

LEGACY FUND CLARIFICATIONS

This memorandum identifies potential constitutional provisions relating to the legacy fund that the Legislative Assembly may wish to clarify in statute.

In 2009 the Legislative Assembly passed House Concurrent Resolution No. 3054, which placed the question of creating the legacy fund on the 2010 general election ballot. The voters of the state approved the measure, which created Article X, Section 26, of the Constitution of North Dakota. That section provides:

1. Thirty percent of total revenue derived from taxes on oil and gas production or extraction must be transferred by the state treasurer to a special fund in the state treasury known as the legacy fund. The legislative assembly may transfer funds from any source into the legacy fund and such transfers become part of the principal of the legacy fund.
2. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and an 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 fifteen percent of the principal of the legacy fund may be expended during a biennium.
3. Statutory programs, in existence as a result of legislation enacted through 2009, providing for impact grants, direct revenue allocations to political subdivisions, and deposits in the oil and gas research fund must remain in effect but the legislative assembly may adjust statutory allocations for those purposes.

The state investment board shall invest the principal of the North Dakota legacy fund. The state treasurer shall transfer earnings of the North Dakota legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium.

Subsection 2 prohibits the expenditure of the principal and earnings of the legacy fund until after June 30, 2017, and an 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. **What is the definition of principal of the legacy fund?**

Proposed language: "Principal" means 30 percent of total revenue derived from taxes on oil and gas production or extraction deposited in the fund and any funds transferred by the Legislative Assembly into the fund from any source.

Subsection 2 further prohibits spending more than 15 percent of the principal of the legacy fund during a biennium. **How is the 15 percent limit determined for a biennium?**

Proposed language: The Legislative Assembly may spend up to 15 percent of the principal balance of the legacy fund each biennium, subject to approval by at least two-thirds of the members elected to each house of the Legislative Assembly. The 15 percent limit must be determined by the Office of Management and Budget by December 1 of each even-numbered year and at other times as requested by the Legislative Management.

The State Treasurer shall transfer earnings of the North Dakota legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium.

1. **What is the definition of earnings?** The 2013 Legislative Assembly approved House Bill No. 1167 defining earnings of the legacy fund as net income in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. **Proposed additional language:** The earnings of the legacy fund accruing prior to July 1, 2017, must be retained in the fund as earnings until appropriated or transferred from the fund by the Legislative Assembly.
2. **When is the transfer to the general fund made?** **Proposed language:** The State Treasurer shall transfer the earnings of the legacy fund to the general fund at the end of each biennium. For purposes of this section, "at the end of each biennium" means after cancellation of unexpended appropriations under North Dakota Century Code Section 54-44.1-11.
3. **How should the funds transferred to the general fund be used?** Unless the Legislative Assembly determines otherwise, the earnings transferred to the general fund will be available for general purposes as appropriated by the Legislative Assembly. **Proposed language:** Any legacy fund earnings transferred to the general fund must be immediately transferred by the State Treasurer to (an existing or a new special fund).