Of the 70 percent, 50 percent is designated for research, development, and marketing pursuant to the passage of Initiated Measure No. 3 in June 1990, and 20 percent is designated for clean coal demonstration projects pursuant to voter approval of a constitutional amendment in June 1994. The remaining 30 percent of the funds deposited in the coal development trust fund are to be held in trust and administered by the Board of University and School Lands, which has the authority to invest the funds, and may, as provided by law, lend money from the fund to political subdivisions. Senate Bill No. 2014 (2017) reduced the allocation of coal severance tax allocations to the coal development trust fund from 30 to 15 percent and provides an allocation of 15 percent to the lignite research fund.

From the state general fund share of coal conversion tax collections, the Legislative Assembly designated 3 percent for transfer to the lignite research fund during the 2007-09 biennium and 5 percent after the 2007-09 biennium in House Bill No. 1093 (2007).

House Bill No. 1152 (2017) changed the allocation of the state's share of oil and gas tax revenue to provide up to \$3 million of allocations to the lignite research fund.

**ANALYSIS OF THE MEDICAL MARIJUANA FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$614,188		\$1,032,133
Add estimated revenues				
Program fees:				
Compassion center and manufacturer registration fees	\$940,000		\$940,000	
Additional plant fees	170,000		90,000	
Qualifying patient, designated caregiver, and compassion center agents	592,350		719,750	
Revenue impact of House Bill No. 1359 (2021) - Estimated reduction in agent fees			(22,250)	
Revenue impact of House Bill No. 1420 (2021) - Estimated increases in compassion center fees of \$1,010,000 and additional plant fees of \$560,000 are offset by an estimated decrease in agent fees of \$71,000			1,499,000	
Revenue impact of House Bill No. 1391 (2021)- No estimated impact on revenues			0	
Total estimated revenues		1,702,350		3,226,500
Total available		\$2,316,538		\$4,258,633
Less estimated State Department of Health expenditures (Pursuant to a continuing appropriation in North Dakota Century Code Section 19-24.1-40)				
Salaries and wages	\$900,703		\$971,248 <sup>2</sup>	
Indirect costs	0		142,774 <sup>2</sup>	
Operating expenditures	383,702		450,771 <sup>2</sup>	
Expenditure impact of House Bill No. 1359 (2021) - Estimated increase in operating expenses			4,000	
Expenditure impact of House Bill No. 1420 (2021) - Estimated increases in salaries and wages of \$1,265,075, including 7 full-time equivalent (FTE) positions; operating expenses of \$74,716; and capital assets of \$90,000.			1,429,791	
Expenditure impact of House Bill No. 1391 (2021) - No estimated impact on expenditures	0		0	
Total estimated expenditures and adjustments		1,284,405 <sup>1</sup>		2,998,584
Estimated ending balance		\$1,032,133		\$1,260,049

<sup>1</sup>The State Department of Health presented a budget, funded through the continuing appropriation, totaling \$1,398,080, including 5 FTE positions.

<sup>2</sup>The State Department of Health presented a budget, funded through the continuing appropriation, totaling \$1,564,793, including 5 FTE positions.

**FUND HISTORY**

In November 2016, voters approved Initiated Statutory Measure No. 5 (North Dakota Compassionate Care Act) relating to medical marijuana and created Chapter 19-24. In Senate Bill No. 2344 (2017), the Legislative Assembly repealed Chapter 19-24 and created and enacted Chapter 19-24.1 to provide for the legalization of medical marijuana. Senate Bill No. 2344 required the State Department of Health to establish and implement a medical marijuana program to allow for the production, processing, and sale of marijuana for medical use. In Section 19-24.1-40, the Legislative Assembly established a medical marijuana fund. The State Department of Health must deposit all fees related to medical marijuana into the fund and must administer the fund. Money in the fund is appropriated to the department on a continuing basis for use in administering the medical marijuana program. Therefore, the Legislative Assembly removed funding for the Medical Marijuana Division from the State Department of Health's base budget in 2019.

**ANALYSIS OF THE NORTH DAKOTA OUTDOOR HERITAGE FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$4,948,114		\$3,866,164
Add estimated revenues				
Oil and gas gross production tax collections	\$15,000,000 <sup>1</sup>		\$15,000,000 <sup>1</sup>	
Interest income	100,000		90,000	
Refunds	1,705,094			
Total estimated revenues		16,805,094		15,090,000
Total available		\$21,753,208		\$18,956,164
Less estimated expenditures and transfers				
House Bill No. 1215 (2021) Transfer to outdoor heritage revolving loan fund <sup>2</sup>			\$1,500,000	
House Bill No. 1009 (2021) Transfer to soil health cover crop grant program <sup>3</sup>			200,000	
Grant award commitments	\$17,712,044 <sup>4</sup>		16,000,000	
Administrative expenses	175,000		175,000	
Total estimated expenditures and transfers		17,887,044		17,875,000
Estimated ending balance		\$3,866,164		\$1,081,164

<sup>1</sup>North Dakota Century Code Section 57-51-15 established a maximum allocation of \$40 million (\$20 million per year) to the fund. For the 2019-21 biennium, House Bill No. 1014 (2019) limits the allocations to \$15 million. The current forecast for oil and gas taxes will result in \$15 million being allocated to the fund during the 2021-23 biennium. Senate Bill No. 2014 (2021) limits oil and gas gross production tax revenue allocations to the fund to \$7.5 million annually for the 2021-23 biennium.

<sup>2</sup>House Bill No. 1215 (2021) creates an outdoor heritage revolving loan fund and transfers 10 percent of the oil and gas gross production tax collections allocated to the outdoor heritage fund to the revolving loan fund. Cumulative transfers may not exceed \$25 million.

<sup>3</sup>House Bill No. 1009 (2021) provides for a transfer to \$300,000 from the outdoor heritage fund to the Agriculture Commissioner for the soil health cover crop grant program.

<sup>4</sup>All money in the fund is appropriated on a continuing basis, pursuant to Section 54-17.8-02. Grant commitments include projects that will draw down funds over a 10-year period. The amounts shown reflect the estimated amount available for grants and not the amount expended.

**FUND HISTORY**

The North Dakota outdoor heritage fund was established in House Bill No. 1278 (2013) (Chapter 54-17.8) to provide, pursuant to a continuing appropriation, grants to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to enhancing conservation practices in this state by:

- Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;
- Improving, maintaining, and restoring water quality, soil conditions, plant diversity, animal systems, and by supporting other practices of stewardship to enhance farming and ranching;
- Developing, enhancing, conserving, and restoring wildlife and fish habitat on private and public lands; and
- Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

For the 2013-15 biennium, pursuant to Section 57-51-15, 4 percent of the first 1 percent of oil and gas gross production tax collections is deposited in the North Dakota outdoor heritage fund, up to \$15 million per year. House Bill No. 1176 (2015) amended Section 57-51-15 to increase the amount deposited in the North Dakota outdoor heritage fund from 4 percent of the first 1 percent of oil and gas gross production tax collections to 8 percent, and to increase the maximum oil and gas gross production tax collection deposits from \$15 million to \$20 million per year and from \$30 million to \$40 million per biennium. For the period September 1, 2017, through August 31, 2019, Senate Bill No. 2013 (2017), a maximum of \$10 million of oil and gas gross production tax collections may be deposited in the fund. For the period September 1, 2019, through August 31, 2021, House Bill No. 1014 (2019), a maximum of \$15 million of oil and gas gross production tax collections may be deposited in the fund. The Industrial Commission has oversight of the North Dakota outdoor heritage fund. The North Dakota Outdoor Heritage Advisory Board (consisting of 12 voting and 4 ex officio members) makes recommendations to the commission on the funding of grants.

## ANALYSIS OF THE RESOURCES TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2019-21 Biennium		2021-23 Biennium	
		\$		\$
Beginning balance, excluding infrastructure revolving loan fund		\$326,742,619		\$335,263,424
Add estimated revenues and transfers				
Oil extraction tax collections	\$299,660,000 <sup>1</sup>		\$261,400,000 <sup>1</sup>	
Bond proceeds from repayment of loans			74,500,000 <sup>2</sup>	
Repayments and reimbursements	13,568,805		13,126,800	
Investment earnings/miscellaneous income	4,492,000		1,500,000	
Total estimated revenues		317,720,805		350,526,800
Total available		\$644,463,424		\$685,790,224
Less funds designated for the infrastructure revolving loan fund (North Dakota Century Code Section 61-02-78)	\$0 <sup>3</sup>		\$0 <sup>3</sup>	
Less estimated expenditures and transfers				
State Water Commission - Grants, projects, and project administration, pursuant to Senate Bill No. 2020 (2019) for the 2019-21 biennium and House Bill No. 1020 (2021) for the 2021-23 biennium	305,000,000 <sup>4</sup>		605,920,859 <sup>5</sup>	
House Bill No. 1431 (2021) - Appropriation to the State Water Commission to provide funding for the Mouse River flood control project			74,500,000 <sup>2</sup>	
Total estimated State Water Commission expenditures and loans		305,000,000		680,420,859
Transfer to renewable energy development fund (Section 57-51.1-07)	\$3,000,000 <sup>6</sup>		\$3,000,000	
Transfer to energy conservation grant fund (Section 57-51.1-07)	1,200,000 <sup>6</sup>		1,200,000	
Total estimated transfers		4,200,000		4,200,000
Estimated ending balance, excluding funds designated for infrastructure revolving loan fund		<u>\$335,263,424</u>		<u>\$1,169,365</u>

<sup>1</sup>Estimated oil extraction tax revenues - The allocations for the 2019-21 biennium and the 2021-23 biennium are based on the January 2021 legislative revenue forecast and legislative action through crossover.

<sup>2</sup>House Bill No. 1431 (2021) allocates \$74.5 million of bond proceeds which are deposited into the resources trust fund for the repayment of outstanding loans of the Western Area Water Supply Authority. The bill also provides an appropriation of \$74.5 million from the resources trust fund to the State Water Commission for the Mouse River flood control project.

<sup>3</sup>House Bill No. 1020 (2017) amended Section 61-02-78 to provide no more than \$26,000,000 of total resources trust fund revenue may be allocated to the infrastructure revolving loan fund. As a result, excess transfers of \$8,440,473 were returned to the resources trust fund during the 2017-19 biennium and there will be no more transfers to the infrastructure revolving loan fund. House Bill No. 1431 (2021) eliminates the infrastructure revolving loan fund within the resources trust fund; combines it with the community water development fund to establish a newly created water infrastructure revolving loan fund; and provides a continuing appropriation to the State Water Commission for the purpose of providing loans for water projects in a similar manner as the prior infrastructure revolving loan fund.



Infrastructure Revolving Loan Fund Share of Oil Extraction Tax Collections	
	Infrastructure Revolving Loan Fund Transfers
2013-15 biennium	\$11,407,864
2015-17 biennium	23,032,609
2017-19 biennium	(8,440,473)
Total	\$26,000,000 <sup>1</sup>

<sup>1</sup>Loans outstanding as of January 31, 2021, totaled \$25,606,099.

<sup>4</sup>Sections 1 and 3 of Senate Bill No. 2020 (2019) appropriate \$778,482,206 or any additional funding that becomes available, from the resources trust fund for the purpose of defraying the expenses of the State Water Commission for the 2019-21 biennium.

<sup>5</sup>House Bill No. 1020 (2021) includes \$605,920,859 from the resources trust fund for the purpose of defraying the expenses of the State Water Commission for the 2021-23 biennium. This amount includes \$288,557,676 of new appropriations for the 2021-23 biennium and \$317,363,183 of water project funding continued from the 2019-21 biennium (carryover).

<sup>6</sup>The Legislative Assembly approved Senate Bill No. 2362 (2019), which changed the method of allocating oil extraction tax revenue related to the state's share of revenue associated with production on tribal lands. The changes also restored the maximum allocation to the energy conservation grant fund from \$200,000 to \$1.2 million.

#### INFRASTRUCTURE REVOLVING LOAN FUND HISTORY

The infrastructure revolving loan fund was created by the Legislative Assembly in Senate Bill No. 2233 (2013), which became effective on January 1, 2015. The bill established an infrastructure revolving loan fund within the resources trust fund. The bill provided 10 percent of oil extraction tax revenue deposited in the resources trust fund is to be made available on a continuing basis to provide loans for water supply, flood protection, or other water development and water management projects. Loans are approved by the State Water Commission with a fixed interest rate of 1.5 percent and administered by the Bank of North Dakota. Annually, the Bank receives .5 percent of the balance of issued loans to cover costs associated with administering the loans. The fund beginning balance and revenue earned in a biennium are carried over from biennium to biennium within the resources trust fund. House Bill No. 1020 (2017) provided the maximum to be allocated to the infrastructure revolving loan fund is **\$26 million**. House Bill No. 1431 (2021) eliminates the infrastructure revolving loan fund within the resources trust fund; combines it with the community water development fund to establish a newly created water infrastructure revolving loan fund; and provides a continuing appropriation to the State Water Commission for the purpose of providing loans for water projects in a similar manner as the prior infrastructure revolving loan fund.

#### RESOURCES TRUST FUND HISTORY

The resources trust fund was created pursuant to the passage of Initiated Measure No. 6 in the November 1980 general election. Initiated Measure No. 6 created a 6.5 percent oil extraction tax, 10 percent of which was to be allocated to the resources trust fund. In June 1990 the Constitution of North Dakota was amended to establish the resources trust fund as a constitutional trust fund and provide that the principal and income of the fund could be spent only upon legislative appropriations for:

- Constructing water-related projects, including rural water systems; and
- Energy conservation programs.

In November 1994 the voters of North Dakota approved a constitutional amendment, which is now Section 24 of Article X of the Constitution of North Dakota, to provide that 20 percent of oil extraction taxes be allocated as follows:

- 50 percent (of the 20 percent) to the common schools trust fund; and
- 50 percent (of the 20 percent) to the foundation aid stabilization fund.

The 1995 Legislative Assembly amended Section 57-51.1-07 to increase the percentage of oil extraction tax deposited into the resources trust fund from 10 to 20 percent. The general fund received 60 percent of oil extraction tax revenues, and the remaining 20 percent was allocated pursuant to Section 24 of Article X of the Constitution of North Dakota.

Section 57-51.1-07, as amended by Senate Bill No. 2129 (2011), provides that oil extraction tax revenues be distributed as follows:

- 20 percent to the resources trust fund;
- 20 percent allocated as provided in Section 24 of Article X of the Constitution of North Dakota;
- 30 percent to the legacy fund; and
- 30 percent to be allocated to the state's general fund with certain funds designated for deposit in the property tax relief sustainability fund, the strategic investment and improvements fund, and the state disaster relief fund as provided in House Bill No. 1451 (2011).

The Legislative Assembly in Senate Bill No. 2014 (2013) authorized quarterly transfers of 5 percent of the amount credited to the resources trust fund to the renewable energy development fund--up to \$3 million per biennium and of .5 percent of the amount credited to the resources trust fund to the energy conservation grant fund--up to \$1.2 million per biennium. Funds in the newly created energy conservation grant fund are appropriated on a continuing basis to the Department of Commerce for grants to political subdivisions for energy conservation projects in nonfederal public buildings. In addition, effective January 1, 2015, the Legislative Assembly, in Senate Bill No. 2233 (2013), established an infrastructure revolving loan fund within the resources trust fund. The bill provides 10 percent of oil extraction tax revenue deposited in the resources trust fund is to be made available on a continuing basis to provide loans for water supply, flood protection, or other water development and water management projects. Loans are approved by the State Water Commission and administered by the Bank of North Dakota. House Bill No. 1020 (2017) reduced the allocation to the renewable energy development fund from 5 to 3 percent and the maximum allocation to the energy conservation grant fund from \$1.2 million to \$200,000 for the 2017-19 biennium, restored the maximum allocation to the energy conservation grant fund to \$1.2 million after July 31, 2019, and provided for a \$26 million maximum allocation of resources trust fund revenues to the infrastructure revolving loan fund.

The Legislative Assembly in Senate Bill No. 2020 (2015) directed the State Water Commission to refinance all remaining bonds through the Bank of North Dakota and to continue annual loan payments on the newly refinanced bonds. The State Water Commission refinanced the bonds with the Bank on July 29, 2015, in the amount of \$45,840,221 at a variable interest rate of 1.75 percent. The Bank loan will mature on June 30, 2030.

The Legislative Assembly in Senate Bill No. 2020 (2019) provided \$37.2 million to pay off the Bank of North Dakota loan. The bill contains an emergency clause, added in Senate Bill No. 2015 (2019); therefore, the State Water Commission paid off the Bank loan from the water development trust fund during the 2017-19 biennium.

**ANALYSIS OF THE RISK MANAGEMENT FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$4,950,402		\$3,546,130
Add estimated revenues				
Premiums (2021 HB 1057)	\$2,510,235 <sup>1</sup>		\$3,016,031 <sup>2</sup>	
Interest and other revenue	240,000 <sup>3</sup>		240,000 <sup>3</sup>	
Total estimated revenues		2,750,235		3,256,031
Total estimated available		\$7,700,637		\$6,802,161
Less estimated expenditures and transfers				
Administration	\$1,508,611		\$1,338,611	
Claims-related expenses	0 <sup>4</sup>		0 <sup>4</sup>	
Claims, litigation, and excess insurance (2021 HB 1015)	2,645,896		3,221,136 <sup>5</sup>	
Total estimated expenditures and transfers		4,154,507		4,559,747
Estimated ending balance		\$3,546,130		\$2,242,414

<sup>1</sup>In response to an actuarial review completed in 2018 by Aon plc, the Office of Management and Budget's (OMB) Risk Management Division assessed a total of \$2,755,796 in risk management premiums to state agencies, boards, and commissions and the North Dakota University System for the 2019-21 biennium. Assessments were subject to a risk management discount program for agencies that adopt proactive loss control practices, with a maximum available discount of 15 percent. The amount shown for premiums reflects discounts of \$121,792 for fiscal year 2020, discounts of \$123,871 fiscal year for 2021 and a \$102 required contribution for the newly established Ethics Commission.

<sup>2</sup>In response to an actuarial review completed in 2020 by Aon plc, OMB's Risk Management Division is assessing a total of \$3,351,146 in risk management premiums to state agencies, boards, and commissions and the University System for the 2021-23 biennium. Contributions reflect estimated discounts of 10 percent (\$335,115) and include the actuarial projected increased required contributions (\$75,003) to address the increased statutory caps beginning July 1, 2022, as provided in House Bill No. 1057 (2021).

<sup>3</sup>Investment and other revenue relates to realized or projected gains from risk management investments, payments received from salvaged vehicles, and costs and attorney's fees collected for successful lawsuits.

<sup>4</sup>The amounts listed for claims-related expenses are for adjusting consulting services required for large or unusual claims.

<sup>5</sup>This amount includes a payment authorized in House Bill No. 1015 (2021) for attorney's fees incurred by a state employee resulting from a criminal investigation lacking a probable cause, estimated at \$48,136.

**FUND HISTORY**

The North Dakota Supreme Court abolished the doctrine of sovereign immunity in September 1994. As a result of this court decision, the 1995 Legislative Assembly passed the Tort Claims Act (Senate Bill No. 2080 (1995)), which created a risk management fund and assigned the responsibility of administering a risk management program to OMB.

North Dakota Century Code Section 32-12.2-19 allows OMB to pay notification and remediation costs or insurance costs from the risk management fund in the event of an information technology security breach at a state agency.

**ANALYSIS OF THE SENIOR CITIZEN SERVICES AND PROGRAMS FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$0		\$0
Add revenues				
Allocation from sales, use, and motor vehicle excise tax collections	\$8,513,710 <sup>1,2</sup>		\$9,300,000 <sup>1,2</sup>	
Total estimated revenues		8,513,710		9,300,000
Total available		\$8,513,710		\$9,300,000
Less estimated expenditures and transfers				
State Treasurer - County senior citizen matching grants	\$8,242,217 <sup>3</sup>		\$9,300,000 <sup>3</sup>	
Transfer to the general fund	271,493 <sup>4</sup>			
Total estimated expenditures and transfers		8,513,710		9,300,000
Estimated ending balance		\$0		\$0

<sup>1</sup>The allocation from sales, use, and motor vehicle excise tax collections is shown below:

Fiscal Year	Allocation From Sales, Use, and Motor Vehicle Excise Tax Collections	Percentage Increase (Decrease) From Previous Year
2012	\$1,695,832 (actual)	21.2%
2013	\$1,821,347 (actual)	7.4%
2014	\$2,311,346 (actual)	26.9%
2015	\$2,654,064 (actual)	14.8%
2016	\$3,169,878 (actual)	19.4%
2017	\$3,627,787 (actual)	14.4%
2018	\$3,886,950 (actual)	7.1%
2019	\$4,060,513 (actual)	4.5%
2020	\$4,163,710 (actual)	2.5%
2021	\$4,350,000 (actual)	4.5%
2022	\$4,650,000 (estimate)	6.9%
2023	\$4,650,000 (estimate)	0%

<sup>2</sup>Senate Bill No. 2242 (2011) increased the amount of general fund revenue to be allocated to the senior citizen services and programs fund from two-thirds of one mill levied statewide to three-fourths of one mill levied statewide effective for taxable years beginning after December 31, 2010. The bill also increased the amount of grants provided to counties that have approved a mill levy for senior citizen services and programs from two-thirds of the amount levied in the county for senior citizen programs to three-fourths of the amount levied in the county for senior citizen programs, limited to one mill.

Senate Bill No. 2162 (2013) increased the amount of general fund revenue to be allocated to the senior citizen services and programs fund from three-fourths of one mill levied statewide to 85 percent of one mill levied statewide effective for taxable years beginning after December 31, 2012. The bill also increased the amount of grants provided to counties that have approved a mill levy for senior citizen programs from three-fourths of the amount levied in the county for senior citizen programs to 85 percent of the amount levied up to one mill.

Senate Bill No. 2143 (2015) increased the amount of general fund revenue to be allocated to the senior citizen services and programs fund from 85 percent of one mill levied statewide to 87.5 percent of the amount appropriated up to one mill levied statewide effective for taxable years beginning after December 31, 2014. The bill also increased the amount of grants provided to counties that have approved a mill levy for senior citizen programs from 85 percent of the amount levied in the county for senior citizen programs to 87.5 percent of the amount appropriated up to one mill.

<sup>3</sup>The county senior citizen matching grants are shown below:

Fiscal Year	County Senior Citizen Matching Grants	Percentage Increase (Decrease) From Previous Year
2012	\$1,687,098 (actual)	21.9%
2013	\$1,789,363 (actual)	6.1%
2014	\$2,290,963 (actual)	28.0%
2015	\$2,650,725 (actual)	15.7%
2016	\$3,143,803 (actual)	18.6%
2017	\$3,504,725 (actual)	11.5%
2018	\$3,723,317 (actual)	6.2%
2019	\$3,823,071 (actual)	2.7%
2020	\$3,892,217 (actual)	1.8%
2021	\$4,350,000 (actual)	11.8%
2022	\$4,650,000 (estimate)	6.9%
2023	\$4,650,000 (estimate)	0%

<sup>4</sup>Any funds remaining at the end of each biennium are transferred to the general fund.

#### FUND HISTORY

Senate Bill No. 2267 (2005) created the senior citizen services and programs fund. Statutory provisions are contained in North Dakota Century Code Sections 57-15-56(5) and 57-39.2-26.2. Current statutory provisions provide that each year during July through December, the State Treasurer is to transfer to the fund the portion of sales, use, and motor vehicle excise tax collections that are equivalent to the amount generated from 87.5 percent of one mill levied statewide as reported by the Tax Commissioner. The State Treasurer, by March 1 of the following year, pursuant to a continuing appropriation, distributes money in the fund as grants to eligible counties for senior citizen programs. The grants are provided to counties that have approved a mill levy for senior citizen services and programs. Current statutory provisions provide that the amount of each county's annual grant is equal to 87.5 percent of the amount appropriated in dollars in the county for senior citizen programs, limited to one mill. The Legislative Assembly provided intent that counties match 50 percent of the state grant with funding from the county general fund or state aid distribution fund receipts. Any money remaining in the fund at the end of each biennium is transferred to the general fund, except in the 2005-07 biennium any remaining money in the fund at the end of the biennium was allocated to those counties that were levying the statutory maximum for senior citizen programs in proportion to the amounts generated by those levies in those counties. Senate Bill No. 2242 (2011) amended statutory provisions to increase the amount of collections to be allocated to the fund and the amount of grants provided to counties from two-thirds of the amount levied for senior citizen programs to three-fourths of the amount levied for senior citizen programs, limited to one mill. Senate Bill No. 2162 (2013) increased these amounts to 85 percent of the amounts levied for senior citizen programs, limited to one mill. Senate Bill No. 2143 (2015) increased these amounts to 87.5 percent of the amounts appropriated for senior citizen programs, limited to one mill.

## ANALYSIS OF THE STATE AID DISTRIBUTION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$0		\$0
Add estimated revenues				
Sales, use, and motor vehicle excise taxes (based on 43.5 percent of an equivalent one-cent sales tax effective July 1, 2014)	\$193,967,183 <sup>1</sup>		\$189,178,151 <sup>1</sup>	
Total estimated revenues		193,967,183		189,178,151
Total available		\$193,967,183		\$189,178,151
Less estimated expenditures and transfers				
Payments to political subdivisions				
County share (53.7 percent)	\$104,160,377		\$101,588,667	
City share (46.3 percent)	89,806,806		87,589,484	
Total estimated expenditures and transfers		193,967,183		189,178,151
Estimated ending balance		\$0		\$0

<sup>1</sup>The amounts shown for the 2019-21 biennium and the 2021-23 biennium are based on the January 2021 legislative revenue forecast and legislative action affecting sales and use tax and motor vehicle excise tax through crossover, including the effects of Senate Bill No. 2220. This analysis does not reflect the effect of House Bill Nos. 1309, 1310, 1351, and 1501, and Senate Bill Nos. 2137, 2152, 2200, and 2226, because based on the fiscal notes, the effect of these bills cannot be determined.

### FUND HISTORY

North Dakota Century Code Section 57-39.2-26.1 provided, prior to January 1999, for a portion of sales, use, and motor vehicle excise tax collections equal to 60 percent of an equivalent one-cent sales tax to be deposited by the State Treasurer in the state aid distribution fund. The Tax Commissioner certified to the State Treasurer the portion of sales, use, and motor vehicle excise tax net revenues that were deposited in the state aid distribution fund. The state aid distribution fund had historically been allocated, subject to legislative appropriation, with 50 percent of revenues for state revenue sharing and 50 percent for personal property tax replacement.

The 1997 Legislative Assembly amended Section 57-39.2-26.1 to provide that, effective January 1, 1999, deposits into the state aid distribution fund are based on an amount equal to 40 percent of an equivalent one-cent sales tax instead of an amount equal to 60 percent of an equivalent one-cent sales tax. In addition, a continuing appropriation was added which appropriates all revenues deposited in the state aid distribution fund for payments to political subdivisions. Senate Bill No. 2325 (2013) provides that effective July 1, 2014, deposits into the state aid distribution fund be based on an amount equal to 43.5 percent of an equivalent one-cent sales tax instead of an amount equal to 40 percent of an equivalent one-cent sales tax.

The 1997 Legislative Assembly also changed the allocation of the state aid distribution fund from 50 percent for personal property tax replacement and 50 percent for revenue sharing to 53.7 percent for counties and 46.3 percent for cities. The allocation for each county includes townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the Southwest Water Authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within the cities. The allocation for each city includes park districts and other taxing districts within the city, excluding school districts. The county allocation to townships must be based on the same percentage allocation that a township received in calendar year 1996.

House Bill No. 1025 (2003), which became effective on August 1, 2003, revised the state aid distribution formula for cities and counties to account for population changes resulting from the 2000 federal census. The bill provides for total distribution percentages to cities and counties to remain at 53.7 percent to counties and 46.3 percent to cities; however, the allocation formula to specific counties and cities is:

<b>Population Category Through June 30, 2011</b>			
<b>Counties</b>	<b>Percentage</b>	<b>Cities (Based on Population)</b>	<b>Percentage</b>
17 counties with the largest population (allocated equally)	20.48%	80,000 or more	19.4%
17 counties with the largest population (allocated based on population)	43.52%	20,000 or more but less than 80,000	34.5%
Remaining counties (allocated equally)	14.40%	10,000 or more but less than 20,000	16.0%
Remaining counties (allocated based on population)	21.60%	5,000 or more but less than 10,000	4.9%
		1,000 or more but less than 5,000	13.1%
		500 or more but less than 1,000	6.1%
		200 or more but less than 500	3.4%
		Less than 200	2.6%
<b>Total</b>	<b>100.00%</b>		<b>100.0%</b>

Senate Bill No. 2253 (2011), which became effective July 1, 2011, revised the state aid distribution formula for cities to provide that distributions be based upon the proportion each city's population bears to the total population of all cities. The bill did not change the total distribution percentages to cities and counties, which remains at 53.7 percent to counties and 46.3 percent to cities. The allocation formula for specific counties and cities is:

<b>Population Category Effective July 1, 2011</b>		
<b>Counties</b>	<b>Percentage</b>	<b>Cities</b>
17 counties with the largest population (allocated equally)	20.48%	Based upon the proportion each city's population bears to total population
17 counties with the largest population (allocated based on population)	43.52%	
Remaining counties (allocated equally)	14.40%	
Remaining counties (allocated based on population)	21.60%	
<b>Total</b>	<b>100.00%</b>	

Senate Bill No. 2325 (2013), which became effective July 1, 2014, increased the portion of the sales and use, gross receipts, and motor vehicle excise tax collections that is deposited in the state aid distribution fund from an amount equal to 40 percent of the equivalent one-cent sales tax to an amount equal to 43.5 percent of an equivalent one-cent sales tax.

House Bill No. 1067 (2015), which became effective July 1, 2015, and expires on June 30, 2021, changes the state aid distribution formula from allocations based on the decennial census to allocations based on most recent actual or estimated census data.

**ANALYSIS OF THE STRATEGIC INVESTMENT AND IMPROVEMENTS FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$1,142,813,830		\$774,051,531
Add estimated revenues				
Production royalties (2017 SB 2134; 2019 SB 2211) <sup>1,2</sup>	\$153,536,120		\$118,000,000	
Mineral leases <sup>1</sup>	2,166,893		1,200,000	
Oil and gas bonuses <sup>1</sup>	1,381,335		0	
Investment earnings <sup>1</sup>	28,032,358		28,000,000	
Oil and gas tax collections (2019 HB 1014, 2019 HB 1066; 2019 SB 2249, 2019 SB 2312, 2019 SB 2362; 2021 HB 1015; 2021 SB 2014, 2021 SB 2249) <sup>3,4</sup>	324,800,000		197,480,000	
Total estimated revenues		509,916,706		344,680,000
Total estimated available		\$1,652,730,536		\$1,118,731,531
Less estimated expenditures and transfers				
<b>Secretary of State</b>				
Voting system information technology project (2019 SB 2002)	\$8,200,000			
<b>Office of Management and Budget</b>				
Litigation funding pool (2019 SB 2015)	3,500,000			
Comprehensive real estate assessment (2019 SB 2015)	500,000			
Transfer to preliminary planning revolving fund (2019 SB 2015)	100,000			
Information technology projects (2021 HB 1015)			\$3,251,304	
<b>Information Technology Department</b>				
Information technology projects (2019 HB 1021)	5,150,000			
Statewide interoperable radio network (2019 HB 1435)	20,000,000			
<b>State Treasurer</b>				
Information technology project (2019 SB 2005)	35,000			
<b>Attorney General</b>				
Litigation funding pool (2021 HB 1003)			3,000,000	
<b>North Dakota University System</b>				
Capital building fund program (2021 SB 2003)			19,000,000	
Campus projects (2021 SB 2003)			2,363,000	
<b>Department of Trust Lands</b>				
Oil and gas impact grants (2019 HB 1013)	2,000,000			
Contract costs to determine mineral revenue repayments (2019 SB 2211)	1,088,635			
<b>Department of Environmental Quality</b>				
Contingent appropriation for the implementation of air pollution control primacy (2019 HB 1024)	1,040,000			
<b>Department of Human Services</b>				
Information technology projects and capital projects (2019 SB 2012)	11,490,695			
<b>Industrial Commission</b>				
Rare earth elements and fracturing sand studies (2019 HB 1014)	270,000			



<b>Aeronautics Commission</b>			
Airport grants (2019 HB 1006; 2021 SB 2006)	20,000,000		5,000,000
<b>Bank of North Dakota</b>			
Transfer to the innovation loan fund to support technology advancement (2021 HB 1141)			15,000,000
<b>Highway Patrol</b>			
Construction of a law enforcement training center (2021 SB 2011)			27,100,000
<b>Department of Corrections and Rehabilitation</b>			
Equipment, repairs, and a facility assessment (2019 HB 1015)	1,218,000		
<b>Adjutant General</b>			
Dispatch system information technology project and Camp Grafton expansion project (2019 SB 2016)	2,502,253		
<b>Department of Commerce</b>			
Entrepreneurship grants and vouchers program (2019 HB 1018; 2021 SB 2018)	3,000,000		7,000,000
Beyond visual line of sight unmanned aircraft systems (2021 SB 2018)			19,000,000
Intermodal transportation assistance program (2021 SB 2245)			10,000,000
<b>NDSU Main Research Center</b>			
Extraordinary repairs (2019 HB 1020)	940,465		
<b>State Historical Society</b>			
Historical site projects and extraordinary repairs (2021 HB 1018)			1,400,000
<b>Parks and Recreation Department</b>			
Various capital projects at parks and the International Peace Garden (2019 SB 2019; 2021 HB 1019)	3,755,000		10,500,000
<b>Transfer to the general fund (2019 SB 2015)</b>	764,400,000		
<b>Contingent transfer to the infrastructure revolving loan fund (2019 HB 1014)<sup>5</sup></b>	25,137,707		
<b>Mineral revenue repayments from reserves (2017 SB 2134; 2019 SB 2211)<sup>2</sup></b>	1,208,354		
<b>Administrative costs/other fees</b>	3,142,896		4,000,000
Total estimated expenditures and transfers		878,679,005	126,614,304
Estimated ending balance		\$774,051,531	\$992,117,227
Restricted fund income			
Reserve relating to potential title disputes (2017 SB 2134; 2019 SB 2211) <sup>2,6</sup>		228,116,695	228,116,695
Loan guarantees (2011 SB 2306; 2013 SB 2287; 2019 SB 2296; 2021 SB 2230) <sup>7</sup>		50,000,000	75,000,000
Estimated ending balance - Unobligated		\$495,934,836	\$689,000,532

<sup>1</sup>The amounts shown reflect projections by the Department of Trust Lands for the 2019-21 and 2021-23 bienniums.

<sup>2</sup>Senate Bill No. 2134 (2017) changes the definition of the ordinary high water mark related to sovereign minerals, reducing the mineral revenue to the strategic investment and improvements fund and requiring repayments for previously received mineral revenues. The bill appropriates \$100 million from the strategic investment and improvements fund and authorizes \$87 million from a line of credit through the Bank of North Dakota for the mineral revenue repayments. Some production royalties may be deposited in the strategic investment and improvements fund prior to the implementation of the repayment process. The bill provides legislative intent that the \$87 million line of credit is to be repaid from the strategic investment and improvements fund; however, the total amount of funding needed for mineral revenue repayments is unknown and any changes to the amount of funding or the line of credit repayments will be determined by future legislative assemblies. Mineral revenue repayments began in the fall of 2020. The amount shown for the repayments reflects the amount paid through January 2021 pursuant to the department's continuing appropriation.

House Bill No. 1202 (2019) clarifies the definition of navigable waters, which may affect the state's mineral interests and mineral revenue deposited in the strategic investment and improvements fund. However, the estimated impact is unknown.

<sup>3</sup>Estimated revenues - These amounts reflect actual allocations through December 2020. The estimated allocations for the remainder of the 2019-21 biennium and the estimated allocations for the 2021-23 biennium are based on the January 2021 legislative revenue forecast.

<sup>4</sup>House Bill Nos. 1014 and 1066 (2019) and Senate Bill Nos. 2016, 2249, 2312, and 2362 (2019) change the oil and gas tax revenue allocation formulas. The combined effect of the bills results in a decrease in the allocations to the strategic investment and improvements fund.

House Bill No. 1015 (2021) increases the oil and gas tax revenue allocation limit for the state disaster relief fund by \$5 million and aligns the allocations to the municipal infrastructure fund and the county and township infrastructure fund to provide allocations to the two funds at the same time after the initial allocation to the strategic investment and improvements fund. For the 2021-23 biennium only, Senate Bill No. 2014 (2021) increases the oil and gas tax revenue allocations to the oil and gas research fund by \$6 million and limits the allocations to the North Dakota outdoor heritage fund to \$7.5 million per fiscal year. Senate Bill No. 2249 (2021) increases the oil and gas tax revenue allocation limit for the state disaster relief fund by \$5 million, the same as House Bill No. 1015 (2021). The combined effect of the bills results in an increase in the allocations to the strategic investment and improvements fund.

<sup>5</sup>House Bill No. 1014 (2019) provides a contingent transfer of up to \$40 million from the strategic investment and improvements fund to the infrastructure revolving loan fund if the actual oil and gas tax revenues deposited in the strategic investment and improvements fund during the 2017-19 biennium exceed \$755 million. The contingency was met, and the amount shown for the 2019-21 biennium reflects the actual transfer to the infrastructure revolving loan fund.

<sup>6</sup>These amounts represent mineral revenues received from areas of the Yellowstone and Missouri Rivers and Lake Sakakawea where mineral rights are in dispute. Pursuant to action of the Board of University and School Lands, this portion of the fund balance is designated to be held in reserve.

<sup>7</sup>Senate Bill No. 2287 (2013) increased the guarantee reserve fund balance from 25 to 100 percent, not to exceed a total of \$25 million, through July 31, 2015. After July 31, 2015, the amount of reserves for all guaranteed loans must be determined by a formula that will provide an adequate amount of reserves as determined by the Bank of North Dakota. Money may be transferred from the strategic investment and improvements fund to reimburse lenders for guaranteed loans in default.

Senate Bill No. 2296 (2019) increased the limit for loan guarantees to \$50 million. Senate Bill No. 2230 (2021) increases the loan guarantee limit to \$75 million.

### **FUND HISTORY**

House Bill No. 1451 (2011) provided the lands and minerals trust fund be renamed the strategic investment and improvements fund, and as soon as feasible after June 30, 2011, the State Treasurer close out the lands and minerals trust fund and transfer any remaining unobligated balance to the strategic investment and improvements fund. The lands and minerals trust fund originated in 1977 when the Legislative Assembly transferred to the Board of University and School Lands possessory interest in properties obtained by the Bank of North Dakota, including tracts of real property and reserved mineral interests.

All income from the sale, lease, and management of the mineral interests relating to these properties is deposited in the strategic investment and improvements fund, pursuant to North Dakota Century Code Section 15-08.1-08. The principal and interest of the fund may be used for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of state government. Money in the fund may be included in draft appropriation Acts under Section 54-44.1-06 and may be appropriated by the Legislative Assembly, but only to the extent the money is estimated to be available at the beginning of the biennium in which the appropriations are authorized.

Prior to July 1, 2015, if the unobligated balance of the strategic investment and improvements fund exceeded \$300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund were deposited instead into the legacy fund in the subsequent month. In House Bill Nos. 1176 and 1377 (2015), the Legislative Assembly amended Section 15-08.1-08 to remove the provision related to the additional deposits of revenue in the legacy fund from the strategic investment and improvements fund. The unobligated balance in the fund is defined as the balance in the fund reduced by appropriations or transfers from the fund authorized by the Legislative Assembly, guarantee reserve fund requirements under Section 6-09.7-05, and any fund balance designated by the Board of University and School Lands relating to potential title disputes related to certain riverbed leases.

**ANALYSIS OF THE TAX RELIEF FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$182,300,000		\$200,199,146
Add estimated revenues				
Allocation of oil and gas tax revenues	\$200,000,000 <sup>1</sup>		\$200,000,000 <sup>1</sup>	
Refund of prior biennium county expenses	199,146			
Total estimated revenues		200,199,146		200,000,000
Total available		\$382,499,146		\$400,199,146
Less estimated expenditures and transfers				
Transfer to general fund (Section 5 of 2019 SB 2015)	\$8,600,000			
Transfer to human service finance fund (Section 6 of Senate Bill No. 2015 (2019) and Section 5 of House Bill No. 1015 (2021))	173,700,000		\$187,385,888	
Total estimated expenditures and transfers		182,300,000		187,385,888
Estimated ending balance		<u>\$200,199,146</u>		<u>\$212,813,258</u>

<sup>1</sup>Estimated oil extraction tax revenues - The allocations for the 2019-21 biennium and the 2021-23 biennium are based on the January 2021 legislative revenue forecast and legislative action through crossover.

**FUND HISTORY**

North Dakota Century Code Section 57-64-05, as created by Senate Bill No. 2199 (2009), created the property tax relief sustainability fund for property tax relief programs, pursuant to legislative appropriation. Senate Bill No. 2199 provided an initial transfer of \$295 million from the permanent oil tax trust fund to the property tax relief sustainability fund. Chapter 57-51.1 provided for an allocation of the state's share of oil and gas tax revenues of \$341.79 million each biennium to the property tax relief sustainability fund.

Section 15.1-27-45, as created by Section 40 of House Bill No. 1013 (2013), changed the name of the property tax relief sustainability fund to the property tax relief fund, but only for the 2013-15 biennium. House Bill No. 1377 (2015) repealed Sections 15.1-27-45 and 57-64-05 relating to the property tax relief sustainability fund and amended Section 57-51.1-07.5 to change the name of the property tax relief sustainability fund to the tax relief fund and decreased the amount of the state's share of oil and gas tax revenue deposited in the fund from \$341.79 million per biennium to \$300 million per biennium.

House Bill No. 1152 (2017) amended Section 57-51.1-07.5 to change the allocation of the state's share of oil and gas tax revenue to reduce the allocation to the tax relief fund to \$200 million.

House Bill No. 1066 (2019) amended Section 57-51.1-07.5 but did not change the allocation of \$200 million to the tax relief fund.

**ANALYSIS OF THE TOBACCO PREVENTION AND CONTROL TRUST FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$9,058,624		\$2,041,934
Add estimated revenues				
Investment and miscellaneous revenue	\$1,512,610 <sup>1</sup>		\$2,100 <sup>1</sup>	
Total estimated revenues		1,512,610 <sup>2</sup>		2,100 <sup>2</sup>
Total available		\$10,571,234		\$2,044,034
Less estimated expenditures and transfers				
State Department of Health (2019 HB 1004)				
Local public health unit grants	\$525,000			
Cancer programs	484,300			
Domestic violence offender treatment grants	300,000			
Microbiology laboratory capital improvements	1,220,000			
Department of Human Services (2019 SB 1012)				
Medical services grants	6,000,000			
Total estimated expenditures and transfers		8,529,300		
Estimated ending balance		\$2,041,934		\$2,044,034

<sup>1</sup>In August 2015 the Tobacco Prevention and Control Executive Committee entered into an agreement with the State Investment Board to provide investment management services for the tobacco prevention and control trust fund. On September 30, 2015, the Tobacco Prevention and Control Executive Committee transferred \$47.3 million to the State Investment Board for management. The investment policy statement adopted by the executive committee includes an asset mix of 75 percent global fixed income, 10 percent global equity, and 15 percent cash. Estimated investment income reflects earnings and realized gains, but does not include changes in the market value of the investments. The Legislative Assembly repealed North Dakota Century Code Chapter 23-42 in Senate Bill No. 2024 (2017) to dissolve the Tobacco Prevention and Control Executive Committee and provided funds in the tobacco prevention and control trust fund are to be used as appropriated by the Legislative Assembly.

<sup>2</sup>Revenues have been estimated based on actual revenues received through January 2021 and the December 2020 executive budget revenue forecast.

**FUND HISTORY**

The tobacco prevention and control trust fund was created as a result of voter approval of Initiated Measure No. 3 in the November 2008 general election. The measure added seven new sections to the Century Code and amended Section 54-27-25 to establish the Tobacco Prevention and Control Advisory Committee and an executive committee, develop and fund a comprehensive statewide tobacco prevention and control plan, and create a tobacco prevention and control trust fund to receive tobacco settlement dollars to be administered by the executive committee. The measure provided for the advisory committee, appointed by the Governor, to develop the initial comprehensive plan and select an executive committee responsible for the implementation and administration of the comprehensive plan. The initiated measure became effective 30 days after the election (December 4, 2008).

Tobacco settlement payments received by the state under the Master Settlement Agreement are derived from two subsections of the Master Settlement Agreement. Subsection IX(c)(1) of the Master Settlement Agreement provides payments on April 15, 2000, and on April 15 of each year thereafter in perpetuity, while subsection IX(c)(2) of the Master Settlement Agreement provided for additional strategic contribution payments that began on April 15, 2008, and continued each April 15 thereafter through 2017. Section 54-27-25, created by House Bill No. 1475 (1999), did not distinguish between payments received under the separate subsections of the Master Settlement Agreement and provided for the deposit of all tobacco settlement money received by the state into the tobacco settlement trust fund. Money in the fund, including interest, is transferred within 30 days of deposit in the fund to the community health trust fund, common schools trust fund,

and water development trust fund. Senate Bill No. 2012 (2019) amended Section 54-27-25, effective July 1, 2019, to provide all money in the fund must be transferred within 30 days of receipt to the community health trust fund.

The measure provided for a portion of tobacco settlement dollars received by the state to be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement continues to be deposited in the tobacco settlement trust fund and will continue to be allocated pursuant to Section 54-27-25. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement was deposited into the tobacco prevention and control trust fund until the last payment was received in 2017. Interest earned on the balance in this fund is deposited in the fund. The fund was administered by the executive committee created by the measure for the purpose of creating and implementing the comprehensive plan. However, the Legislative Assembly approved Senate Bill No. 2024 (2017) to repeal Chapter 23-42 related to the tobacco prevention and control program and to amend Section 54-27-25 to provide funds in the tobacco prevention and control trust fund are to be used as appropriated by the Legislative Assembly. The Legislative Assembly did not provide funding for the Tobacco Prevention and Control Executive Committee for the 2017-19 biennium. In addition, Section 15 of House Bill No. 1015 (2017) requires the Office of Management and Budget administer the tobacco prevention and control trust fund in accordance with legislative authorizations or appropriations during the 2017-19 biennium.

The measure also provided, if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan. The Legislative Assembly, in Section 39 of House Bill No. 1015 (2009), provided any money deposited in the water development trust fund under Section 54-27-25 may only be spent pursuant to legislative appropriation. Senate Bill No. 2024 (2017) repealed the Tobacco Prevention and Control Executive Committee and authority to use funding from the water development trust fund for the comprehensive plan.

The tobacco settlement payment received by the state in April 2008 was the first payment that included funds relating to subsection IX(c)(2) of the Master Settlement Agreement. This payment was received prior to the approval of the measure and was deposited in the tobacco settlement trust fund and disbursed as provided for in Section 54-27-25 prior to amendment by the measure. In 2009 tobacco settlement payments began to be deposited in the tobacco settlement trust fund and the tobacco prevention and control trust fund pursuant to Section 54-27-25 as amended by the measure. The last payment under subsection IX(c)(2) of the Master Settlement Agreement was received in April 2017. The state received total tobacco settlement collections of \$119,487,461 under subsection IX(c)(2) of the Master Settlement Agreement, of which \$105,689,732 was deposited into the tobacco prevention and control trust fund from April 2009 through April 2017.

**ANALYSIS OF THE STATE TUITION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$1,874,600 <sup>1</sup>		\$1,650,307 <sup>1</sup>
Add estimated revenues				
Fines for violation of state laws	\$10,889,781 <sup>2</sup>		\$12,000,000 <sup>2</sup>	
Transfer from the Department of Career and Technical Education	31,792 <sup>3</sup>		0	
Transfers from the common schools trust fund	366,756,000		421,020,000	
Total estimated revenues		377,677,573		433,020,000
Total available		\$379,552,173		\$434,670,307
Less estimated expenditures and transfers				
State aid to schools (2019 SB 2013; 2021 HB 1013)	\$377,901,866		\$433,020,000	
Total estimated expenditures and transfers		377,901,866		433,020,000
Estimated ending balance		\$1,650,307 <sup>1</sup>		\$1,650,307 <sup>1</sup>

<sup>1</sup>Beginning/ending balance - North Dakota Century Code Section 15.1-28-03 provides for the distribution of money in the state tuition fund in August, September, October, November, December, January, February, March, and April of each fiscal year. Fine proceeds deposited in the state tuition fund during May and June of each fiscal year are carried forward for distribution in August of the subsequent year.

<sup>2</sup>Fines for violation of state laws - Fine proceeds estimated to be deposited in the state tuition fund during the 2019-21 biennium are based on actual fines deposited into the fund through January 2021 and estimated fine proceeds for the remainder of the 2019-21 biennium based on the 2019 legislative revenue forecast. Fine proceeds estimated to be deposited in the state tuition fund during the 2021-23 biennium are based on the December 2020 executive budget revenue forecast. The amount of state tuition fund distributions from fine proceeds is shown below.

Fiscal Year	Revenue From Fines	Percentage Increase (Decrease) From Previous Year
2001	\$4,241,256 (actual)	N/A
2002	\$4,778,756 (actual)	12.7%
2003	\$4,607,423 (actual)	(3.6%)
2004	\$4,721,407 (actual)	2.5%
2005	\$4,507,137 (actual)	(4.5%)
2006	\$4,506,316 (actual)	(0.01%)
2007	\$4,590,395 (actual)	1.9%
2008	\$4,692,048 (actual)	2.2%
2009	\$4,452,118 (actual)	(5.1%)
2010	\$4,593,325 (actual)	3.2%
2011	\$4,963,691 (actual)	8.1%
2012	\$5,769,861 (actual)	16.2%
2013	\$6,158,750 (actual)	6.7%
2014	\$6,844,632 (actual)	11.1%
2015	\$7,655,890 (actual)	11.9%
2016	\$6,945,206 (actual)	(9.3%)
2017	\$5,511,247 (actual)	(20.6%)
2018	\$6,055,397 (actual)	9.9%
2019	\$5,885,838 (actual)	(2.8%)
2020	\$5,093,885 (actual)	(13.5%)
2021	\$5,795,896 (estimate)	13.8%
2022	\$6,000,000 (estimate)	3.5%
2023	\$6,000,000 (estimate)	0%

<sup>3</sup>In January 2020 the Department of Career and Technical Education returned funding remaining from \$250,000 of carryover authority transferred to the department from funds remaining in the grants - state school aid line item after the Superintendent of Public Instruction complied with all statutory payment obligations imposed for the 2011-13 biennium. The carryover funding was made available to the department to provide autism spectrum disorder technology grants during the 2013-15 and 2015-17 bienniums.

### **FUND HISTORY**

The state tuition fund originated in 1889 with the enactment of the Constitution of North Dakota. The original constitutional provisions have not changed significantly since enactment and are currently contained in Section 2 of Article IX of the Constitution of North Dakota, which provides that payments to the common schools trust fund of the state include:

- Distributions from the common schools trust fund;
- All fines for violation of state laws; and
- All other amounts provided by law.

Section 15.1-28-01 provides the state tuition fund consists of the net proceeds from all fines for violation of state laws and distributions from the common schools trust fund. Section 15.1-28-03 directs the Office of Management and Budget, on or before the third Monday in January, February, March, April, August, September, October, November, and December of each year, to certify to the Superintendent of Public Instruction the amount of the state tuition fund. Prior to the 2007-09 biennium, the Superintendent apportioned the money in the state tuition fund among the school districts in the state based on the number of school-age children in the district. Senate Bill No. 2200 (2007) consolidated funding for the state school aid program, including per-student payments, teacher compensation payments, special education average daily membership payments, revenue supplemental payments, and tuition apportionment payments, into a new state school aid funding formula with a new distribution methodology; therefore, beginning with the 2007-09 biennium, the Superintendent includes the money in the state tuition fund in state school aid payments to school districts as determined by Chapter 15.1-27.

**ANALYSIS OF THE VETERANS' POSTWAR TRUST FUND  
FOR THE 2019-21 AND 2021-23 BIENNIUMS  
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2019-21 Biennium		2021-23 Biennium	
Beginning balance		\$6,086,115 <sup>1</sup>		\$6,184,658
Add estimated revenues				
Investment and other income	\$500,000 <sup>2,3,4</sup>		\$500,000 <sup>2,5</sup>	
Commemorative memorial coin program donations	4,400		4,400	
Commemorative memorial coin program sales	14,000		14,000	
Short-term interest	3,500		3,500	
Impact Foundation donations	30,000 <sup>6,7</sup>		30,000 <sup>6,7</sup>	
Other donations (2019 HB 1131)	48,050 <sup>7</sup>		50,000 <sup>7</sup>	
Total estimated revenues		599,950		601,900
Total available		\$6,686,065		\$6,786,558
Less estimated expenditures and transfers				
Grants and related expenditures	\$271,280			
Veterans' transportation programs	2,362			
Commemorative memorial coin program expenditures	16,432		\$16,000	
Miscellaneous veterans' programs	4,340			
Impact Foundation expenditures	31,149 <sup>6,7</sup>		30,000 <sup>6,7</sup>	
Remaining funds available for programs that benefit veterans	175,844 <sup>3</sup>		340,000 <sup>5</sup>	
Total estimated expenditures and transfers		501,407 <sup>3</sup>		386,000 <sup>5</sup>
Estimated ending balance		<u>\$6,184,658</u>		<u>\$6,400,558</u>

<sup>1</sup>Revenue from donations for the commemorative memorial coin program (\$13,274), short-term interest (\$659), net proceeds from the Impact Foundation (\$24,136 - see footnotes 6 and 7 below), and other unspent funding available from the 2017-19 biennium (\$59,300) is available for programs during the 2019-21 biennium and is included in this beginning balance.

<sup>2</sup>The State Treasurer has not provided investment income estimates for the 2019-21 and 2021-23 bienniums. Investment income for these bienniums is estimated based on the average income and change in the fund value through December 2020. See footnotes 3 and 5 below regarding income available for benefits.

<sup>3</sup>Prior to July 2011, North Dakota Century Code Section 37-14-14 appropriated on a continuing basis all income of the veterans' postwar trust fund to the Administrative Committee on Veterans' Affairs for programs that benefit veterans or their dependents. The Legislative Assembly in House Bill No. 1468 (2011) amended Section 37-14-14 to provide that all income earned in a biennium is appropriated to the Administrative Committee on Veterans' Affairs for authorized programs on a continuing basis in the following biennium, and not in the biennium in which it is earned. Therefore, the investment income earned by the fund during the 2019-21 biennium will not be available for programs until the 2021-23 biennium. Funds available for benefits during the 2019-21 biennium totaled \$501,407 through December 2020, of which \$308,550 is from income earned on the fund during the 2017-19 biennium, \$14,900 is from donations and sales related to the commemorative memorial coin program, \$3,197 is from short-term interest, \$30,000 is from revenue received from the Impact Foundation (see footnotes 6 and 7 below), and \$48,050 is from donations. Remaining funds available consisted of unspent funds available from prior bienniums, miscellaneous revenue, donations, and short-term interest income.

<sup>4</sup>Of the investment income and other income reported for the 2019-21 biennium through December 2020, \$19,555 is from patriotic license plate fees transferred to the veterans' postwar trust fund. Contributions to the veterans' postwar trust fund from individual income tax returns totaled \$22,284 through December 2020.



<sup>5</sup>Pursuant to House Bill No. 1468 (2011), investment income earned during the 2021-23 biennium is not available for program expenditures until the 2023-25 biennium. Estimated funds available for benefits during the 2023-25 biennium total approximately \$386,000, of which \$290,000 is estimated based on average monthly payable income earning on fund investments through December 2020, \$16,000 is estimated for the commemorative memorial coin program, \$30,000 is estimated to be received from the Impact Foundation (see footnotes 6 and 7 below), and \$50,000 is for estimated donations. Funding available from unspent funds from prior bienniums, miscellaneous revenue, donations, and short-term interest may also be spent during the 2021-23 biennium but have not been included in the estimated expenditures in this analysis.

<sup>6</sup>The North Dakota Veterans Emergency Needs Charitable Fund (also known as the North Dakota Support Our Veterans Fund) was established in April 2010 by the Impact Foundation to support emergency needs of North Dakota veterans and their eligible dependents. As noted in the March 28, 2018, *Performance Audit Report of the Department of Veterans' Affairs* prepared by the State Auditor, the department has received and expended funds from the Impact Foundation by combining these funds with those of the veterans' postwar trust fund without legislative or Emergency Commission approval. The State Auditor's report identified that these actions were in conflict with Section 18 of Article X of the Constitution of North Dakota and Section 37-18-12. In 2019, the Legislative Assembly authorized the department to accept donations and other funding, such as the funding received from the Impact Foundation. See footnote 7 below.

<sup>7</sup>House Bill No. 1131 (2019) allows the Department of Veterans' Affairs to apply for, accept, and expend private donations, gifts, grants, or bequests that are offered or tendered with a specifically identified purpose or a restrictive condition which is related to a benefit or service for resident North Dakota veterans and appropriates those funds to the department on a continuing basis in accordance with the donor's instructions. Of the \$48,050 of donations received through December 2020, \$9,600 is for hardship assistance grants, \$18,100 is for a hyperbaric oxygen therapy program for veterans with posttraumatic stress disorder, \$12,000 is for a commemorative book provided free to Vietnam War veterans, and \$8,350 is for a program to partner with a private organization to build comfort homes for military and veteran families when a family member is hospitalized. An additional \$4,400 was donated for the commemorative memorial coin program.

## **FUND HISTORY** **Established**

The fund was created by Section 6 of Senate Bill No. 2271 (1981):

**SECTION 6. TRANSFER OF VIETNAM BONUS FUNDS TO VETERANS' POSTWAR TRUST FUND.** All unobligated moneys in the Vietnam veterans' adjusted compensation funds in the state treasury after July 1, 1981, shall be transferred by the state treasurer to the veterans' postwar trust fund. Any obligations of such funds as a result of any amendment of section 37-25-10 by the forty-seventh legislative assembly shall be paid out of the veterans' postwar trust fund and the moneys necessary to meet those obligations are hereby appropriated.

### **1988 Initiated Measure No. 4**

Initiated Measure No. 4, approved by the voters in the November 1988 general election, provided the following:

- Established the veterans' postwar trust fund as a permanent fund.
- Required the State Treasurer to transfer \$740,000 per year for 5 years commencing July 1, 1989, from the state general fund or other sources as appropriated by the Legislative Assembly to the veterans' postwar trust fund to total \$3.7 million.
- Appropriated the income from the veterans' postwar trust fund on a continuing basis to the Administrative Committee on Veterans' Affairs to be spent for veterans' programs as authorized by law.
- Required the State Treasurer to invest the fund in legal investments as provided by Section 21-10-07.

The principal balance in the fund on December 8, 1988, was \$401,849.

Senate Bill No. 2009 (1989) transferred \$1,480,000--\$740,000 on July 1, 1989, and \$740,000 on July 1, 1990--from the state general fund to the veterans' postwar trust fund. The bill also appropriated up to \$274,000 of investment income earned on the veterans' postwar trust fund balance to the Veterans' Home for its operating costs. Because of net budget reductions during the 1989-91 biennium, the transfer from the general fund to the veterans' postwar trust fund for the 2<sup>nd</sup> year of the 1989-91 biennium was reduced by \$95,005, from \$740,000 to \$644,995.

Senate Bill No. 2001 (1991) transferred \$1,575,005 from the general fund to the veterans' postwar trust fund during the 1991-93 biennium. This amount restored the \$95,005 which was not transferred during the 1989-91 biennium because of net budget reductions. Because of budget allotments ordered by the Governor during the 1991-93 biennium, the transfer from the general fund to the veterans' postwar trust fund for the 2<sup>nd</sup> year of the 1991-93 biennium was reduced by \$5,670, from \$740,000 to \$734,330.

House Bill No. 1001 (1993) transferred \$745,670 from the general fund to the veterans' postwar trust fund during the 1993-95 biennium. This was the final transfer required by the initiated measure and included \$5,670 to restore the reduction made during the 1991-93 biennium because of budget reductions.

#### **1996 Initiated Constitutional Measure No. 4**

Initiated Constitutional Measure No. 4, approved by the voters in the November 1996 general election, created the following new section to Article X of the Constitution of North Dakota:

The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund as authorized by legislative enactment. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. All income received from investments is to be utilized for programs which must be of benefit and service to veterans, who are defined by legislative enactment, or their dependents, and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon those programs selected at the discretion of the administrative committee on veterans' affairs.

#### **House Bill No. 1468 (2011)**

The Legislative Assembly in House Bill No. 1468 (2011) amended Section 37-14-14 to provide that all income earned in a biennium is appropriated to the Administrative Committee on Veterans' Affairs on a continuing basis in the following biennium, and not in the biennium in which it is earned, for authorized programs.

#### **House Bill No. 1439 (2013)**

The Legislative Assembly in House Bill No. 1439 (2013) provided \$250,000 from the general fund to increase the principal balance of the veterans' postwar trust fund.

#### **House Bill No. 1360 (2015)**

The Legislative Assembly in House Bill No. 1360 (2015) created Section 39-04-10.15 to require an initial fee of \$25 for patriotic license plates, of which \$20 is deposited in the highway tax distribution fund and \$5 is deposited in the veterans' postwar trust fund. The revenue deposited in the veterans' postwar trust fund must be added to the principal of the fund.

#### **Senate Bill No. 2183 (2017)**

The Legislative Assembly in Senate Bill No. 2183 (2017) created Section 37-18-15 to establish a commemorative memorial coin program to provide commemorative memorial coins to a family member of a deceased North Dakota veteran during military funeral honors and to allow for the purchase of commemorative memorial coins from the Department of Veterans' Affairs. The bill provided legislative intent that the Administrative Committee on Veterans' Affairs considering providing funding from the veterans' postwar trust fund to the department for the purpose of funding at least 4,000 commemorative memorial coins during the 2017-19 biennium.

#### **House Bill No. 1248 (2019)**

The Legislative Assembly in House Bill No. 1248 (2019) created Section 57-38-34.7 to allow an individual to make a contribution to the veterans' postwar trust fund on the individual's income tax return for taxable years beginning after December 31, 2018. The Tax Commissioner is required to transfer the contributions to the State Treasurer for deposit in the veterans' postwar trust fund.