

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: SB 2101

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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).*

No fiscal impact. Legislation passed in 2015 was not implemented as it was contradictory to Article X of the ND State Constitution.

- 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.*

Not applicable

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.*

Not applicable

- 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.*

Not applicable

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Not applicable

Name: Lance Gaebe

Agency: ND Department of Trust Lands

Telephone: 701-328-2807

Date Prepared: 12/28/2016

2017 SENATE FINANCE AND TAXATION

SB 2101

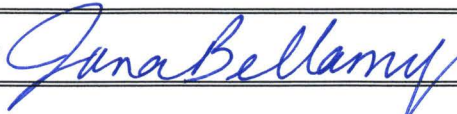
2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

Senate Bill 2101
1/4/2017
Job # 26554

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to the coal development trust fund; and to repeal section 15-03-05.1 of the North Dakota Century Code, relating to calculation of coal development trust fund income.

Minutes:

Attachments 1

Chairman Cook: Opened the hearing on SB 2101, all Senators present.

Jeff Engleson, Chief Investment Officer, North Dakota Department of Trust Lands: See testimony #1 in support of SB 2101.

Chairman Cook: Questions?

Vice Chairman Bekkedahl: Annual transfers to the general fund 800-1mill in the last 4 years, what is coming in (30%) that comes in?

Jeff Engleson: 30% of 30% has been about a million a year for the last 20 years, can't be spent can only be loaned.

Chairman Cook: Questions? Further testimony in support of SB 2101? Further testimony opposed? Neutral Testimony?

Senator Dotzenrod: Has anyone gone through the paragraphs 15-03-05.1 in its entirety, is it the way it looks in the century code today.

Jeff Engleson: Yes, that is correct, bottom paragraph is as it currently stands.

Chairman Cook: Closed hearing on SB 2101

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

Senate Bill 2101
2/1/2017
Job #: 27698

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to the coal development trust fund; and to repeal section 15-03-05.1 of the North Dakota Century Code, relating to calculation of coal development trust fund income.

Minutes:

No Attachments

Senator Unruh moved a do pass.

Vice Chairman Bekkedahl seconded.

Committee discussion on putting funds from the general fund to the school construction fund. A bigger picture is being looked at in the Education committee.

Roll call vote was taken: 6 yeas, 0 nays, 0 absent/not voting.

Senator Unruh will carry the bill.

Date: 2-1-17
 Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2101**

Senate _____ Finance and Taxation _____ Committee
 Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Unruh Seconded By Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	<input checked="" type="checkbox"/>		Senator Jim Dotzenrod	<input checked="" type="checkbox"/>	
Vice Chair Brad Bekkedahl	<input checked="" type="checkbox"/>				
Senator Lonnie J. Laffen	<input checked="" type="checkbox"/>				
Senator Jessica Unruh	<input checked="" type="checkbox"/>				
Senator Scott Meyer	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 0
 Absent 0
 Floor Assignment unruh

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

REPORT OF STANDING COMMITTEE

SB 2101: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2101 was placed on the Eleventh order on the calendar.

2017 HOUSE FINANCE AND TAXATION

SB 2101

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2101
3/6/2017
28707

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A bill relating to the coal development trust fund; relating to calculation of coal development trust fund income.

Minutes:

Attachment #1

Chairman Headland: Opened hearing on SB 2101.

Jeff Engleson, Chief Investment Officer of North Dakota Department of Trust Lands: Distributed written testimony. See attachment #1. Ended testimony at 7:03.

Representative Schobinger: On SB 2039, did you get an attorney general's opinion that determined you would follow the constitution or did you just decide not to follow the law?

Jeff Engleson: I think the governor vetoed that portion of law but it stayed published as was. That was a line item veto by the governor because it wasn't legal. It was in a couple different bills last session. We did get the attorney general's opinion too.

Representative B. Koppelman: This language you're striking out now was in a budget bill last time?

Jeff Engleson: That bill was an education bill that related to school construction loans. There were three different bills related to school construction last session. In the process of reconciling all that this language was missed.

Representative B. Koppelman: I don't believe the governor has the ability to line item veto anything except for a budget bill.

Jeff Engleson: Maybe that was a transfer. Part of this bill got line item vetoed so maybe this wasn't the part. I can get you clarification of that.

Representative Ertelt: You referred to the desire to repeal that section of code because you're invested in bonds. Is there any requirement to be invested in bonds or has that been the choice to do so?

Jeff Engleson: It is the board's policy to do that right now. The nature of this fund 20 years ago was a mistake when it first invested in equities. At that point the agency hadn't had an investment study done before and so our first investment pointed it out that we should have never invested in stocks. There is really only \$5 million of cash in this fund that is uncommitted to loans.

Chairman Headland: Further testimony in support? Is there any opposition to SB 2101? Seeing none we will close the hearing on SB 2101. We have the bill before us.

Representative B. Koppelman: MADE A MOTION FOR A DO PASS

Representative Howe: SECONDED

Chairman Headland: Is there any discussion?

ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT- MOTION CARRIED

Representative Grueneich will carry this bill.

Date: 3-6-17
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2101**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	AB				
Representative Schobinger	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Grueneich

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

REPORT OF STANDING COMMITTEE

SB 2101: Finance and Taxation Committee (Rep. Headland, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2101 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2101

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Lance D. Gaebe, Commissioner

**TESTIMONY OF JEFF ENGLESON
Chief Investment Officer
North Dakota Department of Trust Lands**

IN SUPPORT OF SENATE BILL NO. 2101

**Senate Finance and Taxation
January 4, 2017**

Mr. Chairman and members of the Committee, my name is Jeff Engleson, I am the Chief Investment Officer for the ND Department of Trust Lands (NDDTL). I am here today to testify in support of Senate Bill 2101.

Senate Bill 2101 was introduced at the request of the NDDTL in order to update two sections of the N.D.C.C. related to the Coal Development Trust Fund. As proposed, the bill amends language in N.D.C.C. § 57-62-02(1) that currently contradicts language in the North Dakota Constitution. Section 2 of this bill repeals N.D.C.C. § 15-03-05.1, a section of law that is outdated and should have been removed from law previously.

The Coal Development Trust Fund was established by N.D.C.C. ch. 57-62 pursuant to Section 21 of Article X of the North Dakota Constitution. 30 percent of coal severance tax collections are deposited into the Fund each month. The Fund actually retains only 30 percent amount of taxes deposited in it; the remaining 70% is transferred to other entities for lignite research and clean coal projects.

This Fund is held in trust and is administered by the Board of University and School Lands (Land Board) for loans to coal impacted counties, cities, and school districts as provided by N.D.C.C § 57-62-03 and for school construction loans pursuant to N.D.C.C. ch. 15.1-36. Any balance not loaned as provided in law is invested according to the policies of the Land Board. Article X, Section 21 provides that the income earned by the Fund must first be used to replace any uncollectable loans; any remaining income must be transferred to the State General Fund each year.

As of September 30, 2016, the Coal Development Trust Fund had a balance of approximately \$68.2 million. Of that amount, \$49.8 million was either loaned or committed to school construction loans, \$13.2 million was loaned to coal development impacted political subdivisions and the balance was invested in a diversified bond portfolio that current yields approximately 1%. Annual transfers to the General Fund have been between \$800,000 and \$1 million over the past four years.

Section 1

The changes proposed in Section 1 of this bill reverse changes made to N.D.C.C. § 57-62-02(1) that were adopted by the Sixty-fourth Legislative Assembly within Senate Bill 2039. There were numerous bills last session dealing with school construction loan programs. In the process of reconciling these bills, it was determined that the provision conflicted with the Constitution, which directs that income from the Coal Development Trust Fund is to be transferred to the General Fund

The changes proposed in Section 1 of this bill correct the conflict between statute and the Constitution. It is important to emphasize that although Section 8 of Senate Bill 2039 (2015 Legislature) became law, it was not implemented. During fiscal year 2016, all income from the Coal Development Trust Fund was deposited into the General Fund as required by the Constitution.

Section 2

Section 2 of this bill repeals N.D.C.C. § 15-03-05.1, a section of law that was previously important, but which is no longer needed.

N.D.C.C. § 15-03-05.1 was originally adopted in 1989, when the Land Board was considering the investment of a portion of the permanent trust funds in equity securities. Due to the volatile nature of equities, it was decided that the best way to maintain stable income, and thus stable distributions to trust beneficiaries, was to amortize (or spread) any realized capital gains to income over a ten-year period.

In 1993, at the Land Board's request, N.D.C.C. § 15-03-05.1 was amended to clarify that the Commissioner of University and School Lands must calculate total income for the permanent trust funds each year, not just the investment income. Realized gains and losses still needed to be amortized to income.

Although N.D.C.C. § 15-03-05.1 was originally intended to maintain consistent distributions to permanent educational trust fund beneficiaries, in 1993 the Attorney General's Office determined that because the Coal Development Trust Fund was a "permanent trust fund", N.D.C.C. § 15-03-05.1 also applied to distributions from it. At that time, the Coal Development Trust Fund was invested in equity securities, so amortizing gains for this Fund was consistent with doing so for the permanent educational trusts.

In 2006, voters approved an amendment to Article IX, Section 2 of the Constitution which details the method of determining permanent educational trust fund distributions. At the Land Board's request, the 2009 Legislature amended N.D.C.C. § 15-03-05.1 to remove its application to the permanent trust funds. Since 2009, N.D.C.C. § 15-03-05.1 has applied only to the Coal Development Trust Fund.

The Land Board no longer invests a portion of the Coal Development Trust Fund in equity securities, because it determined that the risk of doing so was not consistent with the objectives of the Fund. The Fund's assets are instead invested in a bond portfolio that has far less risk than a portfolio of equity securities. As demand for both school construction loans and coal impact loans has increased, the Land Board has changed the way it invests this Fund to make it even more conservative and short-term, thus minimizing the potential for both capital gains and losses.

In summary, N.D.C.C. § 15-03-05.1 can be repealed for the following reasons:

- It was adopted to reduce the volatility of income calculations for the permanent educational trust funds; however, it no longer applies to these funds.
- It was intended to reduce the volatility of distributions that could be caused by equity investments; however, this Fund has not invested in equities for over 20 years.
- The investment strategy for this Fund will result in minimal capital gains and losses going forward; therefore, there is no reason to justify the additional cost and effort of amortizing capital gains and losses to income.

I respectfully request a "do pass" recommendation for Senate Bill 2101 and will gladly answer any questions you may have at this time.

Attachment

North Dakota Constitution, Article X, Section 21

Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may loan moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state. Up to fifty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for lignite research, development, and marketing as provided by law. An additional twenty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for clean coal demonstration projects approved by the industrial commission.

History of N.D.C.C. § 15-03-05.1

As originally adopted in 1989:

Calculation of investment income. At the end of each fiscal year, the board shall calculate the investment income earned by the permanent funds. The investment income earned by the funds shall equal the amount of interest on debt securities and dividends on equity securities. If the sale of securities results in a net gain or loss during a fiscal year, the net gain or loss shall be amortized to investment income in equal annual installments over a ten-year period. In lieu of amortizing any fiscal year net loss on the sale of securities, the board may recover such loss, in whole or in part, from past unamortized capital gains and future net realized capital gains.

As amended in 1993: N.D.C.C. § 15-03-05.1 was amended, at the request of the Land Board, to clarify that total income must be calculated for each trust each year, not just investment income. Realized gains and losses are still amortized (spread) over 10 years.

Calculation of fund income. At the end of each fiscal year, the board shall calculate the investment income earned by the permanent funds. The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.

As amended in 2009: In 2009, the permanent educational trusts began using the distribution formula found in Article IX, Section 2 of the Constitution. At the request of the Land Board, legislation was adopted that removed the permanent education trusts from N.D.C.C. § 15-03-05.1

Calculation of fund income - Coal development trust fund. At the end of each fiscal year, the board shall calculate the income earned by the coal development trust fund. The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.

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Lance D. Gaebe, Commissioner

**TESTIMONY OF JEFF ENGLESON
Chief Investment Officer
North Dakota Department of Trust Lands**

IN SUPPORT OF SENATE BILL NO. 2101

**House Finance and Taxation
March 6, 2017**

Mr. Chairman and members of the Committee, my name is Jeff Engleson, I am the Chief Investment Officer for the ND Department of Trust Lands (NDDTL). I am here today to testify in support of Senate Bill 2101.

Senate Bill 2101 was introduced at the request of the NDDTL in order to update two sections of the N.D.C.C. related to the Coal Development Trust Fund. As proposed, the bill amends language in N.D.C.C. § 57-62-02(1) that currently contradicts language in the North Dakota Constitution. Section 2 of this bill repeals N.D.C.C. § 15-03-05.1, a section of law that is outdated and should have been removed from law previously.

The Coal Development Trust Fund was established by N.D.C.C. ch. 57-62 pursuant to Section 21 of Article X of the North Dakota Constitution. 30 percent of coal severance tax collections are deposited into the Fund each month. The Fund actually retains only 30 percent amount of taxes deposited in it; the remaining 70% is transferred to other entities for lignite research and clean coal projects.

This Fund is held in trust and is administered by the Board of University and School Lands (Land Board) for loans to coal impacted counties, cities, and school districts as provided by N.D.C.C § 57-62-03 and for school construction loans pursuant to N.D.C.C. ch. 15.1-36. Any balance not loaned as provided in law is invested according to the policies of the Land Board. Article X, Section 21 provides that the income earned by the Fund must first be used to replace any uncollectable loans; any remaining income must be transferred to the State General Fund each year.

As of September 30, 2016, the Coal Development Trust Fund had a balance of approximately \$68.2 million. Of that amount, \$49.8 million was either loaned or committed to school construction loans, \$13.2 million was loaned to coal development impacted political subdivisions and the balance was invested in a diversified bond portfolio that currently yields approximately 1%. Annual transfers to the General Fund have been between \$800,000 and \$1 million over the past four years.

Section 1

The changes proposed in Section 1 of this bill reverse changes made to N.D.C.C. § 57-62-02(1) that were adopted by the Sixty-fourth Legislative Assembly within Senate Bill 2039. There were numerous bills last session dealing with school construction loan programs. In the process of reconciling these bills, it was determined that the provision conflicted with the Constitution, which directs that income from the Coal Development Trust Fund is to be transferred to the General Fund

The changes proposed in Section 1 of this bill correct the conflict between statute and the Constitution. It is important to emphasize that although Section 8 of Senate Bill 2039 (2015 Legislature) became law, it was not implemented. During fiscal year 2016, all income from the Coal Development Trust Fund was deposited into the General Fund as required by the Constitution.

Section 2

Section 2 of this bill repeals N.D.C.C. § 15-03-05.1, a section of law that was previously important, but which is no longer needed.

N.D.C.C. § 15-03-05.1 was originally adopted in 1989, when the Land Board was considering the investment of a portion of the permanent trust funds in equity securities. Due to the volatile nature of equities, it was decided that the best way to maintain stable income, and thus stable distributions to trust beneficiaries, was to amortize (or spread) any realized capital gains to income over a ten-year period.

In 1993, at the Land Board's request, N.D.C.C. § 15-03-05.1 was amended to clarify that the Commissioner of University and School Lands must calculate total income for the permanent trust funds each year, not just the investment income. Realized gains and losses still needed to be amortized to income.

Although N.D.C.C. § 15-03-05.1 was originally intended to maintain consistent distributions to permanent educational trust fund beneficiaries, in 1993 the Attorney General's Office determined that because the Coal Development Trust Fund was a "permanent trust fund", N.D.C.C. § 15-03-05.1 also applied to distributions from it. At that time, the Coal Development Trust Fund was invested in equity securities, so amortizing gains for this Fund was consistent with doing so for the permanent educational trusts.

In 2006, voters approved an amendment to Article IX, Section 2 of the Constitution which details the method of determining permanent educational trust fund distributions. At the Land Board's request, the 2009 Legislature amended N.D.C.C. § 15-03-05.1 to remove its application to the permanent trust funds. Since 2009, N.D.C.C. § 15-03-05.1 has applied only to the Coal Development Trust Fund.

The Land Board no longer invests a portion of the Coal Development Trust Fund in equity securities, because it determined that the risk of doing so was not consistent with the objectives of the Fund. The Fund's assets are instead invested in a bond portfolio that has far less risk than a portfolio of equity securities. As demand for both school construction loans and coal impact loans has increased, the Land Board has changed the way it invests this Fund to make it even more conservative and short-term, thus minimizing the potential for both capital gains and losses.

In summary, N.D.C.C. § 15-03-05.1 can be repealed for the following reasons:

- It was adopted to reduce the volatility of income calculations for the permanent educational trust funds; however, it no longer applies to these funds.
- It was intended to reduce the volatility of distributions that could be caused by equity investments; however, this Fund has not invested in equities for over 20 years.
- The investment strategy for this Fund will result in minimal capital gains and losses going forward; therefore, there is no reason to justify the additional cost and effort of amortizing capital gains and losses to income.

I respectfully request a "do pass" recommendation for Senate Bill 2101 and will gladly answer any questions you may have at this time.

North Dakota Constitution, Article X, Section 21

Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may loan moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state. Up to fifty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for lignite research, development, and marketing as provided by law. An additional twenty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for clean coal demonstration projects approved by the industrial commission.

History of N.D.C.C. § 15-03-05.1

As originally adopted in 1989:

Calculation of investment income. At the end of each fiscal year, the board shall calculate the investment income earned by the permanent funds. The investment income earned by the funds shall equal the amount of interest on debt securities and dividends on equity securities. If the sale of securities results in a net gain or loss during a fiscal year, the net gain or loss shall be amortized to investment income in equal annual installments over a ten-year period. In lieu of amortizing any fiscal year net loss on the sale of securities, the board may recover such loss, in whole or in part, from past unamortized capital gains and future net realized capital gains.

As amended in 1993: N.D.C.C. § 15-03-05.1 was amended, at the request of the Land Board, to clarify that total income must be calculated for each trust each year, not just investment income. Realized gains and losses are still amortized (spread) over 10 years.

Calculation of fund income. At the end of each fiscal year, the board shall calculate the investment income earned by the permanent funds. The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.

As amended in 2009: In 2009, the permanent educational trusts began using the distribution formula found in Article IX, Section 2 of the Constitution. At the request of the Land Board, legislation was adopted that removed the permanent education trusts from N.D.C.C. § 15-03-05.1

Calculation of fund income - Coal development trust fund. At the end of each fiscal year, the board shall calculate the income earned by the coal development trust fund. The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.