

## LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD - BACKGROUND MEMORANDUM

Pursuant to North Dakota Century Code Section 21-10-11, as created by 2011 Senate Bill No. 2302 (attached as an [appendix](#)) the Legacy and Budget Stabilization Fund Advisory Board is established for the purpose of developing recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the State Investment Board. Section 21-10-11 provides that staff and consultants of the state Retirement and Investment Office advise the board in developing asset allocation and investment policies. The Legislative Council is to provide staff services to the board and the board is required to report at least semiannually to the Budget Section.

Pursuant to Section 21-10-11, the Legacy and Budget Stabilization Fund Advisory Board is comprised of two members of the Senate appointed by the Senate majority leader, two members of the House of Representatives appointed by the House majority leader, the director of the Office of Management and Budget (OMB) or designee, the president of the Bank of North Dakota or designee, and the Tax Commissioner or designee. Section 21-10-11 provides that a chairman be selected by the board.

### BUDGET STABILIZATION FUND HISTORY

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

- Section 54-27.2-01 establishes the budget stabilization fund and provides that any interest earned on the balance of the budget stabilization fund must be retained in the fund.

The section provides that 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 general fund. The 2011 Legislative Assembly approved House Bill No. 1451 which decreased, effective July 1, 2011, the maximum balance allowed in the fund from 10 percent to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly.

- Section 54-27.2-02 provides that any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund.
- Section 54-27.2-03 provides that the Governor may order a transfer from the budget stabilization fund to the general fund if the director of OMB projects that 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.

### REVENUES AND EXPENDITURES OF THE BUDGET STABILIZATION FUND

The following is a summary of revenues and expenditures of the budget stabilization fund since its creation by the 1987 Legislative Assembly:

Biennium	Beginning Balance	Transfer From General Fund Balance at End of Biennium	Interest Earnings	Total Available	Transfers to the General Fund	Ending Balance
1987-89	\$0	\$25,246,378	\$0	\$25,246,378	\$0	\$25,246,378
1989-91	\$25,246,378	\$0	\$2,770,189	\$28,016,567	\$5,967,192 <sup>1</sup>	\$22,049,375
1991-93	\$22,049,375	\$0	\$1,278,908	\$23,328,283	\$23,328,283 <sup>2</sup>	\$0
1993-95	\$0	\$0	\$0	\$0	\$0	\$0
1995-97	\$0	\$0 <sup>3</sup>	\$0	\$0	\$0	\$0
1997-99	\$0	\$0	\$0	\$0	\$0	\$0
1999-2001	\$0	\$0	\$0	\$0	\$0	\$0
2001-03	\$0	\$0	\$0	\$0	\$0	\$0
2003-05	\$0	\$99,472,631	\$0 <sup>4</sup>	\$99,472,631	\$0	\$99,472,631
2005-07	\$99,472,631	\$100,527,369	\$0 <sup>4</sup>	\$200,000,000	\$0	\$200,000,000
2007-09	\$200,000,000	\$124,936,548	\$0 <sup>4</sup>	\$324,936,548	\$0	\$324,936,548
2009-11	\$324,936,548	\$61,414,562 <sup>5</sup>	\$0 <sup>4</sup>	\$386,351,110	\$0	\$386,351,110

<sup>1</sup>During the 1989-91 biennium, the Budget Section approved OMB's proposed general fund reductions totaling \$95,763,770 caused by the loss of sales tax revenue, individual income tax revenue, and gas tax revenue due to the referral of the sales tax, individual income tax, and gas tax measures on the December 5, 1989, special election ballot. After the budget reductions had been approved by the Budget Section, the Governor ordered a transfer of \$5,967,192 from the budget stabilization fund to select agencies.

<sup>2</sup>The 1991 Legislative Assembly enacted legislation, which was effective for only the 1991-93 biennium, to allow the Governor to transfer any necessary funds from the budget stabilization fund to the general fund to offset a negative balance in the general fund. Pursuant to this legislation, the Governor transferred \$23,328,283 from the budget stabilization fund to the general fund. In addition, during the 1991-93 biennium, OMB reduced general fund appropriations by a total of \$4,305,000, which represents approximately .4 percent of total general fund appropriations for the biennium, as a result of projected lower general fund revenues.

<sup>3</sup>At the end of the 1995-97 biennium, \$17,116,290 would have been transferred to the budget stabilization fund; however, this amount was transferred to the Bank of North Dakota pursuant to Section 21 of 1997 House Bill No. 1015. The funds became part of the Bank of North Dakota's undivided profits.

<sup>4</sup>Interest is deposited in the general fund because the balance in the fund is at the maximum allowed under Section 54-27.2-01.

<sup>5</sup>The amount shown is based on the June 30, 2011, general fund balance estimate made at the close of the 2011 legislative session of \$660,231,525 and the 2011-13 biennium general fund appropriations of \$4,066,853,792. The maximum balance in the fund is limited to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly or \$386,351,110.

**LEGACY FUND HISTORY**

The legacy fund was created in 2010 when the voters of North Dakota approved a constitutional amendment--now Article X, Section 26, of the Constitution of North Dakota--to provide that 30 percent of oil and gas gross production and oil extraction taxes on oil and gas produced after June 30, 2011, be transferred to the legacy fund. The principal and earnings of the legacy fund may not be spent until after June 30, 2017, and any expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of

the Legislative Assembly. Not more than 15 percent of the principal of the legacy fund may be spent during a biennium. The Legislative Assembly may transfer funds from any source to the legacy fund and such transfers become part of the principal of the fund. The State Investment Board is responsible for investment of the principal of the legacy fund. Interest earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. Section 21-10-11 provides that the goal of investment for the legacy fund is principal preservation while maximizing total return.

**ANALYSIS OF THE LEGACY FUND FOR THE 2009-11 AND 2011-13 BIENNIUMS**

	2009-11 Biennium		2011-13 Biennium	
Beginning balance		\$0		\$0
Add estimated revenues				
Thirty percent of oil and gas gross production and extraction tax collections			\$612,468,299 <sup>1</sup>	
Excess revenues from strategic investment and improvement fund			0 <sup>2</sup>	
Investment earnings			6,090,000	
Total estimated revenues		0		618,558,299
Total available		\$0		\$618,558,299
Total estimated expenditures and transfers				0 <sup>3</sup>
Estimated ending balance		\$0		\$618,558,299

<sup>1</sup>Estimated revenues - The February 2011 revised revenue forecast for the 2011-13 biennium projects oil and gas gross production tax and oil extraction tax revenues to total \$2,041,560,997 for the 2011-13 biennium. Thirty percent of the projected revenues is \$612,468,299.

<sup>2</sup>House Bill No. 1451 (2011) provides that if the unobligated balance of the strategic investment and improvements fund exceeds \$300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund in the subsequent month must be deposited instead into the legacy fund.

<sup>3</sup>The principal and earnings of the legacy fund may not be spent until after June 30, 2017.

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