

2013 HOUSE JUDICIARY

HCR 3003

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3003
DATE February 25, 2013
JOB 19438

Conference Committee

Caamen Heick

Explanation or reason for introduction of bill/resolution:

Concurrent Resolution to create and enact two new sections of the Constitution of ND, relating to the foundation aid stabilization fund and public employees retirement stabilization fund.

Minutes:

Attachments 1,2,3,4,5

Chairman Kim Koppelman: Opens HCR 3003.

Rep. Delzer: Time on tape 1:07 to 3:20. Provided written testimony #1. Also handouts #2,3,4, and 5. See attached. Introduced the resolution. This fund would be put in place to cover the unfunded liability when and if it comes up. He reviewed the foundation aid stabilization fund handouts. The funds used out of the foundation stabilization fund will be 2 ½ % of the latest K-12 general fund spending. He stated he put the bill in at \$150million for a cap on the foundation aid stabilization fund to be filled up again at \$100 million so it will stay at that level if it is ever used. Putting dollar figures in the constitution is tough so the proposed amendment shows 15% and 10% as the trigger points. The budget stabilization fund will have more money it is to because it's 9 ½ % of the general fund spending for the year. A change in the proposed amendment as the bill says when the PERS fund gets to \$450 anything other can be used for K-12 funding. So the amendment shows when it hits that limit whatever you decide is the right limit it may be used for K-12 funding or just go to the general fund. The other issue on the amendment is states when the Oasis fund is paid off the Legislature can use the money for whatever purpose they felt was right. The foundation stabilization fund is set up so the Governor controls it. This fund would be set up so the Legislature would control it and it would use that money to cover unfunded liability when and if that unfunded liability showed up. With our oil production that the way it is we would be at \$600 at the end of the biennium there would be enough money to cover both of those. The Legislature can always make the assumption that is a public employee's retirement but if you put PERS in there then the Legislature does not have that to decide whether it will cover whatever TFFR is or how they would cover it. I think we should put the money aside for the public employees first, then if we want to do something for TFFR in the future. TFFR should not be in the Constitution because it is questioned whether that is a Legislative responsibility or not.

Rep. Gary Paur: As this fund grows past where it would cover the unfunded liability the Legislature can use it for whatever it wishes. But I would imagine public employees will be asking for an increase in their benefits.

Rep. Delzer: The way it's being proposed you would not be at a point that you were going to close out the current plan. Whether you switched to a different plan because this is meant to be there and it would grow again if some of it was used and if there is more money coming in from the source. It

would only cover unfunded liability. The plan would be done before you make the decision to use any of that money. Even if the plan stopped today you would be looking at 30, 40, 50 years before that plan was over.

Rep. Lois Delmore: This money was put aside for purposes of education, I find it interesting that you would put it to the public employees but way we take funds from this account and put it there when it was earmarked for short falls of education? The funds could go down as rapidly as they have gone up. Why would be take this amount and tie it up for a different reason?

Rep. Delzer: You can say it's a different reason but how much do you want to put in foundation aid stabilization? If we leave it alone and nothing changes that's going to build to billions of dollars. The only time it could ever be used is if there is an allocation. So it doesn't make sense to let that grow. You could take it out and spend it on K-12 but then are we shorting K-12? We don't have a money situation where we are shorting K-12. The other issue is not having enough money in an unfunded liability in pension plans.

Rep. Lois Delmore: How much money is there in the legacy fund that we opted not to use for anything right now?

Rep. Delzer: The legacy fund is growing fast, when we are done with this session it should continue to grow and it is set up more to sure the future gets a share of this harvested oil. I think it is close to a billion dollars; then two billion dollars at the end of the next biennium.

Rep. Lois Delmore: There are revenues there, that down the road if we truly need to make sure those unfunded mandates are there is a lot more money there and it is going faster than what these two accounts are.

Rep. Delzer: Yes, it is but do we want to just leave this the way it is? If you don't want to set up a plan to cover the public employees' pension but that is why I put it in because I think it is a good idea.

Rep. Vicky Steiner: I think if the voters knew there we had this unfunded liability setting out there maybe they would make some adjustments but once it's put in the Constitution then we need to have the discussion again because times have changed. I don't think the voters ever anticipated this amount of dollars was set aside and couldn't be used for other things that make sense.

Rep. Andy Maragos: I assume that both the common schools trust fund and the foundation stabilization fund are growing at approximately the same pace. They each get 10% of the oil revenue.

Rep. Delzer: they do the common school trust fund also gets part of the tobacco settlement, also revenue from certain other places so it would be growing faster than the foundation aid.

Rep. Andy Maragos: They why did you decide to allocate everything to the foundation aid stabilization fund and not use both of them in you effort?

Rep. Delzer: Because the common schools trust fund we have interest and income comes out and is used for K-12 funding all the time. The more that builds the more money we have available for K-12 funding.

Rep. Randy Boehning: At the end of the next biennium we will have \$606 million in the stabilization fund, how will this legislation affect the balance of that fund as it stands currently.

Rep. Delzer: If it was passed and adopted by the people at the time when it was passed it would be limited to either \$150 million or 15% everything above there would go into the retirement fund.

Rep. Randy Boehning: So the money that is the stabilization fund no money would flow into that but into the retirement fund then to the general fund?

Rep. Delzer: I would say by the time the people adopted this there would be enough money to fund both of these funds at the levels proposed. Even at the 15% and we haven't finished our K-12 funding as the Governor was planning for \$1.8 billion.

Rep. Roger Brabandt: Is PERS funded at about 65%?

Rep. Delzer: Is it around 60%. We put 2% last time in it extra. We are currently at 12% for every state employee, the state is furnishing 10% and the employees are furnishing 2%.

Chairman Kim Koppelman: When you look at the different funds and the differences in growth because of the interest or yield there seems to be a discrepancy there? Is there a difference in the way they are invested?

Rep. Delzer: There are different investments at different times. The growth has not been as good in the retirement fund as we had hoped. The last was a negative growth for last 12 month period. With this bill coming forward we would have a better chance setting having money set aside to cover the unfunded liability than to try and add to the fund. A few years back we took at 18% loss and it takes a long to catch that up.

Sen. Schaible: In support of this bill because he likes the idea of putting money away to fund these unfunded balances in our retirement accounts. The biggest quest we have is should be look at different plans and how we should do that? If we have that discussion the roadblock we have is what are we going to do with the unfunded balance? Should be continue to offer contributions from employees and employers or when should be make the switch? But we always come back to the how do you handle the unfunded balance? Before you move forward you need to address some of that. This bill answers that.

Bev Nielson, ND Counsel of Educational Leaders: Opposes the bill but does agree that the funds that are in the stabilization fund could be used for some other things. Not only would could it cover allotment but it would cover a shortfall in appropriations for K-12. The objection from our perspective is that this money would go to a public employee's fund. It's totally unrelated to education and we don't see the connection at all. The dollar amount should never be put in the Constitution because it is not reviewed every two years like the legislation. We believe the cap should be a percent but also if you are going to give to some other entity that should be a percent as well.

Chairman Kim Koppelman: The point the Rep. Delzer is trying to make is what do you do with these funds that accumulate in good times? There is nothing that ties oil with education either other than that is a source of money and we want to fund education so we created these funds. I'm not sure education owns it does it?

Bev Nielson: If we have access to it for other reasons we can't use it for a shortfall in foundation aid we can only use it for an allotment.

Rep. Randy Boehning: Once the funds get to their limits won't that money be put in the common schools trust fund and that would be there forever?

Bev Nielson: That's actually in the next bill but I would like to use it for a shortfall in appropriation.

Rep. Randy Boehning: Currently the way it is looking there is enough money in the stabilization fund that money would go to the common schools trust fund underneath this plan.

Kayla Pulvermacker, NDEA: Opposes HCR. Education costs never decrease and they never stop. We feel if we are going to use these dollars we should be looking at using them for education.

Chairman Kim Koppelman: No other testimony, closes HCR 3003

Minutes of the

(HOUSE) (SENATE) BILL NO. 3003 SUBCOMMITTEE OF THE
Judiciary STANDING COMMITTEE

Meeting location: Prairie Room

Date of meeting: 3/18/2013

Time meeting called to order: 8:00 am

Members present: Rep Kretschmer, Rep Boehning & Rep Hogan

Others present (may attach attendance sheet):
Rep Jeff Delzer & Rep Lois Delmore

Topics discussed:

JD amend: Limit for foundation aide stabilization fund as a percentage
JD amend: changes the name of PER fund to all retirements.
↳ lets the leg decide.
Lois Delmore present amendments to target special ed

Motion and vote:

R.Boeh Moved to adopt amendment (3003) with changes on line 10 funds for monies, changes money to funds page 3 line. line 23 - change ^{must be determined by the assembly} to "as provided by law."
Randy ^{Boeh} moved KH ^{Boeh} seconded. Amended passed

R.Boehning moved, KH seconded on amend 3003. Pass unanimously. ~~R.Boehning moved to amend~~

Time of adjournment: 8:50

Delete lines 24 + 25.

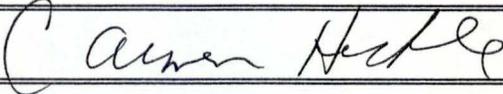
Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3003
DATE March 18, 2013
JOB 20104

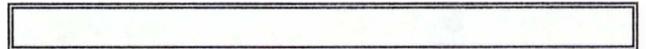
Conference Committee



Explanation or reason for introduction of bill/resolution:

Concurrent Resolution to create and enact two new sections of the Constitution of ND, relating to the foundation aid stabilization fund and public employees retirement stabilization fund.

Minutes:



Starts on minute 40:57 on recording 20104.

Chairman Kim Koppelman: Opens HCR 3003 for committee work.

Rep. Bill Kretschmar: Explained marked up bill 13.3030.03007 and amendments 13.3030.03010. K-12 will stay the same there will be less money being put into it. Instead of getting 50% it will get 20%, 30% is for the state retirement stabilization fund. In the stabilization fund the Legislative Assembly will have control for the purpose of unfunded retirement obligations. That is Rep. Streyle's amendment. In the K-12 stabilization fund stays exactly the same except it gets less of the money.

Rep. Bill Kretschmar: Made a motion on the amendments.

Rep. Andy Maragos: Second the motion.

Vice Chairman Larry Klemin: In the original bill the 50% that was going to foundation stabilization fund all the other language is staying in there?

Rep. Bill Kretschmar: That is correct.

Chairman Kim Koppelman: The difference the current situation is the entire amount goes into the foundation and stabilization fund because of the oil boom that is becoming larger than we will ever need. So the original proposal by Rep. Delzer put a dollar amount in there and said once the foundation stabilization fund reaches this level the money would go into this retirement stabilization fund. The change the subcommittee is recommending is instead looks at the actual tax and divides the portion that goes into foundation and stabilization fund lower it and puts another portion while the tax amount stays the same and splits it puts part of it foundation stabilization fund and part of it in this new retirement stabilization. Which would shore up the public employees or state employees retirement funds, is that correct.

Rep. Bill Kretschmar: That is correct. We shortened it so it is more explainable on the ballot.

Vice Chairman Larry Klemin: What happens to the money that is currently in the foundation aid stabilization fund if this is approved?

Rep. Bill Kretschmar: What's in there now stays, what's coming in will stay unless we get to a situation where the Governor would direct the transfer that is current Constitutional law.

Vice Chairman Larry Klemin: Right now 50% of this money is going to foundation aid stabilization fund, if this is approve 30% would go to state retirement stabilization and 20% goes into foundation aid stabilization fund. It doesn't say in here what happens to the money that currently in the foundation aid stabilization fund.

Rep. Bill Kretschmar: Sub paragraph 3 on the amendments.

Discussion was held.

Voice vote carried.

Rep. Bill Kretschmar: Made a do pass as amended motion.

Rep. Kathy Hogan: Second the motion.

Vote 12-2-0

Rep. Bill Kretschmar: Will carry the resolution.

Ends at time mark 1:07:17 on recording 20104.

FISCAL NOTE
Requested by Legislative Council
01/10/2013

Bill/Resolution No.: HCR 3003

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$6,050,000	\$(6,050,000)	\$283,200,000	\$(283,200,000)
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This resolution proposes a constitutional change to limit the balance of the foundation aid stabilization fund (FASF) and establishes the public employees retirement stabilization fund (PERSF) to receive interest and oil extraction tax revenue once the FASF reaches its cap.

- 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.*

Section 2 of the resolution limits the balance of the FASF to \$150 million and provides that once that balance is reached, interest and income will instead be deposited into the proposed PERSF. Section 3 limits the PERSF to a maximum balance of \$450 million. After that balance is reached, interest and income will be deposited in the general fund.

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.*

Under current law, the FASF receives 10 percent of oil and gas extraction taxes, all interest earned on the fund balance accrues to the general fund, and there is no limit to the fund balance. This resolution would limit the FASF to a balance of \$150 million. After reaching the cap, FASF interest and the 10 percent allocation of oil extraction tax would be deposited in the proposed PERSF. Once that fund reached \$450 million, interest on both funds, as well as the 10 percent allocation of oil extraction taxes, would be deposited in the general fund. It is assumed this measure would be approved by the voters in November 2014 and would take effect in December 2014. The estimated balance of the FASF on November 30, 2014, is \$511.7 million. This would result in a transfer of \$361.8 million to the PERSF in order to reduce the FASF balance to the cap of \$150 million. During the remainder of the 2013-15 biennium, the general fund would realize a reduction in revenue of approximately \$350,000 as interest that would have accrued to the general fund is instead retained in the PERSF. However, it is estimated that oil extraction tax allocations from December 2014 through June 2015 would result in the PERSF reaching a balance of \$456.4 million by June 30, 2015. Because this is in excess of the \$450 million cap, \$6.4 million would be transferred to the general fund. The net result is a gain of \$6,050,000 for the general fund for the 2013-15 biennium. For the 2015-17

biennium, interest on both funds would accrue to the general fund, just as it would under current law. However, because both funds would be at the maximum balance, oil extraction taxes that would accrue to the FASF under current law would now be deposited in the general fund. Because no oil tax forecast exists for the 2015-17 biennium, it is assumed the estimated FY 2014 amount of \$141.6 million will continue for both years of the 2015-17 biennium, resulting in a general fund gain of \$283.2 million.

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.*

Name: Joe Morrisette

Agency: OMB

Telephone: 701-328-1024

Date Prepared: 01/11/2013

YK
3/18/13
1082

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3003

Page 1, line 1, remove "to create and enact two new sections to article X of the Constitution of"

Page 1, remove line 2

Page 1, line 3, remove "retirement stabilization fund; and"

Page 1, line 4, replace "the foundation aid stabilization fund" with "allocation of revenue from oil extraction taxes"

Page 1, line 6, replace "limits the growth of" with "provides for the deposit of certain oil extraction taxes into the state retirement stabilization fund and"

Page 1, line 6, remove "directs that excess"

Page 1, line 7, replace "revenues be transferred to the public employees retirement stabilization fund" with "provides for the determination of balances in each fund"

Page 1, line 10, remove "two new sections to article X and the"

Page 1, line 11, replace "are" with "is"

Page 1, remove lines 14 through 24

Page 2, replace lines 1 through 29 with:

"SECTION 1. 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;
 - ~~2.~~ Fifty
 - b. Thirty percent must be deposited in the state retirement stabilization fund; and
 - c. Twenty percent must be deposited in the foundation aid stabilization fund in the state treasury, the
2. Moneys in the state retirement stabilization fund may be expended by the legislative assembly only for the purpose of addressing unfunded retirement benefit obligations to which members of state retirement systems may be entitled. The balance of monies to be maintained in the fund must be determined by law.
3. The interest income of which the foundation aid stabilization fund must be transferred to the state general fund on July first of each year. The principal of the foundation aid stabilization fund may be expended only

2082

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

Date: 3-18-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3003

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.3030.03090

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice vote - Carried
proposed amendment*

Date: 3-18-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3003

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.3030.0301D

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos		/			
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman		/			

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

HCR 3003: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HCR 3003 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact two new sections to article X of the Constitution of"

Page 1, remove line 2

Page 1, line 3, remove "retirement stabilization fund; and"

Page 1, line 4, replace "the foundation aid stabilization fund" with "allocation of revenue from oil extraction taxes"

Page 1, line 6, replace "limits the growth of" with "provides for the deposit of certain oil extraction taxes into the state retirement stabilization fund and"

Page 1, line 6, remove "directs that excess"

Page 1, line 7, replace "revenues be transferred to the public employees retirement stabilization fund" with "provides for the determination of balances in each fund"

Page 1, line 10, remove "two new sections to article X and the"

Page 1, line 11, replace "are" with "is"

Page 1, remove lines 14 through 24

Page 2, replace lines 1 through 29 with:

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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;
 2. Fifty
 - b. Thirty percent must be deposited in the state retirement stabilization fund; and
 - c. Twenty percent must be deposited in the foundation aid stabilization fund in the state treasury; the
2. Moneys in the state retirement stabilization fund may be expended by the legislative assembly only for the purpose of addressing unfunded retirement benefit obligations to which members of state retirement systems may be entitled. The balance of monies to be maintained in the fund must be determined by law.
3. The interest income of ~~which~~ the foundation aid stabilization fund must be transferred to the state general fund on July first of each year. 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

2013 SENATE JUDICIARY

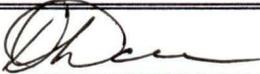
HCR 3003

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HCR3003
4/1/2013
Job #20720

Conference Committee

Committee Clerk Signature	
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Minutes:

Attached testimony

Relating to allocation of revenue from oil extraction taxes

Senator David Hogue - Chairman

Representative Jeff Delzer - District 8 - See written testimony. **(1)** He proposes amendment 13.3030.04001. Senator Grabinger questions why this would go on the primary and not the general election. Rep. Delzer replies it is because it does not have a fiscal effect. His thought that the primary would not be as crowded as constitutional revision issues. Senator Hogue asks if this is a defined benefit plan and if a future legislative body decided that they didn't want any more defined benefit plans would there be a need for the fund and this resolution. Rep. Delzer explains how they may change the plan.

Senator Don Schaible - District 31 - In support - He states employees need to understand that they are being looked out for and protected. He says this will give them assurances and this is an important first step.

Opposition

Pam Sharp - OMB - Ms. Sharp explains the Governor's budget plan. She relates other bills in the House and Senate that will be a better way to deal with the unfunded liability. She hands out page describing AAA rating. **(2)** Committee questions her as to how much is in the fund.

Bev Nielsen - ND Counsel of Educational Leaders - She explains their concerns with the fund. They believe it is so limited in access for schools, limited to only to an allotment. They ask for it to be considered for different uses and she goes on to explain. Senator Lyson wonders why the concerns about putting it into a reserve fund. Senator Hogue explains that the money in the fund was set aside to defray the costs of education in k-12 in the event of a revenue short fall. He says this proposal is to take it to provide a backstop for a class of people that are in defined benefit plans. He asks the limitations on this fund. Ms. Nielsen explains their feeling on this.

Neutral

Sparb Collins - Executive Director of PERS - Gives a handout **(3)**. He explains the main retirement system and the downturn in financial markets. He says the plan now is funded at 68% funded status. Senator Nelson asks him to explain the Oasis plan. He states investments play an important part of funding the assets.

Bill Shalob - Greater ND Chamber - Explains their position is that a defined benefit program is not sustainable. He says you cannot plan out 30 years. He thinks the plans need to be fixed first then figure out how much it is going to take and fund it.

Close the hearing on 3003

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HCR3003
4/3/2013
Job #20819

Conference Committee

Committee Clerk Signature 

Minutes:

Vote

Senator David Hogue - Chairman

Committee hearing

Senator Hogue explains the bill and what it does. He says this bill affects other spending bills in the Senate. Senator Berry believes this does break faith a bit with the people for what this fund was set up for.

Senator Berry moves a do not pass
Senator Nelson seconded

Discussion

Senator Lyson agrees with the motion and says if it was for education he would vote for it. He does believe the stabilization fund should be used but that it should go for education. Senator Sitte says she will oppose the motion because she feels it is needed. Senator Armstrong says he will vote for the motion because he does not like the specificity and believes the fund has changed so much and because of the language cannot be used. This again would be for only one purpose. Senator Hogue believes no one can project out to 2042. Senator Nelson says this only deals with PERS and in fairness others need to be considered.

Vote - 6 ye, 1 no
Motion passes

Senator Nelson will carry

FISCAL NOTE
Requested by Legislative Council
03/19/2013

Amendment to: HCR 3003

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(16,500)	\$16,500	\$(283,000)	\$283,000
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This amended resolution proposes a constitutional change to reduce oil extraction tax revenues to the foundation aid stabilization (FASF) and creates a state retirement stabilization fund (SRSF).

- 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.*

Section 1 of the amended resolution reduces oil tax allocations to the FASF from 10 percent to 4 percent and provides that 6 percent be deposited in the SRSF. Because these are both special funds, this change in allocation does not change total state special funds and is not reflected as a change on this fiscal note. However, the proposed language does not indicate if interest and earnings on moneys in the SRSF are to be retained in that fund or transferred to the general fund. The resolution does not change existing language directing that interest income of the FASF is to be transferred annually to the general fund. If it is assumed that interest earned on the SRSF would be retained in that fund rather than transferred to the general fund, the loss in revenue to the general fund is estimated to be the amounts reflected in section 1A of this fiscal note.

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.*

If it is assumed that interest earned on the SRSF would be retained in that fund rather than transferred to the general fund, the loss in revenue to the general fund is estimated to be the amounts reflected in section 1A of this fiscal note.

- 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.*

Name: Joe Morrissette

Agency: OMB

Telephone: 701-328-1024

Date Prepared: 03/20/2013

FISCAL NOTE
Requested by Legislative Council
01/10/2013

Bill/Resolution No.: HCR 3003

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$6,050,000	\$(6,050,000)	\$283,200,000	\$(283,200,000)
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This resolution proposes a constitutional change to limit the balance of the foundation aid stabilization fund (FASF) and establishes the public employees retirement stabilization fund (PERSF) to receive interest and oil extraction tax revenue once the FASF reaches its cap.

- 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.*

Section 2 of the resolution limits the balance of the FASF to \$150 million and provides that once that balance is reached, interest and income will instead be deposited into the proposed PERSF. Section 3 limits the PERSF to a maximum balance of \$450 million. After that balance is reached, interest and income will be deposited in the general fund.

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.*

Under current law, the FASF receives 10 percent of oil and gas extraction taxes, all interest earned on the fund balance accrues to the general fund, and there is no limit to the fund balance. This resolution would limit the FASF to a balance of \$150 million. After reaching the cap, FASF interest and the 10 percent allocation of oil extraction tax would be deposited in the proposed PERSF. Once that fund reached \$450 million, interest on both funds, as well as the 10 percent allocation of oil extraction taxes, would be deposited in the general fund. It is assumed this measure would be approved by the voters in November 2014 and would take effect in December 2014. The estimated balance of the FASF on November 30, 2014, is \$511.7 million. This would result in a transfer of \$361.8 million to the PERSF in order to reduce the FASF balance to the cap of \$150 million. During the remainder of the 2013-15 biennium, the general fund would realize a reduction in revenue of approximately \$350,000 as interest that would have accrued to the general fund is instead retained in the PERSF. However, it is estimated that oil extraction tax allocations from December 2014 through June 2015 would result in the PERSF reaching a balance of \$456.4 million by June 30, 2015. Because this is in excess of the \$450 million cap, \$6.4 million would be transferred to the general fund. The net result is a gain of \$6,050,000 for the general fund for the 2013-15 biennium. For the 2015-17

biennium, interest on both funds would accrue to the general fund, just as it would under current law. However, because both funds would be at the maximum balance, oil extraction taxes that would accrue to the FASF under current law would now be deposited in the general fund. Because no oil tax forecast exists for the 2015-17 biennium, it is assumed the estimated FY 2014 amount of \$141.6 million will continue for both years of the 2015-17 biennium, resulting in a general fund gain of \$283.2 million.

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.*

Name: Joe Morrisette

Agency: OMB

Telephone: 701-328-1024

Date Prepared: 01/11/2013

Date: 4-3-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 3003**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Berry Seconded By S. Nelson

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 6 No 1

Absent _____

Floor Assignment S. Nelson

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

REPORT OF STANDING COMMITTEE

HCR 3003, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HCR 3003 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HCR 3003

2-25-13 1

Mr. Chairman and members of the judiciary committee, it is an honor to appear before you today. For the record my name is Jeff Delzer, state representative for district 8 which is parts of Mclean and Burliegh counties. I appear before you in support of HR3003, a constitutional amendment to limit the size of the foundation stabilization fund and create a public retirement fund. This fund would be to cover the unfunded liability of the public employee's retirement fund.

The budget stabilization fund was set up in the late 80's and now has 9.5% of the latest legislative general fund budget. It can be used when OMB reforecast that there is a 2.5% or larger revenue shortfall during the interim. Then there has to be a 2.5% allocation and then the budget stabilization fund is used to cover the rest. That would mean that the foundation aide stabilization fund would need to have 2.5% of the latest budget for k-12. If that number was 1.5 billion then to cover the allocation it would take 37.5 million to cover the cost so there would still be plenty in the fund.

The retirement fund can be set at what level you desire. 450 million should go a long way by the time we get to the need for it. Those of you who have been here long enough to remember the oasis plan which we had to fund for many sessions with general fund. Setting aside money to cover the unfunded liabilities if and when they come about is a sensible thing to do.

2-25-13
Rep. Delzer 2

**ANALYSIS OF THE FOUNDATION AID STABILIZATION FUND FOR THE 2011-13 AND 2013-15 BIENNIUMS
(REFLECTING THE 2013-15 EXECUTIVE BUDGET RECOMMENDATION)**

	2011-13 Biennium		2013-15 Biennium	
Beginning balance		\$140,193,764		\$332,951,033
Add estimated revenues				
Oil extraction tax allocations	\$192,757,269 ¹		\$273,476,675 ¹	
Total available		\$332,951,033		\$606,427,708
Less estimated expenditures and transfers				
Transfer to foundation aid program	\$0 ²		\$0 ²	
Estimated ending balance		\$332,951,033		\$606,427,708

¹Estimated revenues - Based on actual oil extraction tax collections transferred to the fund through December 2012 and estimated allocations for the remainder of the 2011-13 biennium and the 2013-15 biennium per the November 2012 executive revenue forecast.

²Estimated 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 in the 2011-13 biennium or the 2013-15 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, 2011, through November 30, 2012, \$298,141 of interest from the foundation aid stabilization fund has been allocated to the general fund.

**ANALYSIS OF THE BUDGET STABILIZATION FUND FOR THE 2011-13 AND 2013-15 BIENNIUM
(REFLECTING THE 2013-15 BIENNIUM EXECUTIVE BUDGET RECOMMENDATION)**

	2011-13 Biennium		2013-15 Biennium	
	Beginning balance		\$386,351,110	
Add estimated revenues				
Investment income			\$0 ⁴	
Transfer from general fund	\$16,134,104 ¹ 52,201,124 ²		0	
Total estimated revenues		68,335,228		0
Total available		\$454,686,338		\$454,686,338
Less estimated expenditures and transfers				
None				
Total estimated expenditures and transfers		0 ³		0 ³
Estimated ending balance		\$454,686,338		\$454,686,338

*2-25-13 3
Rep. Pelzer*

¹The Legislative Assembly in the November 2011 special session increased general fund appropriations for the 2011-13 biennium by \$169,832,688 from \$4,066,853,792 to \$4,236,686,460 resulting in a \$16.1 million increase in the maximum balance allowed in the budget stabilization fund. Therefore, interest and investment earnings of the fund will be retained in the fund until the cap is reached.

²North Dakota Century Code Chapter 54-27.2 provides any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund except that the balance in the budget stabilization fund may not exceed 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The amount shown is based on the executive budget estimate of a June 30, 2013, general fund balance of \$121,183,167 after other recommended transfers to the highway fund, housing incentive fund, and property tax relief sustainability fund and the recommended 2013-15 biennium general fund appropriations of \$4,786,171,981; therefore, the maximum balance in the fund is limited to \$454,686,338.

³No transfers from the budget stabilization fund are anticipated.

⁴Interest earned on the fund is deposited in the general fund because the balance in the fund is at the maximum allowed under Section 54-27.2-01.

FUND HISTORY

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

- Section 54-27.2-01 establishes the budget stabilization fund and provides any interest earned on the balance of the budget stabilization fund must be retained in the fund. The section currently provides any money in the fund in excess of 9.5 percent of the general fund budget as approved by the most recently adjourned Legislative Assembly must be deposited in the state general fund. The Legislative Assembly approved 2011 House Bill No. 1451 which decreased, effective July 1, 2011, the maximum balance allowed in the fund from 10 to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly.
- Section 54-27.2-02 provides any amount in the state general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund.
- Section 54-27.2-03 provides the Governor may order a transfer from the budget stabilization fund to the general fund if the Director of the Office of Management and Budget (OMB) projects general fund revenues for the biennium will be at least 2.5 percent less than estimated by the most recently adjourned Legislative Assembly. The amount transferred is limited to the difference between an amount 2.5 percent less than the original legislative general fund revenue forecast and the revised forecast prepared by OMB. Any transfer made must be reported to the Budget Section.

2-25-13 4

13.3030.03004
Title.

Prepared by the Legislative Council staff for
Representative Delzer
February 15, 2013

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3003

- Page 1, line 7, after the period insert "This measure also limits the growth of the public employees retirement stabilization fund."
- Page 1, line 18, overstrike the period and insert immediately thereafter "; and"
- Page 2, line 3, remove "one"
- Page 2, line 4, replace "hundred fifty million dollars" with "fifteen percent of the amount appropriated as state aid to elementary and secondary education during the most recently completed biennium"
- Page 2, line 5, remove "one"
- Page 2, line 6, replace "hundred fifty million dollars" with "the level established in subsection 1"
- Page 2, line 9, replace "one hundred million dollars" with "ten percent of the amount appropriated as state aid to elementary and secondary education during the most recently completed biennium"
- Page 2, line 10, remove "one"
- Page 2, line 11, replace "hundred million dollars" with "ten percent of the amount appropriated as state aid to elementary and secondary education during the most recently completed biennium"
- Page 2, line 13, replace "is again one hundred fifty million dollars" with "reaches fifteen percent of the amount appropriated as state aid to elementary and secondary education during the most recently completed biennium"
- Page 2, line 24, after the first "and" insert "may be"
- Page 2, line 24, remove "first"
- Page 2, line 26, replace "2." with "3."
- Page 2, line 26, replace "Moneys" with "Except as otherwise provided, moneys"
- Page 2, line 27, remove "any"
- Page 2, line 29, after the underscored period insert "Upon determining that the obligations have been addressed, the legislative assembly may expend moneys in the fund for any other purpose."

Renumber accordingly

2-25-12
Rep Delzer 5

Sixty-third
Legislative Assembly
of North Dakota

HOUSE CONCURRENT RESOLUTION NO. 3003

Introduced by

Representatives Delzer, Monson, Streyle

Senators Lyson, Schaible

1 A concurrent resolution to create and enact two new sections to article X of the Constitution of
2 North Dakota, relating to the foundation aid stabilization fund and the public employees
3 retirement stabilization fund; and to amend and reenact section 24 of article X of the
4 Constitution of North Dakota, relating to the foundation aid stabilization fund.

STATEMENT OF INTENT

5
6 This measure limits the growth of the foundation aid stabilization fund and directs that excess
7 revenues be transferred to the public employees retirement stabilization fund. This measure
8 also limits the growth of the public employees retirement stabilization fund.

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

11 That the following proposed two new sections to article X and the amendment to section 24
12 of article X of the Constitution of North Dakota are agreed to and must be submitted to the
13 qualified electors of North Dakota at the general election to be held in 2014, in accordance with
14 section 16 of article IV of the Constitution of North Dakota.

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

17 **Section 24.** Twenty percent of the revenue from oil extraction taxes from taxable oil
18 produced in this state must be allocated as follows:

- 19 1. Fifty percent must be deposited in the common schools trust fund; and
- 20 2. Fifty percent must be deposited in the foundation aid stabilization fund ~~in the state~~
21 ~~treasury, the interest income of which must be transferred to the state general fund on~~
22 ~~July first of each year. The principal of the foundation aid stabilization fund may be~~
23 ~~expended only upon order of the governor, who may direct such a transfer only to~~
24 ~~offset foundation aid reductions that were made by executive action pursuant to law~~
25 ~~due to a revenue shortage.~~

1 **SECTION 2.** A new section to article X of the Constitution of North Dakota is created and
2 enacted as follows:

- 3 1. The balance of moneys in the foundation aid stabilization fund may not exceed ~~one~~
4 ~~hundred fifty million dollars~~ fifteen percent of the amount appropriated as state aid to
5 elementary and secondary education during the most recently completed biennium.
- 6 2. Whenever the balance of moneys in the foundation aid stabilization fund reaches ~~one~~
7 ~~hundred fifty million dollars~~ the level established in subsection 1, any excess moneys
8 must be transferred to the public employees retirement stabilization fund and no
9 additional moneys may be deposited in the foundation aid stabilization fund until the
10 balance in the foundation aid stabilization fund falls below ~~one hundred million~~
11 ~~dollars~~ ten percent of the amount appropriated as state aid to elementary and
12 secondary education during the most recently completed biennium.
- 13 3. If the balance of moneys in the foundation aid stabilization fund falls below ~~one~~
14 ~~hundred million dollars~~ ten percent of the amount appropriated as state aid to
15 elementary and secondary education during the most recently completed biennium,
16 the deposits required by section 24 of article X, together with any interest and income,
17 must be retained in the foundation aid stabilization fund until the balance ~~is again one~~
18 ~~hundred fifty million dollars~~ reaches fifteen percent of the amount appropriated as state
19 aid to elementary and secondary education during the most recently completed
20 biennium.
- 21 4. Moneys in the foundation aid stabilization fund may be expended only by the governor
22 and only for the purpose of offsetting reductions in state aid to elementary and
23 secondary education which were made by executive action pursuant to law due to a
24 revenue shortage.

25 **SECTION 3.** A new section to article X of the Constitution of North Dakota is created and
26 enacted as follows:

- 27 1. The balance of moneys in the public employees retirement stabilization fund may not
28 exceed four hundred fifty million dollars.
- 29 2. Whenever the balance of moneys in the public employees retirement stabilization fund
30 reaches four hundred fifty million dollars, any excess moneys must be transferred to

1 | the state general fund and may be used first to provide state aid to elementary and
2 | secondary education.
3 | 2.3. Moneys Except as otherwise provided, moneys in the public employees retirement
4 | stabilization fund may be expended by the legislative assembly only for the purpose of
5 | addressing any unfunded retirement benefit obligations payable by the state to
6 | members of the public employees retirement system. Upon determining that the
7 | obligations have been addressed, the legislative assembly may expend moneys in the
8 | fund for any other purpose.

Introduced by

Representatives Delzer, Monson, Streyle

Senators Lyson, Schaible

1 A concurrent resolution ~~to create and enact two new sections to article X of the Constitution of~~
2 ~~North Dakota, relating to the foundation aid stabilization fund and the public employees~~
3 ~~retirement stabilization fund; and to amend and reenact section 24 of article X of the~~
4 ~~Constitution of North Dakota, relating to the foundation aid stabilization fund~~ allocation of
5 revenue from oil extraction taxes.

6 **STATEMENT OF INTENT**

7 This measure ~~limits the growth of~~ provides for the deposit of certain oil extraction taxes into the
8 state retirement stabilization fund and the foundation aid stabilization fund and directs that
9 ~~excess revenues be transferred to the public employees retirement stabilization fund~~ authorizes
10 the legislative assembly to determine the balance of ^{funds} ~~monies~~ that should be retained in each
11 fund.

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

14 That the following proposed ~~two new sections to article X and the amendment to section 24~~
15 ~~of article X of the Constitution of North Dakota are~~ is agreed to and must be submitted to the
16 qualified electors of North Dakota at the general election to be held in 2014, in accordance with
17 section 16 of article IV of the Constitution of North Dakota.

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

20 ~~Section 24.~~ Twenty percent of the revenue from oil extraction taxes from taxable oil
21 produced in this state must be allocated as follows:

22 ~~1.~~ Fifty percent must be deposited in the common schools trust fund.

23 ~~2.~~ Fifty percent must be deposited in the foundation aid stabilization fund in the state
24 treasury, the interest income of which must be transferred to the state general fund on
25 July first of each year. The principal of the foundation aid stabilization fund may be

1 ~~expended only upon order of the governor, who may direct such a transfer only to~~
2 ~~offset foundation aid reductions that were made by executive action pursuant to law~~
3 ~~due to a revenue shortage.state retirement stabilization fund and the foundation aid~~
4 ~~stabilization fund.~~

5 ~~— SECTION 2. A new section to article X of the Constitution of North Dakota is created and~~
6 ~~enacted as follows:~~

7 ~~— 1. The balance of moneys in the foundation aid stabilization fund may not exceed one~~
8 ~~hundred fifty million dollars.~~

9 ~~— 2. Whenever the balance of moneys in the foundation aid stabilization fund reaches one~~
10 ~~hundred fifty million dollars, any excess moneys must be transferred to the public~~
11 ~~employees retirement stabilization fund and no additional moneys may be deposited in~~
12 ~~the foundation aid stabilization fund until the balance in the foundation aid stabilization~~
13 ~~fund falls below one hundred million dollars.~~

14 ~~— 3. If the balance of moneys in the foundation aid stabilization fund falls below one~~
15 ~~hundred million dollars, the deposits required by section 24 of article X, together with~~
16 ~~any interest and income, must be retained in the foundation aid stabilization fund until~~
17 ~~the balance is again one hundred fifty million dollars.~~

18 ~~— 4. Moneys in the foundation aid stabilization fund may be expended only by the governor~~
19 ~~and only for the purpose of offsetting reductions in state aid to elementary and~~
20 ~~secondary education which were made by executive action pursuant to law due to a~~
21 ~~revenue shortage.~~

22 ~~— SECTION 3. A new section to article X of the Constitution of North Dakota is created and~~
23 ~~enacted as follows:~~

24 ~~— 1. The balance of moneys in the public employees retirement stabilization fund may not~~
25 ~~exceed four hundred fifty million dollars.~~

26 ~~— 2. Whenever the balance of moneys in the public employees retirement stabilization fund~~
27 ~~reaches four hundred fifty million dollars, any excess moneys must be transferred to~~
28 ~~the state general fund and used first to provide state aid to elementary and secondary~~
29 ~~education.~~

30 ~~— 2. Moneys in the public employees retirement stabilization fund may be expended by the~~
31 ~~legislative assembly only for the purpose of addressing any unfunded retirement~~

1 benefit obligations payable by the state to members of the public employees
2 retirement system.

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

5 **Section 24.**

6 1. Twenty percent of the revenue from oil extraction taxes from taxable oil produced in
7 this state must be allocated as follows:

8 ~~1. a.~~ Fifty percent must be deposited in the common schools trust fund;

9 ~~2. Fifty~~

10 b. Thirty percent must be deposited in the state retirement stabilization fund; and

11 c. Twenty percent must be deposited in the foundation aid stabilization fund in the
12 state treasury, the

13 2. a. ~~monies~~ ^{funds} in the state retirement stabilization fund may be expended by the

14 legislative assembly only for the purpose of addressing unfunded retirement
15 benefit obligations to which members of state retirement systems may be
16 entitled.

17 b. The interest income of ~~which~~ the foundation aid stabilization fund must be
18 transferred to the state general fund on July first of each year. The principal of the
19 foundation aid stabilization fund may be expended only upon order of the
20 governor, who may direct such a transfer only to offset foundation aid reductions
21 that were made by executive action pursuant to law due to a revenue shortage.

22 3. The balance of ~~monies~~ to be maintained in the state retirement stabilization fund and
23 the foundation aid stabilization fund ^{as provided by law} must be determined by the legislative assembly.

24 ~~Any monies not retained in the funds must be transferred to the state general fund and~~
25 ~~may be used to provide state aid to elementary and secondary education.~~

Mr. Chairman and members of the judiciary committee, it is an honor to appear before you today. For the record my name is Jeff Delzer, state representative for district 8 which is parts of Mclean and Burliegh counties. I appear before you in support of HR3003, a constitutional a mendment to limit the size of the foundation stabilization fund and create a public retirement fund. This fund would be to cover the unfunded liability of the public employee's retirement fund.

The budget stabilization fund was set up in the late 80's and now has 9.5% of the latest legislative general fund budget. It can be used when OMB reforecast that there is a 2.5% or larger revenue shortfall during the interim. Then there has to be a 2.5% allocation and then the budget stabilization fund is used to cover the rest. That would mean that the foundation aide stabilization fund would need to have 2.5% of the latest budget for k-12. If that number was 1.5 billion then to cover the allocation it would take 37.5 million to cover the cost so there would still be plenty in the fund.

The retirement fund can be set at what level you desire. [REDACTED] million should go a long way by the time we get to the need for it. Those of you who have been here long enough to remember the oasis plan which we had to fund for many sessions with general fund. Setting aside money to cover the unfunded liabilities if and when they come about is a sensible thing to do.

**ANALYSIS OF THE BUDGET STABILIZATION FUND FOR THE 2011-13 AND 2013-15 BIENNIUMS
(REFLECTING THE 2013-15 BIENNIUM EXECUTIVE BUDGET RECOMMENDATION)**

	2011-13 Biennium		2013-15 Biennium	
Beginning balance		\$386,351,110		\$454,686,338
Add estimated revenues				
Investment income	\$16,134,104 ¹		\$0 ⁴	
Transfer from general fund	52,201,124 ²		0	
Total estimated revenues		68,335,228		0
Total available		\$454,686,338		\$454,686,338
Less estimated expenditures and transfers				
None				
Total estimated expenditures and transfers		0 ³		0 ³
Estimated ending balance		\$454,686,338		\$454,686,338

¹The Legislative Assembly in the November 2011 special session increased general fund appropriations for the 2011-13 biennium by \$169,832,688 from \$4,066,853,792 to \$4,236,686,460 resulting in a \$16.1 million increase in the maximum balance allowed in the budget stabilization fund. Therefore, interest and investment earnings of the fund will be retained in the fund until the cap is reached.

²North Dakota Century Code Chapter 54-27.2 provides any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund except that the balance in the budget stabilization fund may not exceed 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The amount shown is based on the executive budget estimate of a June 30, 2013, general fund balance of \$121,183,167 after other recommended transfers to the highway fund, housing incentive fund, and property tax relief sustainability fund and the recommended 2013-15 biennium general fund appropriations of \$4,786,171,981; therefore, the maximum balance in the fund is limited to \$454,686,338.

³No transfers from the budget stabilization fund are anticipated.

⁴Interest earned on the fund is deposited in the general fund because the balance in the fund is at the maximum allowed under Section 54-27.2-01.

FUND HISTORY

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

- Section 54-27.2-01 establishes the budget stabilization fund and provides any interest earned on the balance of the budget stabilization fund must be retained in the fund. The section currently provides any money in the fund in excess of 9.5 percent of the general fund budget as approved by the most recently adjourned Legislative Assembly must be deposited in the state general fund. The Legislative Assembly approved 2011 House Bill No. 1451 which decreased, effective July 1, 2011, the maximum balance allowed in the fund from 10 to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly.
- Section 54-27.2-02 provides any amount in the state general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund.
- Section 54-27.2-03 provides the Governor may order a transfer from the budget stabilization fund to the general fund if the Director of the Office of Management and Budget (OMB) projects general fund revenues for the biennium will be at least 2.5 percent less than estimated by the most recently adjourned Legislative Assembly. The amount transferred is limited to the difference between an amount 2.5 percent less than the original legislative general fund revenue forecast and the revised forecast prepared by OMB. Any transfer made must be reported to the Budget Section.

ANALYSIS OF THE BUDGET STABILIZATION FUND FOR THE 2011-13 AND 2013-15 BIENNIUM (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2011-13 Biennium		2013-15 Biennium	
Beginning balance		\$386,351,110		\$653,693,034
Add estimated revenues				
Investment income	\$16,134,104 ¹		\$0 ⁴	
Transfer from general fund	251,207,820 ²		0	
Total estimated revenues		267,341,924		0
Total available		\$653,693,034		\$653,693,034
Less estimated expenditures and transfers				
None				
Total estimated expenditures and transfers		0 ³		0 ³
Estimated ending balance		\$653,693,034		\$653,693,034

¹The Legislative Assembly in the November 2011 special session increased general fund appropriations for the 2011-13 biennium by \$169,832,688 from \$4,066,853,792 to \$4,236,686,460 resulting in a \$16.1 million increase in the maximum balance allowed in the budget stabilization fund. Therefore, interest and investment earnings of the fund will be retained in the fund until the cap is reached.

²North Dakota Century Code Chapter 54-27.2 provides any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund except that the balance in the budget stabilization fund may not exceed 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The amount shown is based on the estimated June 30, 2013, general fund balance of \$1,655,497,221 as of crossover and a maximum balance allowed in the fund of \$653,693,034 based on 2013-15 biennium general fund appropriations of \$6,880,979,308 as of crossover. The executive budget anticipated a June 30, 2013, transfer from the general fund of \$52,201,124 based on executive budget estimates of a June 30, 2013, general fund balance of \$121,183,167 after other recommended transfers to the highway fund, housing incentive fund, and property tax relief sustainability fund and the recommended 2013-15 biennium general fund appropriations of \$4,786,171,981.

³No transfers from the budget stabilization fund are anticipated.

⁴Interest earned on the fund is deposited in the general fund because the balance in the fund is at the maximum allowed under Section 54-27.2-01.

FUND HISTORY

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

- Section 54-27.2-01 establishes the budget stabilization fund and provides any interest earned on the balance of the budget stabilization fund must be retained in the fund. The section currently provides any money in the fund in excess of 9.5 percent of the general fund budget as approved by the most recently adjourned Legislative Assembly must be deposited in the state general fund. The Legislative Assembly approved 2011 House Bill No. 1451 which decreased, effective July 1, 2011, the maximum balance allowed in the fund from 10 to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly.
- Section 54-27.2-02 provides any amount in the state general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund.
- Section 54-27.2-03 provides the Governor may order a transfer from the budget stabilization fund to the general fund if the Director of the Office of Management and Budget (OMB) projects general fund revenues for the biennium will be at least 2.5 percent less than estimated by the most recently adjourned Legislative Assembly. The amount transferred is limited to the difference between an amount 2.5 percent less than the original legislative general fund revenue forecast and the revised forecast prepared by OMB. Any transfer made must be reported to the Budget Section.

**ANALYSIS OF THE FOUNDATION AID STABILIZATION FUND FOR THE 2011-13 AND 2013-15 BIENNIUMS
(REFLECTING THE 2013-15 EXECUTIVE BUDGET RECOMMENDATION)**

	2011-13 Biennium		2013-15 Biennium	
Beginning balance		\$140,193,764		\$332,951,033
Add estimated revenues				
Oil extraction tax allocations	\$192,757,269 ¹		\$273,476,675 ¹	
Total available		\$332,951,033		\$606,427,708
Less estimated expenditures and transfers				
Transfer to foundation aid program	\$0 ²		\$0 ²	
Estimated ending balance		\$332,951,033		\$606,427,708

¹Estimated revenues - Based on actual oil extraction tax collections transferred to the fund through December 2012 and estimated allocations for the remainder of the 2011-13 biennium and the 2013-15 biennium per the November 2012 executive revenue forecast.

²Estimated 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 in the 2011-13 biennium or the 2013-15 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, 2011, through November 30, 2012, \$298,141 of interest from the foundation aid stabilization fund has been allocated to the general fund.

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Title.

Prepared by the Legislative Council staff for
Representative Delzer
April 1, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE CONCURRENT RESOLUTION NO.
3003

Page 1, line 11, replace "general" with "primary"

Page 2, line 4, overstrike "The principal of" and insert immediately thereafter "Monies in"

Page 2, line 7, after the period insert "The balance of monies to be maintained in the fund must
be determined by law."

Renumber accordingly

has contributed to significant employment growth in the western half of the state, and state officials report that growth has been occurring around the rest of North Dakota as well.

The state's financial position is also very strong in our view. Fiscal 2012 ended with a generally accepted accounting principles general fund balance of \$2.91 billion, a \$1.5 billion increase from the previous year. Most of the increase was due to revenues exceeding budget projections, although the general fund also received a \$670 million transfer from the permanent oil tax trust fund when that fund was closed out. The unassigned portion of the fund balance was \$1.41 billion (96% of fiscal 2012 general fund expenditures) and an additional \$996.7 million was committed. Fiscal 2013 revenues continue to be strong, and officials project an ending general fund balance of \$1.4 billion, in addition to multiple other reserves such as \$700 million in the strategic investment and improvements fund and \$650 million in the budget stabilization fund, the maximum level under current law.

North Dakota's revenue collections have been strong and collections for the current biennium have significantly exceeded the original forecasts from April 2011. While general fund spending from direct oil taxes is limited to \$300 million per biennium, the strong economic activity driven by oil extraction has led to strong collections for sales taxes and personal and corporate income taxes. Through January 2013, general fund revenues for the 2011-2013 biennium were \$1.20 billion, or 41.5%, above the April 2011 forecast.

The administration and legislature recently updated the 2011-2013 biennial forecast, most recently with a legislative forecast in February 2013. Sales taxes are North Dakota's largest general fund revenue source, at 50% of the 2011-2013 biennial forecast revenue, followed by individual income taxes (20%), corporate income taxes (9%), and oil and gas production and extraction (7%). Officials project that the current federal sequestration cuts will have minimal impact on the state economy and state finances.

In our view, North Dakota's conservative practices and moderate infrastructure needs have kept its debt levels low. With the state's limited additional debt on the horizon, we believe annual debt service should remain very low as a percent of the operating budget; the carrying charge was only about 1% of expenditures in fiscal 2011.

Based on the analytical factors we evaluate for states, on a scale of '1.0' (strongest) to '4.0' (weakest), we have assigned a composite score of '1.5'.

Outlook

The positive outlook reflects what we view as North Dakota's strong government framework and management, strong budgetary performance, and enhanced reserves. If the state continues to improve pension funding levels and brings them more in line with 'AAA' rated peers, we could raise the rating to 'AAA'. Alternatively, if those actions do not improve pension funding to that level, we could revise the outlook on North Dakota back to stable. Downside risks for the rating include the potential for significant reductions in federal funding that currently flows to the state. Standard & Poor's will continue to monitor the federal consolidation efforts and the impact these will have on the state.

NDPERS UNDEDED LIABILITY (Main system)

2046

	State Fund Payments	Other Fund Payments	Ret. Stabilization Fund Balance ¹	Unfunded Liability (AVA)	Unfunded Liability (MVA)
HCR 3003 ²	\$2,776		\$3,942	\$6,968	\$5,911
PERS Recovery Plan ³	\$ 621	\$1,863		0	0

1. Assumes \$56 million deposit on July 1, 2015 and annual deposits of \$85 million each year thereafter into a separate fund until July 1, 2046. Also assumed the separate fund will earn 2% interest per year.
2. If HCR 3003 was amended to allocate the funds directly to the PERS Retirement fund the unfunded liability would be paid off in 2031 based upon the actuarial value of assets and in 2025 based upon the market value of assets.
3. This was in SB 2059 which passed the Senate but was defeated in the House. This plan was given a “favorable” recommendation in 2012 and 2010 by the Legislative Employee Benefits Committee and supported in the Executive Budget.

Observations and Considerations

- Funds deposited in the Retirement Stabilization Fund will not be sufficient to cover the PERS unfunded liability by 2046. It will be 3 billion short based upon actuarial value of assets and 2 billion short based upon market value of assets. Additional state funds would continue to be required.
- The recovery plan in SB 2059 required 621 million in state contributions to pay off the unfunded liability by 2046 based upon the actuarial value of assets.
- HCR 3003 would require substantially more state fund to cover the PERS unfunded liability with the funds staying in the Retirement Stabilization Fund.



5670 Greenwood Plaza Boulevard Suite 425 Greenwood Village, CO 80111-2499
T 303.714.9900 F 303.714.9990 www.segalco.com

MEMORANDUM

To: Sparb Collins
State of North Dakota Public Employees' Retirement System

From: Brad Ramirez

Date: March 26, 2013

Re: House Concurrent Resolution No. 3003 – Unfunded Actuarial Liability under Alternative Contribution Projections

In our recent conversation, you asked Segal to prepare estimates showing the impact of additional contributions on the Unfunded Actuarial Liability (UAL). Two alternatives have been prepared.

Scenario 1. What will be the offset of a \$56 million deposit on July 1, 2013 and annual deposits of \$85 million each year thereafter into a side fund until July 1, 2046? We have assumed that the side fund will earn 2% interest per year.

We estimate that the balance of the side fund will be \$3.942 billion as of July 1, 2046. If the side fund is contributed to the Plan,

1. The UAL (AVA basis) as of July 1, 2046 will decrease 57% from \$6.968 billion to \$3.026 billion.
2. The UAL (MVA basis) as of July 1, 2046 will decrease 67% from \$5.911 billion to \$1.969 billion.

If the side fund earns 1% per year, the total in the fund will be \$3.297 million as of July 1, 2046. If the side fund earns 3% per year, the total in the fund will be \$4.745 million as of July 1, 2046.

Scenario 2. If additional contributions are made directly to the PERS Main Plan, a one-time contribution of \$56 million on July 1, 2013 plus additional contributions of \$170 million every other year beginning on July 1, 2015, when will the Plan be 100% funded?

Sparb Collins
State of North Dakota Public Employees' Retirement System
March 26, 2013
Page 2

We estimate that the Plan is projected to become 100% funded:

1. On an actuarial value basis on July 1, 2031.
2. On a market value basis on July 1, 2025.

Note that these contributions are assumed to earn the PERS assumption of 8% interest per year.

These projections are based on financial and demographic information as of July 1, 2012. All assumptions, unless otherwise noted, are those used in the actuarial valuation as of July 1, 2012 dated October 15, 2012. Projections, by their nature, are not a guarantee of future results. Emerging results may differ significantly if the actual experience proves to be different from these assumptions or if alternative methodologies are used. Actual experience may differ due to such variables as demographic experience, the economy, stock market performance and the regulatory environment.

cc: Tammy Dixon
 Laura L. Mitchell

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