

Industrial Commission
of North Dakota

Doug Burgum
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



North Dakota Public Finance Authority

House Bill 1014

House Appropriations Committee Government Operations Division

Testimony of DeAnn Ament

North Dakota Public Finance Authority/North Dakota Building Authority January 12, 2023

For the record, my name is DeAnn Ament. I am the Executive Director of the Public Finance Authority (“PFA” or “Authority”) and agency of the Industrial Commission. I am also appearing today in my capacity as an Authorized Officer for the North Dakota Building Authority. I will first talk about the PFA. The statutory authority for the PFA is found in N.D.C.C. 6-09.4.

PURPOSE

The PFA was established to make low-cost loans to North Dakota political subdivisions at favorable interest rates. Loans are made to political subdivisions by the PFA through the purchase of municipal securities issued by the political subdivisions in accordance with state and federal law. Loans are primarily made with the proceeds of bonds issued by the PFA under the programs described below. Direct loans may be made to a political subdivision from the PFA’s operating fund or from the federal grants or loan repayments held under the State Revolving Loan Fund Program.

Mission

To develop rural and urban North Dakota by providing political subdivisions and other qualifying organizations access to flexible and competitive financing options for their local qualifying projects.

The Authority administers the financial portion of the State Revolving Loan Fund (SRF), the Capital Financing Program (CFP), Industrial Development Bond Program and the Legacy Fund Infrastructure Program bonds. Detailed activity of all programs is contained in our annual report which is attached. Additionally, the PFA provides the administration and accounting for the North Dakota Building Authority.

Currently, the most active program is the SRF. This program is funded through grants to the Department of Environmental Quality (DEQ) from the Environmental Protection Agency and are referred to as capitalization or cap grants. This funding began in 1990 and the program was set up as a Revolving Loan Fund. Along with the grants, bonds sold in the capital market have been issued to provide the required state match as well as leverage the program. These funds are utilized to provide low-interest loans for water and sewer related projects.

This past calendar year there were loan approvals of \$63,407,000 and funded draws of \$52,736,875 for the Clean Water SRF. A few of the Clean Water projects financed recently included \$51,634,000 for the Metro Flood Diversion Authority to construct sixteen lift stations in the Fargo area, \$120,000 for Hebron to replace water meters, and Wilton received \$1,319,000 for

a city-wide sewer main replacement project. Grand Forks and Cass Rural Water Users District have not closed their loans, but they respectively will receive \$54,620,000 to expand and improve their wastewater treatment plant and \$28,646,000 to expand Fargo's effluent reuse facility and construct a pipeline to deliver the effluent reuse water from the City of Fargo's regional reclamation facility to a processing facility near Casselton. The Drinking Water SRF had approvals of \$18,885,209 and funded loan draws of \$27,639,709. Projects financed under the Drinking Water program include \$1,500,000 for Bismarck to replace lead service lines, \$2,500,000 to Cass Rural Water Users District to parallel and loop lines, Jamestown received \$3,393,300 for water line replacements, and Upper Souris Water District received \$1,274,000 for supervisory control and data acquisition (SCADA) and system improvements.

The recent passage of the Bipartisan Infrastructure Law (BIL) has added additional funding as well as the Build America, Buy America (BABA) Act to the SRF programs. The BIL requires many changes for documenting, funding and reporting purposes. These additional requirements challenge the current staff of 2.75 FTE to reprioritize the workload to meet requirements in a timely manner.

Additionally, the amount of time to spend the SRF grants has been reduced to three years. To expedite the expenditure of loan forgiveness funds, a Planning Assistance Reimbursement (PAR) was piloted by the DEQ and PFA in 2020 and has seen an increase in demand. These grants help potential borrowers explore their options for their water and sewer systems.

The PFA joined with BND, DEQ and Department of Water Resources in the new one-stop portal, Funding Infrastructure in North Dakota (FIND) in 2021. FIND allows political subdivisions seeking financing for their projects to submit one application. The agencies collaborate to provide the best funding package and make sure state funds are being utilized in the best possible manner.

In 2022, the SRF began working with a software company to develop a loan tracking software as the current system of spreadsheets and databases has become onerous to track almost 600 unique projects and associated loans. The PAR program and loan tracking software project in addition to administering the BIL have increased the workload and will continue to do so into the foreseeable future.

The PFA issued \$85,330,000 of SRF bonds in January 2022 to provide funding for approved water, sanitary sewer, and storm water projects. The PFA issued Legacy Fund Infrastructure bonds to provide \$680,000,000 of funding to projects approved in the 2021 legislative session. The agency also helped the ND Transmission Authority with their first bond issue of \$150,000,000. The Department of Emergency Services has asked the PFA to assist them with creating a hazard mitigation revolving loan fund should House Bill 1070 pass.

During 2022 there were no CFP bonds or Industrial Development Bonds issued. In 2011, the Industrial Commission authorized the PFA to utilize the CFP to provide loans for political subdivisions impacted by weather related events and have mainly financed counties and townships. The PFA can offer disaster assistance to political subdivisions until federal and state money is available and/or to assist in cash flowing local match requirements.

Goals for the 2023-2025 biennium include maximizing the use of the BIL funding, timely approval of loans and expediting loan forgiveness to meet federal grant requirements. The PFA will also continue to look at ways to work with other agencies to provide economical and efficient financing for political subdivisions in North Dakota.

PFA BUDGET

	PFA 2021-2023	PFA & Governor's Recommended 2023-2025	Change
FTE	2.75	3.75	1.00
Salaries and Benefits	\$694,082	\$919,093	\$225,011
Operating	\$181,668	\$208,247	\$26,579
Capital Assets	\$0	\$30,000	\$30,000
	\$875,750	\$1,157,340	\$281,590

The 2023-2025 budget includes the recommended salary and benefit adjustments as outlined in the Executive Budget including the Governor’s planned increase of \$81,553. Salaries and benefits are approximately 79% of the PFA portion of the budget. The PFA staffing level is currently at 2.75 FTEs which includes an Executive Director, a Business Manager and Account Budget Specialist III. The current request includes an optional \$132,646 for an increase of one FTE for a deputy director position for succession planning purposes for a total of 3.75 FTE for the 2023-2025 biennium.

The increase in 2023-2025 operating expenses include \$6,000 for accounting equipment and software, \$5,196 for the succession FTE and \$15,383 for inflation for travel, professional development, information technology and supplies which were approved in the Executive Budget. The one-time capital asset request of \$30,000 is for accounting software. The current software mainstream support has ended, so future options are being reviewed.

The PFA is a state agency that operates under the supervision and authority of the Industrial Commission. **It is a self-supporting state agency and receives no money from the General Fund.**

NORTH DAKOTA BUILDING AUTHORITY

The North Dakota Building Authority (“NDBA”) was created in 1985 for the purpose of providing another option (obtaining funding through the capital markets) for the Legislature as it considers how to pay the costs of projects declared by the Legislature to be in the public interest. The authority for the NDBA can be found in N.D.C.C. 54-17.2. Since the NDBA was established, it has funded over \$207 million of projects. The Industrial Commission has appointed three Authorized Officers for the North Dakota Building Authority (“NDBA”): Joe Morrissette, Karen Tyler and DeAnn Ament.

The NDBA portion of the Governor’s Executive Budget of the PFA budget includes \$17,259,452

for NDBA (lease) bond payments for the outstanding bonds and are reflected in Section 1, Subdivision 1 of HB 1014. The 2021-2023 appropriation for NDBA for bond payments was \$22,040,721. Section 1, Subdivision 1 will need to be amended to reflect the \$4,781,269 decrease in debt service payments due to two bond issues being paid in full.

Attached for your information is the Debt Service Schedule for all the Building Authority outstanding bond issues. If NDBA bonding is authorized by the Legislature this session this attachment shows that there is available debt service under the 10% of 1¢ statutory limitation established for any bonds issued by the North Dakota Building Authority. The level of debt service available would translate into NDBA bonding for approximately \$230.2 million of projects.

Section 3 provides the breakdown on the source of funding for the \$17,259,452 of lease (bond) payments as stated under the base level. Because the amount needed is \$17,259,452. Section 3 should be amended as follows:

North Dakota University System*	\$15,021,771
North Dakota University System - energy conservation projects*	207,649
Department of Corrections and Rehabilitation	143,375
Office of Management and Budget	283,875
Attorney General’s Office	330,000
State Historical Society	592,375
Parks and Recreation Department	30,950
Research and extension service	242,205
Veteran’s Home	407,252

The following non-General Fund sources or energy conservation savings* will be utilized to pay a portion of these payments:

*University System – UND (05A)	\$ 207,649
Historical Society (05A)	33,333
Veterans Home (10A/B)	407,252
*University System – UND (2020A)	3,823,875
	<u>\$ 4,472,109</u>

LEGACY FUND INFRASTRUCTURE PROGRAM

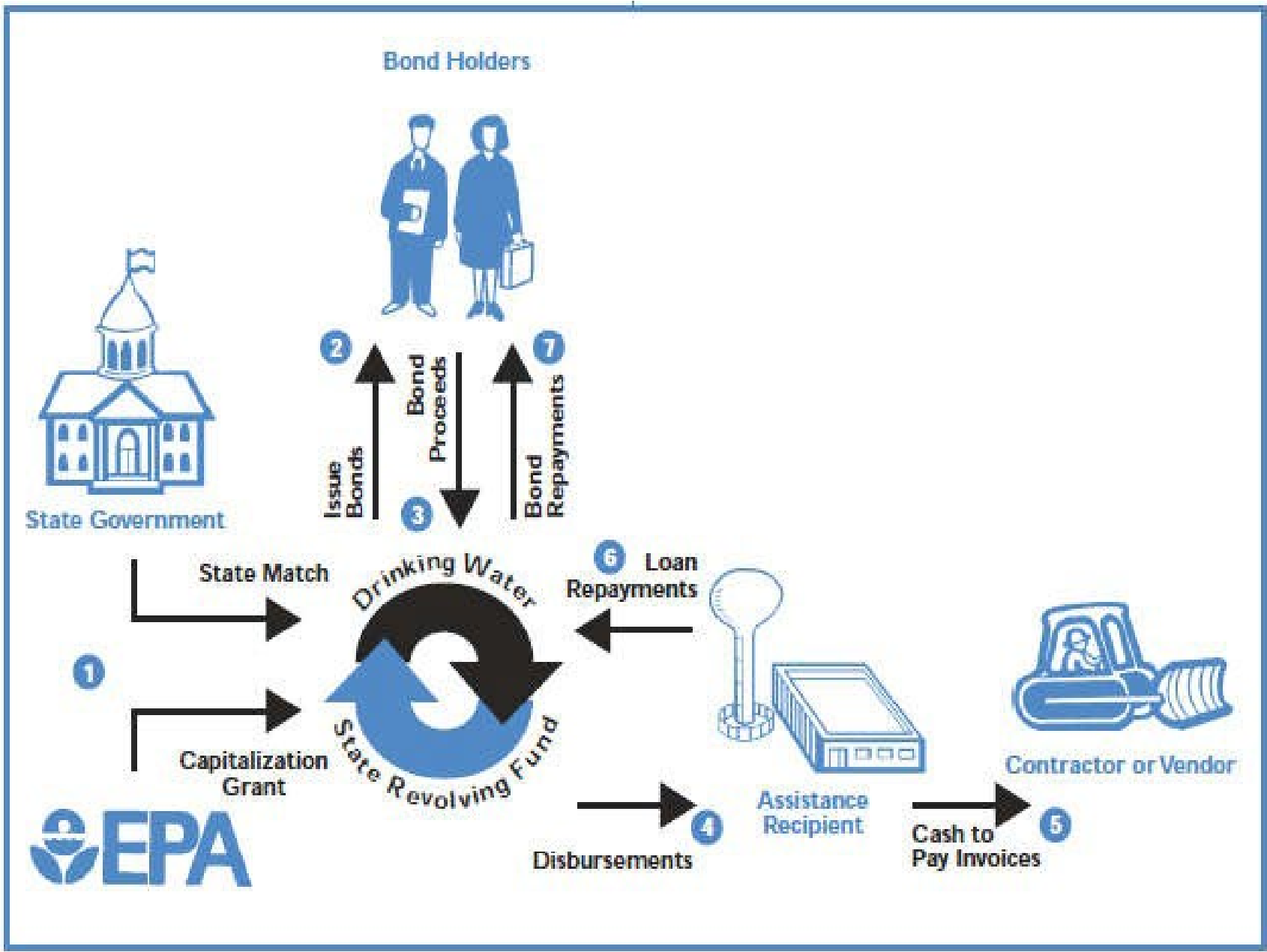
During the 2021 legislative session, House Bill 1431 authorized the PFA to issue Legacy Fund Infrastructure Program bonds to provide funding for \$680,000,000 of projects. Bonds were issued on December 9, 2021 and July 19, 2022 to provide funds for these projects. The Legacy portion of the Governor’s Executive Budget of the PFA budget includes \$102,620,461 for bond payments for the outstanding bonds and are reflected in Section 1, Subdivision 1 of HB 1014. The 2023-2025 appropriation for Legacy Fund Infrastructure Program bond payments was \$102,620,461. Section 1, subdivision 1 will need to be amended to reflect the \$102,620,461 increase in debt service payments for these required debt payments.

The total Section 1, Subdivision 1 Bond Payments Amended Appropriation should be \$119,879,913 which reflects the decreased NDBA and the increased Legacy Fund payments.

The written testimony below describes additional information on the PFA and its financing programs. The attached PFA 2022 Annual Report included in the binder describes in more detail the PFA's programs and provides a complete history of all the Public Finance Authority's loans and bond issues since 1975. The PFA Annual Report is provided to Legislative Council each year.

The Industrial Commission, by policy, has established a three-member Public Finance Authority Advisory Committee with the Committee being appointed by the Commission. The Committee reviews each loan application for the purpose of making a recommendation concerning the loan to the Industrial Commission, which must give its approval before a loan may be made under each Program. However, if the loan is \$500,000 or less for the Capital Financing Program or \$2,000,000 or less for the SRF Program, the Committee may authorize the approval of the loan, and then submit a report describing the loan and the action taken to the Commission at its next meeting.

The next page illustrates the flow of funds for SRF loans.



The municipal securities issued by a political subdivision to the Public Finance Authority may be either tax-exempt or taxable obligations. A political subdivision must retain bond counsel to assist in the preparation and adoption of its bond resolution and other necessary documents. The Public Finance Authority may purchase municipal securities only if the Attorney General issues an opinion that states the municipal securities are properly eligible for purchase under the North Dakota Century Code (N.D.C.C.) chapter 6-09.4, the Public Finance Authority Act.

Required Debt Service Reserve

Subsection 1 of §6-09.4-10 of the N.D.C.C. requires the Public Finance Authority to establish a debt service reserve in an aggregate amount equal to at least the largest amount of money required in the current or any succeeding calendar year for the payment of the principal of and interest on its outstanding bonds.

Subsection 4 of §6-09.4-10 of the N.D.C.C. of the N.D.C.C. provides as follows:

“In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the Legislative Assembly and paid to the Public Finance Authority for deposit in the reserve fund, such sum, if any, as shall be certified by the Industrial Commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve.”

In the written opinion of the Attorney General, this provision does not constitute a legally enforceable obligation of the State. In the written opinion of the Public Finance Authority’s bond counsel, there is no applicable provision of state law that would prohibit a future Legislative Assembly from appropriating any sum that is certified by the Industrial Commission as necessary to restore the reserve fund in an amount sufficient to meet the required debt service reserve amount. The legislative obligation imposed by the Legislative Assembly in subsection 4 of §6-09.4-10 is referred to as a moral obligation because the obligation to provide an appropriation for the Public Finance Authority’s reserve fund is not backed by the full faith and credit of the State. All bonds issued by the Public Finance Authority under any of its programs prior to 2011 are moral obligation bonds unless the Industrial Commission approves a resolution to allow the Public Finance Authority to issue bonds under section 40-57 as a conduit issuer. The State Revolving Fund Program bonds issued in 2011, 2012, 2015, 2016, 2018 and 2022 do not contain the moral obligation provision. Under any of the Public Finance Authority programs, there has never been the need to request an appropriation to cover a shortfall in a reserve fund.

At the present time, the Public Finance Authority has three loan programs: the Capital Financing Program, the State Revolving Fund Program, and the Industrial Development Bond Program.

Capital Financing Program

The Capital Financing Program, established in 1990, makes loans to political subdivisions for any purpose for which political subdivisions are authorized to issue municipal securities, subject to certain statutory requirements.

Through December 31, 2022, the Public Finance Authority has made \$265,093,016 of loans to political subdivisions under the Capital Financing Program. The outstanding amount of Capital Financing Program bonds is \$121,490,000. Recognizing the strength of the State's moral obligation pledge, Standard and Poor's (S&P) has assigned a rating of "AA-" to the Capital Financing Program Bonds.

The Industrial Commission authorized the PFA to utilize the Capital Financing Program to provide loans for political subdivisions impacted by weather-related events. These loans assisted political subdivisions until federal and state money was available or aided in cash flowing local match requirements.

During times of crisis, the PFA was able to assist 40 political subdivisions. Loans approved under this program total \$71,531,546 and none were outstanding as of December 31, 2022.

State Revolving Fund Program

Under the State Revolving Fund (SRF) Program federal capitalization grants are received by the State through the Department of Environmental Quality from the Environmental Protection Agency (EPA) and are deposited and held under the Program's Master Trust Indenture for the purpose of making below-market interest rate loans to political subdivisions for qualified projects and for other authorized purposes. The projects are subject to approval by the Department under appropriate state law, the Federal Clean Water Act and the Federal Safe Drinking Water Act. The federal capitalization grants are available to states on the basis of an 80-20 federal-state match. A portion of the SRF Program bonds issued by the Public Finance Authority provides the 20% state match. The federal capitalization grants must be held by the state in a revolving loan fund and are available only for purposes authorized under the Federal Clean Water Act and the Federal Safe Drinking Water Act.

The SRF Program consists of a Clean Water SRF Program and a Drinking Water SRF Program. Federal capitalization grants for the Clean Water SRF Program were first appropriated to the State in 1989. The State has been appropriated and awarded \$258,004,688 of federal capitalization grants under the Clean Water SRF Program from 1989 through calendar year 2022. Through December 31, 2022, 338 loans totaling \$903,450,416 have been approved under the Clean Water SRF Program. The Department of Environmental Quality's Clean Water Intended Use Plan for 2023 includes over \$1,081,275,000 of potential CWSRF projects.

Federal capitalization grants for the Drinking Water SRF Program were first appropriated to the State in 1997. \$240,645,767 of federal capitalization grants under the Drinking Water SRF Program have been appropriated and awarded to the State through federal fiscal year 2022. Through December 31, 2022, 311 loans totaling \$733,316,147 have been approved under the Drinking Water SRF Program. The Department of Environmental Quality's Drinking Water Intended Use Plan for 2022 includes approximately \$809,546,000 of potential projects.

A project must be on the appropriate Intended Use Plan to be able to apply for a loan under the SRF Program. The current interest rate for most loans under the SRF Program is 1.5% with a 0.5% annual administrative fee on the outstanding balance. Bonds issued by the Public Finance

Authority under the SRF program are rated “Aaa” by Moody’s Investors Service, Inc. (Moody’s), which is Moody’s highest possible rating. The PFA obtained an additional rating for the North Dakota SRF Program bonds from Standard & Poor’s Ratings Services which assigned their highest rating, “AAA”.

Industrial Development Bond Program

The Public Finance Authority’s Industrial Development Bond Program provides loans to North Dakota manufacturers that meet the IRS definition for small issue manufacturers. This program has been assigned an “A+” rating by S&P, which allows those manufacturers that qualify to finance fixed assets at attractive tax-exempt rates. Bonds issued under this Program will be moral obligation bonds of the State unless the borrower has the financial strength to request that the Public Finance Authority issue the bonds on a conduit basis. The 2005 Legislature passed the legislation allowing the Public Finance Authority to issue industrial revenue bonds. Current Program limits are \$2,000,000 per borrower. For conduit issuance when the state’s moral obligation is not used as a credit enhancement there are no project or program limits. The Public Finance Authority has made three loans under this program in the amount of \$4,860,000 and \$650,000 is currently outstanding.

If you have any questions, feel free to contact me at 701.426.5723 or dament@nd.gov.

NORTH DAKOTA BUILDING AUTHORITY DEBT SERVICE

Biennium	2010B		2017A		2020A	Totals	Other Source	Energy Conser. Budgeted	Total Gen. Fund	10% of \$.01 Sales Tax*	Available Debt Service
	2002A	2010A/B	2012A	2006B/2001A 2006A/2000A/1998A 2005A							
2021-23	497,700	407,271	914,000	6,214,250	14,007,500	22,040,721	4,585,981	423,295	17,031,445	44,409,819	27,378,374
2023-25	0	404,834	0	2,782,875	14,016,375	17,204,084	4,262,045	207,649	12,734,390	44,409,819	31,675,429
2025-27	0	402,344	0	0	14,001,750	14,404,094	4,224,219	0	10,179,875	44,409,819	34,229,944
2027-29	0	396,928	0	0	14,020,125	14,417,053	4,223,678	0	10,193,375	44,409,819	34,216,444
2029-31	0	164,096	0	0	14,019,875	14,183,971	4,159,317	0	10,024,654	44,409,819	34,385,165
2031-33	0	0	0	0	14,013,500	14,013,500	3,823,500	0	10,190,000	44,409,819	34,219,819
2033-35	0	0	0	0	14,017,875	14,017,875	3,826,750	0	10,191,125	44,409,819	34,218,694
2035-37	0	0	0	0	14,018,125	14,018,125	3,818,125	0	10,200,000	44,409,819	34,209,819
2037-39	0	0	0	0	14,009,125	14,009,125	3,820,000	0	10,189,125	44,409,819	34,220,694
2039-41	0	0	0	0	14,010,125	14,010,125	3,818,875	0	10,191,250	44,409,819	34,218,569
Totals	1,425,788	2,182,830	2,711,750	16,358,375	140,134,375	162,813,118	41,619,252	1,062,788	120,131,078		

Revised 5/21/2021

*The statutory limitation is based on the Legislative May 2021 forecast with a 0% increase each subsequent biennium.