



North Dakota Legislative Council

Prepared for Representative Bosch
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LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD - STATUS REPORT TO THE BUDGET SECTION JUNE 29, 2023

ADVISORY BOARD OVERVIEW

The Legacy and Budget Stabilization Fund Advisory Board was created by Senate Bill No. 2302 (2011), and is codified as North Dakota Century Code Section 21-10-11. The advisory board develops recommendations for the investment of funds in the legacy fund and the budget stabilization fund, which are presented to the State Investment Board (SIB). The advisory board reports to the Budget Section at least semiannually.

BUDGET STABILIZATION FUND

Asset Allocation Plan and Investment Returns

As of April 2023, the asset allocation of the fund is 99.5 percent short-term fixed income and 0.5 percent in cash and equivalents. The schedule below provides information on budget stabilization fund investment returns as reported by the Retirement and Investment Office (RIO). More detailed information regarding the balance of the fund by asset class and the investment returns, as reported by RIO, is attached as [Appendix A](#).

	Fiscal Year through April 2023			5 Years Ended June 30, 2022		
	Actual	Benchmark	Variance	Actual	Benchmark	Variance
Unaudited investment returns, net of fees	2.73%	1.26%	1.47%	1.05%	1.07%	(0.02%)

Balance and Transfers

Pursuant to Chapter 54-27.2, 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 15 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The schedule below provides information on the balance of the budget stabilization fund and transfers between the budget stabilization fund and the general fund as reported by RIO.

	Fund Balance - Market Value	Transfer to the General Fund	Transfer from the General Fund
Fiscal Year 2021 - June 30, 2021 ¹	\$749,374,748	\$5,575,109	N/A
Fiscal Year 2022 - June 30, 2022 ²	\$717,359,225	\$0	N/A
Fiscal Year 2023 - June 30, 2023 (estimated) ³	\$914,429,031	\$0	\$194,429,031

¹For June 30, 2021, the 15 percent statutory maximum for the balance of the budget stabilization fund was \$748,943,600 based on total 2021-23 general fund appropriations of \$4,992,957,330 as approved by the 2021 Legislative Assembly during the regular legislative session. The June 30, 2021, balance exceeded the 15 percent statutory maximum because the transfer to the general fund was based on the May 31, 2021, balance of \$754,518,709 and did not include earnings or changes in the value of investments during June 2021.

²For June 30, 2022, the statutory maximum balance was \$751,568,600 because a contingent general fund appropriation of \$17,500,000 became effective on July 1, 2021, which increased the 2021-23 general fund appropriations to \$5,010,457,330. As a result, the maximum balance of the fund increased by \$2,625,000, from \$748,943,600 to \$751,568,600.

³For June 30, 2023, the statutory maximum balance is \$914,429,031 based on general fund appropriations for the 2023-25 biennium of \$6,096,193,537 approved by the 2023 Legislative Assembly.

LEGACY FUND

Asset Allocation Plan and Investment Returns

When the legacy fund was created in 2011, the Legacy and Budget Stabilization Fund Advisory Board recommended the SIB invest the legacy fund based on an asset allocation plan of 100 percent short-term fixed income investments. In April 2013, the advisory board recommended a new asset allocation plan to add domestic and foreign equities, real estate, real assets, and other fixed income investments to the portfolio for the legacy fund, which was approved by the SIB and fully implemented as of January 2015.

During the 2015-17 biennium, the Legacy and Budget Stabilization Fund Advisory Board authorized the SIB to transfer the investments in the Bank of North Dakota's CD match program from the budget stabilization fund to the legacy fund after the budget stabilization fund was liquidated during the 2015-17 biennium due to a budget shortfall. During the 2019-21 biennium, the advisory board approved an increase in the amount available from the legacy fund for investment in the CD match program to provide up to \$400 million. Currently, the SIB has \$44.6 million of the legacy fund invested in the CD match program.

The Legislative Assembly approved House Bill Nos. 1425 and 1512 (2021) directing the advisory board to develop an asset allocation plan for the legacy fund targeting 10 percent of fixed income and 10 percent of equity investments for in-state investment programs. In February 2021, the advisory board changed the asset allocation plan for the legacy fund authorizing the SIB to target 3 percent (with a range of 0 to 6 percent) of the legacy fund investments in private capital markets for an in-state investment program. The State Investment Board selected 50 South Capital to manage the in-state investment "growth fund."

In February 2022, RIO contracted with RVK, Inc., to study the legacy fund asset allocation plan and in-state equity investments. The advisory board updated the investment policy in October 2022 to reflect a target allocation of 20 percent for in-state investments. In June 2023, the advisory board revised the investment policy to reflect additional changes to the asset allocation of the investments of the legacy fund based on recommendations from RVK, Inc., including changes approved during the 2023 legislative session, decreasing the allocations to core fixed income investments, treasury inflation-protected securities, domestic equities, and international equities while increasing the allocations to the Bank of North Dakota's CD match program, private credit, high yield fixed income, private equity, and in-state private equity.

The schedule below provides information on legacy fund investment returns as reported by RIO. More detailed information regarding the investment returns is attached as [Appendix B](#).

	Fiscal Year through April 2023			5 Years Ended June 30, 2022		
	Actual	Benchmark	Variance	Actual	Benchmark	Variance
Unaudited investment returns, net of fees	5.78%	5.17%	0.61%	5.35%	4.97%	0.38%

Revenue Deposits

The schedule below provides information on the oil and tax revenues and transfers from the strategic investment and improvements fund deposited in the legacy fund since the 2011-13 biennium.

	Oil and Gas Tax Revenue Deposits	Transfers from the Strategic Investment and Improvements Fund ¹	Total Legacy Fund Deposits
2011-13 biennium	\$1,132,412,536	\$146,001,725	\$1,278,414,261
2013-15 biennium	1,679,854,750	201,879,330	1,881,734,080
2015-17 biennium	815,796,247		815,796,247
2017-19 biennium	1,248,613,201		1,248,613,201
2019-21 biennium	965,917,312		965,917,312
2021-23 biennium (through May 2023)	1,456,726,429		1,456,726,429
Total	\$7,299,320,475	\$347,881,055	\$7,647,201,530

¹Pursuant to Section 15-08.1-08, if the unobligated balance of the strategic investment and improvements fund exceeded \$300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund was deposited instead into the legacy fund. Beginning July 2015, House Bill Nos. 1176 and 1377 (2015) removed the provisions requiring the additional transfers.

Balance and Transfers

The schedule below provides information on the balance of the legacy fund and transfers to the general fund as reported by RIO. Cumulative net income of the legacy fund totaled \$2.03 billion from inception through September 30, 2022. Pursuant to a November 2016 Attorney General's opinion, all earnings accruing through the end of the 2015-17 biennium (\$436,839,672) became part of the principal of the legacy fund. Realized earnings after June 30, 2017, as defined in Section 21-10-12, are transferred to the general fund at the end of each biennium.

House Bill No. 1380 (2021) established a percent of market value (POMV) calculation to determine the amount of legacy fund earnings available for spending each biennium and created a legacy earnings fund. As provided by law, any realized earnings of the legacy fund transferred to the general fund would be immediately transferred to a legacy earnings fund, from which the Legislative Assembly would appropriate or transfer the earnings to various purposes with the amount of spending based on the POMV. During the 2021-22 interim, the Legacy Fund Earnings Committee studied the potential uses of legacy fund earnings.

In Senate Bill No. 2330 (2023), the Legislative Assembly applied the POMV to the definition of legacy fund earnings by changing the statutory definition from realized earnings to an amount based on 7 percent of the 5-year average balance of the legacy fund. House Bill No. 1379 (2023) changed the amounts designated from the legacy earnings fund for bond payments, tax relief, and other legislative purposes. House Concurrent Resolution No. 3033 (2023) provides a constitutional amendment to clarify the process for biennial distributions from the legacy fund and to decrease the amount of principal that can be spent from the fund.

	Fund Balance - Market Value	Total Net Investment Earnings	Transfer to the General Fund
2017-19 biennium - June 30, 2019 ¹	\$6,122,227,871	\$669,413,658	\$455,263,216
2019-21 biennium - June 30, 2021 ¹	\$8,115,202,181	\$1,887,514,683	\$871,687,384
2021-23 biennium - Estimated for May 2023 ²	\$9,163,711,047	(\$297,366,508)	\$486,568,637

¹Due to the timing of investment reports, the earnings available for transfer to the general fund are based on the realized earnings through May of odd-numbered years. For the 2017-19 biennium, this resulted in 23 months of earnings. Subsequent transfers will consist of 24 months of earnings from June 1 prior to the beginning of the biennium through May 31 of the 2nd year of the biennium. The 2019 legislative revenue forecast reflected an estimated transfer of \$300 million of earnings at the end of the 2017-19 biennium. The 2021 legislative revenue forecast reflects an estimated transfer of \$736 million at the end of the 2019-21 biennium. Senate Bill No. 2362 (2019) provides for a contingent transfer of \$64.37 million from the general fund to the common schools trust fund if the actual legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium exceed \$164.37 million.

²The amount shown for the transfer to the general fund for the 2021-23 biennium reflects the POMV calculation for the 2021-23 biennium earnings of the legacy fund.

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