

2009 HOUSE CONSTITUTIONAL REVISION

HCR 3058

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3058

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 02/25/09

Recorder Job Number: 9741

Committee Clerk Signature Lou Engelson

Minutes:

**Chairman Koppelman:** We'll open the hearing on HCR 3058.

**Rep. Joe Kroeber** offered testimony in support of HCR 3058. See Attachment #1. What we are looking at is the right side of the document. You see where you have the 6½ % oil extraction tax. Sixty percent of the 6½ % goes into the state general fund, and that goes into the permanent oil trust fund and the oil and gas research fund. That part is not what we are talking about. It is on the right side where you have the 20% of the 6½ % goes into the resources water trust fund. And then when you go way to the right, and that's what I'm talking about. It will take 20% of the 6½ % of the oil extraction tax for education purposes. Fifty percent of that will go into the common school trust fund and 50% will go into the foundation aid stabilization fund. These are the funds that I am talking about. The reason I did that (\$726,165,879 times 15%) was I was simply going to cap it at whatever it was at at the end of this biennium which would have been approximately \$120 million. This is from the executive budget that we received at the end of the session. What has happened here is this was a tremendous idea that they had back in 1994, and still is a tremendous idea. In 2005-2007, the ending fund balance was \$29 million. In 2007-2009 we predicted there would be \$45 million at the end of the biennium. But because of the explosion in the oil production, at the end of 09,

that's \$72 million. We are now predicting at the end of this biennium we would have \$119 million. So my idea was if we could cap this at the end of the biennium. What happened because of this bill, the elementary and secondary ed would not have to take a hit on allotment. Your elementary and secondary schools would get the full funding that they were promised they would get from the state. I'm not changing that at all. That's all staying exactly the same. It appears to me that having over \$120 million in this fund is probably tying up more dollars than what we really should need. It is extremely difficult for DPI to estimate exactly the number of students that we are going to have. If this were enacted, we could take and ensure that the elementary and secondary schools would get the amount of dollars the legislative promised from this particular fund.

**Rep. Conrad:** Is there something we can say that isn't tied to this current language?

**Rep. Kroeber:** That's exactly what I would to have you look at. When I talked to them about this I said I wanted to cap this at \$120. That's clean. It's solid. They said that makes a lot of sense, however, if this does go into the constitution, ten years from now or fifteen years from now, this might not be appropriate. I think that's something I would appreciate you discussing. I'm not married to the 15%. When I visited with OMB about this they said we, at one time, changed the name of that line item.

**Rep. Conrad:** So what you're saying is we should keep in this stabilization fund, an amount of money that will protect us in case we for some reason can't draw any cash?

**Rep. Kroeber:** It already does that. That's already taken care of. What mine does is it sets a cap on the amount that will be in this fund so those additional dollars could be considerable. They could just be tied up in this formula and they would not be used for education unless you had an allotment. Whereby putting them into the common school trust fund, we take the interest off that each biennium for our elementary and secondary school. That makes up part

of our foundation. It's not going to change the initial intent of the legislation at all. It just seems to me that we need to be able to make better use of that amount.

**Rep. Kretschmar:** As I read this on page 2, is that the appropriation that this legislative assembly set up for K-12?

**Rep. Kroeber:** The interest income from the foundation aid stabilization fund may be expended upon order of the governor to meet any shortfalls. That's the one for this biennium. (inaudible) slight miscalculation in the number of students that may not, the secondary schools wouldn't get the amount of dollars that they were promised in this biennium. Where now that part's not protected by the constitutional measure as it's written up.

**Rep. Kretschmar:** I'm interested more on line 2 of page 2.

**Rep. Kroeber:** Oh, components of the grants-state school aid. That's the major line in the DPI bill. This amounts to \$726 million. That's a changeable number each time. As that goes up, of course the 15% of that amount would keep increasing this fund a little bit at a time.

**Rep. Kretschmar:** You've got July 1, 2009 in there. It reads to me like that's the number we are going to use forever.

**Rep. Kroeber:** I think that's the part that I want you to look at and see if you can come up with something that's cleaner than that and is easier to explain to the people when they have to vote on it.

**Rep. Hatlestad:** If I understand what you are looking at, whatever the general fund appropriation to DPI was, 15% of that number would be the cap?

**Rep. Kroeber:** Correct.

**Rep. Hatlestad:** So as the state increased the money to the elementary and secondary ed, the cap would go up.

**Rep. Kroeber:** That is correct.

**Chairman Koppelman:** Further testimony in support of HCR 3058?

**Greg Burns:** (A large portion of this testimony was inaudible and no written testimony was provided.) I'm Greg Burns with the North Dakota Education Association. We support this resolution. It made sense to us to try to attempt to balance the spending and protect education from further cuts in the future. We too have had to think about this July 1, 2009, and what it means, and after listening to the testimony today and maybe a way to get around that is to defer to July 1<sup>st</sup> in the preceding biennium. That way there's a moving target there. It would tend to maintain the balance (inaudible). We all have to give them a fixed dollar amount in the constitution which we all know this dollar amount (inaudible) The value of money over time increases and it would seem to be a sliding scale.

**Chairman Koppelman:** When you talk about further cuts, are you referring to the allotment that happened back in the 80s.

**Mr. Burns:** It would prevent things like that.

**Chairman Koppelman:** What year did that happen, do you recall?

**Mr. Burns:** I do not recall.

**Rep. Uglem:** By transferring the excess into the common schools trust fund would that automatically increase funding to schools?

**Mr. Burns:** The way I understand it, it wouldn't decrease the money to the schools. What it would do is increase the amount of interest that is available to be used out of the common schools trust fund. The money that is apportioned to the school's stabilization trust fund into the common schools trust fund doesn't translate dollar for dollar. What it does is raise the interest that is available in the common schools trust fund. It's not a dollar for dollar exchange.

**Rep. Griffin:** How much is in the common schools trust fund?

**Mr. Burns:** I don't.

**Bev Nielson:** For the record I am Bev Nielson with the North Dakota School Board Association. We also see this as a positive move because the money from the trust fund (inaudible) interest only. If you will recall about three years ago we put on the ballot a constitutional amendment which would change the percent of the value of the fund as opposed to interest and that is going to go into effect sometime here in the near future. The one thing that I do like about this is on page section 2 where it says the interest from the foundation aid stabilization funding when we have shortfalls.

**Chairman Koppelman:** Those dollars are not currently available from that fund?

**Ms. Nielson:** Currently the only thing that the stabilization money can be used for if there is an allotment.

**Rep. Uglem:** Define allotment for me.

**Ms. Nielson:** That is a state term and I think it's an odd term. What it is is an across the board cut.

**Chairman Koppelman:** That's correct. The allotment idea is an across the board cut when the entire budget is in trouble. My understanding of the difference here is when there is a shortfall that might be because of miscounting the number of students or something like that. So the appropriation made a year and a half ago maybe didn't match up.

**Ms. Nielson:** Didn't match up. Correct.

**Chairman Koppelman:** Further questions. Further testimony in support of HCR 3058. Testimony in opposition to HCR 3058. Any neutral testimony on HCR 3058. Seeing none we'll close the hearing on HCR 3058.

A subcommittee was appointed consisting of Rep. Hatlestad, Rep. Meier and Rep. Conrad.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 3058

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 03/05/09

Recorder Job Number: 10325

Committee Clerk Signature

*Lou Engelson*

Minutes:

**Chairman Koppelman** opened the hearing on HB 3058.

**Rep. Conrad:** Rep. Hatlestad and I met with people of Public Instruction and then I met with Anita, and we got this drafted up. We also met with Rep. Kroeber to be sure that we were clear on his intent. What this does is, first of all remember the chart? Twenty percent of the oil extraction tax goes to education and then 50% of that 20% goes into the common schools trust fund and 50% goes into the foundation aid stabilization fund. So what we're doing here is we're saying that that money in the foundation stabilization fund may not grow more than 2% a year. If in any year the amount to be deposited under this section would cause the foundation stabilization fund to exceed its permitted rate of growth, the excess tax must be deposited in the common schools trust fund. So right now it's about \$120 million at the end of this biennium. This was what Rep. Kroeber's intent was that there be a cap of sort on there. We didn't want to put an amount of money in. So right now at the end of this biennium there would be \$124 million and so that cannot grow more than 2%, which would kind of be a reasonable cost of living increase for most years. Not all, given the size of that fund. It would only go up 2% and anything beyond that 2% would be dumped into the common schools trust fund. So

that fund would be kept up with inflation but not growing much more because \$120 million is really a lot of money.

**Chairman Koppelman:** So the interest right now stays in the foundation stabilization fund?

**Rep. Conrad:** No. It goes to the general fund.

**Chairman Koppelman:** It goes into the general fund after how much?

**Rep. Hatlestad:** It says in the original bill the governor could take the interest to meet any shortfalls in the amounts appropriated for the K through 12. If they fell they are going to be \$5 million short, the governor would have the authority to, if the interest amounted to \$5 million, to use that \$5 million to cover the shortfall.

**Rep. Conrad:** And then could put the rest of the interest into the general fund. The interest would continue to go into the general fund unless there is some kind of shortfall.

**Chairman Koppelman:** So how does your amendment change the resolution?

**Rep. Conrad:** It cleans it up. I think it cleans what Rep. Kroeber was intending. When we took it up to DPI, it said it didn't achieve what we had understood we wanted so we went and found some language and then first checked with him as to his intend, then found the language and checked back.

**Chairman Koppelman:** I wish I had seen a little earlier. I had our clerk give copies of the resolution and testimony to Rep. Svedjan and Rep. RaeAnn Kelsch because they are chairmen of the appropriations and education committee. I didn't hear back from Rep. Kelsch. Rep. Svedjan said he thought it looked alright in its original form.

**Rep. Conrad:** The intent is to not let this fund grow by more than it is now. It's grown considerably. The second thing is that the interest should be available for shortfalls. That \$5 million this year is because we had more students than we thought we were going to have. So



this would be available to help those school districts out. If there is a shortfall for some reason then the interest could be used.

**Rep. Griffin:** It looks like the provision that will affect the general fund will remain the same in the bill.

**Rep. Kretschmar:** When I look at section number 3, I'm wondering if we should take the word "interest" out of there because this fund would be invested (inaudible) and just say income. There's two places in the bill. Second word in the second to last line.

**Rep. Hatlestad:** Is that tax money going in? Is that considered income?

**Chairman Koppelman:** I don't believe so. I know that we've made this change, what Rep. Kretschmar is referring to, in other places in legislation for the very reason because I think in the constitution especially in the old days, interest was the definition of income. Today when you've got bonds and derivatives. It's not technically interest. I thought about proceeds.

**Rep. Meier:** So if this money does not get spent in the biennium then it just pools for the next biennium?

**Rep. Conrad:** Then it would be dumped into the common schools trust fund so it's invested. They invest differently. They are long term investments. And the stabilization fund because that's supposed to be available for emergencies. So you could make more money.

**Chairman Koppelman:** So the way this was introduced was that it would be capped at 15% of the general fund appropriation for foundation aid. And now we're saying it can't grow by more than 2%. That's essentially the difference. I don't know what that comes out to in numbers, but why the change? What difference does it make?

**Rep. Conrad:** It seems to be cleaner, and it's a way of capping it but letting it grow some.

**Chairman Koppelman:** Is there no concern that the needs of the foundation, payments, whatever, helps with the stabilization fund if we move it into the common schools trust fund.

**Rep. Hatlestad:** When you said capped, I didn't get that impression. If I look at the bottom of page 1, it says If in any year the amount to be deposited in the foundation aid stabilization fund to exceed 15% of basically whatever we appropriated for K through 12 which would amount to almost \$8 million we kicked in. So you're looking at close to \$120 million. You would have to generate \$120 million before this would go into effect?

**Chairman Koppelman:** No I think that's right.

**Rep. Conrad:** But the fund right now is at about \$120 million.

**Chairman Koppelman:** The language that I repeated is what I wrote in notes from testimony. I think that's what Rep. Kroeber said. I think he said it caps the amount of foundation aid stabilization fund.

**Rep. Hatlestad:** No. I don't think that's what he said.

**Chairman Koppelman:** Doesn't it say that if it exceeds 15%, it caps it at 15% of the appropriation, and you said, Rep. Hatlestad, so it exceeds 15% under the original resolution.

**Rep. Hatlestad:** Go back to the first page. If the amount to be deposited, so isn't that tax money?

**Chairman Koppelman:** Yes.

**Rep. Hatlestad:** So you would have to get \$120 million in tax money, which is 50% of the 20%. So if you generate \$400 million in tax revenue, \$600, so 20% of that is \$120 million?

**Rep. Conrad:** \$125.

**Rep. Hatlestad:** So then 50% of that would be \$60 million. So it would have to be double the income that you double what you got now for any money to kick into the schools trust fund in the original bill?

**Rep. Conrad:** Yes, that's what under the original bill.

**Rep. Uglem:** That was not the intention.

**Rep. Conrad:** His real intention is to keep it at about where it is at now.

**Rep. Griffin:** Rep. Kroeber said he wanted to cap it at \$120 million. It appears that language didn't but I suppose now he figures the 2% growth rate, if this doesn't go into effect by the end of the biennium and has reached \$120, that once it starts growing at 2% a year that would be sufficient. Even would allow more money in it than what he intended by it.

**Chairman Koppelman:** How much is in the stabilization fund now?

**Rep. Hatlestad:** I don't know.

**Rep. Conrad:** Around \$120.

**Chairman Koppelman:** If it is \$120 then whatever it is at the time this would go into effect, it could grow by 2% a year but anything then would be put in the common schools trust fund.

Where you're saying the way this is written, a whole lot more than that would go into it before it would go into the common schools trust fund.

**Rep. Hatlestad:** That would almost be impossible to reach that.

**Chairman Koppelman:** Can the common schools trust fund be used for foundation aid stabilization.

**Rep. Conrad:** I think they would have all been allocated.

**Chairman Koppelman:** So when we calculate foundation aid payments and we plan for how much they are going to be in a given biennium, then whatever interest is coming out of the common schools trust fund to contribute toward that payment is already calculated in. Is that correct?

**Rep. Meier:** I believe so.

**Chairman Koppelman:** And so we, the appropriations folks and the education folks look at that and say here's foundation aid for the next biennium, and X percent of that comes out of the common schools trust fund. Some of it might come from other revenue sources. So the

foundation aid stabilization fund is really designed for when all of the aforementioned is not adequate.

**Rep. Conrad:** Right. Number four.

**Chairman Koppelman:** That's current. And that's the principal in the foundation aid stabilization fund.

**Rep. Conrad:** Can be touched by the governor only to offset foundation reductions.

**Chairman Koppelman:** Would you like to move your amendment Rep. Conrad?

**Rep. Conrad:** I sure would.

**Chairman Koppelman:** And if so would you like the interest out of there.

**Rep. Conrad:** Yes. Take interest out of there.

**Chairman Koppelman:** On number 3 on the top line and in the second to the last line of item number 3 strike the word interest. The amendment as revised is before us. We'll take a voice vote on the Conrad amendment. All those in favor say aye. Those opposed? Motion carries.

**Rep. Kretschmar:** I'll second that.

**Rep. Conrad:** To answer Rep. Hatlestad's question, taxes are referred to as revenue, not income.

**Chairman Koppelman:** Again we have a general election date. Do we want to change that on line 16? Motion to change from general to primary by Rep. Hatlestad. Seconded by Rep. Meier. Discussion? Seeing none we'll vote on that, voice vote? All those in favor signify by saying aye. Opposed? Motion carries. We now have the twice amended bill before us.

**Rep. Hatlestad:** Motion to do pass.

**Rep. Griffen:** Second.

**Chairman Koppelman:** Further discussion on the do pass motion. Seeing none I'll ask the clerk to call the roll.

The roll was called by the clerk.

**8 yes, 1 no, 0 absent and not voting. Rep. Hatlestad was assigned to carry the resolution.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3058

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 03/06/09

Recorder Job Number: 10366

Committee Clerk Signature

*Lou Engelson*

Minutes:

**Chairman Koppelman** opened the hearing on HCR 3058.

**Chairman Koppelman:** The purpose of the meeting is to fix an amendment. It deals with HCR 3058, and before we can do that we will need a motion to consider our actions.

**Rep. Conrad:** So moved.

**Rep. Uglem:** Second.

**Chairman Koppelman:** We have a motion and a second to reconsider our action by which we amended and passed HCR 3058. Any discussion on the motion? All those in favor signify by saying aye. Opposed? The motion carries. The resolution is before us as amended. Rep. Hatlestad, I'll ask you to explain your amendment, and then maybe the motion ought to be to remove the previous amendment and replace it with this one.

**Rep. Hatlestad:** When we talked yesterday before we passed, we were working on the premise that there was about \$124 million in that fund. There isn't. It depends upon whose figures you look at now whether you look at DPI or whether you look at the governor. Maybe we can just go out and pick a figure out of the air. DPI says there's \$51 million in the fund.

The governor says there's going to be \$68 million in the fund, and so then we went and looked at figures for what's going to happen by the time that this amendment, if it passes, went into

effect. It would be pushing maybe just under \$100 million. In between we drafted the amendment that says \$80 and now we'd like to move that bottom figure up to \$100 million so that the fund would basically have to, before anything got shoved here and there, would have at least \$100 million in the fund and then be allowed a 2% growth each year with the rest of the money going into the common schools trust fund. So basically from what we passed yesterday to what I'd like you to pass today, we want to put a cap of \$100 million plus a 2% growth factor. So do I amend the amendment?

**Rep. Uglem:** I'm questioning if it's below \$100 million, will it still allow it to grow to \$102 million the next year, or does it have to be at \$102 million before it's allowed to grow?

**Rep. Hatlestad:** It has to be at \$100 million before it will grow. So it will dump everything that it gets into the fund until it reaches \$102 million.

**Rep. Uglem:** So the \$100 will not increase unless the fund is at \$100 already.

**Rep. Hatlestad:** Yes. And then it will grow 2%.

**Rep. Uglem:** So we don't allow inflation unless it's at \$100?

**Rep. Hatlestad:** It's now projected to be \$68 so it will continue to grow until it reaches \$100 million unbridled with nothing being changed. Then after it reaches that, then it will take 2% which is \$2 million of the money coming in, and then anything over that \$2 million will go to the schools trust.

**Rep. Uglem:** What I'm getting at is I'm thinking if we want to allow it to go to \$102 million, whether it can hit the \$100 million mark or not to allow for inflation each year. Otherwise we don't allow for inflation until after it hits \$100 million.

**Rep. Conrad:** We don't yet because there's not money available.

**Rep. Uglem:** I understand that, but it leaves \$100 million cap instead of adjusting the cap each year.

**Rep. Meier:** I visited with Rep. Hatlestad. He's going to amend line 2 to say instead of \$80 to \$100 million.

**Chairman Koppelman:** My understanding of what we proposed and what we passed is that if the fund reaches \$100 million, that's when this provision kicks in. So in other words, if we have \$102 million in it five years from now and then it dips to \$80 million because of the economic tough times, it would then be allowed to grow unbridled back to \$100 million I think. And then this would kick in because the term is whenever the foundation aid stabilization fund reaches a level of \$100 million. It's not when in terms of one time. It's whenever so it can bounce around, and as I read the amendment, if it's below \$100 million, all bets are off it grows as it will or as it's able. Once it hits the \$100 million, then the 2% limit kicks in. Does that address your concern?

**Rep. Uglem:** That's what I understand it says, but my concern is ten years from now if we hit \$100 million, we don't allow for ten years inflation.

**Chairman Koppelman:** Right. And that's a point well taken.

**Rep. Uglem:** If that's the intent, that's fine.

**Rep. Conrad:** That was the intent. The intent I think is to put a cap. There's no magic in the number.

**Rep. Uglem:** There's no inflation on the cap.

**Chairman Koppelman:** Given what I'm hearing in terms of levels, the fund can grow from \$60 to \$100 million. It's at \$60 right now. So it can grow substantially. It can nearly double before this even comes into play.

**Rep. Conrad:** The cap should grow by 2%.

**Rep. Uglem:** The \$100 million is worth the same value as we go down the road with inflation.

**Rep. Hatlestad:** So how do you change it to say that then?



**Chairman Koppelman:** The problem you run into, one is kind of like what we talked about on that measure where we were talking about state spending, if you reference something like CPI, you're putting something in the constitution that may or may not last forever, and how do you deal with that. You could put language in that allows the legislature to adjust the cap based on some inflationary index or inflationary factor. Or you could put a picked amount like 2%, but most of us have lived long enough to remember a lot of inflation back in the 70's for example and early 80's and a 2% growth rate would have been going way backwards then.

**Rep. Conrad:** (inaudible) to say the amount when the voters passed this, we expect will be between 80 and 120. That that amount plus 2% every year is the cap.

**Rep. Hatlestad:** In the sense that does happen, it going to be guaranteed a 2% growth before any money is being transferred.

**Chairman Koppelman:** That would roll the dice to say if it's \$80 we'll cap it there. If it's \$120 we'll cap it there. I think you want something a little more definitive in the constitution.

**Rep. Griffin:** I think we should just pass this as is because we have a deadline of Monday.

**Rep. Hatlestad:** So I need to make a motion to rescind the amendment.

**Chairman Koppelman:** I think what your motion should be logistically is the amendment that we voted on yesterday was 0102 but when it was fixed to remove the word interest it became 0103. I think your correct motion would be to reconsider our action by which we adopted amendment 0103 and replace that amendment with 0201.

**Rep. Hatlestad:** What about the amendment to the amendment?

**Chairman Koppelman:** 0201 as revised and the revision is on page 1, section 1, section 24, subsection 2 80 becomes 100.

**Rep. Hatlestad:** I'll so move all that.

**Rep. Meier:** I'll second.

**Chairman Koppelman:** Moved and seconded as stated. Any further discussion? Seeing none, those in favor of re-amending as described please signify by saying aye. Thos opposed? Motion carries. We now have the amended and re-amended HCR 3058 before us.

**Rep. Hatlestad:** Do pass as amended.

**Rep. Conrad:** Second.

**Chairman Koppelman:** Further discussion. We'll ask the clerk to call the roll on a do pass recommendation.

**7 yes, 0 no, 2 absent and not voting. Rep. Hatlestad was assigned to carry the resolution.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/09/2009

Amendment to: HCR3058

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HCR 3058, if enacted and approved by the voters, will allocate certain excess oil extraction tax revenues to the common schools trust fund.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted and approved by voters, the fiscal impact of Engrossed HCR 3058 would likely first occur in the 2011-13 biennium. There is no forecast of oil extraction tax revenues for the 2011-13 biennium, so any potential fiscal impact cannot be determined.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	03/10/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/20/2009

Bill/Resolution No.: HCR3058

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

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**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted and approved by voters, the fiscal impact of HCR 3058 would likely first occur in the 2011-13 biennium. There is no forecast of oil extraction tax revenues for the 2011-13 biennium, so any potential fiscal impact cannot be determined.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/24/2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE  
CONCURRENT RESOLUTION NO. 3058

Page 1, line 1, after "resolution" replace the remainder of the resolution with "for the amendment of section 24 of article X of the Constitution of North Dakota, relating to the permitted growth of the foundation aid stabilization fund.

**STATEMENT OF INTENT**

This measure provides that if the deposits of oil extraction tax revenues into the foundation aid stabilization fund would cause the fund to increase by more than two percent each year, the excess amount must be deposited in the common schools trust fund.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed amendment to section 24 of article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2010, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 24 of article X of the Constitution of North Dakota is amended and reenacted as follows:

**Section 24.**

1. Twenty percent of the revenue from oil extraction taxes from taxable oil produced in this state must be allocated as follows:
  - ~~1-~~ a. Fifty percent must be deposited in the common schools trust fund;  
and
  - ~~2-~~ b. Fifty percent must be deposited in the foundation aid stabilization fund in the state treasury, ~~the interest.~~
2. Whenever the foundation aid stabilization fund reaches a level of <sup>one hundred</sup> ~~eighty~~ million dollars, the foundation aid stabilization fund may not be allowed to grow by more than two percent per year. If in any year the amount to be deposited under this section would cause the foundation aid stabilization fund to exceed its permitted rate of growth, the excess taxes must be deposited in the common schools trust fund.
3. The income ~~of which~~ from the foundation aid stabilization fund may be expended upon order of the governor to meet any shortfalls in amounts appropriated for elementary and secondary education during a given biennium and any income not so expended must be transferred to the state general fund on July first of each odd-numbered year.
4. The principal of the foundation aid stabilization fund may be expended only upon order of the governor, who may direct such a transfer only to offset foundation aid reductions that were made by executive action pursuant to law due to a revenue shortage."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3058

Page 1, line 1, after "resolution" replace the remainder of the resolution with "for the amendment of section 24 of article X of the Constitution of North Dakota, relating to the permitted growth of the foundation aid stabilization fund.

**STATEMENT OF INTENT**

This measure provides that if the deposits of oil extraction tax revenues into the foundation aid stabilization fund would cause the fund to increase by more than two percent each year, the excess amount must be deposited in the common schools trust fund.

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Renumber accordingly

March 5, 2009

VR  
3/5/09

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Renumber accordingly



March 6, 2009

V12  
3/6/09

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Renumber accordingly

Date: 03/05/08  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3058

**HOUSE CONSTITUTIONAL  
REVISIONS COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Hatlestad Seconded By Griffin

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Conrad	✓	
Vice Chairman Kretschmar	✓		Rep. Griffin	✓	
Rep. Hatlestad	✓		Rep. Schneider	✓	
Rep. Meier	✓				
Rep. Schatz	✓	✓			
Rep. Uglem	✓				

Total Yes 8 No 1

Absent 0

Floor Carrier: Hatlestad

If the vote is on an amendment, briefly indicate intent:  
DP

*Revised*

Date: 03/06/09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3058

**HOUSE CONSTITUTIONAL  
REVISIONS COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Hatlestad Seconded By Conrad

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Conrad	✓	
Vice Chairman Kretschmar			Rep. Griffin	✓	
Rep. Hatlestad	✓		Rep. Schneider	✓	
Rep. Meier	✓				
Rep. Schatz					
Rep. Uglem	✓				

Total Yes 7 No 0

Absent 2

Floor Carrier: Hatlestad

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3058: Constitutional Revision Committee (Rep. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HCR 3058 was placed on the Sixth order on the calendar.

Page 1, line 1, after "resolution" replace the remainder of the resolution with "for the amendment of section 24 of article X of the Constitution of North Dakota, relating to the permitted growth of the foundation aid stabilization fund.

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Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HCR 3058

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3058

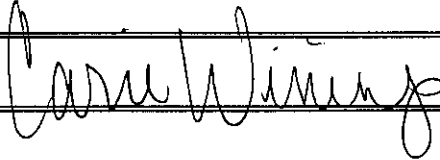
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/25/2009

Recorder Job Number: 11512

Committee Clerk Signature



Minutes:

**Senator Oehlke:** Opened the hearing on HCR 3058.

**Representative Joe Kroeber, District 12:** See attachment #1 for testimony as sponsor and in support of the bill. See Attachment #2 and #3 for charts provided.

10.25 **Senator Dotzenrod:** The previous hearing was to find simplicity; do you think this would be simple for the voter?

**Representative Kroeber:** I do think this is simple; it is just capping and moving the excess dollars into the common schools trust.

12.27 **Bev Nielson, School Boards Association:** Testified in support of the resolution. We do have a concern of putting a specific dollar amount in our constitution. A percentage of the previous biennium's grants and aids appropriation would be better. We have to make sure that we always have at least 10% of the funding of schools in this fund if we are going to be saved from an allotment which is an across the board 10%. It seems to make more sense to me to have at least 10% of the previous biennium's funding of K12 education. The constitution should be permanent. We think that the move to move some of the money to the commons schools trust fund is a good move and we believe the flexibility for the use of the stabilization fund is an excellent move. We will be shorting the schools \$5 million this year when the state

has a lot of money. That doesn't need to happen simply because the enrollment numbers were off.

14.50 **Senator Dotzenrod:** This number you gave us?

**Bev Neilson:** \$5 million. There is a bill that might give us \$2 million back. There were more students than we thought we would have and that changed the divisor.

16.45 **Josh Askvig, North Dakota Educators Association:** Testified in support of the bill. We have a bit of concern with the \$100 million, but not enough to change our minds.

17.35 **Senator Oehlke:** Would you like a percentage better?

**Josh Askvig:** I think that would confuse things a bit but we would probably prefer. I don't think that we thought the fund would ever get to this point.

**Representative Kroeber:** One other comment. It was for the simplicity to the ballot. I do understand the concern for down the road.

**Senator Oehlke:** Closed the hearing.



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3058

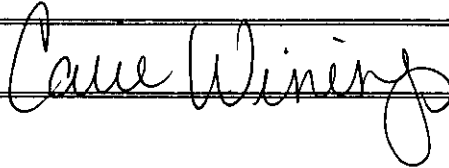
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/30/2009

Recorder Job Number: 11558

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HCR 3058.

**Senator Dotzenrod:** You almost have to have the oil taxing chart. If you go to the far right side of that chart; the far right arrow says that 50% goes to the foundation aid stabilization fund; when that stabilization fund hits \$100 million the overflow will go in to the common schools trust fund, and that the \$100 million that is in the foundation aid stabilization fund will be allowed to grow no more than 2% a year. It basically caps the foundation aid stabilization fund at \$100 million and puts anything over into the schools trust fund.

**Senator Triplett:** What is the point?

**Vice Chairman Miller:** I don't get it either.

**Senator Dotzenrod:** Representative Weiler felt that the amount of money that is needed from that foundation aid stabilization fund is kind of a savings account that is used to make the foundation aid program whole and that it doesn't really serve any other purpose other than that and that the common schools trust fund to allow that to grow and keep growing is kind of like a trust fund that you can keep growing. The interest on the common schools trust fund goes to the schools. I think that is what he wanted to do.

**Vice Chairman Miller:** We don't need to pass a constitutional amendment to do that though.

**Chairman Cook:** Yes we do.

**Senator Anderson:** I think it says that half of that 20% has to go into each. This one says that once the one gets to \$100 million it can only up 2%. It might be 25% and 75%. What we are doing is confusing the voters.

**Vice Chairman Miller:** They will never figure it out and they will vote no.

**4.40 Chairman Cook:** What this also does is would eliminate the interest from the foundation aid and the stabilization fund from going to the general fund. Right now 50% must be deposited into foundation aid stabilization fund and the state treasury, the interest income of which must be transferred to the state general fund on July 1<sup>st</sup> of each year. The principle of the foundation aid stabilization fund may be expended only upon order of the Governor who may direct such a transfer only to offset foundation aid (inaudible) will remain by executive action pursuant to law due to a revenue shortage. It does two things, it caps at \$100 million, with no more interest going to the general fund. It would get to the \$100 million and then stop and then the common schools trust fund would grow.

**Vice Chairman Miller:** But its interest would still grow that fund.

**Senator Anderson:** I don't read it that way. I think it could go up to \$102 million.

**Chairman Cook:** You are right because it would be able to grow 2% per year.

**Senator Dotzenrod:** Essentially then the common schools trust fund becomes sort of like the legacy fund. It sort of creates a fund that we cannot take money out of and dedicates it to education. Like the legacy fund whose earnings can only be used for one purpose, to support the schools.

**6.59 Senator Triplett:** The foundation aid stabilization fund only supports the public schools too except that some of the interest goes back to the general fund.

**Chairman Cook:** In looking at the language on the back of the bill, I see what it is saying. It says the income from the foundation aid stabilization fund may be expended upon order of the Governor to meet any shortfalls in amounts appropriated for elementary and secondary education during a given biennium and any income not so expended must be transferred to the state general fund on July 1<sup>st</sup> with each odd number year. So the income earned, and that is interest, would still go over there. How much is in the foundation aid stabilization fund right now?

**Senator Anderson:** Representative Kroeber said that it would be up to \$100 million in another biennium.

**Chairman Cook:** So they are expecting it to be \$88 million by the end of this next biennium. Can we get this out of here today? I like the concept of it here. I feel much more comfortable dealing with a final decision on this if I knew what was going to happen with the other fund. With that in mind, if all we do is amend it, then we have a chance for a second look at it after we see what is happening to the big picture.

**Vice Chairman Miller:** I specifically don't like Section 3.

**Chairman Cook:** The income that is existing law.

**Vice Chairman Miller:** The order of the Governor?

**Chairman Cook:** Yes. The only way the foundation fund can be spent is by order of the Governor.

**Senator Triplett:** I think there is a bit of a change here. I think that the existing law is that the principle can be expended by order of the Governor to offset foundation aid reductions due to a shortfall in revenue. I think what is new here is that the income, instead of having the income being directly transferred to the state general fund each year, now we are saying the income can be expended by the Governor for shortfalls and appropriated money.

**Chairman Cook:** You're right, I don't like that either. It is increasing the Governor's authority.

**Senator Triplett:** Instead of having the income go into the state general fund every year, you are authorizing the Governor to use it for biennial shortfalls. Because the wording is different, they must mean something different than the foundation aid reduction for which you can still access the principle.

**Chairman Cook:** Then I would suggest that we amend it so that the income still goes just as it is today.

**Senator Triplett:** That will catch their attention more than money in terms of getting a conference committee going if that is your intent.

**Vice Chairman Miller:** I don't think that should be part of the Governor's authority to do that.

**Senator Dotzenrod:** If it gets up to a point where it is capped at \$100 million or \$102 million, and then the income right now goes to the general fund. Under the provisions of this if it passes, if the Governor doesn't take the income then where would it go?

**Senator Triplett:** To the general fund. It still says that any income not so expended must be transferred to the general fund.

13.45 **Senator Hogue:** Even though I was here for the hearing, and I am even more confused now. After it hits \$100 million, then it says if its growth exceeds 2% the excess taxes would be deposited into the common schools trust fund, so it will always hit 2%.

**Senator Dotzenrod:** If you can get 50% of the money coming at this fund, so it is going to hit that 2% growth almost immediately. That means the extra dollars of that 50% are going to have to go into the common schools trust fund because it is going to hit a fund that is capped. The foundation aid is going to be almost capped.

**Senator Hogue:** My reading is that it will hit \$100 million and then it is going to go from \$100 to \$102 etc.; it will never go beyond that because the interest income is going to earn 2% I would think.

**Senator Triplett:** I think it is talking about new money coming in from taxes. You would still get to that point pretty early in the year I would think. I think the new money coming in could be 2% of whatever the beginning rate was and then the new oil revenue taxes that are coming in go over to the trust fund.

**15.26 Discussion:** A discussion occurred between the committee members as to what the bill actually does to and with the funds. Also what would be needed to keep schools whole. There was some discussion as to why the NDEA would support the bill. The committee looks back at Kroeber's testimony to explain some of it.

**21.31 John Walstad, Legislative Council:** I did not write this one, but I can discuss it.

**Chairman Cook:** Clarifies what the situation is today and what the law allows and what this resolution would do.

**22.57 Chairman Cook:** If we had a 10% shortfall in the next biennium, on the state aid committed allocations, what would have to be drawn from here?

**John Walstad:** I do not know that but I can get that for you.

**Chairman Cook:** OK.

**John Walstad:** Clarifies what Senator Cook is asking for.

**Chairman Cook:** Should we change the name to be correct if we are changing the Constitution?

**John Walstad:** I think you could do that.

**Chairman Cook:** If DPI miscalculated the number of students, and that was the reason for there not being enough money to make the final payment, does the existing current law allow the Governor to reach into the foundation aid stabilization fund?

**John Walstad:** No.

**Chairman Cook:** If we pass the bill as it is presented to us, can he?

**John Walstad:** Yes, I believe it does.

25.25 **Senator Dotzenrod:** Clarifies what miscalculation means.

**John Walstad:** I think that this reference is for a specific provision in law that says the Governor can whack 10% off the foundation aid program if general fund revenue is inadequate and that is what I think this reference to executive action is. But, now with the language above shortfalls, that I think would be a shortfall.

**Vice Chairman Miller:** What determines a shortfall?

**John Walstad:** I believe that a shortfall would not be if the legislature does not appropriate enough money. I think if the legislature says that they are providing this much money for what used to be the foundation aid program for this biennium and it turns out that much money would over stretch the general fund and there is not enough money to make the allocation, this would allow that shortfall amount to be drawn from this fund instead of the general fund.

27.50 **Chairman Cook:** I would disagree. I think the way it is written, that if this was to pass the voters approval and become constitutional law, a future legislature could intentionally shortfall funding of K-12 education by \$50 million and this would kick in and take it. It says shortfalls and amounts appropriated; it doesn't say whether it was intentional shortfalls or unintentional. It says any shortfall. If the legislature were short on making their budget, they could just cut the appropriations for K-12 and as soon as the shortfall kicked in it would come out of here.

**John Walstad:** I don't think I would read it that way. It says shortfalls in amounts appropriated. I think the amount appropriated is the measuring stick. There is nothing in the constitution that says the legislature has to appropriate any percentage of the cost of K-12 education so there is nothing to measure whether the legislature is short of some level.

**Chairman Cook:** Then how would that answer my question on DPI miscalculation?

**Senator Triplett:** Most of education funding is based on a per pupil/ weighted student average. How I would read this is that if the legislature said that a certain number of dollars per student, but then they made the overall appropriation based on DPI estimate of 10,000 students and then later we had an influx of families and the numbers were actually 12,000, then that would be a shortfall.

**Chairman Cook:** I don't think that is what it says though.

**Senator Dotzenrod:** Doesn't Section 3 refer to the earnings on the fund and forward refer to the principle?

**Chairman Cook:** Yes.

**Senator Dotzenrod:** So you can't take any principle out by using the authority in Section 3. So, the idea that you are going to potentially shortfall by \$50 million in order to get money out of this fund, that is not going to work in paragraph 3.

**Chairman Cook:** OK.

31.20 **Vice Chairman Miller:** What bothers me is if the legislature intentionally budgets less the Governor could make that determination that it is a shortfall and then fills that in. So long as no one in the legislature says anything then that is fine right? It could be a grand scheme.

**Chairman Cook:** We would never do that.

**John Walstad:** I am not crazy about the language in Section 3. I think that sets up an argument.

**Chairman Cook:** If you look at the discussion we are having, imagine what the voters are going to think.

**Senator Triplett:** Can John Walstad suggest some other language?

**Chairman Cook:** Let me ask first how are we going to correct this?

**Senator Triplett:** That is an interesting question. I suppose we fix it in the next legislative session and by an emergency. That is just one piece of what is going on here, the other piece of it is trying to cap the foundation aid fund all together and get more of the oil tax revenues rolling into the common schools trust fund which do get used more immediately for the benefit of schools. I think that the notion that there is a limit at which the foundation aid stabilization fund is big enough and there is no point in getting it bigger. Maybe we are about there and then we should work at putting more money into a place where the interest earnings are accessible for actual ongoing use by schools. I think that if we think the main point is ok then this sort of secondary point we just want to fix them so that we are clear at what it says.

35.08 **Chairman Cook:** That is where I am at and my only question now is what it is going to cost to take care of a 10% deficit? We are getting to a fixed number in the constitution.

**Senator Hogue:** I think section 3 is too loosely worded. I am not sure why the Governor has to be given that discretion if you have always had a way in the past to correct the problem.

**Chairman Cook:** I think that the problem is the miscalculation in the numbers. I just don't think that is a problem worth muddying up the constitution and confusing people as a means of trying to find a solution to it. I think there are easier solutions; statutory ones. I wonder if we should just worry about the cap and deal with the rest in conference committee.

**John Walstad:** The subsection 3, I would question, what it allows is the Governor to step in and cut off transfer of money that would go to the general fund and say it is going to the shortfall for foundation aid, but if he doesn't do that and it goes to general fund, that is where



the short fall would exist isn't it? So it would fill the shortfall the way it operates now wouldn't it?

**Senator Triplett:** No, I don't think so. I think the shortfall would exist because of - I think they make appropriations based on number of students projected and if they underestimate - it hasn't been much of a problem because we have been in these long periods of decline in enrollment - but if you imagine the schools that have increasing enrollment and those aren't projected, then the appropriation is....

**John Walstad:** So the appropriation is not big enough?

**Senator Triplett:** Right.

**John Walstad:** The legislature did not appropriate enough money.

**Senator Triplett:** Even though they intended to.

**John Walstad:** That is where the language in 3 doesn't say that for sure.

**Chairman Cook:** Let's try to leave everything the same as existing law, except work on some amendments that would put a cap on there.

**John Walstad:** Leave the subsection 2 with the 2% cap?

**Chairman Cook:** What do you think committee? Do we want to put a number of \$100 million plus CPI or 2%? I have heard some pretty strong arguments before on principle about not having numbers in the constitution.

38.40 **Senator Dotzenrod:** Since this was created have we ever taken any money out of it?

**Chairman Cook:** I would say not.

**Senator Dotzenrod:** I think the whole purpose here is a general shift away from resources that benefit the general fund to resources that benefit the schools. Getting more money in that common schools trust fund, having that trust fund grow more and get more capital into that fund so that the earnings get bigger and it becomes a larger and larger trust fund to benefit

schools. I think the dollars are being pushed in that direction. It looks like we may not be able to take money out of this for many years.

**Chairman Cook:** It could happen next session too.

**Senator Dotzenrod:** If we go into a serious shortfall, this would be there and available, but until that happens, we are going to keep putting money in there.

**Senator Triplett:** Another way of doing it without putting a specific dollar amount would be just to change the 50/50 split all together. You would accomplish the same result with a little less nastiness and without worrying about a 2% increase or CPI or whatever, just say that 10% goes into the foundation aid stabilization fund.

**Chairman Cook:** Remember that the 20% is coming off the oil extraction tax, which is the tax that has all of the incentives on it.

**Senator Triplett:** There is not going to be very much money in it this next time around. Let me ask another question, when should this be voted on? The primary or general?

**42.05 Vice Chairman Miller:** This is something that I think that this will not pass in front of the voters as it is especially in the primary election.

**Chairman Cook:** We should be doing this or the legacy fund; we cannot do both. If we do both they will vote them both down.

**Senator Triplett:** Or some combination of both. What you just said about putting them together in one bill. Before we make any decisions, we should get your question answered.

**Chairman Cook:** Could you get that for us.

**John Walstad:** Yes. (Came back to the committee later and stated it would be \$80 million)

**Chairman Cook:** Closed the discussion.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3058

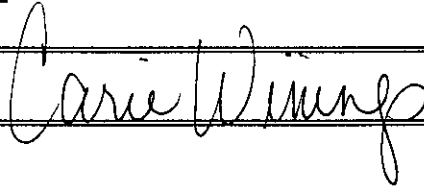
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 04/01/2009

Recorder Job Number: 11592

Committee Clerk Signature



Minutes:

1.55 **Chairman Cook:** Reopened discussion on HCR 3058. (Reviews the resolution) I think the best thing we can do is not deal with this during this session. Maybe it would be wise to get a permanent oil trust fund established this session.

4.03 **Senator Oehlke:** I do like the simplicity of the other resolution that we have talked about. This one is confusing to me. I tend to agree with your perspective on this.

**Chairman Cook:** Ten percent of current foundation aid would be \$80 million, so \$100 million seems like it could be the right number.

**Senator Hogue:** Subsection 3 is a problem for me. I don't think that as a committee that we agreed what it means. So I don't support that. I don't know how the voters can be expected to figure that one out if we can't.

**Senator Dotzenrod:** In looking at current law, it looks like the only way to get something out of the foundation aid stabilization fund is essentially in a lock box. I don't know how you get money out of there. It looks like the only way to do it is if the Governor ahead of time plans in such a way to reduce and make a cut in payments to schools and then makes that cut and he is allowed to go into this fund to make up for that.

**Chairman Cook:** The interest goes to the general fund.

**Senator Dotzenrod:** Up until now I thought this stabilization fund was sort of there in case foundation aid that was anticipated ran short, then they could just go get money out of this fund, but the Governor has to really – I guess if we did run into a situation where the money just wasn't there we could go in get this money.

**Chairman Cook:** My guess is that this was created because of the situation in the late 80's.

**Senator Triplett:** I think the only thing incorrect about what you said is about the Governor planning for a shortfall, I think this is for a shortfall that is not planned by anyone. This is when the economy just goes south and in the middle of a biennium and the Governor is a position where the money simply isn't coming in as the legislature anticipated., and so orders a 5% decrease across the board for all agencies which state law allows and then this is to pick up the difference and say that even in a case where all other agencies are being asked to pull back and shrink, we still want to maintain our schools. This is a special fund to keep schools whole at a time when all of state government is being forced by circumstances to shrink.

**Chairman Cook:** I think we would all agree that it is a fund that has merit. It has a justifiable purpose.

**Vice Chairman Miller:** As the state supports more of K-12 education we need to make sure we have adequate reserves in case the state goes and starts supporting 70-80% of our schools and we have a budget shortfall that could really hurt. I think that it is important that we keep it in tact as it is.

**Senator Triplett:** That is a point. I guess we have not agreed as a legislature whether or not the \$300 million property tax relief is intended to be permanent. I guess in my mind it should be considered a permanent alteration of the split between state and local share of public education, but I am not sure that the entire legislation is on board with that. If we are in the

process of making an increased commitment on the part of the state for supporting public education, then maybe we need to think about what is the right level of backup to have.

Then either killing the bill or converting to a study would be better.

**Senator Dotzenrod:** I am wondering about the right way to mechanically make this all work.

There is going to be a conference committee on the legacy fund and it was discussed about how we want to go forward with that, and I wonder if this should be kept alive long enough to be discussed between the House and Senate in conference committee; or send this out with a do not pass and end it here. I am not sure what works the best.

**Chairman Cook:** That is a good question and one we should ask with every bill right now. I think if we kill this that it doesn't necessarily mean that it is dead, if the other one passes and I am sure it will, and we will end up in conference committees on a permanent oil trust fund, if there is a lot of desire out there to somehow bring this issue into it, that still could happen in a conference committee environment.

**Senator Hogue:** I am OK with a do not pass on the bill. I think allowing the fund to grow and only using this fund once every generation is alright because hopefully we won't have that significant economic recession once every 20 years. I don't have a problem letting it grow to over 2% once it gets over \$100 million.

**Vice Chairman Miller:** Moved a Do Not Pass.

**Senator Hogue:** Seconded.

**Chairman Cook:** Discussion?

**Senator Dotzenrod:** Before we vote, to kind of clarify something, I am probably going to vote for the do not pass, but I am not convinced that this is something that in isolation by itself I would be against. The problem is that if we are going to go into the constitution and going to the voters with a major question on the future of oil revenues in terms of the legacy fund, it is

hard for me to imagine how we would do this at the same time and put them side by side and ask the voters to vote yes or no on one of the other or both. As far as the merit here of doing this, I am not sure if I would be voting for a do not pass.

**Chairman Cook:** That is exactly where I am at. Our priority should be a good sound simple permanent oil trust fund that we can put before the voters and have success in doing so. To what degree this – I still think we have time to revisit this in two years and have a good discussion on it and do it right. Even if we were to do that, we need to do some work on this bill. Whether we cap it at \$100 million or whether we cap it at a number relative to what the K-12 budget is, also whether or not it should include money that goes out for property tax reduction if there is ever a shortfall there. Those are all policy questions that need to be discussed and I am not against finding a place to put a study resolution.

**Senator Triplett:** That is a good idea.

**A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.**

**Senator Miller will carry the bill.**

Date: 04/01/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 3058

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Amended

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3058, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)**  
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HCR 3058 was placed on the Fourteenth order on the calendar.



2009 TESTIMONY

HCR 3058

Chairman Koppelman and members of the Constitutional Revision Committee. I am Rep. Joe Kroeber from District 12 which includes 5/6 of Jamestown. This resolution is to amend section 24 of Article X of the constitution relating to the permitted growth of the foundation aid stabilization fund.

This foundation aid stabilization fund was created in 1994 when the voters of ND approved this amendment to provide that 20 percent of the oil extraction tax revenue be allocated as follows: 50% of the 20% to the common schools trust fund and 50% of the 20% to the foundation aid stabilization fund. I have included a chart which will show how this works.

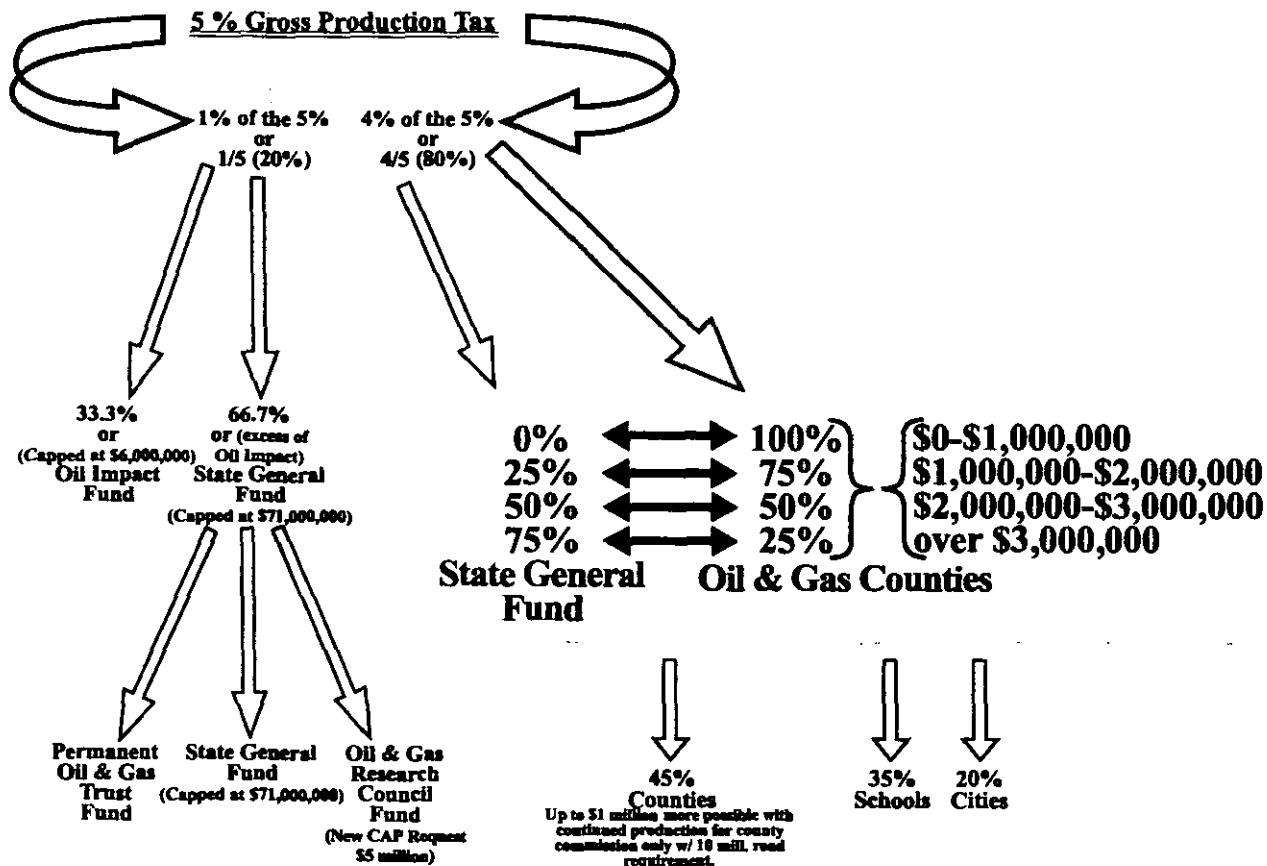
This resolution only makes the following changes. It will cap the foundation aid stabilization fund at 15% of the components of the grants-state school aid line item in the Superintendent of Public Instruction's appropriation, as constituted on July 1, 2009 (which is at the end of the biennium). The appropriation for 2009 for this line item is \$726,165,879 X 15% = 108,924,882. The Executive Budget forecast for this date in January 2009 was \$115,379,135. The 15% component of this bill is about this amount. The excess amount must be deposited in the common schools trust fund. An additional change is the interest income from the foundation aid stabilization fund may be expended upon order of the governor to meet any shortfalls in amounts appropriated for elementary and secondary education during a given biennium and any interest income not so used must be transferred to the state general fund on July of each odd-numbered year. All other provisions of this constitutional amendment would stay in place.

My reasons for requesting these changes are that we should be able to protect our Elementary & Secondary Schools appropriations for foundation aid, transportation aid and special education aid from allotments which by executive action may be necessary due to a revenue shortfall with the \$100,000,000 plus dollars which will remain in the fund. I feel it is important to keep these extra dollars working for our schools in the school lands trust fund. This fund is a true trust fund and provides millions of dollars for our schools each biennium. This change will increase funding for our schools.

The second change is to allow dollars from the interest from this fund to be used in the current biennium if the projected enrollment numbers by DPI are not exactly correct.

Attachment #1

## Oil Taxes 2009

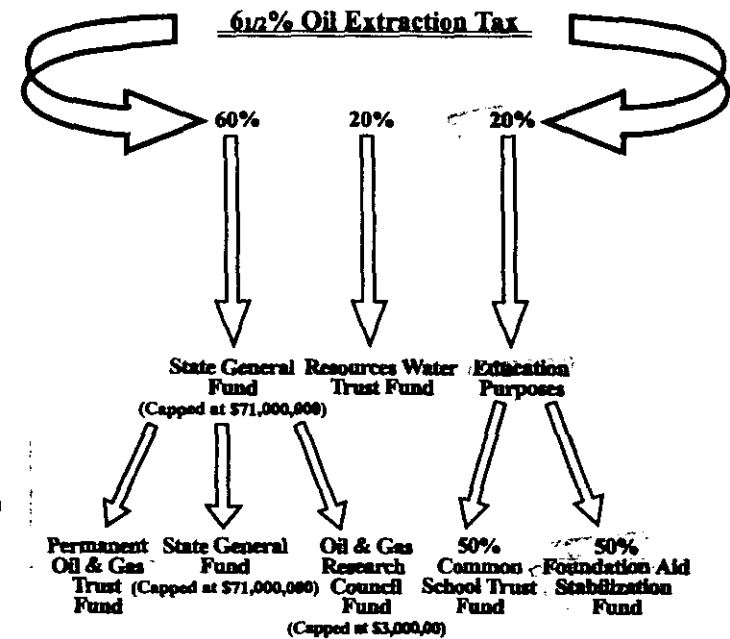


**CAPS**

3.9 M	4.1 M	4.6 M - 1983
3,000 - 6,000	6,000 or Greater	

*Adjusted for Inflation*

**\$7.8   \$8.2   \$9.2 million**



## Foundation Aid Stabilization Fund Status Statement

	2005-07	2007-09		2009-11
	Actual <sup>1</sup>	Legislative Forecast	Revised Forecast	Executive Forecast
Beginning Balance	\$16,098,385	\$28,132,735	\$29,009,838 <sup>2</sup>	\$72,127,692
Revenue:				
Oil extraction tax allocations	12,911,453	16,990,581	43,117,854 <sup>3</sup>	47,358,500
Transfers:				
Transfer to state school aid program	0	0	0	0
Ending Balance	\$29,009,838	\$45,123,316	\$72,127,692	\$119,486,192

<sup>1</sup> Final revenues and expenditures per statewide accounting system reports.

<sup>2</sup> Actual July 1, 2007 balance.

<sup>3</sup> Actual revenues through October 31, 2008, plus estimated receipts for the remainder of the biennium based on the November 2008 executive revenue forecast.

### Notes:

The foundation aid stabilization fund was created in 1994 upon voter approval of Article X, Section 24 of the Constitution of North Dakota. Section 24 provides that 20% of oil extraction taxes are to be allocated as follows:

50% to the common schools trust fund

50% to the foundation aid stabilization fund

Section 24 also provides that interest from the foundation aid stabilization fund must be transferred to the general fund; the principal can only be spent upon order of the Governor to offset foundation aid reductions made by executive action due to a revenue shortfall. North Dakota Century Code Section 54-44.1-12 provides that in the case of an allotment, all agencies that receive monies from a fund must be allotted on a uniform basis. The exception is that appropriations for foundation aid, transportation aid, and special education aid may only be allotted to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund.

#1  
HCR3058

Chairman Cook and members of the Finance/Tax Committee. I am Rep. Joe Kroeber from District 12 which includes 5/6 of Jamestown. This resolution is to amend section 24 of Article X of the constitution relating to the permitted growth of the foundation aid stabilization fund.

This foundation aid stabilization fund was created in 1994 when the voters of ND approved this amendment to provide that 20 percent of the oil extraction tax revenue be allocated as follows: 50% of the 20% to the common schools trust fund and 50% of the 20% to the foundation aid stabilization fund. I have included a chart which will show how this works.

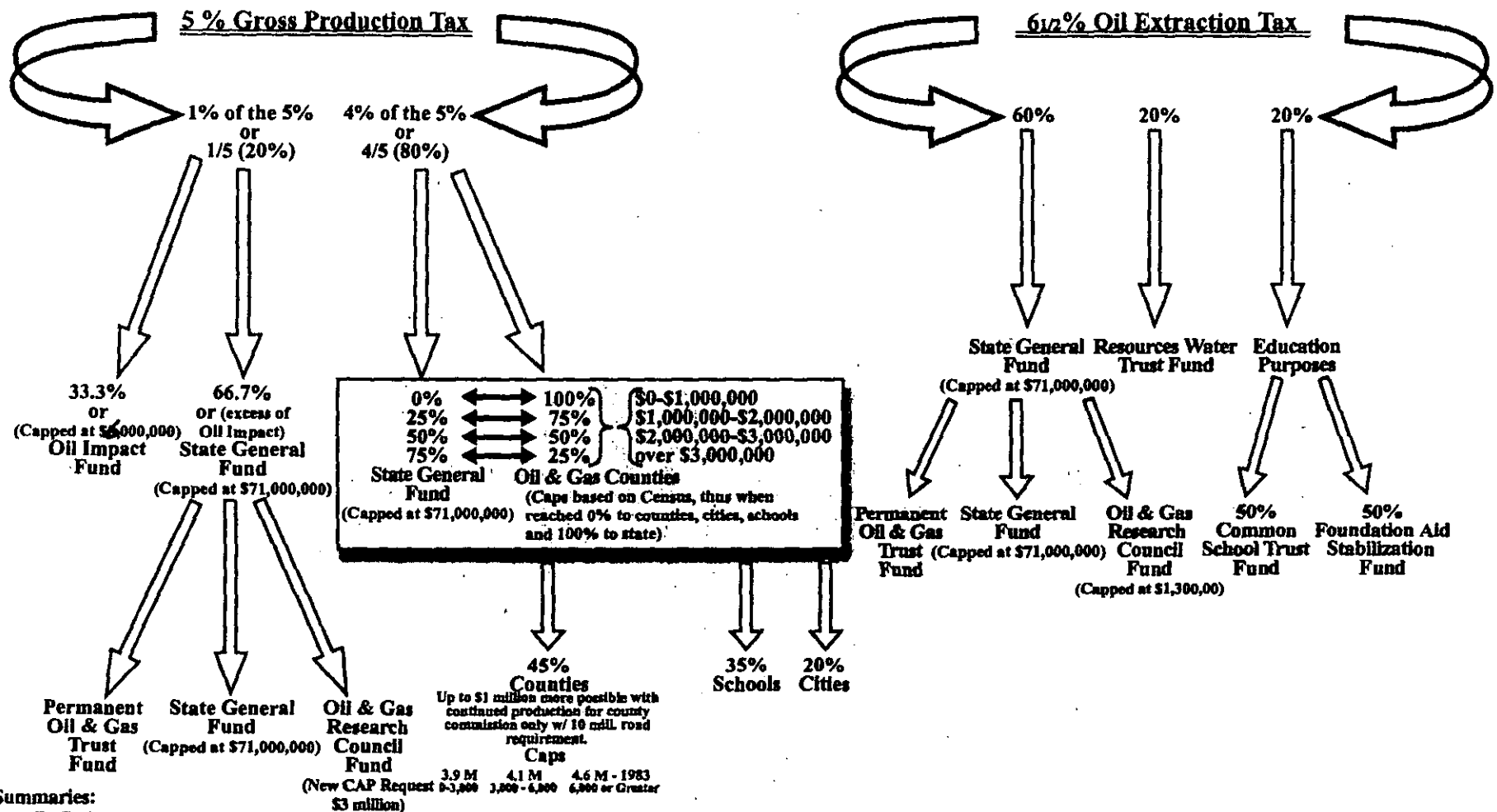
This resolution only makes the following changes. Whenever the foundation aid stabilization fund reaches a level of one hundred million dollars, the fund may not be allowed to grow by more than two percent per year. If in any year the amount to be deposited exceeds the permitted rate of growth, the excess taxes must be deposited in the common schools trust fund. It also allows that the fund maybe expended upon order of the governor to meet any shortfalls in amounts appropriated for elementary and secondary education during a given biennium. All other provisions of this constitutional amendment would stay in place.

My reasons for requesting these changes are that we should be able to protect our Elementary & Secondary Schools appropriations for foundation aid, transportation aid and special education aid from allotments which by executive action may be necessary due to a revenue shortfall with the \$100,000,000 plus dollars which will remain in the fund. I feel it is important to keep these extra dollars working for our schools in the school lands trust fund. This fund is a true trust fund and provides millions of dollars for our schools each biennium. This change will increase funding for our schools.

The second change is to allow dollars from this fund to be used in the current biennium if the projected enrollment numbers by DPI are not exactly correct.

I would try to answer any questions you may have.

# Oil Taxes 2008



## Title Summaries:

**Oil Impact Fund** = Such fund via grant application assists local political subdivisions in dealing with issues arising from oil and energy development and/or activities.

**State General Fund** = Such fund assists with projects and programs (educational, DOT, governmental, human services, agricultural, etc) across the entire state of ND.

**Oil & Gas Counties - Counties** = Such fund assists counties impacted by the production of oil and gas. Entitlement is based on a percentage and population basis.

**Oil & Gas Counties - Schools** = Such fund assists counties impacted by the production of oil and gas. Entitlement is based on a percentage and census basis.

**Oil & Gas Counties - Cities** = Such fund assists counties impacted by the production of oil and gas. Entitlement is based on a percentage and population basis.

**Resources Water Trust Fund** = Such fund assists with construction of water-related projects, including rural water systems and programs for energy conservation.

**Education Purposes - Common School Trust Fund** = Proceeds are deposited with DPI and interest from such fund is distributed to schools via tuition appointment payments.

**Education Purposes - Foundation Aid Stabilization Fund** = Interest monies transferred to state general fund. Principle balance may be used for revenue shortage to state general fund.

**Permanent Oil & Gas Fund** = Such fund assists with projects and programs (educational, DOT, governmental, human services, agricultural, etc) across the entire state of ND.

**Oil & Gas Research Council Fund** = Such fund assists to accumulate and disseminate information concerning the petroleum industry to foster the best interests of the public and industry.

**45% counties** = To receive additional \$1 million funding over 2007 caps of \$3.9, 4.1 and 4.6 million, counties must levy at least 10 mills for county roads. Cap levels are set by population.

# ANALYSIS OF THE FOUNDATION AID STABILIZATION FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2007-09 Biennium		2009-11 Biennium	
Beginning balance - July 1, 2007		\$29,009,838		\$63,935,139
Add estimated revenues				
Oil extraction tax allocations	\$34,925,301 <sup>1</sup>		\$24,892,171 <sup>1</sup>	
Total available		34,925,301		24,892,171
Less estimated expenditures and transfers				
Transfer to foundation aid program	\$0 <sup>2</sup>		\$0 <sup>2</sup>	
Estimated ending balance - June 30, 2009		\$63,935,139		\$88,827,310

<sup>1</sup>Estimated revenues - Based on actual oil extraction tax collections transferred to the fund through February 2009 and estimated allocations for the remainder of the 2007-09 biennium and the 2009-11 biennium per the February 2009 legislative revenue forecast.

<sup>2</sup>Estimated expenditures - As provided in Article X, Section 24, of the Constitution of North Dakota, the principal of the foundation aid stabilization fund can only be used to offset foundation aid reductions made by executive action due to a revenue shortfall. No foundation aid reductions as a result of a revenue shortfall are currently anticipated for the 2007-09 biennium or the 2009-11 biennium.

## FUND HISTORY

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

- Fifty percent (of the 20 percent) to the common schools trust fund.
- **Fifty percent (of the 20 percent) to the foundation aid stabilization fund.**

The principal of the foundation aid stabilization fund may only be spent upon order of the Governor to offset foundation aid reductions made by executive action due to a revenue shortfall. North Dakota Century Code Section 54-44.1-12 provides that the director of the budget may order an allotment to control the rate of expenditures of state agencies. This section provides that an allotment must be made by 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 that the allotment can be offset by transfers from the foundation aid stabilization fund.

Article X, Section 24, of the Constitution of North Dakota provides that 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, 2007, through January 31, 2009, \$1,113,046 of interest from the foundation aid stabilization fund has been allocated to the general fund.