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## LEGACY FUND EARNINGS COMMITTEE

Wednesday, July 8, 2020  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Chet Pollert, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Chet Pollert, Josh Boschee, Jeff Delzer, Craig Headland, Keith Kempenich, Don Vigasaa; Senators Joan Heckaman, Ray Holmberg, Jerry Klein, Jessica Unruh

**Member absent:** Senator Rich Wardner

**Others present:** Representative Karen M. Rohr, Mandan, member of the Legislative Management

**It was moved by Representative Boschee, seconded by Senator Unruh, and carried on a voice vote that the minutes of the February 19-20, 2020, meeting be approved as distributed.**

### PROPOSED USES OF LEGACY FUND EARNINGS

Mr. Adam Mathiak, Senior Fiscal Analyst, Legislative Council, presented a memorandum entitled [Legacy Fund Summary](#) relating to the status and performance of the legacy fund. He said the earnings eligible to be transferred to the general fund at the end of the 2019-21 biennium totaled \$250 million, as of May 31, 2020. He said cumulative investment earnings, including unrealized gains and losses, for fiscal year 2020 through May 2020 totaled \$127.7 million reflecting a 1.99 percent rate of return. He said the cumulative investment earnings for fiscal year 2020 to date were highest in December 2019 with a gain of \$396 million and lowest in March 2020 with a loss of \$486 million.

Mr. Mathiak presented a memorandum entitled [Summary of Comments Submitted to the Legacy Fund Earnings Committee](#). He said the committee received comments from 118 individuals, including 36 at the November 2019 meeting and 82 at the February 2020 meeting. He said the memorandum does not include the ideas presented by committee members. He said the proposed uses were categorized with some comments reflected in multiple categories. He said the committee received 20 proposals related to K-12 education, 18 related to health and human services programs, 23 related to economic development, 80 related to infrastructure programs, 14 related to tax relief programs, and 27 miscellaneous proposals. He said many of the proposals for the infrastructure programs category related to school construction.

In response to a question from Representative Vigasaa, Mr. Mathiak said some comments were submitted after the meeting in February 2020. He said the comments were included in the minutes for the meeting because the comments were received before the minutes were published. He said any comments received after the minutes were published are included with the comments for this meeting.

### BILL DRAFT RELATING TO LEGACY FUND EARNINGS

Mr. Mathiak presented a bill draft [[21.0111.01000](#)] relating to the creation of a legacy earnings fund. He said the first section of the bill draft requires the State Investment Board to manage the investment of the newly created legacy earnings fund. He said the second section of the bill draft establishes the legacy earnings fund, requires the legacy fund earnings to be transferred to the fund, designates a reserve balance, and provides for a calculation to determine the amount available for appropriation or transfer. He said the reserve balance in the legacy fund would be invested in the same manner as the legacy fund and would be available only to cover shortfalls that occur when the legacy fund earnings transferred to the fund are less than the calculated amount available for appropriation or transfer. He said the calculation to determine the amount available for spending reflects the percent of market value method used by the common schools trust fund. He said the committee would need to identify the percentage and number of years used in the calculation before approving the bill draft. He said the bill draft would become effective

August 1, 2021, as drafted, with the first transfer of legacy fund earnings to the newly created fund at the end of the 2021-23 biennium.

In response to a question from Senator Holmberg, Mr. Mathiak said applying the percent of market value directly to the legacy fund earnings would require a constitutional change similar to the way the common schools trust fund was changed. He said changing the definition of legacy fund earnings in statute to implement the percent of market value as a distribution method would go beyond the scope of the constitutional provisions. He said the bill draft would allow the legacy fund earnings to be distributed using the percent of market value without a constitutional amendment.

Representative Headland said the committee should consider placing a limit on the size of the reserve balance in the legacy earnings fund.

Senator Holmberg said a constitutional amendment was needed to allow the Legislative Assembly to access reserve funds in the foundation aid stabilization fund. He said the Legislative Assembly could access the reserve balance in the legacy earnings fund as needed because the provisions would be statutory rather than constitutional.

Senator Unruh suggested the committee receive information on the authority of the Legislative Assembly to transfer the legacy fund earnings to a special fund.

Senator Klein suggested the committee receive information on the earnings and balance of the common schools trust fund since the percent of market value change was implemented.

In response to a question from Representative Delzer, Mr. Mathiak said the legacy fund earnings for the 2021-23 biennium would not be available to be spent until the 2023-25 biennium based on provisions in the bill draft, which could cause budget challenges for the 2021-23 biennium budget.

Chairman Pollert asked the Legislative Council staff to prepare a revised bill draft for the next meeting to include 5 years in the percent of market value calculation.

Mr. Mathiak presented a memorandum entitled [Legacy Earnings Fund - Sample Distribution Plan](#). He said the memorandum provides an example of statutory provisions for appropriating or transferring money from the legacy earnings fund based on the amount available under the calculation in the bill draft. He said the example includes transfers to state funds using a percentage of the funding available with limits to certain funds based on a biennial dollar amount or a certain fund balance.

Representative Delzer suggested continuing the Legacy Fund Earnings Committee for the 2021-22 interim.

Chairman Pollert asked the Legislative Council staff to prepare a bill draft for the next meeting to continue the Legacy Fund Earnings Committee for the 2021-22 interim.

Representative Boschee suggested the committee receive information regarding the estimated amount available from the legacy earnings fund under the percent of market value calculation based on various percentages.

Representative Headland suggested the committee receive an update from the Retirement and Investment Office at the next meeting regarding the status of legacy fund earnings and the potential impact of investment losses.

Mr. Mathiak distributed comments ([appendix](#)) received in advance of the meeting from the Nurse-Family Partnership regarding a proposed use of the legacy fund earnings.

No further business appearing, Chairman Pollert adjourned the meeting at 11:20 a.m.

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Adam Mathiak  
Senior Fiscal Analyst

ATTACH:1