

ANALYSIS OF STATE TRUST FUNDS FOR THE 2019-21 AND 2021-23 BIENNIUMS



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ANALYSIS OF THE ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$22,139,680		\$13,850,616
Add revenues ¹				
Fees, forfeitures, transfers, and recoveries penalties	\$7,345,726		\$2,450,000	
Oil and gas tax collections (2019 HB 1014) ^{2,3}	11,504,524		13,430,000	
Federal funds ⁴			22,500,000	
Total revenues		18,850,250		38,380,000
Total available		\$40,989,930		\$52,230,616
Less expenditures and transfers				
Reclamation of well sites placed into service after July 31, 1983 (2019 SB 2123) ⁵	\$302,764		\$6,500,000	
Reclamation of well sites placed into service on or before July 31, 1983 (2017 HB 1347)	850,309		500,000	
Orphaned well plugging and reclamation costs ⁶	20,652,385		22,500,000	
Brine pond and soil remediation studies (2017 HB 1347)	315,573		0	
Transfer to the environmental quality restoration fund ⁷	0		400,000	
Pipeline restoration and reclamation oversight program - Agriculture Commissioner (2019 SB 2009; 2021 HB 1009) ⁸	81,771		200,000	
Oil database information technology project (2019 HB 1014)	4,925,829		74,171	
Miscellaneous ⁹	10,683		13,000	
Total expenditures and transfers		27,139,314		30,187,171
Ending balance		<u>\$13,850,616</u>		<u>\$22,043,445</u>

¹Revenues to the fund include:

- Fees collected by the Oil and Gas Division of the Industrial Commission for permits or other services;
- Funds received from the forfeiture of drilling and reclamation bonds;
- Funds received from any federal agency or from donations related to well plugging and site reclamation;
- Transfers or grant awards from the oil and gas impact fund;
- Oil and gas tax collections; and
- Funds recovered from the sale of confiscated equipment and oil and from certain civil penalties.

²House Bill No. 1014 (2019) decreases the allocation limit related to the fund balance by \$50 million, from \$100 million to \$50 million.

³Estimated revenues - The estimated allocations for the 2021-23 biennium are based on actual oil and gas tax revenue allocations through April 2022 and the 2021 legislative revenue forecast for the remainder of the 2021-23 biennium.

⁴The amount shown for the 2021-23 biennium reflects funding anticipated to be received by the Industrial Commission from the federal Infrastructure Investment and Jobs Act.

⁵Senate Bill No. 2123 (2019) clarifies the fund may be used for the reclamation of saltwater handling facility sites and treating plant sites.

⁶The amount shown for the 2019-21 biennium reflects costs for plugging and reclaiming orphaned oil wells which are in addition to the federal coronavirus relief funding authorized by the Emergency Commission and Budget Section during the 2019-20 interim. The amount shown for the 2021-23 biennium reflects the estimated costs for plugging and reclaiming orphaned oil wells pursuant to the requirements under the federal Infrastructure Investment and Jobs Act.

⁷For the 2019-21 biennium, the Department of Environmental Quality did not request any transfers. For the 2021-23 biennium to date through March 31, 2022, the Department of Environmental Quality has not requested any transfers. As amended by Senate Bill No. 2190 (2015), North Dakota Century Code Section 38-08-04.5 allows for transfers from the abandoned oil and gas well plugging and site reclamation fund with the requirement that any transfers into the environmental quality restoration fund will be returned by the State Department of Health to the abandoned oil and gas well plugging and site reclamation fund.

⁸The Legislative Assembly appropriated \$200,000 in Senate Bill No. 2009 (2019). House Bill No. 1009 (2021) includes an appropriation of \$200,000 from the fund for the program.

⁹Miscellaneous expenditures include credit card merchant fees and audit fees.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$13,208,180. The estimated balance increased by \$8,835,265 primarily related to additional bond forfeitures in the 2019-21 biennium, less reclamation work in the 2019-21 biennium, and an increase in oil and gas tax revenue collections in the 2021-23 biennium.

FUND HISTORY

The fund was established in 1983 under Section 38-08-04.5. The purpose of the fund is to defray the costs of plugging or replugging oil wells, the reclamation of well sites, and all other related activities for wells or pipelines. The money in the fund may be spent, pursuant to a continuing appropriation, for contracting for the plugging of abandoned wells; contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads; paying mineral owners their royalty share of confiscated oil; and paying any contract-related expenses. House Bill No. 1358 (2015) expanded the use of the fund allowing up to \$1.5 million per biennium to be spent on the reclamation of well sites placed into service on or before July 31, 1983, and demonstration projects related to reclamation. House Bill No. 1347 (2017), increased the amount available for the expanded uses to \$5 million per biennium. The Industrial Commission is to report to the Budget Section each biennium on the expenditures of the fund and the fund balance.

The Legislative Assembly, in House Bill No. 1333 (2013), established an allocation of 4 percent, up to \$5 million per fiscal year, from 1 percent of the 5 percent oil and gas gross production tax to the fund and limited the allocation based on the fund balance. House Bill No. 1032 (2015) increased the oil and gas tax allocation to the fund by \$2.5 million per fiscal year, from \$5 million to \$7.5 million, and increased the allocation limit based on the fund balance by \$25 million, from \$75 million to \$100 million. In Senate Bill No. 2013 (2017), the Legislative Assembly decreased the oil and gas tax allocations to the fund by \$3.5 million per fiscal year, from \$7.5 million to \$4 million; however, the decrease was effective only for the 2017-19 biennium. House Bill No. 1014 (2019) decreased the allocation limit based on the fund balance by \$50 million, from \$100 million to \$50 million.

**ANALYSIS OF THE ATTORNEY GENERAL REFUND FUND
FOR THE 2019-21 AND 2021-23 BIENNIUMS**

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$11,446,254		\$13,196,439
Add revenues				
Refunds of consumer protection and antitrust expenditures, attorney's fees, and civil penalties ¹	\$4,062,943		\$2,500,000	
Cash deposit bonds				
Tribal gaming, licensing, and investigation fees ²	352,694		0	
Background checks	28,070		30,000	
Interest on investments ^{3,4}	11,063		40,000	
Lawsuit proceeds - Salary equity increases ⁴	2,577,624			
Lawsuit proceeds - Opioid addiction prevention and treatment program ⁵	892,400		1,107,600	
Total revenues		7,924,794		3,677,600
Total available		\$19,371,048		\$16,874,039
Less expenditures and transfers authorized in North Dakota Century Code Section 54-12-18				
Refunds to specifically named consumers (Section 54-12-18(1)) ⁶				
Claims against cash deposit bonds (Section 54-12-18(2))				
Refund of cash deposit bond balance (Section 54-12-18(3))				
Consumer Protection and Antitrust Division expenditures (Section 54-12-18(4))	\$2,572,069		\$2,541,092	
Tribal gaming background investigations (Section 54-12-18(5)) ²	143,152		0	
Tribal gaming licensing expenditures (Section 54-12-18(5)) ²	100,000		0	
Tribal gaming enforcement expenditures (Section 54-12-18(5)) ²	903,962		0	
Less other expenditures and transfers ⁷				
Bureau of Criminal Investigation (BCI) salaries and operating expenses ⁸	347,995		974,016	
State Crime Laboratory operating expenditures ⁸	199,884		360,554	
Information technology contractual program maintenance	906,398		902,786	
Information technology operating expenditures	90,673		100,500	
Criminal justice information sharing system improvements (2019 SB 2003; 2021 HB 1003) ^{8,9}	108,412		411,889	
Operating expenses of the Attorney General's office ⁸			610,507	
Automated fingerprint identification system replacement project (2019 SB 2003) ¹⁰	47,872		108,128	
Attorney salary equity increases (2019 SB 2003) ²	354,192		370,682	
Medicaid Fraud Control Unit (MFCU) and BCI salary equity increases (2021 HB 1003) ⁴			1,230,125	
State Crime Laboratory salary equity increases (2021 HB 1506) ¹¹			503,627	
Criminal history improvement system (2019 SB 2003; 2021 HB 1003) ¹²	400,000		400,000	
Opioid addiction prevention and treatment program - Transfer to Department of Human Services (DHS) (2021 HB 1003) ⁴			2,000,000	
Total expenditures and transfers		6,174,609		10,513,906
Ending balance ¹³		\$13,196,439		\$6,360,133
Restricted fund income				
Reserve relating to attorney salary increases (2019 SB 2003) ³		861,369		490,687
Reserve relating to MFCU and BCI salary equity increases (2021 HB 1003) ⁴				1,347,499

Interest on investments ^{3,4}	11,063	40,000
Balance - Unobligated	<u>\$12,324,007</u>	<u>\$4,481,947</u>

¹The Attorney General has indicated that it is not possible to separately identify refunds, attorney's fees, and civil penalties received, as a court judgement often includes a lump sum amount awarded for the payment of attorney's fees, investigation costs, or payment in lieu of civil penalties.

²House Bill No. 1212 (2021) created Section 53-06.1-11.2 and provides all gaming taxes, monetary fines, and interest and penalties are to be deposited in the newly created charitable gaming operating fund and provides the administrative and operating costs of charitable gaming be paid from the fund. Section 13 of House Bill No. 1003 (2021) further amended this section regarding allocations of gaming tax revenues. Adjustments have been made to the Attorney General's budget to remove funding for gaming-related expenditures from the Attorney General refund fund beginning in the 2021-23 biennium.

³In April 2019, the Consumer Protection Division of the Attorney General's office received a \$1,215,561 settlement for a Wells Fargo lawsuit related to Wells Fargo's automobile gap insurance, the company opening accounts without consumers' knowledge, and its mortgage interest rate extension fees. The funding was deposited in the Attorney General refund fund.

Senate Bill No. 2003 (2019) includes an appropriation of \$425,000, of which \$25,000 relates to anticipated interest and earnings of the settlement amount, of this funding to the Attorney General for the 2019-21 biennium. In Section 14 of the bill, the Legislative Assembly provided legislative intent that the Attorney General use up to \$425,000 from the April 2019 settlement for providing salary equity increases to attorney positions in the Attorney General's office for the 2019-21 biennium. Further intent was provided that the remaining settlement proceeds and investment earnings on the remaining proceeds be retained in the Attorney General refund fund and be used for the cost to continue the salary equity increases provided in the 2019-21 biennium during the 2021-23 and 2023-25 bienniums, subject to legislative appropriations. Section 15 of the bill allows the Attorney General to invest up to \$1,215,561 of the settlement proceeds under the supervision of the State Investment Board for the period beginning July 1, 2019, and ending June 30, 2025.

Revenue available for attorney salary equity increases during the 2019-21 biennium totaled \$1,263,086, of which \$1,215,561 was from lawsuit settlement proceeds and \$11,063 was from interest earned on lawsuit proceed investments.

In September 2019, the Attorney General invested \$1,100,000 with the State Investment Board. The Attorney General spent \$354,192 of the \$425,000 appropriation to provide 29 FTE attorney positions salary equity increases during the 2019-21 biennium, resulting in \$861,369, excluding interest earned on investments, of the total \$1,215,561 of lawsuit proceeds remaining in the Attorney General refund fund available for the cost to continue attorney salary equity increases during the 2021-23 and 2023-25 bienniums. The Attorney General anticipates spending \$370,682 to continue attorney salary equity increases during the 2021-23 biennium, resulting in \$490,687 remaining for the 2023-25 biennium.

⁴In January 2021, the Consumer Protection Division of the Attorney General's office received a \$1,160,896 lawsuit settlement from Apple, Inc., related to Apple's 2016 decision to adjust the speed of consumer iPhones to address unexpected shutdowns in some devices and Apple's concealment of the issue, which led to a software update in December 2016 that reduced iPhone performance. The funding was deposited in the Attorney General refund fund.

In April 2021, the Consumer Protection Division of the Attorney General's office received a \$1,416,728 lawsuit settlement from Boston Scientific Corporation related to a defective surgical mesh medical device that has caused complications in some women who used the device. The funding was deposited in the Attorney General refund fund.

House Bill No. 1003 (2021) includes an appropriation of \$1,249,083 of this funding to the Attorney General for providing salary equity increases during the 2021-23 biennium for 55 FTE BCI positions and 2 FTE MFCU positions. Section 12 of the bill allows the Attorney General to invest up to \$2,577,624 of funding in the Attorney General refund fund, including \$1,160,896 of January 2021 settlement proceeds and \$1,416,728 of April 2021 settlement proceeds, under the supervision of the State Investment Board for the period beginning July 1, 2021, and ending June 30, 2025. Section 12 of the bill includes legislative intent that \$2,577,624 in the Attorney General refund fund and any investment earnings on the funding be retained in the Attorney General refund fund for the purpose of providing the salary equity increases provided for in Sections 1 and 11 of the bill and for the cost to continue the salary equity increases during the 2023-25 biennium, subject to legislative appropriations.

In August 2021, the Attorney General invested \$2,185,895 with the State Investment Board. Through March 2022, the Attorney General has provided \$449,425 of salary equity raises to 48 FTE BCI positions and 2 FTE MFCU positions. The Attorney General anticipates spending \$1,230,125 of the \$1,249,083 appropriation

during the 2021-23 biennium resulting in \$1,347,499, excluding interest earned on investments, of the total \$2,577,624 of lawsuit proceeds remaining in the Attorney General refund fund available for the cost to continue attorney salary equity increases during the 2023-25 biennium.

⁵In March 2021, the Consumer Protection Division of the Attorney General's office received a \$892,400 lawsuit settlement from McKinsey and Company for an opioid-related lawsuit and anticipates up to \$1,107,600 of additional proceeds may become available during the 2021-23 biennium, resulting in a total of \$2,000,000 from the settlement. Section 5 of House Bill No. 1003 (2021) provides for a \$2,000,000 transfer from opioid-related lawsuit settlement proceeds deposited in the Attorney General refund fund to DHS and appropriates the funding to DHS for an opioid addiction prevention and treatment program during the 2021-23 biennium. The department is required to consult with the Attorney General on the use of funding for the program. The Attorney General is required to notify the Legislative Council and Office of Management and Budget of any lawsuit settlement proceeds that become available for transfer to DHS for this program.

⁶The Attorney General has indicated that a court rarely awards refunds to specific consumers, instead awarding refunds to organizations such as the Housing Finance Agency.

⁷The other expenditures are not specifically authorized in Section 54-12-18 but are appropriated as part of the Attorney General's biennial appropriation.

⁸In House Bill No. 1003 (2021), the Legislative Assembly removed \$2.12 million from the general fund in the Attorney General's budget for salaries and operating expenses in various line items. The bill restored \$1.2 million of these items from the Attorney General refund fund, of which \$283,227 is for salaries and wages of a BCI agent and a BCI administrative assistant, \$34,377 is for operating expenses of the State Crime Laboratory, \$271,889 is for operating expenses of the criminal justice information sharing system, and \$610,507 is for other operating expenses of the Attorney General's office, primarily related to information technology-related expenses. See footnote 9 below for additional information.

⁹In Senate Bill No. 2003 (2019), the Legislative Assembly appropriated ongoing funding of \$140,000 from the Attorney General refund fund to the Attorney General for criminal justice information sharing improvements during the 2019-21 biennium. The Attorney General spent \$108,412 during the 2019-21 biennium. In House Bill No. 1003 (2021) \$271,889 was authorized for ongoing operating expenses of the criminal justice information sharing system, resulting in a total of \$411,889 authorized for the system during the 2021-23 biennium.

¹⁰In Senate Bill No. 2003 (2019), the Legislative Assembly appropriated \$316,000, of which \$158,000 was from federal funds and \$158,000 was from the Attorney General refund fund, for the automated finger identification system replacement project, also known as the automated biometric identification system replacement project. The Attorney General spent \$47,872 from the Attorney General refund fund on the project during the 2019-21 biennium, resulting in \$108,128 remaining. The Attorney General received authority from the Capital Construction Carryover Committee, pursuant to Section 54-44.1-11, to continue this funding into the 2021-23 biennium.

¹¹During the November 2021 special legislative session, in House Bill No. 1506, the Legislative Assembly appropriated \$537,297 to the Attorney General from the Attorney General refund fund for salary equity increases for 25 FTE State Crime Laboratory positions. In December 2021, the Attorney General invested \$508,578 from the Attorney General refund fund with the State Investment Board. The Attorney General anticipates spending \$503,627 of the appropriation during the 2021-23 biennium.

¹²The criminal history repository replacement project began in the 2011-13 biennium to rewrite the existing criminal history repository system. The criminal history repository replacement project consists of various smaller projects. The Attorney General budgeted \$450,000 on the project during the 2011-13 biennium, \$2,300,000 during the 2013-15 biennium, and \$970,000 during the 2015-17 biennium. The Legislative Assembly appropriated \$400,000 for the project in each of the 2019-21 and 2021-23 bienniums, resulting in a total of \$4,520,000 approved for the project, all from the Attorney General refund fund.

Of the \$4,120,000 approved for the project since the 2011-13 biennium, actual expenditures through the 2019-21 biennium totaled \$3,800,595. The project has been substantially completed, although upgrades to the criminal history improvement system are periodically requested. The Attorney General anticipates spending the entire \$400,000 appropriated for the 2021-23 biennium.

¹³Section 54-12-18 provides at the end of each biennium, any balance in the Attorney General refund fund in excess of the amount necessary to fulfill the requirements of the fund must be deposited in the general fund. Section 18 of House Bill No. 1003 (2021) authorized the Attorney General to retain the June 30, 2021, balance in the Attorney General refund fund rather than transferring the balance to the general fund. As a result, no funding from the Attorney General refund fund was transferred to the general fund at the end of the 2019-21 biennium, allowing the Attorney General to use the remaining balance in the Attorney General refund fund during the 2021-23 biennium. See the **FUND HISTORY** section for additional information on exemptions granted to the Attorney General.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$6,248,430. The increase of \$111,709 in the estimated balance of \$6,360,139 is due to a slight increase in consumer protection refund revenue compared to estimates and minor operating expense adjustments.

FUND HISTORY

Section 54-12-18, created by House Bill No. 1141 (1989), establishes the Attorney General refund fund. The section was amended by the 1991, 1993, 1999, and 2001 Legislative Assemblies and currently provides when the Attorney General's Consumer Protection Division recovers funding for cases involving the violation of consumer fraud laws, the Attorney General is required to deposit the funding in the Attorney General refund fund. Funding recovered by the Consumer Protection Division for the following costs must also be deposited in the fund:

1. Refunds related to Consumer Protection Division expenditures, attorney's fees, and civil penalties regarding consumer protection or antitrust matters;
2. Cash deposit bonds paid by applicants for a transient merchant's license when surety bonds are not provided; and
3. Funds and fees collected by the gaming section for licensing tribal gaming and the investigation of gaming employees, applicants, organizations, manufacturers, distributors, or tribes involved in state or tribal gaming.

Funding in the Attorney General refund fund is appropriated to the Attorney General on a continuing basis for the following purposes:

1. Provide refunds from funds recovered by the Consumer Protection Division to specifically named consumers;
2. Pay valid claims against cash deposit bonds posted by transient merchant licensees;
3. Refund the balance of any cash deposit bond remaining after the payment of valid claims. Refunds will be issued 2 years after the expiration of the transient merchant's license;
4. Pay expenditures, attorney's fees, and salaries incurred in the operation of the Consumer Protection Division; and
5. Pay the actual costs of background investigations, licensing, and enforcement of gaming in the state or pursuant to Indian gaming compacts.

At the end of each biennium, any money in the fund in excess of the amounts required for numbers 1, 2, 3, and 5 above must be deposited in the general fund. The Attorney General and Director of the Office of Management and Budget are required to establish accounting procedures for the Attorney General refund fund.

Since the 2001 legislative session, each Legislative Assembly has provided the Attorney General with an exemption to allow unexpended funds from the Attorney General refund fund to continue to be spent in each subsequent biennium. The following table provides information regarding these exemptions:

Biennium	Bill No.	Section	Exemption Limitation ¹
2001-03	1003	8	\$100,000
2003-05	2003	4	No limitation specified
2005-07	1003	11	No limitation specified
2007-09	2003	15	No limitation specified
2009-11	1003	13	No limitation specified
2011-13	2003	9	No limitation specified
2013-15	1003	3	No limitation specified
2015-17	2003	4	No limitation specified
2017-19	1003	16	No limitation specified
2019-21	2003	3	No limitation specified
2021-23	1003	18	No limitation specified

¹Section 8 of House Bill No. 1003 (2001) allowed the Attorney General to continue up to \$100,000 of unexpended funds from the Attorney General refund fund to be spent during the 2001-03 biennium while any remaining amount in excess of \$100,000 was required to be returned to the general fund at the end of the 1999-2001 biennium. Exemptions granted in subsequent bienniums have not been limited to a specific dollar amount, allowing the Attorney General to continue using the full balance of the Attorney General refund fund each biennium.

ANALYSIS OF THE BEGINNING FARMER REVOLVING LOAN FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium ¹		2021-23 Biennium ¹	
	Actual		Estimated	
Beginning cash balance		\$5,944,481		\$2,431,860
Add revenues				
Transfers of Bank of North Dakota profits (2019 HB 1014; 2021 SB 2014)	\$6,000,000		\$8,000,000	
Transfers from partnership in assisting community expansion (PACE) funds ²	1,500,000		0	
Recoveries from loans previously written-off	22,517		0	
Investment interest	20,693		20,000	
Total revenues		7,543,210		8,020,000
Total available		\$13,487,691		\$10,451,860
Less expenditures and transfers				
Interest rate buydowns	\$7,733,881		\$8,000,000	
Transfers to PACE funds ²	3,310,000		0	
Transfers to the value-added agriculture equity loan program ³	0		0	
Public Service Commission rail rate complaint case (2019 SB 2008; 2021 HB 1008) ⁴	0		0	
Intermodal container transportation (2019 HB 1018) ⁵	0		0	
Administrative expenses including audit fees	11,950		13,000	
Total expenditures and transfers		11,055,831		8,013,000
Ending cash balance		\$2,431,860		\$2,438,860

¹The beginning and ending cash balances do not include the value of the outstanding loans because the loans are reflected on the Bank of North Dakota's balance sheet.

²North Dakota Century Code Sections 6-09.13-04 and 6-09-15.5 authorize the Bank of North Dakota to transfer any unobligated funds that have been appropriated for interest rate buydowns between the beginning farmer revolving loan fund, the Ag PACE fund and other PACE funds. The Bank transferred \$1,500,000 from PACE funds to the beginning farmer revolving loan fund and transferred \$3,310,000 from the beginning farmer revolving loan fund to PACE funds for the 2019-21 biennium. No other transfers are anticipated for the 2021-23 biennium.

³Section 6-09-15.5 authorizes the Bank of North Dakota to transfer up to \$1 million per biennium of unobligated funds from the beginning farmer revolving loan fund to the value-added agriculture equity loan program. No transfers were made for the 2019-21 biennium, and no transfers are anticipated for the 2021-23 biennium.

⁴Senate Bill No. 1009 (2019) and Senate Bill No. 1009 (2021) authorize transfers of up to \$900,000 from the beginning farmer revolving loan fund to the Public Service Commission to pay for costs associated with a rail rate complaint case. Any amounts spent by the Public Service Commission must be reimbursed to the beginning farmer revolving loan fund using the amounts available from damages or proceeds received, net of legal fees, from a successful outcome of a rail rate complaint case. No transfers were made for the 2019-21 biennium, and no transfers are anticipated for the 2021-23 biennium.

⁵House Bill No. 1018 (2019) provides up to \$1.3 million from the beginning farmer revolving loan fund to the Department of Commerce to pay intermodal container transportation shipping fees if the containers are unable to be shipped resulting in fees to transport the containers to new locations. No transfers were made during the 2019-21 biennium.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$5,183,581. The estimated balance decreased by \$2,744,721 primarily related to an increase in the interest rate buydowns and transfers to PACE funds during the 2019-21 biennium.

FUND HISTORY

The beginning farmer revolving loan fund was established in Senate Bill No. 2220 (1983) and is maintained to provide interest rate buydowns on loans to beginning farmers for the first purchase of farm real estate or chattels. The beginning farmer revolving loan fund is administered by the Bank of North Dakota pursuant to Section 6-09-15.5.

ANALYSIS OF THE STATE BONDING FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$3,714,292 ¹	
Add revenues				
Investment income	\$248,654		(\$219,643)	
State bonding fund claims collections	0		50,598	
Game and fish bonds	2,430		1,240	
Total revenues		251,084		(167,805)
Total available		\$3,965,376		\$3,747,893
Less expenditures and transfers				
Claim liabilities/payments/write-offs	\$41,802		\$14,985	
Investment expense	8,235		7,162	
Administration	(359)		0	
Total expenditures and transfers		49,678		22,147
Ending balance		<u>\$3,915,698</u>		<u>\$3,725,746</u>

¹The 2019-21 biennium beginning balance has been adjusted from the October 2020 trust fund analysis to correct an error in the prior balance reported by the Insurance Commissioner.

FUND HISTORY

The state bonding fund was created in 1915 and is maintained for bond coverage of public employees. The state bonding fund is managed by the Insurance Commissioner, and the amount of coverage provided to each state agency, department, industry, and institution is determined by the Insurance Commissioner based upon the amount of money and property handled and the opportunity for default. North Dakota Century Code Section 26.1-21-09 provides that premiums for bond coverage are to be determined by the Insurance Commissioner, but can be waived if the state bonding fund's balance is in excess of \$2 million. No premium has been charged, possibly since 1953, because the bonding fund's balance has exceeded the minimum level established by the Legislative Assembly.

Senate Bill No. 2010 (2019) provides for the Insurance Commissioner to contract with the North Dakota Insurance Reserve Fund for administration of the state bonding fund. The bill also provides continuing appropriation authority from the state bonding fund to the Insurance Commissioner to pay contractual fund administration costs to the North Dakota Insurance Reserve Fund.

ANALYSIS OF THE BUDGET STABILIZATION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$666,415,898	
Add revenues				
Investment income	\$40,040,689 ¹		\$15,000,000 ¹	
Oil and gas tax collections	48,431,258 ²		9,646,249 ²	
Transfer from general fund	0 ³		0 ³	
Total revenues		88,471,947		24,646,249
Total available		\$754,887,845		\$773,589,849
Less expenditures and transfers				
Transfer to general fund	\$5,944,245 ¹		\$22,021,249 ¹	
Total expenditures and transfers		5,944,245		22,021,249
Ending balance		\$748,943,600		\$751,568,600

¹Interest earnings are retained in the fund unless the balance of the fund is at the maximum amount allowed under North Dakota Century Code Section 54-27.2-01. Any interest earnings that would cause the fund to go above the maximum balance are transferred to the general fund.

²Section 57-51.1-07.5 provides for the deposit of up to \$75 million of the state share of oil and gas tax collections into the budget stabilization fund each biennium. The entire \$75 million amount was not deposited into the fund during the 2019-21 biennium due to the fund reaching its fund limit. The State Treasurer deposited \$9,646,249 of oil tax collections into the fund during the 2021-23 biennium due to the fund being below its maximum balance due to a decrease in the value of the investments.

³Chapter 54-27.2 provides 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 2021-23 biennium general fund appropriations approved by the 2021 Legislative Assembly total \$5,010,457,330; therefore, the 15 percent maximum budget stabilization fund balance is \$751,568,600 for the 2021-23 biennium. This amount includes a contingent general fund appropriation of \$17.5 million that became effective on July 1, 2021, and was not included in the calculation used to determine the maximum fund balance for the 2019-21 biennium.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$748,943,600. The estimated balance increased by \$2,625,000 due to a contingent general fund appropriation of \$17.5 million becoming effective on July 1, 2021, which increased the maximum balance of the fund.

FUND HISTORY

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

- Section 54-27.2-01 establishes the budget stabilization fund and provides any interest earned on the balance of the budget stabilization fund must be retained in the fund. The section originally provided any money in the fund in excess of 10 percent of the general fund budget, as approved by the most recently adjourned Legislative Assembly, must be deposited in the general fund. House Bill No. 1451 (2011) decreased the maximum balance allowed in the fund from 10 to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. House Bill No. 1155 (2017) increased the maximum balance allowed in the fund from 9.5 to 15 percent of the general fund budget, as approved by the most recently adjourned Legislative Assembly.
- Section 54-27.2-02 provides 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 the Governor may order a transfer from the budget stabilization fund to the general fund if the Director of the Office of Management and Budget projects a general fund revenue shortfall. The section originally limited the transfer to the difference between an amount 2.5 percent less than the original legislative general fund revenue forecast and the revised forecast prepared by the Office of Management and Budget. House Bill No. 1155 revised the section to allow for transfers from the budget stabilization fund to the general fund as follows:

After general fund allotments totaling at least 3 percent have been made under Section 54-44.1-12, the Governor may order a transfer of up to an amount equal to 3 percent of general fund appropriations;

After the previous transfer has been made and an additional 1 percent general fund budget allotment has been made, the Governor may order a transfer of up to 2 percent of general fund appropriations;

After the previous transfer has been made and an additional 1 percent general fund budget allotment has been made, the Governor may order a transfer of up to 3 percent of general fund appropriations; and

After the previous transfer has been made and an additional 1 percent general fund budget allotment has been made, the Governor may order a transfer of any remaining funds in the budget stabilization fund.

The amount of transfers from the budget stabilization fund to the general fund may not exceed the difference between the original and revised general fund revenue forecasts less general fund allotments made under Section 54-44.1-12. For purposes of the transfers, total general fund allotment percentages must be based on allotments made after any allotment exemption granted by the Director of the Budget.

ANALYSIS OF THE CAPITOL BUILDING FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS¹

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$6,548,608		\$3,462,486
Add revenues				
Investment income	\$180,796		\$172,956	
Rentals, royalties, and bonuses	2,371,169		4,540,000	
Total revenues		2,551,965		4,712,956
Total available		\$9,100,573		\$8,175,442
Less expenditures and transfers				
Administrative expenses	\$61,791		\$97,000	
Income payments to counties ²	7,018		16,494	
Capitol Grounds Planning Commission continuing appropriation (North Dakota Century Code Section 48-10-02) ³	198,922		250,000	
Capitol Grounds Planning Commission operating expenses (2019 SB 2015; 2021 HB 1015)	1,239		25,000	
Facility Management projects (2021 HB 1015)			518,800	
Facility Management extraordinary repairs (2019 SB 2015; 2021 HB 1015)	1,944,477		500,000	
Facility consolidation study (2021 HB 1015)			350,000	
Legislative Assembly digital signage and voting system upgrades (2019 HB 1001)	129,278		0	
Judicial branch Supreme Court law library space remodel (2019 HB 1002)	970,000		0	
Special assessments (2019 SB 2015; 2021 HB 1015)	320,000		198,066	
Interior and exterior signs (2021 HB 1015)			500,000	
Accessibility improvements (2021 SB 2146)			750,000	
Accessibility compliance consultant (2021 HB 1012)			25,000	
Capitol south entrance project (2019 SB 2015)	2,005,362		0	
Total expenditures and transfers		5,638,087		3,230,360
Ending balance		\$3,462,486		\$4,945,082

¹The analysis reflects the legislative appropriations for the 2019-21 and 2021-23 bienniums and does not include the land owned by the fund.

²Section 15-04-23 provides the Board of University and School Lands is to pay a fee to the board of county commissioners of each county in which the state retains original grant lands. The total fees paid may not exceed 5 percent of the net revenue generated from the original grant lands in that county during the year preceding the payments. The board of county commissioners is to forward a prorated portion of any fees received to the organized townships in which the original grant lands are located. The funds are to be used for the repair, maintenance, and construction of roads and bridges. Any remaining funds are to be used by the county for repair, maintenance, and construction of roads and bridges in unorganized townships in which the original grant lands are located.

³Section 20 of Senate Bill No. 2015 (2019) amended Section 48-10-02 to increase a continuing appropriation to the Capitol Grounds Planning Commission from \$175,000 per biennium to \$250,000 per biennium of income and interest of the Capitol building fund. The amount that may be spent may not exceed 50 percent of the unencumbered balance of the fund on the 1st day of the biennium.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$1,780,381. The increase in the estimated balance of \$3,164,701 is primarily due to an increase in the estimated revenue from mineral royalties, rents, and bonuses during the 2019-21 biennium and the 2021-23 biennium.

FUND HISTORY

The Capitol building fund was established at the time of statehood by the Enabling Act of 1889. Section 12 of the Enabling Act provided 32,000 acres to North Dakota upon statehood to be sold and the proceeds used to finance the construction of buildings for legislative, executive, and judicial use. The proceeds from the sale make up the Capitol building fund along with any investment proceeds from that fund.

In 1957 Congress amended Section 12 of the Enabling Act to expand the fund's use for construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvements of public buildings at the Capitol.

In Senate Bill No. 388 (1967) the Legislative Assembly created Section 48-10-02 to provide that all money, properties, and income from the fund, unless otherwise appropriated, are dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing. The Capitol Grounds Planning Commission is to take steps to accumulate and conserve the money and property in the Capitol building fund for this purpose.

In House Bill No. 1117 (1979) the Legislative Assembly amended Section 48-10-02 to provide that the Board of University and School Lands invest and manage the fund on behalf of the Capitol Grounds Planning Commission. The section was further amended to provide a continuing appropriation to the Capitol Grounds Planning Commission from the interest and income from the Capitol building fund not to exceed 50 percent of the unencumbered balance. Expenditures made under the continuing appropriation may be made after consideration of the Capitol grounds master plan for projects or planning but may not exceed \$50,000 per biennium. Expenditures may be made only upon approval by two-thirds of the total membership of the commission. The Legislative Assembly in Senate Bill No. 2090 (2007) increased the continuing appropriation to the Capitol Grounds Planning Commission limit from \$50,000 to \$100,000.

In House Bill No. 1015 (2013) the Legislative Assembly amended Section 48-10-02 to increase the continuing appropriation to the Capitol Grounds Planning Commission from \$100,000 to \$175,000 per biennium beginning with the 2013-15 biennium.

In Senate Bill No. 2015 (2019) the Legislative Assembly amended Section 48-10-02 to increase the continuing appropriation to the Capitol Grounds Planning Commission from \$175,000 to \$250,000 per biennium.

ANALYSIS OF THE COAL DEVELOPMENT TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium ¹		2021-23 Biennium ¹	
	Actual		Estimated	
Beginning balance		\$83,795		\$124,463
Add revenues				
Investment income ²	\$748,754		\$994,500	
School construction loan income ²	1,210,657		862,500	
Total revenues		1,959,411		1,857,000
Total available		\$2,043,206		\$1,981,463
Less expenditures and transfers				
Investment expense	\$50,699		\$39,780	
Administrative expenses	8,076		6,000	
Transfer to the general fund ²	1,859,968		1,750,000	
Total expenditures and transfers		1,918,743		1,795,780
Ending balance		<u>\$124,463</u>		<u>\$185,683</u>

¹The beginning and ending balances do not include the value of permanent assets of the coal development trust fund, which must be maintained pursuant to North Dakota Century Code Section 57-62-02 and Section 21 of Article X of the Constitution of North Dakota. As of December 31, 2021, the total value of permanent fund assets was \$71.65 million, of which \$29.50 million was school construction loans receivable, \$9.39 million was coal impact loans receivable, and \$32.76 million was either cash or short-term investments.

Senate Bill No. 2014 (2017) reduces the allocation of coal severance tax allocations to the coal development trust fund from 30 to 15 percent and provides an allocation of 15 percent to the lignite research fund. The coal severance tax allocations become part of the fund assets which are not reflected in the amounts shown in the table. Senate Bill No. 2272 (2017) amends Section 15.1-36-02 to make available up to \$60 million from the fund for loans of up to \$2 million for unanticipated school construction projects or emergency repairs.

²Section 57-62-02 and Section 21 of Article X of the Constitution of North Dakota, provide that the income from the coal development trust fund must be used first to replace any uncollectible loans made from the fund and any remaining income must be deposited in the general fund. The amounts shown on this analysis include only the income in excess of any allowance for uncollectible loans made from the fund and do not include any revenues or expenses affecting the permanent fund balance.

In Senate Bill No. 2039 (2015), the Legislative Assembly created a new school construction assistance loan fund and identified the income from the coal development trust fund as income to the new fund. However, the income from the coal development trust fund will not be transferred to the school construction assistance loan fund because Section 57-62-02 and Section 21 of Article X of the Constitution of North Dakota require the income to be transferred to the general fund. The provisions to continue to transfer the income to the general fund are included in Senate Bill Nos. 2101 and 2272 (2017).

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$4,698. The estimated balance increased by \$180,985 primarily related to an increase in investment income for both bienniums and a decrease in the amount transferred to the general fund in the 2019-21 biennium.

FUND HISTORY

The coal development trust fund originated with the passage of House Bill No. 1257 (1979), now codified as various sections of Chapter 57-62. In 1980 the voters of North Dakota approved Constitutional Measure No. 5, Section 21 of Article X of the Constitution of North Dakota, and establishing the coal development trust fund as a constitutional trust fund.

Section 57-62-02 provides 30 percent of the coal severance tax must be deposited in the coal development trust fund. Section 57-62-02 provides the Board of University and School Lands shall administer the fund and use money in the fund for loans to coal-impacted counties, cities, and school districts, and for loans to school districts for school construction. Section 15.1-36-02 limits the outstanding principal balance of school construction loans from the coal development trust fund to \$50 million. Section 57-61-01.5 provides that 70 percent of the money deposited in the coal development trust fund must be transferred to the lignite research fund. Consequently, 30 percent of the coal severance taxes deposited in the fund (9 percent of total coal severance taxes collected) remains in the coal development trust fund to be used for the purposes provided in Section 57-62-02.

ANALYSIS OF THE COMMON SCHOOLS TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

ASSETS, DISTRIBUTIONS, AND INVESTMENT RETURNS FOR THE COMMON SCHOOLS TRUST FUND

The following is a summary of actual and estimated assets, distributions, and investment returns for the common schools trust fund for the 1997-99 through 2021-23 bienniums:

Biennium	Fiscal Year	Beginning Assets (Excluding Land and Mineral Values)	Distributions	Total Average Investment Return (Interest Income and Capital Gains)
1997-99	1998	\$400,689,879	\$23,200,000	13.57%
	1999	\$444,823,559	\$23,200,000	7.50%
1999-2001	2000	\$467,059,293	\$23,775,000	11.05%
	2001	\$521,509,978	\$23,775,000	2.03%
2001-03	2002	\$533,360,593	\$28,896,500	(1.34%)
	2003	\$522,905,814	\$28,896,500	4.57%
2003-05	2004	\$547,047,877	\$30,000,000	12.60%
	2005	\$614,738,548	\$30,000,000	8.58%
2005-07	2006	\$686,273,875	\$31,100,000	7.51%
	2007	\$761,901,287	\$31,100,000	12.82%
2007-09	2008	\$887,092,909	\$33,400,000	(4.22%)
	2009	\$908,928,685	\$33,400,000	(13.75%)
2009-11	2010	\$846,314,086	\$38,589,000	14.48%
	2011	\$1,221,501,801	\$38,589,000	17.99%
2011-13	2012	\$1,622,412,984	\$46,257,000	2.42%
	2013	\$1,917,135,220	\$46,257,000	10.65%
2013-15	2014	\$2,417,363,782	\$65,163,000	13.85%
	2015	\$3,128,315,233	\$65,163,000	.50%
2015-17	2016	\$3,437,988,002	\$103,067,000	(0.63%)
	2017	\$3,512,355,582	\$103,067,000	9.50%
2017-19	2018	\$3,940,114,988	\$144,132,000	6.50%
	2019	\$4,318,989,728	\$144,132,000	3.87%
2019-21 ¹	2020	\$4,651,515,837	\$183,378,000	(1.87%)
	2021	\$4,819,013,877	\$183,378,000	21.67%
2021-23 ³	2022	\$5,942,176,896	\$210,510,000	²
	2023	²	\$210,510,000	²

¹The Legislative Assembly approved Senate Bill No. 2362 (2019), which changed the method of allocating oil extraction tax revenue related to the state's share of revenue associated with production on tribal lands, increasing the allocation to the common schools trust fund. In addition, Senate Bill No. 2362 provides, if the actual legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium in accordance with Section 26 of Article X of the Constitution of North Dakota exceed the estimate made by the 66th Legislative Assembly by at least \$64,370,000, the State Treasurer must immediately transfer \$64,370,000 from the general fund to the common schools trust fund, for the biennium beginning July 1, 2019, and ending June 30, 2021. The State Treasurer transferred \$64,370,000 from the general fund to the common schools trust fund at the end of the 2019-21 biennium.

²Section 2 of Article IX of the Constitution of North Dakota was amended in November 2006 through voter approval of Measure No. 1 (House Concurrent Resolution No. 3037 (2005)). The measure changed the way distributions from the common schools trust fund and other permanent educational trust funds are determined. The amendment became effective July 1, 2009, and distributions are no longer based on interest and income earned by the fund. Distributions from the common schools trust fund are now based on a percentage of the 5-year average value of trust assets, excluding the value of lands and minerals. Therefore, the Board of University and School Lands does not project asset values, income, or investment return because it is no longer relevant to the calculation of distribution amounts. **The unaudited fund balance of the common schools trust fund was \$5,964,458,356 as of December 31, 2021.**

³Senate Bill No. 2328 (2021) provides an oil extraction tax credit for the use of an onsite flaring mitigation system; however, the fiscal impact of the credit on common schools trust fund deposits cannot be determined based on the fiscal note.

MONEY DEPOSITED IN THE COMMON SCHOOLS TRUST FUND

Select Constitutional Provisions

Article IX, Section 1

This section provides the following money must be deposited in a permanent trust fund, known as the common schools trust fund, and used to support the common schools of the state:

- All proceeds relating to public lands granted to the state by the federal government for the support of the common schools.
- All proceeds relating to property acquired by the state through escheat (property reverting to the state in the absence of legal heirs).
- All gifts, donations, and other property acquired by the state for the support of the common schools.
- The proceeds of all bonuses relating to the leasing of coal, gas, oil, or other mineral interests relating to common schools lands.

This section was included in the original Constitution of North Dakota enacted in 1889. In 1982 the section was amended to provide that bonuses relating to the leasing of coal, gas, oil, or other mineral interests relating to common schools lands were to be deposited in the common schools trust fund. Measure No. 1 (2006), approved by voters, removed the reference to bonuses related to leasing and provided that revenues earned by a perpetual trust fund must be deposited in the fund.

Article IX, Section 5

This section provides that in all sales of common schools lands, the state must retain the mineral interests. Leases may be executed for the extraction and sale of the minerals.

This section was included in the original Constitution of North Dakota enacted in 1889. As originally enacted, the section prohibited the sale of common schools lands that were "coal lands" and did not address other minerals. In 1960 the section was amended to its current form which allows the sale of lands containing minerals, but requires that the state retain the mineral interests. Minerals are defined to include oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ores, and colloidal or other clays.

Article X, Section 24

This section provides that 10 percent of oil extraction tax revenue must be deposited in the common schools trust fund.

This section was enacted in 1994 through voter approval of Measure No. 1 (Senate Concurrent Resolution No. 4011 (1993)). In November 2016 voters approved Senate Concurrent Resolution No. 4003 (2015), which provided for a constitutional amendment to Section 24. The amendment allows the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for education-related purposes and simplifies other language in the section. However, the amendment does not change deposits to the fund or limit the balance in the common schools trust fund, which has not been changed since enactment.

The Legislative Assembly approved Senate Bill No. 2362 (2019), which changed the method of allocating oil extraction tax revenue related to the state's share of revenue associated with production on tribal lands, increasing the allocation to the foundation aid stabilization fund.

Select North Dakota Century Code Provisions

Sections 47-30.2-44

Section 47-30.2-44 provides that all funds received by the state under the Uniform Unclaimed Property Act must be deposited in the common schools trust fund.

Section 54-27-25

This section, which was enacted by the 1999 Legislative Assembly, creates a tobacco settlement trust fund to be used to deposit tobacco settlement money received by the state. The Legislative Assembly, in Senate Bill No. 2003 (2015), amended Section 54-27-25 related to the tobacco settlement trust fund to provide the principal and interest of the fund may be appropriated to the Attorney General for the enforcement of the Master Settlement Agreement and any disputes with the agreement. Appropriations made to the Attorney General for enforcement of the Master Settlement Agreement reduce the amount available for transfer from the tobacco settlement trust fund to the common schools trust fund.

Until July 1, 2017, 45 percent of the tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement and deposited in the tobacco settlement trust fund was transferred to the common schools trust fund and became a part of the principal of the fund. In House Bill No. 1012 (2017), the Legislative Assembly amended Section 54-27-25 to suspend transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increase transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.

In Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-27-25 to remove authorization for appropriation to the Attorney General for enforcement of the Master Settlement Agreement and to provide all money in the fund must be transferred within 30 days of receipt to the community health trust fund. As a result, no additional tobacco settlement proceeds will be deposited into the common schools trust fund.

Tobacco settlement money received by the state and transferred to the common schools trust fund totaled \$189,745,840. The following is a summary of actual transfers to the common schools trust fund from the tobacco settlement trust fund, net of funds appropriated from the tobacco settlement trust fund to the Attorney General's office for the enforcement of the Master Settlement Agreement.

Biennium	Total Transfers
1999-2001	\$23,805,353
2001-03	23,998,745
2003-05	20,977,122
2005-07	19,722,653
2007-09	27,672,929
2009-11	18,248,834
2011-13	18,108,052
2013-15	19,003,716
2015-17	18,208,436
Total	\$189,745,840

DISTRIBUTIONS FROM THE COMMON SCHOOLS TRUST FUND Select Constitutional Provisions

Article IX, Section 1

This section provides that revenues earned by the perpetual trust fund must be deposited in the fund, the costs of administering the fund may be paid out of the fund, and the perpetual trust funds must be managed to preserve their purchasing power and to maintain stable distributions to fund beneficiaries.

Article IX, Section 2

This section provides that payments to the common schools of the state include:

- Biennial distributions from each educational trust fund must be 10 percent of the 5-year average value of the trust assets, excluding the value of lands and minerals. This section was amended in November 2006 through voter approval of Measure No. 1 (House Concurrent Resolution No. 3037 (2005)). The

measure changed the way distributions from the common schools trust fund and other permanent educational trust funds are determined. Previously, distributions were based on the amount of interest and income earned by each trust during a fiscal year. The amendment became effective July 1, 2009, and distributions from the common schools trust fund for the 2009-11 biennium and all subsequent bienniums are based on the distribution formula.

- All fines for violation of state laws. (This money is not added to the trust fund, but is added to the distributions from the common schools trust fund and distributed to schools.)
- All other amounts provided by law.

This section was included in the original Constitution of North Dakota enacted in 1889. The original law contained the following two provisions that were removed through voter approval of Measure No. 3 in June 1982:

- Payments to the common schools must be distributed in proportion to the number of school-age children in each district.
- Any portion of the interest or income of the common schools trust fund not distributed during a fiscal year must be added to the permanent balance of the trust fund.

Select North Dakota Century Code Provisions

Section 15-01-02

This section provides the Board of University and School Lands has full control of:

- The selection, appraisal, rental, sale, disposal, and management of common schools lands.
- The investment of any funds derived from the sale of common schools lands.
- The proceeds of any other property required by law to be used for the support of the common schools.

Section 47-30.2-46

Section 47-30.2-46 provides a continuing appropriation for the amounts necessary to pay all expense deductions, including the payment of claims, costs related to the sale of abandoned property, and certain administrative costs.

INVESTMENT OF THE COMMON SCHOOLS TRUST FUND

Section 15-03-04 provides the Board of University and School Lands is to apply the prudent investor rule in investing the permanent funds under its control, including the common schools trust fund. The prudent investor rule means that in making investments, the board is to exercise the same judgment and care that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it.

ANALYSIS OF THE COMMUNITY HEALTH TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$19,858,323		\$26,666,703
Add revenues				
Transfers to date from the tobacco settlement trust fund	\$44,093,129 ¹		\$23,250,900 ¹	
Projected transfers from the tobacco settlement trust fund	0 ²		18,000,000 ²	
Transfers from the tobacco prevention and control trust fund (2021 SB 2004)			2,056,437 ²	
Refund of prior biennium expenditures from the fund	6,141			
Total revenues		44,099,270 ²		43,307,337 ²
Total available		\$63,957,593		\$69,974,040
Less expenditures and adjustments				
State Department of Health (2019 HB 1004; 2021 SB 2004)				
Tobacco prevention and control program grants to local public health units for tobacco prevention and control	\$5,854,130 ³		\$6,250,000 ³	
Tobacco prevention and control, including the Tobacco Quitline, cessation grants, other program grants, and operating expenses	3,144,174 ⁴		5,043,000 ⁴	
Women's Way program	318,634		329,500	
Behavioral Risk Factor State Survey	49,952		200,000	
Dentists' loan repayment program	324,000 ⁵		360,000 ⁵	
Behavioral health loan repayment program	200,000 ⁶		234,500 ⁶	
Cancer programs			580,324 ⁷	
Domestic violence prevention			300,000 ⁷	
Local public health state aid			525,000 ⁷	
Forensic examiner contract			1,000,000 ⁸	
One-time funding for a statewide health strategies initiative			0 ⁸	
One-time local public health pandemic response grants			4,515,296 ⁹	
Department of Human Services - Medical Services Division (2019 SB 2012; 2021 HB 1012)	27,400,000		31,500,000	
Total expenditures and adjustments		37,290,890		50,837,620
Ending balance		\$26,666,703		\$19,136,420

¹Through April 2022 the state has received tobacco settlement payments totaling \$23,250,900 for the 2021-23 biennium, all of which has been transferred from the tobacco settlement trust fund to the community health trust fund. The 2019-21 biennium transfers from the tobacco settlement trust fund to the community health trust fund included \$155,286 related to funding returned to the tobacco settlement trust fund from an appropriation to the Attorney General for the 2017-19 biennium. Total transfers of \$150,227,873, including funding returned by the Attorney General, have been made from the tobacco settlement trust fund to the community health trust fund.

²Revenues - Interest earned on the community health trust fund is deposited in the general fund. Community health trust fund revenues have been estimated based on actual revenues received through April 2022 and legislative estimates for the 2021-23 biennium. In Senate Bill No. 2004 (2021), the Legislative Assembly repealed the tobacco prevention and control trust fund and required the Office of Management and Budget to transfer any money remaining in the tobacco prevention and control trust fund to the community health trust fund on July 1, 2021.

Initiated Measure No. 3 (2008) resulted in the allocation shown below of the revised estimated collections for tobacco settlement payments through 2025. In House Bill No. 1012 (2017), the Legislative Assembly amended North Dakota Century Code Section 54-27-25 to suspend transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increase transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund. Transfers from the tobacco settlement trust fund to the water development trust fund remained at 45 percent. In Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-27-25 to provide all money in the tobacco settlement trust fund must be transferred within 30 days of receipt to the community health trust fund. In Senate Bill No. 2004 (2021), the Legislative Assembly repealed the tobacco prevention and control trust fund and required the Office of Management and Budget to transfer any money remaining in the tobacco prevention and control trust fund to the community health trust fund on July 1, 2021. Therefore, the following are estimated allocations of tobacco settlement payments through 2025, based on reallocations approved by the 2017, 2019, and 2021 Legislative Assemblies:

	Actual and Estimated Total Tobacco Settlement Proceeds, Including Attorney General Costs	Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(2) Deposited in the Tobacco Prevention and Control Trust Fund	Allocation of Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(1)		
			Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Actual payment April 2008	\$36.4 million	N/A	\$16.4 million	\$16.4 million	\$3.6 million
Actual payment April 2009	39.2 million	\$14.1 million	11.3 million	11.3 million	2.5 million
Actual payments 2009-11 biennium	64.0 million	23.5 million	18.2 million	18.2 million	4.1 million
Actual payments 2011-13 biennium	63.0 million	22.8 million	18.1 million	18.1 million	4.0 million
Actual payments 2013-15 biennium	64.6 million	22.4 million	19.0 million	19.0 million	4.2 million
Actual payments 2015-17 biennium	63.5 million ¹	22.9 million	18.2 million	18.2 million	4.0 million
Actual payments 2017-19 biennium	74.1 million ¹	N/A	0	33.3 million	40.7 million
Estimated 2019-21 biennium	43.9 million ²	N/A	0	0	44.1 million
Estimated 2021-23 biennium	41.3 million	N/A	0	0	41.3 million
Estimated 2023-25 biennium	52.5 million	N/A	0	0	52.5 million
Total	\$542.5 million	\$105.7 million	\$101.2 million	\$134.5 million	\$201.0 million

¹This amount includes \$200,000 made available from the tobacco settlement trust fund to the Attorney General for enforcement of the Master Settlement Agreement and any disputes with the agreement, net of unspent funds returned by the Attorney General.

²This amount is net of unspent funds returned to the tobacco settlement trust fund by the Attorney General.

³In 2019 the Legislative Assembly provided \$6.5 million from the community health trust fund for grants to local public health units for tobacco prevention and control programs during the 2019-21 biennium. The Legislative Assembly, in Senate Bill No. 2004 (2021), provided a total of \$6.25 million from the community health trust fund for grants to local public health units for tobacco prevention and control programs during the 2021-23 biennium.

⁴Section 54-27-25 provides money in the community health trust fund may be appropriated for community-based public health programs and other public health programs, including programs with an emphasis on preventing or reducing tobacco usage. The 2003 Legislative Assembly authorized the establishment of a telephone "Tobacco Quitline." The 2007 Legislative Assembly increased the funding for the Tobacco Quitline to provide nicotine replacement therapy and cessation counseling. In 2019 the Legislative Assembly appropriated \$3.2 million from the community health trust fund for tobacco prevention and control programs during the 2019-21 biennium. The Legislative Assembly, in Senate Bill No. 2004 (2021), appropriated \$5,043,000 from the community health trust fund for tobacco prevention and control programs including \$2,833,504 for operating expenses and \$2,209,496 for other grants, including cessation.

⁵In 2019 the Legislative Assembly provided a total of \$740,000 for the dental loan repayment program, of which \$324,000 is from the community health trust fund and \$416,000 is from the general fund. The Legislative Assembly, in Senate Bill No. 2004 (2021), approved a total of \$540,000 for the dental loan repayment program, of which \$360,000 is from the community health trust fund and \$180,000 is from the general fund.

⁶In 2019 the Legislative Assembly provided a total of \$364,000 for the behavioral health loan repayment program, of which \$200,000 is from the community health trust fund and \$164,000 is from the general fund. The Legislative Assembly, in Senate Bill No. 2004 (2021), approved a total of \$392,125 for the behavioral health loan repayment program, of which \$234,500 is from the community health trust fund and \$157,625 is from the general fund.

⁷In 2019 the Legislative Assembly changed the funding source for cancer programs and domestic violence offender treatment grants to the tobacco prevention and control trust fund. A total of \$880,324 was provided from the tobacco prevention and control trust fund for cancer programs (\$580,324) and domestic violence offender treatment grants (\$300,000) during the 2019-21 biennium. In addition, the Legislative Assembly provided a total of \$5,250,000, of which \$4,725,000 is

from the general fund and \$525,000 is from the tobacco prevention and control trust fund, for state aid grants to local public health units during the 2019-21 biennium. The Legislative Assembly, in Senate Bill No. 2004 (2021), changed the funding source for cancer programs (\$580,324) and domestic violence offender treatment grants (\$300,000) from the tobacco prevention and control trust fund to the community health trust fund. In addition, Senate Bill No. 2004 (2021) provides \$5,250,000 for local public health unit state aid grants, of which \$4,725,000 is from the general fund and \$525,000 is from the community health trust fund.

⁸In Senate Bill No. 2004 (2021), the Legislative Assembly added funding from the community health trust fund to increase the State Department of Health's forensic examiner contract with the University of North Dakota School of Medicine and Health Sciences (\$1 million) and to provide one-time funding (\$1.5 million) for a statewide health strategies initiative totaling \$3 million. The Legislative Assembly also provided the one-time funding from the community health trust fund for the statewide health strategies initiative is contingent on the State Department of Health securing \$1.5 million in dollar-for-dollar matching funds. The State Department of Health does not anticipate spending the funding for the statewide health strategies initiative.

⁹In Senate Bill No. 2004 (2021), the Legislative Assembly included one-time funding for local public health pandemic response grants totaling \$10,000,000, of which \$5,484,704 is from federal funds and \$4,515,296 is from the community health trust fund. The Legislative Assembly also provided legislative intent that the State Department of Health use federal Coronavirus (COVID-19) funds or other available funds for defraying expenses related to local public health pandemic response grants before accessing the funding appropriated from the community health trust fund.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$11,509,143. The increase in the estimated balance of \$7,627,277 is due to the beginning 2019-21 biennium balance being \$861,656 more than anticipated due to lower than estimated expenditures from the fund during the 2019-21 biennium, 2021-23 biennium to date and estimated transfers from the tobacco settlement trust fund and the tobacco prevention and control trust fund being \$5,265,621 more than estimated, and \$1.5 million provided for a statewide health strategies initiative projected to remain unspent.

FUND HISTORY

Section 54-27-25, created by House Bill No. 1475 (1999), established the community health trust fund. This section created a tobacco settlement trust fund for the deposit of all tobacco settlement money obtained by the state. Money in the fund must be transferred within 30 days of its deposit in the fund as follows:

- 10 percent to the community health trust fund. In House Bill No. 1012 (2017), the Legislative Assembly suspended transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increased transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.
- 45 percent to the common schools trust fund. In House Bill No. 1012 (2017), the Legislative Assembly suspended transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increased transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.
- 45 percent to the water development trust fund.

Section 54-27-25, as amended in Senate Bill No. 2012 (2019), provides all money in the fund must be transferred within 30 days of receipt to the community health trust fund.

In the November 2008 general election, voters approved Initiated Measure No. 3 that amended Section 54-27-25 to establish a tobacco prevention and control trust fund. The measure provides for a portion of tobacco settlement funds received by the state to be deposited in this new fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continues in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated pursuant to Section 54-27-25. In 2009, tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, relating to strategic contribution payments, which began in 2008 and continued through 2017, was deposited into the tobacco prevention and control trust fund. The measure also provided 80 percent of the funds allocated to the community health trust fund from the tobacco settlement trust fund be used for tobacco prevention and control. However, in Senate Bill No. 2004 (2017), the Legislative Assembly amended Section 54-27-25 to remove the 80 percent restriction on transfers to the community health trust fund.

The Legislative Assembly, in Senate Bill No. 2003 (2015), amended Section 54-27-25 related to the tobacco settlement trust fund to provide the principal and interest of the fund may be appropriated to the Attorney General for the enforcement of the Master Settlement Agreement and any disputes with the agreement. Appropriations made to the Attorney General for enforcement of the Master Settlement Agreement reduce the amount available for transfer from the tobacco settlement trust fund to the community health trust fund. The Legislative Assembly, in Senate Bill No. 2012 (2019), removed this authorization. In Senate Bill No. 2004 (2021), the Legislative Assembly repealed the tobacco prevention and control trust fund and required the Office of Management and Budget to transfer any money remaining in the tobacco prevention and control trust fund to the community health trust fund on July 1, 2021.

**ANALYSIS OF THE STATE DISASTER RELIEF FUND
FOR THE 2015-17, 2017-19, 2019-21, AND 2021-23 BIENNIUMS**

	2015-17 Biennium Actual		2017-19 Biennium Actual		2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$75,867,942		\$36,687,549		\$21,987,295		\$15,396,161
Add revenues								
Interest income	\$50,723		\$73,130		\$66,353		\$65,000	
Miscellaneous reimbursements	2,716,118		698,534		24,577		75,000	
Oil and gas tax collections	3,482,364 ¹		0 ⁹		0 ¹²		15,511,903 ¹⁶	
Total revenues		6,249,205		771,664		90,930		15,651,903
Total available		\$82,117,147		\$37,459,213		\$22,078,225		\$31,048,064
Less estimated expenditures								
2009 flooding	\$247,214 ⁴		\$57,462 ¹⁰					
2010 flooding	269,007 ⁴		1,199,702 ¹⁰					
April 2010 ice storm	102,560 ⁴							
2011 flooding	6,366,153 ⁴		2,923,747 ¹⁰		\$2,367,837 ¹³			
2011 ice storm	925 ⁴							
Disaster response coordination contract	200,000 ²							
State disasters and flood mitigation efforts (road grade raising projects)	2,562 ⁴		18,620 ¹⁰					
Flood-impacted housing assistance grant program	1,088,468 ⁴							
Disaster recovery planning and technical services	34,810 ³							
Fargo interior flood protection	30,000,000 ⁵							
Chronic flooding relief	2,000,000 ⁶							
2013 Red River Valley flood	589,741 ⁴		912,450 ¹⁰		210 ¹³			
2013 winter storm	59,539 ⁴		628,258 ¹⁰		2,320 ¹³			
2014 rain storms	84,122 ⁴		72,201 ¹⁰		100,182 ¹³			
2017 flooding					217,970 ¹³		\$125,732 ¹⁷	
Federal Emergency Management Agency (FEMA) mitigation programs					93,046 ¹³		384,398 ¹⁷	
Double Ditch Historic Site repairs	384,497 ⁷		1,694,478 ⁷					
Bismarck area flood protection	4,000,000 ⁸							
Dickey County FEMA repayment					200,000 ¹³			

Non-oil-producing township road maintenance and improvement		7,965,000 ¹¹			8,200,000 ¹¹	
Emergency township road repairs				750,000 ¹⁸		
Dakota Access Pipeline law enforcement				703,432 ¹⁴		
2019 flooding				1,352,454 ¹⁴		1,763,266 ¹⁷
2020 flooding				894,613 ¹⁴		438,745 ¹⁷
Total estimated expenditures and transfers	45,429,598		15,471,918		6,682,064	10,912,141 ¹⁵
Estimated ending balance	<u>\$36,687,549</u>		<u>\$21,987,295</u>		<u>\$15,396,161</u>	<u>\$20,135,923</u>

¹This amount reflects actual oil tax revenue allocations for the 2015-17 biennium. House Bill No. 1377 (2015) amended North Dakota Century Code Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues designated for deposit in the general fund under Chapters 57-51 and 57-51.1 as follows:

- The first \$700 million is deposited in the general fund, tax relief fund, and strategic investment and improvements fund;
- The next \$22 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$25 million; and
- Any additional revenues:
 - 70 percent into the strategic investment and improvements fund; and
 - 30 percent into the political subdivision allocation fund.

²Senate Bill No. 2016 (2015) provided a \$200,000 appropriation from the state disaster relief fund to contract for services to coordinate disaster response organizations with state and political subdivision disaster response efforts, including all aspects of disaster recovery from preparedness training through cleanup for declared or undeclared disasters.

³Senate Bill No. 2016 (2015) appropriated \$1 million for contracted services to provide technical assistance and support to state and local government agencies with emergency management needs associated with preparedness, mitigation, and response and recovery.

⁴Section 1 of Senate Bill No. 2016 (2015) included spending authority of \$17.8 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2015-17 biennium.

⁵Section 11 of Senate Bill No. 2020 (2015) appropriates \$30 million from the state disaster relief fund to the State Water Commission for flood protection projects within the city limits of Fargo.

⁶Section 3 of Senate Bill No. 2016 (2015) appropriates \$2 million from the state disaster relief fund to the Adjutant General to provide for repair and replacement of infrastructure and for removal of debris and other health hazards in organized service districts that are experiencing chronic flooding. The Adjutant General is required to consult with the Environmental Division of the State Department of Health regarding the process of environmental cleanup.

⁷Section 5 of Senate Bill No. 2018 (2015) appropriates \$2 million from the state disaster relief fund for Double Ditch Historic Site repairs. Section 6 of House Bill No. 1018 (2017) appropriates \$500,000 from the state disaster relief fund for Double Ditch Historic Site repairs.

⁸Section 15 of Senate Bill No. 2020 (2015) appropriates \$4 million from the state disaster relief fund to the State Water Commission for levee projects for the Missouri River Correctional Center (\$1.2 million) and for Lincoln Township's Fox Island area (\$2.8 million).

⁹This amount reflects actual oil tax revenue allocations for the 2017-19 biennium. House Bill No. 1152 (2017) amended Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues designated for deposit in the general fund under Chapters 57-51 and 57-51.1 as follows:

- The first \$775 million is deposited in the general fund, tax relief fund, budget stabilization fund, strategic investment and improvements fund, and lignite research fund;
- The next \$20 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$20 million; and
- Any additional revenues are deposited in the strategic investment and improvements fund.

¹⁰Section 1 of House Bill No. 1016 (2017) includes spending authority of \$8.5 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2017-19 biennium. Section 13 of House Bill No. 1016 (2017) includes carryover authority for amounts related to disaster costs for road grade raising projects. The amount of carryover was estimated to be approximately \$100,000.

¹¹Section 4 of Senate Bill No. 2016 (2019) provided a 2017-19 biennium appropriation of \$8.1 million from the state disaster relief fund to the State Treasurer for the purpose of providing distributions to townships in non-oil-producing counties for maintenance and improvement of township roads and bridges. Section 4 of House Bill No. 1015 (2021) provides a 2021-23 biennium appropriation of \$8.2 million from the state disaster relief fund to the State Treasurer for the purpose of providing distributions to townships in non-oil-producing counties for maintenance and improvement of township roads and bridges.

¹²This amount reflects estimated oil tax revenue allocations for the 2019-21 biennium based on the 2021 legislative revenue forecast. House Bill No. 1066 (2019) and Senate Bill No. 2016 (2019) amend Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues under Chapters 57-51 and 57-51.1. As amended, the allocation provides that after \$685 million is deposited in the general fund, tax relief fund, budget stabilization fund, and lignite research fund, then the next \$15 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$15 million.

¹³Section 1 of Senate Bill No. 2016 (2019) includes spending authority of \$7.1 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2019-21 biennium.

¹⁴Section 1 of House Bill No. 1025 (2021) includes a deficiency appropriation of \$3,880,540 from the state disaster relief fund, including \$3,130,540 for expenses related to flooding in the spring of 2019, fall of 2019, and spring of 2020, and \$750,000 to repay loan interest relating to Dakota Access Pipeline law enforcement response costs.

¹⁵This amount is an estimate based on actual expenditures through March 31, 2022, and agency estimated expenditures through June 30, 2023.

¹⁶This amount reflects estimated oil tax revenue allocations for the 2021-23 biennium based on the 2021 legislative revenue forecast. House Bill No. 1015 (2021) and Senate Bill No. 2249 (2021) amend Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues under Chapters 57-51 and 57-51.1. As amended, the allocation provides that after \$685 million is deposited in the general fund, tax relief fund, budget stabilization fund, and lignite research fund, then the next \$20 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$20 million.

¹⁷Section 1 of House Bill No. 1016 (2021) includes spending authority of \$4 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2021-23 biennium.

¹⁸Section 4 of Senate Bill No. 2012 (2021) provides a 2021-23 biennium appropriation of \$750,000 from the state disaster relief fund to the Department of Transportation to provide grants to townships for emergency township road repairs.

FUND HISTORY

Section 37-17.1-27 (Section 4 of Senate Bill No. 2012 (2009)) establishes a state disaster relief fund. Any interest or other fund earnings must be deposited in the fund. In Senate Bill No. 2369 (2011), the Legislative Assembly amended Section 37-17.1-27 to limit use of money in the fund for only the required state share of funding for expenses associated with presidentially declared disasters in the state and to require Emergency Commission and Budget Section approval of the use of money in the fund. In Senate Bill No. 2292 (2013), the Legislative Assembly further amended the section to allow money in the fund to be used for wide area search and rescue activities. Section 6 of Senate Bill No. 2055 (2019) further amends Section 37-17.1-27 to allow the fund to be used for the state share of FEMA disaster response, recovery, and mitigation grants, to remove the requirement for Emergency Commission and Budget Section approval of the use of money that has been appropriated by the Legislative Assembly, and to provide for the Adjutant General to report to the Budget Section on fund expenditures.

ANALYSIS OF THE ELECTRONIC HEALTH INFORMATION EXCHANGE FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance ¹		\$2,418,517	
Add revenues				
Funds from health information network participants	\$1,195,021		\$1,200,000	
Funds from the Department of Human Services (DHS) ²	14,584,718		1,063,349	
Federal funding from the Centers for Medicare and Medicaid Services (CMS) ³	0		1,880,401	
Transfer - Health information technology planning loan fund (2021 SB 2021) ⁴	0		3,500,000	
Total revenues		15,779,739		7,643,750
Total available		\$18,198,256		\$9,998,752
Less estimated expenditures and transfers				
Health information technology and exchange network ^{2,3,4}	\$15,843,254		\$8,725,871	
Total expenditures and transfers		15,843,254		8,725,871
Ending balance		\$2,355,002		\$1,272,881

¹Section 8 of Senate Bill No. 2332 (2009) provided the Industrial Commission transfer, during the 2009-11 biennium, as requested by the director of the Health Information Technology Office, up to \$8 million from the Bank of North Dakota's profits to the health information technology loan fund to meet any required match for federal funds or to the electronic health information exchange fund to meet any required match for federal funds.

Section 6 of House Bill No. 1021 (2011) amended Section 8 of Senate Bill No. 2332 (2009) to provide the Industrial Commission transfer, during the 2009-11 or 2011-13 biennium, up to \$8 million from the Bank of North Dakota's profits to the information technology loan fund or to the electronic health information exchange fund to meet any required match for federal funds or for ongoing operating expenditures of the health information exchange. During the 2009-11 biennium, \$500,000 was transferred to the electronic health information exchange fund, and during the 2011-13 biennium, \$7.5 million was transferred to the electronic health information exchange fund.

²Section 2 of Senate Bill No. 2021 (2017) provided a special funds appropriation of \$43,555,133 to the Information Technology Department for a project to expand the North Dakota health information network. The purpose of the funding was to enhance the overall functionality of the North Dakota health information network by providing comprehensive interoperability between all Medicaid providers throughout the state. The project was intended to allow for statewide repositories for analytics, care coordination, credentialing, and advanced directives.

The Department of Human Services anticipated receiving federal Health Information Technology for Economic and Clinical Health (HITECH) Act Medicaid funding of \$40.8 million for the project, which was included in House Bill No. 1012 (2017) and was to be provided to payers, providers, and existing state health information networks. Funds were expected to be used through the 2021-23 biennium; however, due to funding changes made by the federal government, DHS and the Information Technology Department do not anticipate receiving the entire amount for the project.

The Information Technology Department received \$125,100 during the 2015-17 biennium from DHS for advanced planning documents, a state Medicaid plan, and to conduct a care coordination study for the North Dakota health information network. The Information Technology Department received \$6,333,134 in the 2017-19 biennium and \$14,584,718 in the 2019-21 biennium from DHS for the network. The Information Technology Department anticipates \$1,063,349 will be available during the 2021-23 biennium, resulting in an estimated total of \$22,106,201 of federal HITECH funds received for the network.

³The Centers for Medicare and Medicaid Services certified the North Dakota Health Information Network as a Medicaid management information system in February 2022, which may allow the Information Technology Department to request up to 75 percent federal reimbursement for eligible network expenditures; however, the department continues to work with CMS regarding which network costs are considered eligible for reimbursement and the appropriate cost allocation

formula for expenditure reimbursements. When a cost allocation formula is approved by CMS, the department will be able to submit expenditure reimbursement requests for costs incurred since October 2021 which were not reimbursable with HITECH funding. The \$1,880,401 of federal funding from CMS shown in the table is a preliminary estimate for the 2021-23 biennium. It is unknown how much funding will be available from the federal government for the North Dakota health information network project during the 2023-25 biennium.

⁴Senate Bill No. 2021 (2021) provides for a transfer of \$6 million, as requested by the chief information officer, from the health information technology planning loan fund to the electronic health information exchange fund for the purpose of defraying the expenses of the Health Information Technology Office and the health information network during the 2021-23 biennium. Section 3 of the bill provides legislative intent that the funding be transferred only to the extent federal funding is not available to defray the expenses of the Health Information Technology Office and the health information network during the 2021-23 biennium.

Through March 31, 2022, the chief information officer has requested the Bank transfer \$3 million of funding from the health information technology planning loan fund to the electronic health information exchange fund and estimates an additional \$500,000 will be transferred, resulting in an estimated total of \$3.5 million transferred during the 2021-23 biennium.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$1,299,834, which is \$26,953 more than the current estimated balance of \$1,272,881, primarily related to an increase in estimated expenditures for the health information technology exchange network.

FUND HISTORY

North Dakota Century Code Section 54-59-27 (Senate Bill No. 2332 (2009)) establishes the electronic health information exchange fund. The fund consists of the money deposited in the fund from federal or other sources or money transferred into the fund as directed by the Legislative Assembly. The Health Information Technology Office is to administer the fund. The money in the fund is to be used to facilitate and expand the electronic health information exchange. Money in the fund may be used, subject to legislative appropriations, to provide services directly for grants and for costs of administration of the fund.

An application for a grant must be made to the Health Information Technology Office. The Health Information Technology Office is to determine the applicant's eligibility based upon criteria established by the director of the Health Information Technology Office, in collaboration with the Health Information Technology Advisory Committee.

ANALYSIS OF THE ENVIRONMENT AND RANGELAND PROTECTION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium		2021-23 Biennium	
	Actual		Estimated	
Beginning balance		\$3,655,681		\$5,291,507
Add estimated revenues				
Pesticide registration fees (North Dakota Century Code Section 4.1-34-03) ¹	\$5,087,104		\$5,100,000	
Weed seed-free forage (Section 4.1-14-04) ²	36,199		35,000	
Fertilizer registration, inspection, and tonnage fees (Sections 4.1-40-02, 4.1-40-03, and 4.1-40-07) ^{3,4}	1,445,382		1,445,000	
Commercial feed registration, inspection, and tonnage fees (Section 4.1-41-19) ⁵	727,500		727,500	
Total revenues		7,296,185		7,307,500
Total available		\$10,951,866		\$12,599,007
Less expenditures and transfers				
Agriculture Commissioner (2019 SB 2009; 2021 HB 1009)				
Administrative Services Division	\$418,950		\$351,086	
Marketing and Information Division	101,985		339,026	
Wildlife Services program	433,800		433,800	
Animal Health Division (State Veterinarian)	90,292		117,637	
Plant Industries Division	865,200		1,782,396	
Emergency feed operation loan repayment ⁶	253,229			
Pesticide and Fertilizer Division	2,671,607		3,441,836	
Grain Inspection and Feed Division	182,220		358,614	
Crop Protection Product Harmonization and Registration Board (2019 SB 2009; 2021 HB 1009)				
Crop protection product registration, labeling, and grants ⁷	68,332		75,000	
Minor use pesticide registration	325,000		325,000	
Department of Environmental Quality (2019 HB 1024; 2021 SB 2024)				
Ground water testing, including a \$50,000 grant for the North Dakota Stockmen's Association environmental services program	249,744		250,000	
Total expenditures and transfers		5,660,359		7,474,395
Ending balance		\$5,291,507		\$5,124,612

¹The Legislative Assembly approved Senate Bill No. 2009 (1999), which amended Section 19-18-04, increased the biennial pesticide registration fee by \$50, from \$300 to \$350. House Bill No. 1009 (2009) further amended Section 19-18-04 to deposit all pesticide registration fees in the environment and rangeland protection fund rather than a portion in the general fund. In Senate Bill No. 2027 (2017), Section 19-18-04 was repealed and rewritten as Section 4.1-34-03 as part of the rewrite of agriculture statutes.

²Chapter 4.1-14 allows the Agriculture Commissioner to certify forage acreage as being free of certain weeds and weed seed. Section 4.1-14-04 provides the Agriculture Commissioner a continuing appropriation to certify forage acreage using fees charged for certifications. The Agriculture Commissioner may set and charge the fees. All weed seed-free forage fee revenue must be deposited in the environment and rangeland protection fund.

³House Bill No. 1321 (2011) repealed Section 19-20.2-08.1 that provided for the deposit of certain inspection fees in the anhydrous ammonia storage facility inspection fund. The bill provided that the fee collections are to be deposited in the environment and rangeland protection fund, and anhydrous ammonia inspection storage facility inspection duties are to be transferred from the Insurance Commissioner to the Agriculture Commissioner.

⁴Senate Bill No. 2009 (2011) amended Sections 19-20.1-03, 19-20.1-03.1, and 19-20.1-06 to deposit fertilizer distribution registration, licensing, and inspection fees in the environment and rangeland protection fund rather than the general fund. House Bill No. 1321 (2011) also amended Section 19-20.1-06 to deposit a portion of fertilizer distribution inspection fees in the environment and rangeland protection fund rather than the general fund. In Senate Bill No. 2027 (2017), Sections 19-20.1-03, 19-20.1-03.1, and 19-20.1-06 were rewritten as Sections 4.1-40-02, 4.1-40-03, and 4.1-40-07, respectively.

⁵Section 4.1-41-19 provides for the deposit of the first \$727,500 of commercial feed inspection, licensing, and registration fees in the environment and rangeland protection fund rather than the general fund.

⁶In December 2019, the Emergency Commission authorized the Adjutant General to borrow \$250,000 from the Bank of North Dakota, which was then provided to the Agriculture Commissioner to administer an emergency feed transportation assistance program to reimburse a portion of transportation costs to livestock producers that lost feed supplies or lost access to feed supplies due to excessive rain, snow, and flooding which resulted in the purchase of supplemental livestock feed between September 30, 2019, and December 31, 2019. The Agriculture Commissioner reviewed 119 applications and approved 116 applications. The entire \$250,000 was distributed to eligible applicants in March 2020. The Agriculture Commissioner repaid the loan in December 2020, using funding from the environment and rangeland protection fund, which included \$3,229 of interest for a total repayment of \$253,229.

⁷Section 4-35-30, as created by the Legislative Assembly in House Bill Nos. 1009 (2001) and 1328 (2001), created the Crop Protection Product Harmonization and Registration Board. In Senate Bill No. 2027 (2017), Section 4-35-30 was rewritten as Section 4.1-39-02. The duties of the board relate to crop protection product labeling and registration. In Senate Bill No. 2009 (2019), the Legislative Assembly appropriated \$75,000 from the fund for the board for the 2019-21 biennium. House Bill No. 1009 (2021) appropriates \$75,000 from the fund for the board for the 2021-23 biennium.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$3,081,487. The increase of \$2,043,125 in the estimated balance of \$5,124,612 is primarily due to the COVID-19 pandemic, including a reduction in travel and laboratory testing, as well as utilizing federal COVID-19 pandemic relief funding instead of funding from the Environment and Rangeland Protection Fund. The department also experienced salary savings from an FTE pesticide inspector position that was vacant for part of the biennium.

FUND HISTORY

Section 19-18-02.1, created by Senate Bill No. 2451 (1991), established the environment and rangeland protection fund. The fund contains collections from pesticide registration fees. During the 2007-09 biennium, the biennial fee was \$350 per pesticide product registered in the state. Of this amount, \$300 was deposited in the environment and rangeland protection fund and \$50 in the general fund. Pursuant to Section 19-18-04, as amended by House Bill No. 1009 (2009), beginning with the 2009-11 biennium, the entire pesticide registration fee is deposited in the environment and rangeland protection fund rather than a portion in the general fund.

In Senate Bill No. 2027 (2017), Sections 19-18-02.1 and 19-18-04 were repealed and rewritten as Sections 4.1-39-07 and 4.1-34-03, respectively, as part of the rewrite of agriculture statutes.

**ANALYSIS OF THE FIRE AND TORNADO FUND
FOR THE 2019-21 AND 2021-23 BIENNIUMS**

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$21,927,896	
Add estimated revenues				
Premium collections	\$11,805,826		\$15,092,951	
Investment income (loss)	4,156,919		(2,243,070)	
Boiler inspection fees	175		0	
Loss claims and insurance recoveries	679,333		805,163	
Total estimated revenues		16,642,253		13,655,044
Total available		\$38,570,149		\$34,928,431
Less estimated expenditures and transfers				
Loss claims payments	\$6,976,629		\$4,326,737	
Claims-related payments, including reinsurance costs	8,518,022		10,374,687	
Administration	1,080,024		1,187,861	
Boiler inspection program (2017 HB 1010; 2019 HB 1024)	507,765		0	
Investment expense	91,063		138,250	
State Fire Marshal program (North Dakota Century Code Section 18-01-35)	123,259		130,000	
Total estimated expenditures and transfers		17,296,762		16,157,535
Estimated ending balance		\$21,273,387		\$18,770,896

FUND HISTORY

The fire and tornado fund originated in 1919. The fund is maintained to insure the various political subdivisions and state industries against loss to public buildings and permanent fixtures. Section 26.1-22-14 requires that if the fire and tornado fund balance is less than \$12 million, the Insurance Commissioner must increase assessments on policies. Chapter 26.1-22.1 provides for a boiler inspection program under the Insurance Commissioner and provides for the deposit of boiler inspection fees in the state fire and tornado fund.

Senate Bill No. 2010 (2019) provides for the Insurance Commissioner to contract with the North Dakota Insurance Reserve Fund for administration of the state fire and tornado fund. The bill also provides continuing appropriation authority from the state fire and tornado fund to the Insurance Commissioner to pay contractual fund administration costs to the North Dakota Insurance Reserve Fund. The bill also transfers the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality.

ANALYSIS OF THE FOUNDATION AID STABILIZATION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$422,117,621	
Add revenues				
Oil extraction tax allocations	\$149,035,302		\$173,561,747 ¹	
Total revenues		149,035,302 ²		173,561,747 ²
Total available		\$571,152,923		\$555,131,578
Less expenditures and transfers				
Department of Public Instruction (DPI) - State school aid (2019 SB 2013; 2021 HB 1013)	\$110,000,000 ³		\$143,454,500 ³	
DPI - One-time funding to rewrite the state automated reporting system (STARS) application (2019 SB 2013)	880,640 ³		234,360 ³	
DPI - One-time funding for rapid enrollment grants (2019 SB 2265)	3,000,000 ³			
DPI - One-time funding for music education grants (2019 SB 2265)	702,452 ³			
Transfer to the school construction assistance revolving loan fund (2019 SB 2214)	75,000,000 ³			
Total expenditures and transfers		189,583,092 ⁴		143,688,860 ⁴
Ending balance		\$381,569,831		\$411,442,718
Less required reserve of 15 percent of the general fund appropriation for state school aid and career and technical education grants to school districts and area centers during the prior biennium		214,831,704 ⁵		257,328,933 ⁶
Ending balance available		\$166,738,127		\$154,113,785

¹Estimated revenues - Based on actual oil extraction tax collections deposited in the fund through April 2022 and estimated allocations for the remainder of the 2021-23 biennium based on the 2021 legislative revenue forecast. Senate Bill No. 2328 (2021) provides an oil extraction tax credit for the use of an onsite flaring mitigation system; however, the fiscal impact of the credit cannot be determined based on the fiscal note.

²Section 24 of Article X of the Constitution of North Dakota provides the interest income of the foundation aid stabilization fund must be transferred to the general fund on July 1 of each year. However, the State Treasurer allocates the interest income to the general fund on a monthly basis. For the 2019-21 biennium \$1,205,838 was allocated to the general fund. For the period July 1, 2021, through March 31, 2022, \$208,315 of interest has been allocated to the general fund.

³The Legislative Assembly approved Senate Bill No. 2265 (2019) which provided \$3 million from the foundation aid stabilization fund for rapid enrollment grants to qualifying school districts during the 1st year of the 2019-21 biennium and \$800,000 from the foundation aid stabilization fund for music education grants for kindergarten through grade five. In addition to \$110 million from the foundation aid stabilization fund for state school aid, Senate Bill No. 2013 (2019) provided \$1.2 million of one-time funding from the foundation aid stabilization fund to rewrite the STARS application. Senate Bill No. 2214 (2019) provided for a transfer of \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund and legislative intent that the 67th Legislative Assembly appropriate \$110 million from the foundation aid stabilization fund to DPI to provide ongoing funding for state school aid and transfer an additional \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund. The Legislative Assembly, in House Bill No. 1013 (2021), appropriated \$143,454,500 from the foundation aid stabilization fund to DPI to provide ongoing funding for state school aid. In addition, Section 16 of House Bill No. 1013 provides an exemption to allow DPI to continue \$600,000 of the unexpended amount remaining from a 2019-21 biennium one-time appropriation from the foundation aid stabilization fund for the STARS rewrite, for the purpose of continuing the STARS rewrite during the 2021-23 biennium. The Department of Public Instruction continued \$319,360 for the STARS rewrite during the 2021-23 biennium; however, expenditures are anticipated to total \$234,360, \$85,000 less than appropriated.

⁴Expenditures - Prior to December 8, 2016, Section 24 of Article X of the Constitution of North Dakota provided the principal of the foundation aid stabilization fund could only be used to offset foundation aid reductions made by executive action due to a revenue shortfall. Senate Concurrent Resolution No. 4003 (2015), approved by voters in November 2016, amended Section 24 of Article X of the Constitution of North Dakota to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for education-related purposes.

⁵Amendments to the constitution approved by the voters, as provided in Senate Concurrent Resolution No. 4003 (2015), require the balance in the foundation aid stabilization fund be at least 15 percent of the general fund appropriation for state aid to school districts for the most recently completed biennium as determined by the Office of Management and Budget. Any excess balance in the fund is available for education-related purposes. The Legislative Assembly, in Senate Bill No. 2272 (2017) and House Bill No. 1155 (2017), amended North Dakota Century Code Section 54-44.1-12 to provide any reductions to the general fund appropriation to the Department of Career and Technical Education for grants to school districts due to allotment are also to be offset by funding from the foundation aid stabilization fund. Senate Bill No. 2272 also created a new section to Chapter 54-27 indicating that state school aid includes general fund appropriations for state school aid, transportation aid, and special education aid in DPI as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education. The appropriation for integrated formula payments, transportation aid, and special education grants totaled \$2,009,904,163 during the 2017-19 biennium, of which \$305,546,905 is provided from the state tuition fund, \$295,000,000 is from the foundation aid stabilization fund, and \$1,409,357,258 is provided from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education totaled \$22,854,100 during the 2017-19 biennium. Based on this level of funding from the general fund during the 2017-19 biennium, the Office of Management and Budget, in its 2019-21 executive budget documents, reported a required reserve balance of \$214,831,704 for the 2019-21 biennium.

⁶In 2019, the Legislative Assembly provided \$2,178,702,429 for integrated formula payments, transportation aid, and special education grants during the 2019-21 biennium, of which \$377,764,000 is provided from the state tuition fund, \$110,000,000 is from the foundation aid stabilization fund, and \$1,690,938,429 is provided from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education, totaled \$24,587,780 during the 2019-21 biennium. Based on this level of funding from the general fund during the 2019-21 biennium, the required reserve balance for the 2021-23 biennium is \$257,328,933, \$42,497,229 more than the reserve required for the 2019-21 biennium. In 2021, the Legislative Assembly provided \$2,216,925,000 for integrated formula payments, transportation aid, and special education grants for the 2021-23 biennium, of which \$433,020,000 is from the state tuition fund, \$143,454,500 is from the foundation aid stabilization fund, and \$1,640,450,500 is from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education total \$26,837,780 for the 2021-23 biennium. Based on this level of funding from the general fund during the 2021-23 biennium, the required reserve balance for the 2023-25 biennium is \$250,093,242, \$7,235,691 less than the reserve required for the 2021-23 biennium.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$397,323,121. The increase in the estimated balance of \$14,119,597 is due to lower oil extraction tax allocations, offset by lower than anticipated expenditures during the 2019-2021 biennium resulting in the ending balance being \$517,790 lower than estimated, offset by increasing oil activity during the 2021-23 biennium, resulting in actual and estimated 2021-23 biennium revenues of \$173,561,747 being \$14,871,747 more than originally projected revenues of \$158,690,000. Expenditures for the 2021-23 biennium are anticipated to be \$234,360 more than estimated due to carryover of authorization for an information technology project.

FUND HISTORY

The foundation aid stabilization fund was created in 1994 when the voters of North Dakota approved a constitutional amendment--now Section 24 of Article X of the Constitution of North Dakota--to provide that 20 percent of oil extraction tax revenue be allocated as follows:

- 50 percent (of the 20 percent) to the common schools trust fund; and
- 50 percent (of the 20 percent) to the foundation aid stabilization fund.

In November 2016 voters approved Senate Concurrent Resolution No. 4003 (2015), which amended the Constitution of North Dakota to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for education-related purposes. In addition, the Legislative Assembly approved Senate Bill No. 2039 (2015), which included certain provisions effective December 1, 2016, based on the approval of Senate Concurrent Resolution No. 4003 by voters. Those provisions of Senate Bill No. 2039 established a scholarship

endowment fund and a school construction assistance loan fund and provided for transfers from the foundation aid stabilization fund to the school construction assistance loan fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016), and to the scholarship endowment fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016). Other provisions of Senate Bill No. 2039 provided any accessible funds that remain in the foundation aid stabilization fund, after completion of the required transfers to other funds, must be used for education-related purposes, including state aid to school districts and education-related property tax relief to school district patrons. The Legislative Assembly approved Senate Bill No. 2272 (2017), which provided for uses of the foundation aid stabilization fund and repealed Sections 9 and 10 of Chapter 153 of the 2015 Session Laws related to the transfers to the scholarship endowment fund and the school construction assistance loan fund.

Prior to December 8, 2016, the principal of the foundation aid stabilization fund was only available upon order of the Governor to offset foundation aid reductions made by executive action due to a revenue shortfall. Section 54-44.1-12 provides the Director of the Budget may order an allotment to control the rate of expenditures of state agencies. This section provided that an allotment must be made by a specific fund and all departments and agencies that receive money from a fund must be allotted on a uniform percentage basis, except that appropriations for foundation aid, transportation aid, and special education aid may only be allotted to the extent the allotment can be offset by transfers from the foundation aid stabilization fund. The Legislative Assembly approved Senate Bill No. 2272 (2017) and House Bill No. 1155 (2017), which amended Section 54-44.1-12 to provide any reductions to the general fund appropriation to the Department of Career and Technical Education for grants to school districts due to allotment are offset by funding from the foundation aid stabilization fund. Senate Bill No. 2272 also created a new section to Chapter 54-27 indicating that state school aid includes general fund appropriations for state school aid, transportation aid, and special education aid in DPI, as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education.

The Legislative Assembly approved Senate Bill No. 2362 (2019), which changed the method of allocating oil extraction tax revenue related to the state's share of revenue associated with production on tribal lands, increasing the allocation to the foundation aid stabilization fund.

Section 24 of Article X of the Constitution of North Dakota provides the interest income of the foundation aid stabilization fund must be transferred to the general fund on July 1 of each year. However, the State Treasurer's office allocates the interest income to the general fund on a monthly basis.

ANALYSIS OF THE HEALTH CARE TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$189,101	
Add revenues				
Investment earnings	\$1,281		\$500	
Loan repayments - Principal and interest	975,011		816,708	
Total revenues		976,292		817,208
Total available		\$1,165,393		\$982,601
Less expenditures and transfers				
Department of Human Services nursing facility operating margin increases (2019 SB 2012; 2021 HB 1012)	\$1,000,000		\$982,601	
Total expenditures and transfers		1,000,000		982,601
Ending balance		<u>\$165,393</u>		<u>\$0</u>

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$171,213. The decrease in the estimated balance of \$171,213 is primarily due to loan repayments being less than anticipated.

FUND HISTORY

The health care trust fund was established by the Legislative Assembly in Senate Bill No. 2168 (1999) for providing nursing alternative loans or grants. The Legislative Assembly in House Bill No. 1196 (2011) provided that money in the fund may be transferred to the long-term care facility loan fund for nursing facility renovation projects and used for other programs as authorized by the Legislative Assembly. Money was generated for the health care trust fund as a result of the Department of Human Services making government nursing facility funding pool payments to two government nursing facilities--McVile and Dunseith. Payments were made based on the average amount Medicare rates exceeded Medicaid rates for all nursing care facilities in the state multiplied by the total of all Medicaid resident days of all nursing homes. Federal Medicaid funds were available for these payments and required a state match. Payments were made to the two government nursing facilities and were subsequently returned to the state, less a \$50,000 transaction fee retained by each of the two government nursing facilities. Once returned to the state, the state's matching share was returned to its source, and the federal funds were deposited in the health care trust fund. Money in the fund is invested by the State Investment Board, and any investment earnings are retained in the fund. The federal government has eliminated this intergovernmental transfer program. As a result, North Dakota's final intergovernmental transfer payment was received in July 2004. The Legislative Assembly, in House Bill No. 1012 (2009), amended North Dakota Century Code Section 50-30-02 to preclude the Governor from recommending spending from the health care trust fund in draft appropriation acts under Section 54-44.1-06, except for the operation and maintenance of the nurse aide registry.

ANALYSIS OF THE HEALTH INFORMATION TECHNOLOGY PLANNING LOAN FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance ¹		\$4,717,323	
Add revenues				
Loan repayments - Principal	\$2,646,771		\$1,520,656	
Loan repayments - Interest and miscellaneous income	92,777		69,948	
Total revenues		2,739,548		1,590,604
Total available		\$7,456,871		\$9,010,480
Less estimated expenditures and transfers				
Loans to health care entities ²	\$0		\$0	
Bank of North Dakota fees	36,995		35,019	
Transfer - Electronic health information exchange fund (2021 SB 2021) ³	0		3,500,000	
Total expenditures and transfers		36,995		3,535,019
Ending balance		<u>\$7,419,876</u>		<u>\$5,475,461</u>

¹Section 9 of Senate Bill No. 2332 (2009) provided for a transfer of up to \$5 million of Bank of North Dakota profits to the health information technology planning loan fund, which was transferred during the 2009-11 biennium. Section 4 of House Bill No. 1021 (2011) provided for a transfer of up to \$5 million of Bank profits to the health information technology planning loan fund in the 2011-13 biennium. During the 2011-13 biennium, approximately \$4.3 million of Bank profits were transferred to the fund.

²The Health Information Technology Advisory Committee has approved \$14,227,024 of loans since the program's inception in the 2009-11 biennium through March 31, 2022:

St. Andrew's Health Center (Bottineau)	\$625,000	Nelson County Health System	\$305,000
Cooperstown Medical Center	396,996	Southwest Healthcare System	605,000
Wishek Hospital	761,149	CHI St. Alexius Medical Center	1,250,000
Towner County Medical Center (Cando)	924,018	Pediatric Therapy Partners	100,000
Presentation Medical Center (Rolla)	625,000	Valley Health	72,155
West River Health Services (Hettinger)	1,250,000	Knife River Care Center	125,000
Ashley Medical Center	815,652	Golden Acres Manor	98,648
Tioga Medical Center	931,320	St. Luke's Home	115,053
St. Luke's Community Hospital and Clinics (Crosby)	874,542	Richard P. Stadter Psychiatric Center	463,000
Midgarden Family Clinic (Park River)	101,590	Elm Crest Manor	74,500
7-Day Clinic Walk-In Express Care (Fargo)	50,000	Northwood Deaconess	920,125
Linton Hospital	1,073,012	Pharmacists Association	120,070
McKenzie County Health Care System	600,000	St. Gerard's Community of Care	150,194
Garrison Memorial Hospital	800,000		
		Total	<u>\$14,227,024</u>

³Senate Bill No. 2021 (2021) provides for a transfer of \$6 million, as requested by the chief information officer, from the health information technology planning loan fund to the electronic health information exchange fund for the purpose of defraying the expenses of the Health Information Technology Office and the health

information network during the 2021-23 biennium. Section 3 of the bill provides legislative intent that the funding be transferred only to the extent federal funding is not available to defray the expenses of the Health Information Technology Office and the health information network during the 2021-23 biennium.

Through March 31, 2022, the chief information officer has requested the Bank transfer \$3 million of funding from the health information technology planning loan fund to the electronic health information exchange fund and estimates an additional \$500,000 will be transferred, resulting in an estimated total of \$3.5 million transferred during the 2021-23 biennium.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$2,109,834. The \$3,365,627 increase in the estimated balance of \$5,475,461 is primarily due to the Information Technology Department no longer anticipating \$750,000 of loans being issued during the 2021-23 biennium and anticipating only \$3,500,000 of transfers to the electronic health information exchange fund, rather than the entire \$6,000,000 authorized in Senate Bill No. 2021.

FUND HISTORY

North Dakota Century Code Section 6-09-43 (Senate Bill No. 2332 (2009)) established a health information technology planning loan fund at the Bank of North Dakota for providing low-interest loans to health care entities to assist those entities in improving health information technology infrastructure. This fund is a revolving loan fund. Pursuant to Section 9 of the bill, \$5 million was transferred from the Bank to this fund during the 2009-11 biennium. All money transferred into the fund, interest upon money in the fund, and collections of interest and principal on loans made from the fund are appropriated for disbursement. Annually, the Bank may deduct a service fee for administering the revolving loan fund.

Section 4 of House Bill No. 1021 (2011) provided the Industrial Commission transfer up to \$5,000,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota to the health information technology planning loan fund or the health information technology loan fund in the 2011-13 biennium. The director of the Health Information Technology Office was to request transfers from the Bank only as necessary to meet cashflow needs of the funds and only upon certification by the director of a demonstrated need for health information technology planning loans. During the 2011-13 biennium, \$4,280,219 was transferred by the Bank to the health information technology loan fund.

An application for a loan must be made to the Health Information Technology Office. The director of the Health Information Technology Office, in collaboration with the Health Information Technology Advisory Committee, may approve the application of a qualified applicant that meets the criteria established by the director of the Health Information Technology Office. The Health Information Technology Office is to forward approved applications to the Bank of North Dakota. Upon approval of the application by the Bank, the Bank is to make the loan from the revolving loan fund.

Loans are provided at a fixed interest rate of 1.00 percent. Of the 1.00 percent of interest collected, 0.50 percent is deposited in the fund and 0.50 percent is retained by the Bank as the service fee for administering the loans.

ANALYSIS OF THE HIGHWAY TAX DISTRIBUTION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$0		\$3,026,000
Add revenues ^{1,2}				
Motor vehicle fuel tax	\$185,151,095		\$200,700,000	
Special fuels taxes	169,865,492		186,200,000	
Motor vehicle registration fees	181,786,004		186,800,000	
Total revenues		536,802,591		573,700,000
Total available		\$536,802,591		\$576,726,000
Less expenditures and transfers				
Highway Patrol	\$4,178,043 ³		\$9,346,781	
Motorboat safety account	285,277		200,000	
State snowmobile fund	162,951		200,000	
Rail safety fund	589,018		594,724	
Administrative assistance to transferees	5,500,000		5,500,000	
Ethanol production incentives	4,841,048		4,700,000	
Total deductions before distributions		15,556,337		20,541,505
Total available for distributions and transfers		\$521,246,254		\$556,184,495
Less distributions and transfers				
State highway fund	\$317,669,200		\$340,913,282	
Counties	114,334,755		122,365,748	
Cities	64,451,336		69,578,552	
Townships	13,991,655		14,981,509	
Transit	7,773,308		8,345,404	
Total distributions and transfers		518,220,254		556,184,495
Ending balance		\$3,026,000 ³		\$0

¹Revenues do not include funds collected and disbursed for the administration of DOT's Motor Vehicle Division, through tribal agreements, or funds collected for vanity license plates and disbursed to nonprofit organizations.

²The amounts shown reflect actual revenue collections for the 2019-21 biennium, and the estimated collections for the 2021-23 biennium are based on DOT's March 2022 adjusted revenue forecast. This analysis does not reflect the effect of House Bill No. 1291 (2019) and Senate Bill No. 2061 (2019), because the fiscal impact of the bills could not be determined.

³The Highway Patrol spent \$4,178,043 of its 2019-21 biennium appropriation of \$7,204,043 from the highway tax distribution fund resulting in \$3,026,000 remaining in the highway tax distribution fund, due to federal funds being used in its place. These funds were not distributed during the 2019-21 biennium due to the timing of the reporting of the unspent funds. The 2019-21 biennium ending fund balance was distributed based on the highway tax distribution fund formula during the 1st month of the 2021-23 biennium.

NOTE: The estimated revenue projection for the 2021-23 biennium made at the end of the 2021 legislative session for deposits in the fund was \$572,929,292. Excluding the beginning balance, the estimated fund revenues are \$770,708 more than the 2021 estimate provided by DOT at the end of the 2021 legislative session due to adjustments in the department's estimates.

FUND HISTORY

Section 11 of Article X of the Constitution of North Dakota provides:

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

The majority of funds received from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund. Section 54-27-19 provides the highway tax distribution fund consists of the "moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes." This section provides after the first \$5.5 million per biennium is transferred to the state highway fund for the purpose of providing administrative assistance to other transferees, the money in the fund must be distributed by the State Treasurer as follows:

1. Sixty-one and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formulas in this subsection using the incorporated cities' populations as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
 - a. For counties having no cities with a population of ten thousand or more, twenty-seven percent of the total county allocation must be distributed to all of the incorporated cities within the county on a countywide per capita basis. The remaining county allocation amount must be transferred into the county highway tax distribution fund.
 - b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
 - (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
 - (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
 - (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.

(4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under paragraph 1 and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.

5. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Section 54-27-19(1) provides for 61.3 percent of the funds from the highway tax distribution fund be transferred to DOT for deposit in the state highway fund. Section 24-02-37(1) provides, except for investment income, the money of the state highway fund must be applied in the following priority:

- a. The cost of maintaining the state highway system.
- b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota. Notwithstanding any other provision of law, the department of transportation may repay the United States department of transportation for previous related expenditures from current biennium appropriations to allow the department to reobligate the federal aid to other federal aid projects.
- c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

Section 54-27-19(2) requires 2.7 percent of the funds from the highway tax distribution fund to be deposited in the township highway fund. Section 54-27-19.1 directs the State Treasurer to distribute the money to the counties of the state based on the length of township roads in each county compared to the length of all township roads in the state. To receive any funds, organized townships must provide 50 percent matching funds. Each county treasurer is required to allocate the funds received to the organized townships in the county which provide 50 percent matching funds based on the length of township roads in each of those organized townships compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for highway and bridge purposes. If a county does not have organized townships, or has some organized and some unorganized townships, the county is required to retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county.

Section 54-27-19(3) allocates 1.5 percent of the funds from the highway tax distribution fund to the public transportation fund. Section 39-04.2-04 provides money in the public transportation fund must be disbursed under guidelines issued by the Director of DOT and must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped. In addition, the money may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the director.

Motor Vehicle Fuel Tax

Prior to 1983, the motor vehicle fuel excise tax was 8 cents per gallon on motor vehicle fuel sold. The 1983 Legislative Assembly repealed Chapter 57-54 relating to motor vehicle fuel tax and created Chapter 57-43.1 to consolidate the provisions of the motor fuel tax law and the importers for use tax law. Section 1 of House Bill No. 1539 (1983) imposed a 13 cents per gallon tax for all motor vehicle fuel sold except on motor vehicle fuel sold containing a minimum of 10 percent agricultural ethyl or methanol, which was taxed as shown in the following table:

Exception Effective Dates	Tax Rate Per Gallon
Through December 31, 1983	\$0.09
January 1, 1984, through December 31, 1984	\$0.08
January 1, 1985, through December 31, 1985	\$0.07
January 1, 1986, through June 30, 1992	\$0.09
July 1, 1992	\$0.13

The Legislative Assembly, in Section 1 of Senate Bill No. 2296 (1985), changed the language from agricultural ethyl or methanol to "a qualifying alcohol," adjusted the motor fuel tax on motor vehicle fuel sold containing a minimum of 10 percent agricultural ethyl or methanol as shown in the following table:

Exception Effective Dates	Tax Rate Per Gallon
July 1, 1985, through June 30, 1987	\$0.05
July 1, 1987, through December 31, 1992	\$0.09
January 1, 1993	\$0.13

The Legislative Assembly, in Section 9 of Senate Bill No. 2557 (1987), increased the motor vehicle fuel tax from 13 cents per gallon to 17 cents per gallon for all motor vehicle fuel sold.

The Legislative Assembly, in Section 2 of Senate Bill No. 2029 (1989), increased the motor vehicle fuel tax from 17 cents per gallon to 20 cents per gallon for all motor vehicle fuel sold. The referred measure was disapproved on December 5, 1989, leaving the motor vehicle fuel tax rate at 17 cents per gallon.

The Legislative Assembly, in Section 2 of House Bill No. 1575 (1991), removed Section 57-43.1-02(2) relating to the exception from the motor vehicle fuel tax for motor vehicle fuels containing a minimum of 10 percent of qualifying alcohol.

The Legislative Assembly, in Section 1 of House Bill No. 1163 (1997), increased the motor vehicle fuel tax from 17 cents per gallon to 20 cents per gallon for all motor vehicle fuel sold.

The Legislative Assembly, in Section 2 of House Bill No. 1183 (1999), increased the motor vehicle fuel tax from 20 cents per gallon to 21 cents per gallon for all motor vehicle fuel sold.

The Legislative Assembly, in Section 12 of Senate Bill No. 2012 (2005), increased the motor vehicle fuel tax from 21 cents per gallon to 23 cents per gallon for all motor vehicle fuel sold. Section 2 of House Bill No. 1478 (2005), created a new subsection to Section 57-43.1-02, imposing a 1 cent per gallon motor vehicle fuel tax on E85 fuel effective after June 30, 2005, through the month in which a cumulative total of 1.2 million gallons of E85 fuel has been reported to the Tax Commissioner and after that date is ineffective.

Special Fuels Excise Tax

The 1983 Legislative Assembly also repealed Chapter 57-52, relating to special fuels excise tax and created Chapter 57-43.2 to consolidate the provisions of the Special Fuels Tax Act, the special fuels tax levy, the Importers for Use Tax Act, and the aviation fuel tax. Section 1 of House Bill No. 1072 (1983) created Chapter 57-43.2 related to special fuels taxes and imposed an excise tax of 8 cents per gallon on the sale or delivery of special fuel with some exceptions and an excise tax of 2 cents per gallon on the exempt items in Section 57-43.2-02. Section 1 of House Bill No. 1539 (1983) amended Section 1 of House Bill No. 1072 to increase the special fuels excise tax from 8 cents per gallon to 13 cents per gallon.

The Legislative Assembly, in Section 1 of House Bill No. 1248 (1985), amended the definition of special fuel to include compressed natural gas.

The Legislative Assembly, in Section 10 of Senate Bill No. 2557 (1987), increased the special fuels excise tax from 13 cents per gallon to 17 cents per gallon.

The Legislative Assembly, in Section 3 of Senate Bill No. 2029 (1989), increased the special fuels excise tax from 17 cents per gallon to 19 cents per gallon. The referred measure was disapproved on December 5, 1989, leaving the special fuels excise tax rate at 17 cents per gallon.

The Legislative Assembly, in Section 12 of House Bill No. 1311 (1997), removed exemptions from the 17 cents per gallon on special fuels. Section 2 of House Bill No. 1163 (1997) increased the special fuels excise tax from 17 cents per gallon to 20 cents per gallon.

The Legislative Assembly, in Section 3 of House Bill No. 1183 (1999), increased the special fuels excise tax from 20 cents per gallon to 21 cents per gallon.

The Legislative Assembly, in Section 3 of Senate Bill No. 2454 (2001), amended Section 57-43.2-02 regarding special fuels excise taxes to authorize a reduction of one and five-hundredths cents per gallon on the sale or delivery of diesel fuel that contains at least 2 percent biodiesel fuel by weight.

The Legislative Assembly, in Section 14 of Senate Bill No. 2012 (2005), amended Section 57-43.2-02 regarding special fuels excise taxes to increase the special fuels excise tax from 21 cents per gallon to 23 cents per gallon effective after June 30, 2005.

Motor Vehicle Registration Fees

Motor vehicle registration fees are assessed based on Chapter 39-04 and vary by vehicle type and vehicle weight. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of an initial fee of \$10 for plates. Motor vehicle registration fees were last changed in 2005, which increased fees for all weight classes by \$10.

ANALYSIS OF THE LEGACY FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$6,093,018,603	
Add revenues				
Oil and gas gross production and extraction tax collections (30 percent of collections) (2019 SB 2312) ¹	\$965,917,314		\$1,092,330,000	
Investment earnings (losses) (2021 HB 1015; 2021 HB 1425) ^{2,3,4}	1,887,514,683		1,080,000,000	
Total revenues		2,853,431,997		2,172,330,000
Total available		\$8,946,450,600		\$10,247,093,216
Less expenditures and transfers				
Transfer of realized earnings to the general fund (2019 SB 2015; 2021 HB 1015) ^{3,5,6}	\$871,687,384		\$0	
Transfer of realized earnings to a legacy earnings fund (2021 HB 1380) ⁶	0		N/A	
Expenditure of principal ⁵	0		0	
Total expenditures and transfers		871,687,384		0
Ending balance		<u>\$8,074,763,216</u>		<u>\$10,247,093,216</u>

¹The oil and gas tax revenues reflect allocations for August through July (24 months). The estimated allocations for the 2021-23 biennium reflect actual allocations through April 2022 and the 2021 legislative revenue forecast for the remainder of the biennium.

²Based on the provisions of Section 26 of Article X of the Constitution of North Dakota, investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. North Dakota Century Code Section 21-10-12 provides that the investment earnings are the realized earnings of the fund. Unrealized earnings remain in the fund. The schedule below provides more detail on the investment earnings and the transfers at the end of each biennium since the 2013-15 biennium.

	2013-15 Biennium Actual	2015-17 Biennium Actual	2017-19 Biennium Actual	2019-21 Biennium Actual	2021-23 Biennium Estimated
Realized earnings (losses)	\$145,255,008	\$273,064,100	\$502,243,356	\$951,888,747 ³	N/A
Unrealized earnings (losses)	67,871,752	252,305,388	167,170,302	935,625,936 ³	N/A
Total investment earnings (losses)	\$213,126,760	\$525,369,488	\$669,413,658	\$1,887,514,683 ³	\$1,080,000,000 ³
End of biennium transfer			\$455,263,216	\$871,687,384 ³	N/A

The investment earnings (losses) for the legacy fund for the 2021-23 biennium through March 31, 2022, were approximately (\$44.1 million), including realized earnings (losses) of \$545.4 million and unrealized earnings (losses) of (\$589.5 million).

³Due to the timing of the transfer and the reporting of earnings at the end of the each biennium, the realized and unrealized earnings reflect the amounts reported by the Retirement and Investment Office for July through June (24 months), but the transfer to the general fund reflects the realized earnings from June through May (24 months). The estimated earnings for the 2021-23 biennium reflect 6 percent per year of the forecasted average balance of the fund (\$9 billion).

NOTE: The actual earnings may differ significantly from these estimates based on actual investment performance.

⁴House Bill No. 1425 (2021) designates a portion of the legacy fund investments to in-state fixed income investments and in-state equity investments. The performance of these investments may affect the earnings of the legacy fund.

⁵The principal and earnings of the legacy fund may not be spent until after June 30, 2017, pursuant to Section 26 of Article X of the Constitution of North Dakota. After June 30, 2017, the principal and earnings may be spent as follows:

- Up to 15 percent of the principal of the legacy fund may be spent during a biennium subject to approval by at least two-thirds of the members elected to each house of the Legislative Assembly.
- The realized earnings accruing after June 30, 2017, are transferred by the State Treasurer to the general fund at the end of the biennium and may be spent from the general fund pursuant to legislative appropriation.

Senate Bill No. 2362 (2019) provides a contingent transfer of \$64.37 million from legacy fund earnings deposited in the general fund to the common schools trust fund if the legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium are at least \$164.37 million. The 2019 Legislative Assembly approved the contingent transfer to correct a shortfall of oil extraction tax collections to the common schools trust fund in prior bienniums. The contingency was met, and \$64.37 million was transferred from the general fund to the common schools trust fund.

⁶House Bill No. 1380 (2021) establishes a percent of market value calculation to determine the amount of legacy fund earnings available for spending each biennium and creates a legacy earnings fund. The percent of market value is based on 7 percent of the 5-year average of legacy fund assets. The earnings available for spending would be transferred to a legacy earnings fund for allocations to special funds and other purposes designated by the Legislative Assembly. A portion of the excess earnings are retained in the legacy earnings fund as a reserve for any bond payments, and up to \$100 million of excess earnings are transferred to the legacy fund to become part of the principal with the remaining excess earnings transferred to the strategic investment and improvements fund. The amount of realized earnings that may be transferred to the legacy earnings fund at the end of the 2021-23 biennium is unknown.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$10,021,498,603. The estimated balance increased by \$225,594,613 primarily related to an increase in investment earnings for the 2019-21 biennium and an increase in oil and gas tax revenue collections in the 2021-23 biennium.

FUND HISTORY

The legacy fund was created in 2010 when the voters of North Dakota approved a constitutional amendment--now Section 26 of Article X of the Constitution of North Dakota--to provide 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. Investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium.

Prior to July 1, 2015, 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 were deposited instead into the legacy fund in the subsequent month. In House Bill Nos. 1176 and 1377 (2015), the Legislative Assembly amended Section 15-08.1-08 to remove the provision related to the additional deposits of revenue in the legacy fund from the strategic investment and improvements fund.

Senate Bill No. 2312 (2019) amended the oil and gas tax revenue sharing agreement between the state and the Three Affiliated Tribes of the Fort Berthold Reservation increasing the revenue allocated to the Three Affiliated Tribes and decreasing the revenue allocated to the state. As a result, less revenue is available for allocations to the legacy fund.

ANALYSIS OF THE LIGNITE RESEARCH FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$29,908,588	
Add revenues				
Separate two-cent coal severance tax	\$1,074,511		\$1,075,000	
50 percent of coal severance taxes deposited in the coal development trust fund ¹	1,480,853		1,470,000	
20 percent of coal severance taxes deposited in the coal development trust fund for clean coal projects ¹	634,652		630,000	
15 percent of coal severance taxes ¹	3,021,986		3,000,000	
5 percent of the general fund share of coal conversion tax	2,245,574		0	
Lignite research tax (2021 HB 1412) ¹	0		2,250,000	
Oil and gas tax allocation (2019 HB 1066) ¹	10,000,000		10,000,000	
Investment income on Dakota Gasification Company ammonia plant and Spiritwood plant	180,000		180,000	
Revenue bonds/short-term loan ²	0		0	
Interest income, return of funds, and litigation contributions	648,922		70,000	
Total revenues		19,286,498		18,675,000
Total available		\$49,195,086		\$40,482,466
Less expenditures and transfers ^{3,4}				
Administration	\$831,519		\$900,000	
Lignite feasibility studies (nonmatching grants)	313,483		2,839,249	
Small research grants	1,939,761		8,806,395	
Lignite marketing	1,413,000		2,187,000	
Lignite litigation ⁵	0		1,000,000	
Demonstration projects	0		1,367,678	
Advanced energy technology development	22,889,857		20,382,143	
Total expenditures and transfers ⁶		27,387,620		37,482,465
Ending balance		\$21,807,466		\$3,000,001

¹House Bill No. 1066 (2019) increases the allocation of oil and gas tax revenue to the lignite research fund by \$7 million, from \$3 million to \$10 million. House Bill No. 1412 (2021) exempts 100 percent of the generation tax and 60 percent of the capacity tax from the coal conversion tax and creates a new lignite research tax to maintain the current level of allocations to the lignite research fund.

²Pursuant to North Dakota Century Code Section 54-17.5-04, the Industrial Commission may issue revenue bonds or borrow short-term funds from the Bank of North Dakota.

³The Industrial Commission has a policy stating that 18 percent of lignite research fund income will be used for small research projects, 56 percent for large demonstration research projects, 21 percent for marketing projects, and 5 percent for administration. The commission has further directed that no single large demonstration research project can receive more than 37.5 percent of available funds.

⁴The Industrial Commission has waived the fund allocation policy. The commission has committed \$22 million through the 2011-13 biennium to three projects. In January 2015 the commission learned one of the projects is not proceeding and released the project's commitment of \$8,732,503. Expenditures for Lignite Vision 21 Project have been \$1,360,750 during the 2003-05 biennium, \$2,243,391 during the 2005-07 biennium, \$2,200,000 during the 2007-09 biennium,

\$3,972,090 during the 2009-11 biennium, \$678,851 during the 2011-13 biennium, \$110,000 during the 2013-15 biennium, \$914,663 during the 2015-17 biennium, \$1,290,525 during the 2017-19 biennium, \$0 in the 2019-21 biennium, and anticipated expenditures of \$1,367,678 in subsequent bienniums. The objective of the Lignite Vision 21 Project is to construct new lignite-fired power plants in North Dakota. (These amounts are net of funds that were distributed but later returned when projects did not proceed.)

⁵Lignite litigation - House Bill No. 1093 (2007) provides that \$500,000 of the amount appropriated to the lignite research fund for the 2007-09 biennium is to be used to pay for fees associated with lignite litigation that may be brought by the state to protect and promote the continued development of lignite resources. Activities associated with the litigation have been initiated with \$83,379 spent during the 2007-09 biennium, \$153,907 spent during the 2009-11 biennium, \$652,519 spent during the 2011-13 biennium, \$983,288 during the 2013-15 biennium with \$451,555 of that amount paid by industry, \$259,159 during the 2015-17 biennium with \$122,866 of that amount paid by industry, \$44,962 spent during the 2017-19 biennium with \$14,760 of that amount paid by industry, and \$0 spent during the 2019-21 biennium.

From nonmatching funds within the lignite research fund, \$500,000 is designated for litigation expenses in the 2019-21 biennium and \$0 is designated for the 2021-23 biennium. Of the nonmatching funds, \$313,483 was spent during the 2019-21 biennium.

The State of North Dakota was successful in its litigation against the State of Minnesota during the 2017-19 biennium and will be receiving a total of \$1,410,000. Of the \$1,410,000, \$670,000 will be paid to industry partners, and the remaining \$740,000 will be deposited in the lignite research fund during the 2017-19 and 2019-21 bienniums. The original \$500,000 was spent by the end of the 2011-13 biennium with additional funding being provided from nonmatching program funds in subsequent bienniums.

House Bill No. 1014 (2019) provides legislative intent that at least \$500,000 from the lignite research fund, including proceeds from successful litigation, is available for fees associated with lignite litigation brought by the state to protect and promote the continued development of lignite resources.

⁶The Industrial Commission has continuing appropriation authority for all money deposited in the lignite research fund pursuant to Section 57-61-01.6.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$65,901. The estimated balance increased by \$2,934,100 primarily related to project payments being disbursed later than anticipated.

FUND HISTORY

Section 57-61-01.5(2) and Section 21 of Article X of the Constitution of North Dakota provide for up to 70 percent of the taxes collected and deposited in the coal development trust fund to be deposited in the lignite research fund. Of the 70 percent, 50 percent is designated for research, development, and marketing pursuant to the passage of Initiated Measure No. 3 in June 1990, and 20 percent is designated for clean coal demonstration projects pursuant to voter approval of a constitutional amendment in June 1994. The remaining 30 percent of the funds deposited in the coal development trust fund are to be held in trust and administered by the Board of University and School Lands, which has the authority to invest the funds, and may, as provided by law, lend money from the fund to political subdivisions. Senate Bill No. 2014 (2017) reduced the allocation of coal severance tax allocations to the coal development trust fund from 30 to 15 percent and provides an allocation of 15 percent to the lignite research fund.

From the state general fund share of coal conversion tax collections, the Legislative Assembly designated 3 percent for transfer to the lignite research fund during the 2007-09 biennium and 5 percent after the 2007-09 biennium in House Bill No. 1093 (2007).

House Bill No. 1152 (2017) changed the allocation of the state's share of oil and gas tax revenue to provide up to \$3 million of allocations to the lignite research fund.

ANALYSIS OF THE MEDICAL MARIJUANA FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$614,188		\$1,234,230
Add revenues				
Program fees:				
Compassion center and manufacturer registration fees	\$940,000		\$940,000	
Compassion center agents	934,374		1,105,450	
Total revenues		1,874,374		2,045,450
Total available		\$2,488,562		\$3,279,680
Less State Department of Health expenditures (Pursuant to a continuing appropriation in North Dakota Century Code Section 19-24.1-40)				
Salaries and wages	\$907,214		\$996,840	
Indirect costs	0		146,535	
Operating expenditures	347,118		504,050	
Total expenditures and adjustments		1,254,332 ¹		1,647,425 ²
Ending balance		<u>\$1,234,230</u>		<u>\$1,632,255</u>

¹The State Department of Health presented a budget, funded through the continuing appropriation, totaling \$1,398,080, including 5 FTE positions.

²The State Department of Health presented a budget, funded through the continuing appropriation, totaling \$1,564,793, including 5 FTE positions. The budget was increased \$12,120 for salary adjustments of 1.5 percent on July 1, 2021, with a minimum monthly increase of \$100, and 2 percent on July 1, 2022, and \$4,000 for the expenditure impact of House Bill No. 1359 (2021).

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$1,178,720. The increase in the estimated balance of \$453,535 is due to more program fees and less anticipated expenditures during the 2019-2021 biennium resulting in the ending balance being \$202,097 more than estimated and estimated program fees being \$317,950 more than estimated during the 2021-23 biennium, offset by estimated expenditures \$66,512 more than estimated.

FUND HISTORY

In November 2016, voters approved Initiated Statutory Measure No. 5 (North Dakota Compassionate Care Act) relating to medical marijuana and created Chapter 19-24. In Senate Bill No. 2344 (2017), the Legislative Assembly repealed Chapter 19-24 and created and enacted Chapter 19-24.1 to provide for the legalization of medical marijuana. Senate Bill No. 2344 required the State Department of Health to establish and implement a medical marijuana program to allow for the production, processing, and sale of marijuana for medical use. In Section 19-24.1-40, the Legislative Assembly established a medical marijuana fund. The State Department of Health must deposit all fees related to medical marijuana into the fund and must administer the fund. Money in the fund is appropriated to the department on a continuing basis for use in administering the medical marijuana program. Therefore, the Legislative Assembly removed funding for the Medical Marijuana Division from the State Department of Health's base budget in 2019.

ANALYSIS OF THE NORTH DAKOTA OUTDOOR HERITAGE FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$4,948,114		\$8,936,144
Add estimated revenues				
Oil and gas gross production tax collections	\$15,000,000 ¹		\$15,000,000 ¹	
Interest income	109,020		90,000	
Refunds	1,705,093		911,978	
Total estimated revenues		16,814,113		16,001,978
Total available		\$21,762,227		\$24,938,122
Less estimated expenditures and transfers				
Grant award commitments	\$12,712,011 ²		20,000,000 ³	
Administrative expenses	114,072		200,000 ³	
Total estimated expenditures and transfers		12,826,083		20,200,000
Estimated ending balance		<u>\$8,936,144</u>		<u>\$4,738,122</u>

¹North Dakota Century Code Section 57-51-15 established a maximum allocation of \$40 million (\$20 million per year) to the fund. For the 2019-21 biennium, House Bill No. 1014 (2019) limits the allocations to \$15 million. Senate Bill No. 2014 (2021) limits oil and gas gross production tax revenue allocations to the fund to \$7.5 million annually for the 2021-23 biennium.

²All money in the fund is appropriated on a continuing basis, pursuant to Section 54-17.8-02. Grant commitments include projects that will draw down funds over a 10-year period. The amounts shown reflect the estimated amount available for grants and not the amount expended.

³Grant award commitments were increased from \$16 million to \$20 million because the first three rounds of grants have been more than anticipated and there are two grant rounds remaining in the 2021-23 beinnium. Administrative expenses increased from \$175,000 to \$200,000 as a result of the increase in the number of contracts.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$2,781,164. The estimated increase of \$1,956,958 is primarily related to funds from previous bienniums not being fully committed for projects.

FUND HISTORY

The North Dakota outdoor heritage fund was established in House Bill No. 1278 (2013) (Chapter 54-17.8) to provide, pursuant to a continuing appropriation, grants to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to enhancing conservation practices in this state by:

- Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;
- Improving, maintaining, and restoring water quality, soil conditions, plant diversity, animal systems, and by supporting other practices of stewardship to enhance farming and ranching;
- Developing, enhancing, conserving, and restoring wildlife and fish habitat on private and public lands; and
- Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

For the 2013-15 biennium, pursuant to Section 57-51-15, 4 percent of the first 1 percent of oil and gas gross production tax collections is deposited in the North Dakota outdoor heritage fund, up to \$15 million per year. House Bill No. 1176 (2015) amended Section 57-51-15 to increase the amount deposited in the North Dakota outdoor heritage fund from 4 percent of the first 1 percent of oil and gas gross production tax collections to 8 percent, and to increase the maximum oil and gas gross production tax collection deposits from \$15 million to \$20 million per year and from \$30 million to \$40 million per biennium. For the period September 1, 2017, through August 31, 2019, Senate Bill No. 2013 (2017), a maximum of \$10 million of oil and gas gross production tax collections may be deposited in the fund. For the period September 1, 2019, through August 31, 2021, House Bill No. 1014 (2019), a maximum of \$15 million of oil and gas gross production tax collections may be deposited in the fund. The Industrial Commission has oversight of the North Dakota outdoor heritage fund. The North Dakota Outdoor Heritage Advisory Board (consisting of 12 voting and 4 ex officio members) makes recommendations to the commission on the funding of grants.

ANALYSIS OF THE RESEARCH NORTH DAKOTA FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium		2021-23 Biennium	
	Actual		Estimated	
Beginning balance ¹		\$3,432,289		\$0
Add revenues				
Investment income ¹⁰	\$10,437		\$16	
Refunds from previously awarded grants ²	53,879			
Transfers from the centers of excellence fund (2019 SB 2224) ^{3,4}	352,483			
Transfers from the centers of research excellence fund (2019 SB 2224) ^{3,5}	1,086,111			
Total revenues		1,502,910		16
Total available		\$4,935,199		\$16
Less expenditures and transfers				
Technical review expenses	\$1,950			
Research North Dakota grants ⁶	2,887,220			
Research North Dakota grants designated for biotechnology ⁷	64,957			
Research North Dakota venture grants ⁸	144,419			
Department of Commerce entrepreneurship grants and vouchers ⁹	0			
Department of Commerce discretionary grants ⁹	714,109			
Transfer to the bioscience innovation grant fund (2019 SB 2224) ⁴	700,000			
Transfer to the general fund (2019 SB 2224) ¹⁰	422,544		16	
Total expenditures and transfers		4,935,199		16
Ending balance		\$0		\$0

¹In Senate Bill No. 2018 (2013), the Legislative Assembly established the Research North Dakota fund and provided a transfer of \$12 million from the general fund to provide funding for the Research North Dakota grant program and the Research North Dakota venture grant program. House Bill No. 1018 (2015) included a transfer of \$4,500,000 from the general fund to the Research North Dakota fund. However, the transfer in the 2015-17 biennium was reduced by \$146,458 to \$4,353,542 due to the general fund budget reductions made during the August 2016 special legislative session. House Bill No. 1018 (2015) also directed OMB to transfer unobligated funds from the centers of excellence fund to the Research North Dakota fund. Unobligated funds of \$7,650,000 in the centers of excellence fund were transferred to the Research North Dakota fund in January 2017.

²During the 2019-21 biennium, the Department of Commerce received a total of \$53,879 of previously awarded Research North Dakota grant funding due to recipients not expending funding during the allowable time period.

³In Section 7 of Senate Bill No. 2224 (2019), the Legislative Assembly provided for the transfer of any balance in the centers of excellence fund and centers of research excellence fund to the Research North Dakota fund on July 1, 2019. Section 6 of the bill repealed the centers of excellence and centers of research excellence programs on July 1, 2019. Section 8 of the bill directed OMB to transfer \$700,000 from the Research North Dakota fund to the bioscience innovation grant fund during the 2019-21 biennium, of which up to \$200,000 may be awarded to entities providing assistance to develop bioscience companies. Section 9 of the bill directed OMB to transfer any balance in the Research North Dakota fund to the general fund on June 30, 2021. Section 5 of the bill repealed the Research North Dakota fund and program on July 1, 2021.

⁴The total amount transferred from the centers of excellence fund to the Research North Dakota fund was \$352,483. Of this amount, \$352,336 was the balance in the center of excellence fund at the end of the 2017-19 biennium, which was transferred to the Research North Dakota fund in August 2019. The remaining \$147 is from interest earned on money in the centers of excellence fund during the 2017-19 biennium, which was transferred to the Research North Dakota fund in October 2019.

⁵The total amount transferred from the centers of research excellence fund to the Research North Dakota fund was \$1,086,111. Of this amount, \$1,085,658 was the balance in the center of excellence fund at the end of the 2017-19 biennium, which was transferred to the Research North Dakota fund in August 2019. The remaining \$453 is from interest earned on money in the centers of excellence fund during the 2017-19 biennium, which was transferred to the Research North Dakota fund in October 2019.

⁶Of the \$12 million appropriated for Research North Dakota for the 2013-15 biennium, \$6 million was available for Research North Dakota grants without any specific designation. The purpose of the Research North Dakota grant program was to provide grants to research universities for research, development, and commercialization activities in collaboration with a private sector partner. The Department of Commerce and the Centers of Excellence Commission were to develop guidelines for the grant application, which was to include a detailed partnership agreement and proof of dollar-for-dollar matching funds, which must be in cash. The partnership agreement was to include the scope and location of the work, a budget, and intellectual property agreements.

⁷The 2013 Legislative Assembly designated \$4 million of the \$12 million provided for the Research North Dakota grant program for biotechnology grants. These grants were to be provided to a research university to conduct research on and develop and commercialize vaccines and antibodies for the prevention of, treatment of, or cure for cancer; virally infectious diseases; or other pathogens, including bacteria, mycobacteria, fungi, and parasites. The Department of Commerce did not receive sufficient applications to award the full \$4 million of funding for biotechnology grants; therefore, the department reallocated unawarded funds for other Research North Dakota grants. The 2015 Legislative Assembly designated \$1 million of the \$4.5 million general fund transfer to the Research North Dakota fund for biotechnology grants. The Legislative Assembly provided if the entire \$1 million allocation was not awarded by December 31, 2016, any remaining funds must be reallocated for other Research North Dakota purposes. The funds were not reallocated as the department awarded the entire \$1 million prior to December 31, 2016.

⁸The 2013 Legislative Assembly designated up to \$2 million of the \$12 million provided for the Research North Dakota grant program for venture grants. These grants were to be provided to a research university to further the commercialization of technology developed by the university or jointly with a startup or spinoff business operating in North Dakota. The Department of Commerce and the Centers of Excellence Commission developed guidelines for the grants and established three categories--Phase 1, Phase 2, and Phase 1-2 grants. Phase 1 venture grant recipients were not required to provide a match of grant funds. Phase 2 venture grant recipients must have established a startup or spinoff business during Phase 1 and must provide matching funds for grants received. Phase 1-2 venture grants recipients were not required to match grant funds received during the 1st grant year but must provide matching funds during the 2nd grant year to receive additional funding. The 2015 Legislative Assembly did not designate any funding for venture grants. However, the department reallocated \$3.6 million of unallocated Research North Dakota funding for venture grants. Of this amount, \$2.4 million was distributed during the 2015-17 biennium and \$1.2 million was distributed during the 2017-19 biennium. The 2017 and 2019 Legislative Assemblies did not designate any funding for venture grants. The department did not reallocate any additional funding for venture grants during the 2017-19 biennium. Funding reallocated by the department for the venture grants during the 2019-21 biennium totaled \$144,419.

⁹In Section 14 of Senate Bill No. 2018 (2017), the Legislative Assembly appropriated \$3.5 million of funding available in the Research North Dakota fund for Department of Commerce programs during the 2017-19 biennium. Of this amount, \$500,000 was for the North Dakota tourism program, \$1.5 million was for entrepreneurship grants and vouchers, \$1 million was for discretionary funds, and \$500,000 was appropriated to the department for the purpose of providing a grant to the Energy and Environment Research Center at the University of North Dakota.

Of the \$1.5 million available to the Department of Commerce for entrepreneurship grants and vouchers, Governor Doug Burgum vetoed \$300,000 designated for an organization that provides workforce safety, resulting in a total of \$1.2 million available to the department for entrepreneurship grants and vouchers from Research North Dakota during the 2017-19 biennium.

In Section 12 of Senate Bill No. 2018 (2017) the Legislative Assembly provided the Department of Commerce an exemption to allow unexpended 2017-19 biennium funds for the entrepreneurship grants and vouchers program to continue and to be spent during the 2019-21 biennium. In Section 4 of House Bill No. 1018 (2019) the Legislative Assembly provided an exemption to allow unexpended 2017-19 biennium funds for the discretionary funds line item to continue and be spent during the 2019-21 biennium. Amounts from the Research North Dakota fund continued into the 2019-21 biennium totaled \$94,994 for the entrepreneurship grants and voucher program and \$858,528 from the discretionary funds line item. The department spent \$714,109 of discretionary funds during the 2019-21 biennium but did not spend any of the \$94,994 of funding for the entrepreneurship grants and vouchers program. The remaining amounts for the discretionary funds and entrepreneurship grants and voucher programs were included in the transfer to the general fund at the end of the 2019-21 biennium.

¹⁰Section 9 of Senate Bill No. 2224 (2019) directed OMB to transfer any balance in the Research North Dakota fund to the general fund on June 30, 2021. The 2019 Legislative Assembly anticipated the transfer to the general fund would be \$581,000 at the end of the 2019-21 biennium. The actual transfer to the general fund in June 2021 was \$422,544. The \$158,456 difference is primarily related to the department receiving more qualified Research North Dakota grant applications than anticipated during the 2019 session, resulting in additional grant funding distributed during the 2019-21 biennium.

In August 2021, \$16 of investment income earned on money in the Research North Dakota fund during the 2019-21 biennium was credited to the fund. The Department of Commerce anticipates this funding will be transferred to the general fund in May 2022, resulting in a fund balance of \$0.

NOTE: The estimated June 30, 2021, and June 30, 2023, balances made at the end of the 2021 regular legislative session was \$0, the same as the current estimate, due to the repeal of the Research North Dakota program and fund.

FUND HISTORY

Section 17 of Senate Bill No. 2018 (2013) established a Research North Dakota fund in Section 54-65-08. Money in the fund is appropriated to the Department of Commerce on a continuing basis for implementing and administering the Research North Dakota grant program and the Research North Dakota venture grant program. Interest earned on money in the fund is retained in the fund.

The Legislative Assembly approved Senate Bill No. 2224 (2019), which repealed Section 10-30.5-14 and Chapter 54-65 related to the Research North Dakota program and fund on July 1, 2021.

ANALYSIS OF THE RESOURCES TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance, excluding infrastructure revolving loan fund		\$326,742,618	
Add revenues and transfers				
Oil extraction tax collections	\$305,522,369 ¹		\$355,801,586 ¹	
Bond proceeds from repayment of loans			74,500,000 ²	
Repayments and reimbursements	10,777,487		13,126,800	
Investment earnings/miscellaneous income	6,598,257		1,662,176	
Total revenues		322,898,113		445,090,562
Total available		\$649,640,731		\$768,101,023
Less estimated expenditures and transfers				
State Water Commission - Grants, projects, and project administration, pursuant to Senate Bill No. 2020 (2019) for the 2019-21 biennium and House Bill No. 1020 (2021) for the 2021-23 biennium	\$322,430,270 ³		\$658,909,437 ³	
House Bill No. 1431 (2021) - Appropriation to the State Water Commission to provide funding for the Mouse River flood control project			74,500,000 ²	
Total estimated State Water Commission expenditures and loans		322,430,270		733,409,437
Transfer to renewable energy development fund (North Dakota Century Code Section 57-51.1-07)	\$3,000,000		\$3,000,000	
Transfer to energy conservation grant fund (Section 57-51.1-07)	1,200,000		1,200,000	
Senate Bill No. 2345 (2021) - Transfer to water projects stabilization fund			30,491,586 ⁴	
Total transfers		4,200,000		34,691,586
Ending balance, excluding funds designated for infrastructure revolving loan fund		<u>\$323,010,461</u>		<u>\$0³</u>

¹Estimated oil extraction tax revenues - These amounts reflect, for the 2019-21 biennium, actual oil and gas tax revenue collections deposited in the fund and through April 2022 and the 2021 legislative revenue forecast for the remainder of the 2021-23 biennium.

²House Bill No. 1431 (2021) allocates \$74.5 million of bond proceeds which are deposited into the resources trust fund for the repayment of outstanding loans of the Western Area Water Supply Authority. The bill also provides an appropriation of \$74.5 million from the resources trust fund to the State Water Commission for the Mouse River flood control project.

³The State Water Commission expended \$17,430,270 more than anticipated during the 2019-21 biennium resulting in a reduction of the ending fund balance, which is offset by a reduction in project carryover expenditures during the 2021-23 biennium. Grants, projects, and project administration for the 2021-23 biennium has been reduced by (\$1,709,282) as a result of reduction of the beginning fund balance for the 2021-23 biennium, see the note below for further detail.

⁴The amount shown reflects the oil and gas tax revenue deposited in the resources trust fund in excess of the revenue forecast for the period August through February 2022. Senate Bill No. 2345 (2021 special legislative session) created the water projects stabilization fund for the purpose of defraying planning and construction expenses of water-related projects, provided for a transfer of \$1 million from the resources trust fund to the water projects stabilization fund, and provided for the transfer of all oil extraction tax revenues deposited in the resources trust fund that exceed the amount included in the 2021 legislative forecast from August 1, 2021, through February 28, 2023, on a quarterly basis.

NOTE: Actual 2019-21 biennium oil extraction tax collections were \$1,917,631 less than anticipated for the 2019-21 biennium and actual 2021-23 biennium collections are \$30,491,586 more than anticipated for the 2021-23 biennium compared to the 2021 legislative revenue forecast and are deposited in the water projects stabilization fund.

INFRASTRUCTURE REVOLVING LOAN FUND HISTORY

The infrastructure revolving loan fund was created by the Legislative Assembly in Senate Bill No. 2233 (2013), which became effective on January 1, 2015. The bill established an infrastructure revolving loan fund within the resources trust fund. The bill provided 10 percent of oil extraction tax revenue deposited in the resources trust fund is to be made available on a continuing basis to provide loans for water supply, flood protection, or other water development and water management projects. Loans are approved by the State Water Commission with a fixed interest rate of 1.5 percent and administered by the Bank of North Dakota. Annually, the Bank receives .5 percent of the balance of issued loans to cover costs associated with administering the loans. The fund beginning balance and revenue earned in a biennium are carried over from biennium to biennium within the resources trust fund. House Bill No. 1020 (2017) provided the maximum to be allocated to the infrastructure revolving loan fund is **\$26 million**. House Bill No. 1431 (2021) eliminates the infrastructure revolving loan fund within the resources trust fund; combines it with the community water development fund to establish a newly created water infrastructure revolving loan fund; and provides a continuing appropriation to the State Water Commission for the purpose of providing loans for water projects in a similar manner as the prior infrastructure revolving loan fund.

RESOURCES TRUST FUND HISTORY

The resources trust fund was created pursuant to the passage of Initiated Measure No. 6 in the November 1980 general election. Initiated Measure No. 6 created a 6.5 percent oil extraction tax, 10 percent of which was to be allocated to the resources trust fund. In June 1990 the Constitution of North Dakota was amended to establish the resources trust fund as a constitutional trust fund and provide that the principal and income of the fund could be spent only upon legislative appropriations for:

- Constructing water-related projects, including rural water systems; and
- Energy conservation programs.

In November 1994 the voters of North Dakota approved a constitutional amendment, which is now Section 24 of Article X of the Constitution of North Dakota, to provide that 20 percent of oil extraction taxes be allocated as follows:

- 50 percent (of the 20 percent) to the common schools trust fund; and
- 50 percent (of the 20 percent) to the foundation aid stabilization fund.

The 1995 Legislative Assembly amended Section 57-51.1-07 to increase the percentage of oil extraction tax deposited into the resources trust fund from 10 to 20 percent. The general fund received 60 percent of oil extraction tax revenues, and the remaining 20 percent was allocated pursuant to Section 24 of Article X of the Constitution of North Dakota.

Section 57-51.1-07, as amended by Senate Bill No. 2129 (2011), provides that oil extraction tax revenues be distributed as follows:

- 20 percent to the resources trust fund;
- 20 percent allocated as provided in Section 24 of Article X of the Constitution of North Dakota;
- 30 percent to the legacy fund; and
- 30 percent to be allocated to the state's general fund with certain funds designated for deposit in the property tax relief sustainability fund, the strategic investment and improvements fund, and the state disaster relief fund as provided in House Bill No. 1451 (2011).

The Legislative Assembly in Senate Bill No. 2014 (2013) authorized quarterly transfers of 5 percent of the amount credited to the resources trust fund to the renewable energy development fund--up to \$3 million per biennium and of .5 percent of the amount credited to the resources trust fund to the energy conservation grant fund--up to \$1.2 million per biennium. Funds in the newly created energy conservation grant fund are appropriated on a continuing basis to the Department of Commerce for grants to political subdivisions for energy conservation projects in nonfederal public buildings. In addition, effective January 1, 2015, the Legislative

Assembly, in Senate Bill No. 2233 (2013), established an infrastructure revolving loan fund within the resources trust fund. The bill provides 10 percent of oil extraction tax revenue deposited in the resources trust fund is to be made available on a continuing basis to provide loans for water supply, flood protection, or other water development and water management projects. Loans are approved by the State Water Commission and administered by the Bank of North Dakota. House Bill No. 1020 (2017) reduced the allocation to the renewable energy development fund from 5 to 3 percent and the maximum allocation to the energy conservation grant fund from \$1.2 million to \$200,000 for the 2017-19 biennium, restored the maximum allocation to the energy conservation grant fund to \$1.2 million after July 31, 2019, and provided for a \$26 million maximum allocation of resources trust fund revenues to the infrastructure revolving loan fund.

The Legislative Assembly in Senate Bill No. 2020 (2015) directed the State Water Commission to refinance all remaining bonds through the Bank of North Dakota and to continue annual loan payments on the newly refinanced bonds. The State Water Commission refinanced the bonds with the Bank on July 29, 2015, in the amount of \$45,840,221 at a variable interest rate of 1.75 percent. The Bank loan will mature on June 30, 2030.

The Legislative Assembly in Senate Bill No. 2020 (2019) provided \$37.2 million to pay off the Bank of North Dakota loan. The bill contains an emergency clause, added in Senate Bill No. 2015 (2019); therefore, the State Water Commission paid off the Bank loan from the water development trust fund during the 2017-19 biennium.

The Legislative Assembly in Senate Bill No. 2345 (2021 special legislative session) created the water projects stabilization fund for the purpose of defraying planning and construction expenses of water-related projects, provided for a transfer of \$1 million from the resources trust fund to the water projects stabilization fund, and provided for the transfer of all oil extraction tax revenues deposited in the resources trust fund that exceed the amount included in the 2021 legislative forecast from August 1, 2021, through February 28, 2023, on a quarterly basis.

ANALYSIS OF THE RISK MANAGEMENT FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$4,950,402		\$4,587,478
Add revenues				
Premiums	\$2,510,234 ¹		\$3,065,585 ²	
Interest and other revenue	928,322 ³		240,000 ³	
Total revenues		3,438,556		3,305,585
Total available		\$8,388,958		\$7,893,063
Less expenditures and transfers				
Administration	\$1,373,670		\$1,328,809	
Claims-related expenses	0 ⁴		0 ⁴	
Claims, litigation, and excess insurance	2,427,810		2,645,896 ⁵	
Total expenditures and transfers		3,801,480		3,974,705
Ending balance		\$4,587,478		\$3,918,358

¹In response to an actuarial review completed in 2018 by Aon plc, OMB's Risk Management Division assessed a total of \$2,755,796 in risk management premiums to state agencies, boards, and commissions and the University System for the 2019-21 biennium. Assessments were subject to a risk management discount program for agencies that adopt proactive loss control practices, with a maximum available discount of 15 percent. The amount shown for premiums reflects fiscal year 2020 discounts of \$121,792 and fiscal year 2021 discounts of \$123,872 and a contribution of \$102 from the newly established Ethics Commission.

²In response to an actuarial review completed in 2020 by Aon plc, OMB's Risk Management Division is assessing a total of \$3,351,098 in risk management premiums to state agencies, boards, and commissions and the University System for the 2021-23 biennium. Contributions reflect \$139,537 in discounts for fiscal year 2022 and estimated \$145,976 in discounts for fiscal year 2023.

³Investment and other revenue relates to realized or projected gains from risk management investments, payments received from salvaged vehicles, and costs and attorney's fees collected for successful lawsuits.

⁴The amounts listed for claims-related expenses are for adjusting consulting services required for large or unusual claims.

⁵Pursuant to Section 23 of House Bill No. 1015 (2021), OMB is authorized to make payments from the risk management fund for reasonable and necessary costs and attorney's fees incurred by a state employee as a result of a criminal investigation or prosecution occurring after December 31, 2018, under circumstances in which there was an absence of probable cause, as identified in a prosecutorial or judicial determination or as determined by the Director of OMB in the absences of a prosecutorial or judicial determination, and in which the offense involves the discharge of a public duty. The amount shown includes \$47,771, which was paid under this authorization.

FUND HISTORY

The North Dakota Supreme Court abolished the doctrine of sovereign immunity in September 1994. As a result of this court decision, the 1995 Legislative Assembly passed the Tort Claims Act (Senate Bill No. 2080 (1995)), which created a risk management fund and assigned the responsibility of administering a risk management program to OMB.

Section 32-12.2-19 allows OMB to pay notification and remediation costs or insurance costs from the risk management fund in the event of an information technology security breach at a state agency.

ANALYSIS OF THE SENIOR CITIZEN SERVICES AND PROGRAMS FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$0		\$0
Add revenues				
Allocation from sales, use, and motor vehicle excise tax collections	\$8,505,711 ^{1,2}		\$9,300,000 ^{1,2}	
Total revenues		8,505,711		9,300,000
Total available		\$8,505,711		\$9,300,000
Less expenditures and transfers				
State Treasurer - County senior citizen matching grants	\$7,959,453 ³		\$9,300,000 ³	
Transfer to the general fund	546,258 ⁴			
Total expenditures and transfers		8,505,711		9,300,000
Ending balance		\$0		\$0

¹The allocation from sales, use, and motor vehicle excise tax collections is shown below:

Fiscal Year	Allocation From Sales, Use, and Motor Vehicle Excise Tax Collections	Percentage Increase (Decrease) From Previous Year
2012	\$1,695,832 (actual)	21.2%
2013	\$1,821,347 (actual)	7.4%
2014	\$2,311,346 (actual)	26.9%
2015	\$2,654,064 (actual)	14.8%
2016	\$3,169,878 (actual)	19.4%
2017	\$3,627,787 (actual)	14.4%
2018	\$3,886,950 (actual)	7.1%
2019	\$4,060,513 (actual)	4.5%
2020	\$4,163,710 (actual)	2.5%
2021	\$4,342,001 (actual)	4.3%
2022	\$4,650,000 (estimate)	7.1%
2023	\$4,650,000 (estimate)	0%

²Senate Bill No. 2242 (2011) increased the amount of general fund revenue to be allocated to the senior citizen services and programs fund from two-thirds of one mill levied statewide to three-fourths of one mill levied statewide effective for taxable years beginning after December 31, 2010. The bill also increased the amount of grants provided to counties that have approved a mill levy for senior citizen services and programs from two-thirds of the amount levied in the county for senior citizen programs to three-fourths of the amount levied in the county for senior citizen programs, limited to one mill.

Senate Bill No. 2162 (2013) increased the amount of general fund revenue to be allocated to the senior citizen services and programs fund from three-fourths of one mill levied statewide to 85 percent of one mill levied statewide effective for taxable years beginning after December 31, 2012. The bill also increased the amount of grants provided to counties that have approved a mill levy for senior citizen programs from three-fourths of the amount levied in the county for senior citizen programs to 85 percent of the amount levied up to one mill.

Senate Bill No. 2143 (2015) increased the amount of general fund revenue to be allocated to the senior citizen services and programs fund from 85 percent of one mill levied statewide to 87.5 percent of the amount appropriated up to one mill levied statewide effective for taxable years beginning after December 31, 2014. The bill also increased the amount of grants provided to counties that have approved a mill levy for senior citizen programs from 85 percent of the amount levied in the county for senior citizen programs to 87.5 percent of the amount appropriated up to one mill.

³The county senior citizen matching grants are shown below:

Fiscal Year	County Senior Citizen Matching Grants	Percentage Increase (Decrease) From Previous Year
2012	\$1,687,098 (actual)	21.9%
2013	\$1,789,363 (actual)	6.1%
2014	\$2,290,963 (actual)	28.0%
2015	\$2,650,725 (actual)	15.7%
2016	\$3,143,803 (actual)	18.6%
2017	\$3,504,725 (actual)	11.5%
2018	\$3,723,317 (actual)	6.2%
2019	\$3,823,071 (actual)	2.7%
2020	\$3,892,217 (actual)	1.8%
2021	\$4,067,236 (actual)	4.5%
2022	\$4,650,000 (estimate)	14.3%
2023	\$4,650,000 (estimate)	0%

⁴Any funds remaining at the end of each biennium are transferred to the general fund.

FUND HISTORY

Senate Bill No. 2267 (2005) created the senior citizen services and programs fund. Statutory provisions are contained in North Dakota Century Code Sections 57-15-56(5) and 57-39.2-26.2. Current statutory provisions provide that each year during July through December, the State Treasurer is to transfer to the fund the portion of sales, use, and motor vehicle excise tax collections that are equivalent to the amount generated from 87.5 percent of one mill levied statewide as reported by the Tax Commissioner. The State Treasurer, by March 1 of the following year, pursuant to a continuing appropriation, distributes money in the fund as grants to eligible counties for senior citizen programs. The grants are provided to counties that have approved a mill levy for senior citizen services and programs. Current statutory provisions provide that the amount of each county's annual grant is equal to 87.5 percent of the amount appropriated in dollars in the county for senior citizen programs, limited to one mill. The Legislative Assembly provided intent that counties match 50 percent of the state grant with funding from the county general fund or state aid distribution fund receipts. Any money remaining in the fund at the end of each biennium is transferred to the general fund, except in the 2005-07 biennium any remaining money in the fund at the end of the biennium was allocated to those counties that were levying the statutory maximum for senior citizen programs in proportion to the amounts generated by those levies in those counties. Senate Bill No. 2242 (2011) amended statutory provisions to increase the amount of collections to be allocated to the fund and the amount of grants provided to counties from two-thirds of the amount levied for senior citizen programs to three-fourths of the amount levied for senior citizen programs, limited to one mill. Senate Bill No. 2162 (2013) increased these amounts to 85 percent of the amounts levied for senior citizen programs, limited to one mill. Senate Bill No. 2143 (2015) increased these amounts to 87.5 percent of the amounts appropriated for senior citizen programs, limited to one mill.

ANALYSIS OF THE STATE AID DISTRIBUTION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$0		\$0
Add revenues				
Sales, use, and motor vehicle excise taxes (based on 43.5 percent of an equivalent one-cent sales tax effective July 1, 2014)	\$198,554,573 ¹		\$202,000,686 ¹	
Total revenues		198,554,573		202,000,686
Total available		\$198,554,573		\$202,000,686
Less expenditures and transfers				
Payments to political subdivisions				
County share (53.7 percent)	\$106,623,806		\$108,474,368	
City share (46.3 percent)	91,930,767		93,526,318	
Total expenditures and transfers		198,554,573		202,000,686
Ending balance		\$0		\$0

¹The amounts shown for the 2019-21 biennium and the 2021-23 biennium are based on collections through March 2022 and the 2021 legislative revenue forecast through the remainder of the 2021-23 biennium and legislative action affecting sales and use tax and motor vehicle excise tax, including the effects of House Bill Nos. 1309 and 1449 and Senate Bill No. 2220. This analysis does not reflect the effect of House Bill No. 1351 and Senate Bill Nos. 2137, 2152, and 2226, because based on the fiscal notes, the effect of these bills cannot be determined.

NOTE: The estimated revenue projection for the 2021-23 biennium made at the end of the 2021 regular legislative session for deposits in the fund was \$193,076,918. The estimated fund revenues are \$8,923,768 more than the 2021 legislative estimate.

FUND HISTORY

North Dakota Century Code Section 57-39.2-26.1 provided, prior to January 1999, for a portion of sales, use, and motor vehicle excise tax collections equal to 60 percent of an equivalent one-cent sales tax to be deposited by the State Treasurer in the state aid distribution fund. The Tax Commissioner certified to the State Treasurer the portion of sales, use, and motor vehicle excise tax net revenues that were deposited in the state aid distribution fund. The state aid distribution fund had historically been allocated, subject to legislative appropriation, with 50 percent of revenues for state revenue sharing and 50 percent for personal property tax replacement.

The 1997 Legislative Assembly amended Section 57-39.2-26.1 to provide that, effective January 1, 1999, deposits into the state aid distribution fund are based on an amount equal to 40 percent of an equivalent one-cent sales tax instead of an amount equal to 60 percent of an equivalent one-cent sales tax. In addition, a continuing appropriation was added which appropriates all revenues deposited in the state aid distribution fund for payments to political subdivisions. Senate Bill No. 2325 (2013) provides that effective July 1, 2014, deposits into the state aid distribution fund be based on an amount equal to 43.5 percent of an equivalent one-cent sales tax instead of an amount equal to 40 percent of an equivalent one-cent sales tax.

The 1997 Legislative Assembly also changed the allocation of the state aid distribution fund from 50 percent for personal property tax replacement and 50 percent for revenue sharing to 53.7 percent for counties and 46.3 percent for cities. The allocation for each county includes townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the Southwest Water Authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within the cities. The allocation for each city includes park districts and other taxing districts within the city, excluding school districts. The county allocation to townships must be based on the same percentage allocation that a township received in calendar year 1996.

House Bill No. 1025 (2003), which became effective on August 1, 2003, revised the state aid distribution formula for cities and counties to account for population changes resulting from the 2000 federal census. The bill provides for total distribution percentages to cities and counties to remain at 53.7 percent to counties and 46.3 percent to cities; however, the allocation formula to specific counties and cities is:

Population Category Through June 30, 2011			
Counties	Percentage	Cities (Based on Population)	Percentage
17 counties with the largest population (allocated equally)	20.48%	80,000 or more	19.4%
17 counties with the largest population (allocated based on population)	43.52%	20,000 or more but less than 80,000	34.5%
Remaining counties (allocated equally)	14.40%	10,000 or more but less than 20,000	16.0%
Remaining counties (allocated based on population)	21.60%	5,000 or more but less than 10,000	4.9%
		1,000 or more but less than 5,000	13.1%
		500 or more but less than 1,000	6.1%
		200 or more but less than 500	3.4%
		Less than 200	2.6%
Total	100.00%		100.0%

Senate Bill No. 2253 (2011), which became effective July 1, 2011, revised the state aid distribution formula for cities to provide that distributions be based upon the proportion each city's population bears to the total population of all cities. The bill did not change the total distribution percentages to cities and counties, which remains at 53.7 percent to counties and 46.3 percent to cities. The allocation formula for specific counties and cities is:

Population Category Effective July 1, 2011		
Counties	Percentage	Cities
17 counties with the largest population (allocated equally)	20.48%	Based upon the proportion each city's population bears to total population
17 counties with the largest population (allocated based on population)	43.52%	
Remaining counties (allocated equally)	14.40%	
Remaining counties (allocated based on population)	21.60%	
Total	100.00%	

Senate Bill No. 2325 (2013), which became effective July 1, 2014, increased the portion of the sales and use, gross receipts, and motor vehicle excise tax collections that is deposited in the state aid distribution fund from an amount equal to 40 percent of the equivalent one-cent sales tax to an amount equal to 43.5 percent of an equivalent one-cent sales tax.

House Bill No. 1067 (2015), which became effective July 1, 2015, and expires on June 30, 2021, changes the state aid distribution formula from allocations based on the decennial census to allocations based on most recent actual or estimated census data.

**ANALYSIS OF THE STRATEGIC INVESTMENT AND IMPROVEMENTS FUND
FOR THE 2019-21 AND 2021-23 BIENNIUMS**

	2019-21 Biennium		2021-23 Biennium	
	Actual		Estimated	
Beginning balance		\$1,142,813,830		\$863,342,901
Add revenues				
Production royalties (2017 SB 2134; 2019 SB 2211) ^{1,2}	\$197,964,425		\$196,656,284	
Oil and gas bonuses ^{1,2}	1,765,900		5,125,675	
Mineral revenue refund repayments (2017 SB 2134; 2019 SB 2211) ²	(1,453,164)		(21,071,275)	
Mineral leases ¹	0		0	
Investment earnings ¹	20,614,981		3,680,541	
Oil and gas tax collections (2019 HB 1014, 2019 HB 1066; 2019 SB 2249, 2019 SB 2312, 2019 SB 2362; 2021 HB 1015; 2021 SB 2014, 2021 SB 2249; 2021 SB 2319) ^{3,4}	372,009,651		400,000,000	
Total revenues		590,901,793		584,391,225
Total available		\$1,733,715,623		\$1,447,734,126
Less expenditures and transfers				
Secretary of State				
Voting system information technology project (2019 SB 2002)	\$8,200,000			
Office of Management and Budget				
Litigation funding pool (2019 SB 2015)	3,201,133			
Comprehensive real estate assessment (2019 SB 2015)	500,000			
Transfer to preliminary planning revolving fund (2019 SB 2015)	100,000			
Information technology projects (2021 HB 1015)			\$3,251,304	
Transfer to the cultural endowment fund for the maintenance of public arts projects (2021 HB 1015)			1,000,000	
Information Technology Department				
Information technology projects (2019 HB 1021)	4,406,837			
Statewide interoperable radio network (2019 HB 1435)	20,000,000			
State Treasurer				
Information technology project (2019 SB 2005)	20,537			
Attorney General				
Litigation funding pool (2021 HB 1003)			3,000,000	
North Dakota University System				
Capital building fund program (2021 SB 2003)			19,000,000	
Campus projects (2021 SB 2003)			2,863,000	
Department of Trust Lands				
Oil and gas impact grants (2019 HB 1013)	2,000,000			
Contract costs to determine mineral revenue repayments (2019 SB 2211)	1,088,635			
Department of Environmental Quality				
Contingent appropriation for the implementation of air pollution control primacy (2019 HB 1024)	913,977			

Department of Human Services			
Information technology projects and capital projects (2019 SB 2012)	5,596,999		
Insurance Commissioner			
Study of lignite coal industry insurance (2021 HB 1010)		200,000	
Industrial Commission			
Rare earth elements and fracturing sand studies (2019 HB 1014)	270,000		
Transfer to the oil and gas research fund (2021 SB 2014)		9,500,000	
Aeronautics Commission			
Airport grants (2019 HB 1006; 2021 SB 2006)	20,000,000		
Bank of North Dakota			
Transfer to the innovation loan fund to support technology advancement (2021 HB 1141)		15,000,000	
Department of Corrections and Rehabilitation			
Equipment, repairs, and a facility assessment (2019 HB 1015)	1,094,574		
Adjutant General			
Dispatch system information technology project and Camp Grafton expansion project (2019 SB 2016)	2,502,253		
National Guard deferred maintenance projects (2021 HB 1016)		1,000,000	
Department of Commerce			
Entrepreneurship grants and vouchers program (2019 HB 1018)	2,880,738		
Beyond visual line of sight unmanned aircraft systems (2021 SB 2018)		19,000,000	
Enhanced use lease grants (2021 SB 2018)		7,000,000	
Job development grant (2021 SB 2018)		1,500,000	
Workforce safety grant (2021 SB 2018)		1,500,000	
Agriculture Commissioner			
Grasslands grazing grant program (2021 HB 1009)		5,000,000	
Upper Great Plains Transportation Institute			
Remote sensing infrastructure (2021 SB 2020)		225,000	
Branch Research Centers			
Capital projects at the Carrington Research Center, the Central Grasslands Research Center, the Hettinger Research Center, and the Langdon Research Center (2021 SB 2020)		2,073,000	
NDSU Main Research Center			
Extraordinary repairs (2019 HB 1020)	940,465		
Parks and Recreation Department			
Various capital projects at parks and the International Peace Garden (2019 SB 2019)	3,755,000		
Transfer to the general fund (2019 SB 2015; 2021 HB 1015)	764,400,000	410,000,000	
Contingent transfer to the infrastructure revolving loan fund (2019 HB 1014) ⁵	25,137,707		
Administrative costs/other fees	3,363,867	3,665,780	
Total expenditures and transfers		870,372,722	504,778,084
Ending balance		\$863,342,901	\$942,956,042
Restricted fund income			
Reserve relating to potential title disputes (2017 SB 2134; 2019 SB 2211) ^{2,6}		229,325,049	218,780,117
Loan guarantees (2011 SB 2306; 2013 SB 2287; 2019 SB 2296; 2021 SB 2230) ⁷		50,000,000	80,000,000
Ending balance - Unobligated		\$584,017,852	\$644,175,925

¹The amounts shown reflect projections by the Department of Trust Lands for the 2021-23 bienniums.

²Senate Bill No. 2134 (2017) changes the definition of the ordinary high water mark related to sovereign minerals, reducing the mineral revenue to the strategic investment and improvements fund and requiring refund payments for previously received mineral revenues. The bill appropriated \$100 million from the strategic investment and improvements fund and authorized \$87 million from a line of credit through the Bank of North Dakota for the mineral revenue refund repayment during the 2017-19 biennium. Some production royalties may be deposited in the strategic investment and improvements fund prior to the implementation of the repayment process. The bill provided legislative intent that the \$87 million line of credit is to be repaid from the strategic investment and improvements fund; however, the total amount of funding needed for mineral revenue refund repayments is unknown and any changes to the amount of funding or the line of credit repayments will be determined by future legislative assemblies. Mineral revenue refund repayments began in the fall of 2020. The amounts shown for the refund repayments reflect the amounts paid through April 2022 pursuant to the department's continuing appropriation.

House Bill No. 1202 (2019) clarifies the definition of navigable waters, which may affect the state's mineral interests and mineral revenue deposited in the strategic investment and improvements fund. However, the estimated impact is unknown.

³Estimated revenues - The estimated allocations for the 2021-23 biennium are based on actual oil and gas tax revenue allocations through April 2022 and the 2021 legislative revenue forecast for the remainder of the 2021-23 biennium.

⁴House Bill Nos. 1014 and 1066 (2019) and Senate Bill Nos. 2016, 2249, 2312, and 2362 (2019) change the oil and gas tax revenue allocation formulas. The combined effect of the bills results in a decrease in the allocations to the strategic investment and improvements fund.

House Bill No. 1015 (2021) increases the oil and gas tax revenue allocation limit for the state disaster relief fund by \$5 million and aligns the allocations to the municipal infrastructure fund and the county and township infrastructure fund to provide allocations to the two funds at the same time after the initial allocation to the strategic investment and improvements fund. For the 2021-23 biennium only, Senate Bill No. 2014 (2021) limits the allocations to the North Dakota outdoor heritage fund to \$7.5 million per fiscal year. Senate Bill No. 2249 (2021) increases the oil and gas tax revenue allocation limit for the state disaster relief fund by \$5 million, the same as House Bill No. 1015 (2021). Senate Bill No. 2319 (2021) allocates a portion of the oil and gas tax revenue collected from oil wells that cross into a reservation to the tribes decreasing the state's share of oil and gas tax revenues. The combined effect of the bills results in an increase in the allocations to the strategic investment and improvements fund.

⁵House Bill No. 1014 (2019) provides a contingent transfer of up to \$40 million from the strategic investment and improvements fund to the infrastructure revolving loan fund if the actual oil and gas tax revenues deposited in the strategic investment and improvements fund during the 2017-19 biennium exceed \$755 million. The contingency was met, and the amount shown for the 2019-21 biennium reflects the actual transfer to the infrastructure revolving loan fund.

⁶These amounts represent mineral revenues received from areas of the Yellowstone and Missouri Rivers and Lake Sakakawea where mineral rights are in dispute. Pursuant to action of the Board of University and School Lands, this portion of the fund balance is designated to be held in reserve. The assigned fund balance is adjusted only when approved by the board, which is usually done in August of each year.

⁷Senate Bill No. 2287 (2013) increased the guarantee reserve fund balance from 25 to 100 percent, not to exceed a total of \$25 million, through July 31, 2015. After July 31, 2015, the amount of reserves for all guaranteed loans must be determined by a formula that will provide an adequate amount of reserves as determined by the Bank of North Dakota. Money may be transferred from the strategic investment and improvements fund to reimburse lenders for guaranteed loans in default.

Senate Bill No. 2296 (2019) increased the limit for loan guarantees to \$50 million. Senate Bill No. 2230 (2021) increases the loan guarantee limit to \$80 million.

NOTE: The estimated unobligated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$544,462,532. The estimated unobligated balance increased by \$99,713,393 primarily related to an increase in mineral production royalties in the 2019-21 and 2021-23 bienniums.

FUND HISTORY

House Bill No. 1451 (2011) provided the lands and minerals trust fund be renamed the strategic investment and improvements fund, and as soon as feasible after June 30, 2011, the State Treasurer close out the lands and minerals trust fund and transfer any remaining unobligated balance to the strategic investment and improvements fund. The lands and minerals trust fund originated in 1977 when the Legislative Assembly transferred to the Board of University and School Lands possessory interest in properties obtained by the Bank of North Dakota, including tracts of real property and reserved mineral interests.

All income from the sale, lease, and management of the mineral interests relating to these properties is deposited in the strategic investment and improvements fund, pursuant to North Dakota Century Code Section 15-08.1-08. The principal and interest of the fund may be used for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of state government. Money in the fund may be included in draft appropriation Acts under Section 54-44.1-06 and may be appropriated by the Legislative Assembly, but only to the extent the money is estimated to be available at the beginning of the biennium in which the appropriations are authorized.

Prior to July 1, 2015, 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 were deposited instead into the legacy fund in the subsequent month. In House Bill Nos. 1176 and 1377 (2015), the Legislative Assembly amended Section 15-08.1-08 to remove the provision related to the additional deposits of revenue in the legacy fund from the strategic investment and improvements fund. The unobligated balance in the fund is defined as the balance in the fund reduced by appropriations or transfers from the fund authorized by the Legislative Assembly, guarantee reserve fund requirements under Section 6-09.7-05, and any fund balance designated by the Board of University and School Lands relating to potential title disputes related to certain riverbed leases.

**ANALYSIS OF THE STUDENT LOAN TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS
(REFLECTING BOTH THE 1979 AND 1996 BOND RESOLUTIONS)**

	2019-21 Biennium ¹ Actual		2021-23 Biennium ¹ Estimated	
Beginning balance		\$1,188,901		\$1,219,378
Add revenues				
Fund earnings (net)	(\$54,891)		\$100 ²	
Total revenues		(54,891)		100
Total available		\$1,134,010		\$1,219,478
Less expenditures and transfers				
Return of unused tribal college workforce development grant funding	(\$85,368) ³			
Total expenditures and transfers		(85,368)		
Ending balance		\$1,219,378		\$1,219,478
Restricted fund balance relating to outstanding bonds		1,000,000 ¹		1,000,000 ¹
Ending balance - Unobligated		\$219,378		\$219,478

¹This analysis reflects the estimated revenues, expenditures, and ending balance for **both the 1979 and 1996 bond resolutions**. Prior to fiscal year 2012, permission was needed from the Ambac Assurance Corporation to use any assets from the 1996 bond resolution. There are no longer any bonds insured by the Ambac Assurance Corporation; however, there are outstanding bonds of \$1 million as of March 31, 2022. The outstanding bonds will mature on June 1, 2029. Debt service to bondholders has priority over all other transfers.

²The projected income for the 2021-23 biennium is based on interest rates as of May 1, 2022, and is net of the Industrial Commission and trustee expenses.

³Of the \$500,000 appropriated for the 2017-19 biennium to the Department of Commerce for tribal college workforce development grants, \$85,368 of unspent appropriation authority was returned to the fund in April 2020.

FUND HISTORY

The 1971 Legislative Assembly authorized the Industrial Commission to acquire and hold all unpaid government-guaranteed or reinsured student loans and North Dakota student loans belonging to the state or any of its agencies. As a result, the student loan trust fund was created, which enabled the state to sell tax-exempt bonds and use the proceeds for purchasing student loans made or acquired by the Bank of North Dakota.

The student loan trust fund does not make loans to students or service loans which it acquires. The Bank of North Dakota continues to service those loans which the student loan trust fund holds.

The student loan trust fund is comprised of funds held under two general bond resolutions. The first general bond resolution includes funds from bonds issued in 1979, 1988, 1989, 1992, and 2004. The second general bond resolution--referred to as the 1996 bond resolution--includes funds from bonds issued in 1996, 1997, 1998, and 2000. All bond issuances prior to 2004 were insured by Ambac Assurance Corporation. There are no longer any outstanding bonds insured by Ambac Assurance Corporation.

Under both of the bond resolutions, assets may only be used for:

- Purchase of student loans.
- Payment of debt service to bondholders.
- Providing financial assistance to the North Dakota Student Loan Guarantee Agency.

- Payment of any rebate liability to the federal government.
- Administration of the student loan trust fund.

After all bonds in the 1979 and 1996 bond resolutions have matured, been redeemed or defeased and all expenses paid, and the resolutions closed, any remaining assets held under the bond resolutions would be transferred to the Industrial Commission for use at its discretion and as allowed by law. As of March 31, 2022, \$1 million in bonds remains outstanding. In order to use assets held under the 1979 and 1996 general bond resolutions for a purpose other than those stated in the general bond resolution, the administrator of the student loan trust fund must receive a certification from the trustee of the bond (the Bank of North Dakota) that sufficient reserves remain for bond payments and other related program costs. Prior to 2012, permission needed to be obtained from Ambac Assurance Corporation for any use of assets held in the 1996 general bond resolution; however, there are no longer any bonds insured by Ambac Assurance Corporation.

Section 54-17-25 provides the Industrial Commission may issue subordinate or residual bonds when the commission determines that it is appropriate or expedient to do so.

ANALYSIS OF THE TAX RELIEF FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
	Beginning balance		\$182,300,000	
Add revenues				
Allocation of oil and gas tax revenues	\$200,000,000 ¹		\$200,000,000 ¹	
Refund of prior biennium county expenses	199,146			
Total revenues		200,199,146		200,000,000
Total available		\$382,499,146		\$400,199,146
Less expenditures and transfers				
Transfer to general fund (Section 5 of 2019 SB 2015)	\$8,600,000			
Distributions to non-oil-producing counties (2021 HB 1015)			\$11,799,901 ²	
Transfer to human service finance fund (2019 SB 2015; 2021 HB 1015)	173,700,000		187,223,092	
Total expenditures and transfers		182,300,000		199,022,993
Ending balance		\$200,199,146		\$201,176,153

¹Estimated oil and gas tax revenues - The allocations reflect, for the 2021-23 biennium, actual oil and gas tax revenue collections deposited in the fund through April 2022 and the 2021 legislative revenue forecast for the remainder of the biennium.

²Section 4 of 2021 House Bill No. 1015, provides \$20 million for distributions to non-oil-producing counties for the benefit of organized and unorganized townships. Of the \$20 million, \$8.2 million is from the state disaster relief fund and \$11.8 million is from the tax relief fund. The State Treasurer is required to allocate \$10 million equally to all the townships and \$10 million based on road miles.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$201,176,054. The 2021-23 biennium ending fund balance is anticipated to be \$201,176,153, which is \$99 more than the 2021 legislative forecast resulting from unspent funding due to the equal allocation requirement for the distribution to townships located in non-oil-producing counties during the 2021-23 biennium.

FUND HISTORY

North Dakota Century Code Section 57-64-05, as created by Senate Bill No. 2199 (2009), created the property tax relief sustainability fund for property tax relief programs, pursuant to legislative appropriation. Senate Bill No. 2199 provided an initial transfer of \$295 million from the permanent oil tax trust fund to the property tax relief sustainability fund. Chapter 57-51.1 provided for an allocation of the state's share of oil and gas tax revenues of \$341.79 million each biennium to the property tax relief sustainability fund.

Section 15.1-27-45, as created by Section 40 of House Bill No. 1013 (2013), changed the name of the property tax relief sustainability fund to the property tax relief fund, but only for the 2013-15 biennium. House Bill No. 1377 (2015) repealed Sections 15.1-27-45 and 57-64-05 relating to the property tax relief sustainability fund and amended Section 57-51.1-07.5 to change the name of the property tax relief sustainability fund to the tax relief fund and decreased the amount of the state's share of oil and gas tax revenue deposited in the fund from \$341.79 million per biennium to \$300 million per biennium.

House Bill No. 1152 (2017) amended Section 57-51.1-07.5 to change the allocation of the state's share of oil and gas tax revenue to reduce the allocation to the tax relief fund to \$200 million.

House Bill No. 1066 (2019) amended Section 57-51.1-07.5 but did not change the allocation of \$200 million to the tax relief fund.

ANALYSIS OF THE TOBACCO PREVENTION AND CONTROL TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$9,058,624		\$2,056,437
Add revenues				
Investment and miscellaneous revenue	\$1,516,872 ¹		\$0 ²	
Total revenues		1,516,872		0
Total available		\$10,575,496		\$2,056,437
Less expenditures and transfers				
State Department of Health (2019 HB 1004)				
Local public health unit grants	\$525,000			
Cancer programs	477,178			
Domestic violence offender treatment grants	299,999			
Microbiology laboratory capital improvements	1,216,882			
Department of Human Services (2019 SB 2012)				
Medical services grants	6,000,000			
Transfer to the community health trust fund (2021 SB 2004)			\$2,056,437 ²	
Total expenditures and transfers		8,519,059		2,056,437
Ending balance		\$2,056,437		\$0

¹In August 2015 the Tobacco Prevention and Control Executive Committee entered into an agreement with the State Investment Board to provide investment management services for the tobacco prevention and control trust fund. On September 30, 2015, the Tobacco Prevention and Control Executive Committee transferred \$47.3 million to the State Investment Board for management. The investment policy statement adopted by the executive committee includes an asset mix of 75 percent global fixed income, 10 percent global equity, and 15 percent cash. Estimated investment income reflects earnings and realized gains, but does not include changes in the market value of the investments. The Legislative Assembly repealed North Dakota Century Code Chapter 23-42 in Senate Bill No. 2024 (2017) to dissolve the Tobacco Prevention and Control Executive Committee and provided funds in the tobacco prevention and control trust fund are to be used as appropriated by the Legislative Assembly. Revenues have been estimated based on actual revenues and transfers through April 2022.

²The Legislative Assembly, in Senate Bill No. 2004 (2021), repealed the tobacco prevention and control trust fund and required the Office of Management and Budget to transfer any money remaining in the tobacco prevention and control trust fund to the community health trust fund on July 1, 2021.

FUND HISTORY

The tobacco prevention and control trust fund was created as a result of voter approval of Initiated Measure No. 3 in the November 2008 general election. The measure added seven new sections to the Century Code and amended Section 54-27-25 to establish the Tobacco Prevention and Control Advisory Committee and an executive committee, develop and fund a comprehensive statewide tobacco prevention and control plan, and create a tobacco prevention and control trust fund to receive tobacco settlement dollars to be administered by the executive committee. The measure provided for the advisory committee, appointed by the Governor, to develop the initial comprehensive plan and select an executive committee responsible for the implementation and administration of the comprehensive plan. The initiated measure became effective 30 days after the election (December 4, 2008).

Tobacco settlement payments received by the state under the Master Settlement Agreement are derived from two subsections of the Master Settlement Agreement. Subsection IX(c)(1) of the Master Settlement Agreement provides payments on April 15, 2000, and on April 15 of each year thereafter in perpetuity, while subsection IX(c)(2) of the Master Settlement Agreement provided for additional strategic contribution payments that began on April 15, 2008, and continued each April 15 thereafter through 2017. Section 54-27-25, created by House Bill No. 1475 (1999), did not distinguish between payments received under the separate

subsections of the Master Settlement Agreement and provided for the deposit of all tobacco settlement money received by the state into the tobacco settlement trust fund. Money in the fund, including interest, is transferred within 30 days of deposit in the fund to the community health trust fund, common schools trust fund, and water development trust fund. Senate Bill No. 2012 (2019) amended Section 54-27-25, effective July 1, 2019, to provide all money in the fund must be transferred within 30 days of receipt to the community health trust fund.

The measure provided for a portion of tobacco settlement dollars received by the state to be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement continues to be deposited in the tobacco settlement trust fund and will continue to be allocated pursuant to Section 54-27-25. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement was deposited into the tobacco prevention and control trust fund until the last payment was received in 2017. Interest earned on the balance in this fund is deposited in the fund. The fund was administered by the executive committee created by the measure for the purpose of creating and implementing the comprehensive plan. However, the Legislative Assembly approved Senate Bill No. 2024 (2017) to repeal Chapter 23-42 related to the tobacco prevention and control program and to amend Section 54-27-25 to provide funds in the tobacco prevention and control trust fund are to be used as appropriated by the Legislative Assembly. The Legislative Assembly did not provide funding for the Tobacco Prevention and Control Executive Committee for the 2017-19 biennium. In addition, Section 15 of House Bill No. 1015 (2017) requires the Office of Management and Budget administer the tobacco prevention and control trust fund in accordance with legislative authorizations or appropriations during the 2017-19 biennium.

The measure also provided, if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan. The Legislative Assembly, in Section 39 of House Bill No. 1015 (2009), provided any money deposited in the water development trust fund under Section 54-27-25 may only be spent pursuant to legislative appropriation. Senate Bill No. 2024 (2017) repealed the Tobacco Prevention and Control Executive Committee and authority to use funding from the water development trust fund for the comprehensive plan.

The tobacco settlement payment received by the state in April 2008 was the first payment that included funds relating to subsection IX(c)(2) of the Master Settlement Agreement. This payment was received prior to the approval of the measure and was deposited in the tobacco settlement trust fund and disbursed as provided for in Section 54-27-25 prior to amendment by the measure. In 2009 tobacco settlement payments began to be deposited in the tobacco settlement trust fund and the tobacco prevention and control trust fund pursuant to Section 54-27-25 as amended by the measure. The last payment under subsection IX(c)(2) of the Master Settlement Agreement was received in April 2017. The state received total tobacco settlement collections of \$119,487,461 under subsection IX(c)(2) of the Master Settlement Agreement, of which \$105,689,732 was deposited into the tobacco prevention and control trust fund from April 2009 through April 2017.

In Senate Bill No. 2004 (2021), the Legislative Assembly repealed the tobacco prevention and control trust fund and required the Office of Management and Budget to transfer any money remaining in the tobacco prevention and control trust fund to the community health trust fund on July 1, 2021.

ANALYSIS OF THE TOBACCO SETTLEMENT TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$0		\$0
Add revenues				
Tobacco settlement revenues collected to date	\$43,937,843 ¹		\$23,250,900 ¹	
Projected tobacco settlement revenues	0		18,000,000	
Funding transferred by the Attorney General relating to unspent appropriations	155,286 ^{1,5}		0 ^{1,5}	
Total revenues		44,093,129 ²		41,250,900 ²
Total available		\$44,093,129 ^{3,4}		\$41,250,900 ^{3,4}
Less expenditures and transfers				
Transfers to the community health trust fund	\$44,093,129 ²		\$41,250,900 ²	
Total expenditures and transfers		44,093,129 ⁴		41,250,900 ⁴
Ending balance		\$0		\$0

¹Through April 2022 the state has received tobacco settlement payments totaling \$23,250,900 for the 2021-23 biennium, which has been deposited in the tobacco settlement trust fund. Because payments under subsection IX(c)(2) of the Master Settlement Agreement ended in 2017, no funds were deposited in the tobacco prevention and control trust fund. In addition, the tobacco settlement trust fund received unspent funds related to appropriations to the Attorney General for the 2017-19 biennium. To date, the state has received total tobacco settlement collections of \$668,809,888, including \$549,322,427 under subsection IX(c)(1) of the Master Settlement Agreement and \$119,487,461 under subsection IX(c)(2) of the Master Settlement Agreement. Of the \$668,809,888, \$563,120,156 has been deposited into the tobacco settlement trust fund and \$105,689,732 has been deposited into the tobacco prevention and control trust fund.

²Revenues - House Bill No. 1475 (1999), North Dakota Century Code Section 54-27-25, provided interest on the money in the tobacco settlement trust fund must be retained in the fund, and the principal and interest must be allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. In House Bill No. 1012 (2017), the Legislative Assembly suspended transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increased transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund. In Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-27-25 to provide all money in the fund must be transferred within 30 days of receipt to the community health trust fund. Because deposits in the tobacco settlement trust fund are transferred to the community health trust fund within 30 days, there is no provision for interest.

In the November 2008 general election, voters approved Initiated Measure No. 3 that amended Section 54-27-25 to provide a portion of tobacco settlement funds received by the state be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continues in perpetuity, is deposited into the tobacco settlement trust fund and, beginning with the 2019-21 biennium, allocated 100 percent to the community health trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, which began in 2008 and continued through 2017, began to be deposited in 2009 into the tobacco prevention and control trust fund. The amount received under subsection IX(c)(2) of the Master Settlement Agreement for 2008 was \$13,797,729, which, because it was received prior to passage of the measure, was allocated pursuant to Section 54-27-25 prior to amendment.

Tobacco settlement trust fund revenues have been estimated based on actual revenues received through April 2022 and legislative estimates for the remainder of the 2021-23 biennium.

³In 2006 certain tobacco companies began reducing their tobacco settlement payments to North Dakota contending that the Master Settlement Agreement allows for the payments to be reduced if they lose sales to small cigarette makers that did not participate in the agreement and if states do not enforce laws intended to make smaller tobacco companies set aside money for legal claims. The Attorney General's office filed a lawsuit against the tobacco companies to collect the full

payment and in 2018 reached a settlement with the tobacco companies. The total original estimated tobacco settlement collections, including payments to be received under both subsection IX(c)(1) and subsection IX(c)(2) of the Master Settlement Agreement, and the total actual and estimated collections as revised by the Office of Management and Budget are:

Biennium	1999 Original Estimated Collections	Actual and Office of Management and Budget Revised Estimated Collections
1999-2001	\$57,593,770	\$52,900,784
2001-03	61,143,578	53,636,363
2003-05	51,271,214	46,310,010
2005-07	51,271,214	43,828,118
2007-09	82,231,080	75,633,409
2009-11	82,231,080	64,013,596
2011-13	82,231,080	63,035,245
2013-15	82,231,080	64,618,711
2015-17	82,231,080	63,570,920
2017-19	58,591,490	74,073,990
2019-21	58,591,490	43,937,843
2021-23	58,591,490	41,250,900
2023-25	58,591,490	52,503,832
Total	\$866,801,136	\$739,313,721

⁴Initiated Measure No. 3 (2008) resulted in the following allocation of the revised estimated collections for tobacco settlement payments through 2025. In House Bill No. 1012 (2017), the Legislative Assembly amended Section 54-27-25 to suspend transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increase transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund. Transfers from the tobacco settlement trust fund to the water development trust fund remained at 45 percent. In Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-27-25 to provide all money in the fund must be transferred within 30 days of receipt to the community health trust fund. Therefore, the following are estimated allocations of tobacco settlement payments through 2025, based on reallocations approved by the 2017 and 2019 Legislative Assemblies:

	Actual and Estimated Total Tobacco Settlement Proceeds, Including Attorney General Costs	Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(2) Deposited in the Tobacco Prevention and Control Trust Fund	Allocation of Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(1)		
			Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Actual payment April 2008	\$36.4 million	N/A	\$16.4 million	\$16.4 million	\$3.6 million
Actual payment April 2009	39.2 million	\$14.1 million	11.3 million	11.3 million	2.5 million
Actual payments 2009-11 biennium	64.0 million	23.5 million	18.2 million	18.2 million	4.1 million
Actual payments 2011-13 biennium	63.0 million	22.8 million	18.1 million	18.1 million	4.0 million
Actual payments 2013-15 biennium	64.6 million	22.4 million	19.0 million	19.0 million	4.2 million
Actual payments 2015-17 biennium	63.5 million ¹	22.9 million	18.2 million	18.2 million	4.0 million
Actual payments 2017-19 biennium	74.1 million ¹	N/A	0	33.3 million	40.7 million
Estimated 2019-21 biennium	43.9 million ²	N/A	0	0	44.1 million
Estimated 2021-23 biennium	41.3 million	N/A	0	0	41.3 million
Estimated 2023-25 biennium	52.5 million	N/A	0	0	52.5 million
Total	\$542.5 million	\$105.7 million	\$101.2 million	\$134.5 million	\$201.0 million

¹This amount includes \$200,000 made available from the tobacco settlement trust fund to the Attorney General for enforcement of the Master Settlement Agreement and any disputes with the agreement, net of unspent funds returned by the Attorney General.

²This amount is net of unspent funds returned to the tobacco settlement trust fund by the Attorney General.

⁵The Legislative Assembly, in Senate Bill No. 2003 (2015), amended Section 54-27-25 relating to the tobacco settlement trust fund to provide the principal and interest of the fund may be appropriated to the Attorney General for enforcement of the Master Settlement Agreement and any disputes with the agreement. In Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-27-25 to remove authorization for appropriation to the Attorney General for enforcement of the settlement agreement and in Senate Bill No. 2003 (2019), the Legislative Assembly did not provide funding from the tobacco settlement trust fund to the Attorney General.

FUND HISTORY

Section 54-27-25, created by House Bill No. 1475 (1999), established a tobacco settlement trust fund for the deposit of all tobacco settlement money obtained by the state. Money in the fund, including interest, must be transferred within 30 days of its deposit in the fund:

- 10 percent to the community health trust fund. In House Bill No. 1012 (2017), the Legislative Assembly suspended transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increased transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.
- 45 percent to the common schools trust fund. In House Bill No. 1012 (2017), the Legislative Assembly suspended transfers from the tobacco settlement trust fund to the common schools trust fund during the 2017-19 biennium and increased transfers from the tobacco settlement trust fund to the community health trust fund from 10 to 55 percent of the tobacco settlement revenues deposited in the tobacco settlement trust fund.
- 45 percent to the water development trust fund.

Section 54-27-25, as amended in Senate Bill No. 2012 (2019), provides all money in the fund must be transferred within 30 days of receipt to the community health trust fund.

In the November 2008 general election, voters approved Initiated Measure No. 3 that amended Section 54-27-25 to establish a tobacco prevention and control trust fund. The measure provides for a portion of tobacco settlement funds received by the state to be deposited in a new fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continues in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated pursuant to Section 54-27-25. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, relating to strategic contribution payments, which began in 2008 and continued through 2017, was deposited into the tobacco prevention and control trust fund.

The tobacco settlement payment received by the state in April 2008 was the first payment that included funds relating to subsection IX(c)(2) of the Master Settlement Agreement. This payment was received prior to the approval of the measure and was deposited in the tobacco settlement trust fund and disbursed as provided for in Section 54-27-25 prior to amendment by the measure. In 2009 tobacco settlement payments began to be deposited in the tobacco settlement trust fund and the tobacco prevention and control trust fund pursuant to Section 54-27-25 as amended by the measure.

The Legislative Assembly, in Senate Bill No. 2003 (2015), amended Section 54-27-25 relating to the tobacco settlement trust fund to provide the principal and interest of the fund may be appropriated to the Attorney General for the enforcement of the Master Settlement Agreement and any disputes with the agreement. The Legislative Assembly, in Senate Bill No. 2012 (2019), removed this authorization.

ANALYSIS OF THE STATE TUITION FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium Actual		2021-23 Biennium Estimated	
Beginning balance		\$1,874,600 ¹		\$2,015,709 ¹
Add revenues				
Fines for violation of state laws	\$11,238,849 ²		\$11,815,500 ²	
Transfer from the Department of Career and Technical Education	31,792 ³		0	
Transfers from the common schools trust fund	366,756,000		421,020,000	
Total revenues		378,026,641		432,835,500
Total available		\$379,901,241		\$434,851,209
Less expenditures and transfers				
State aid to schools (2019 SB 2013; 2021 HB 1013)	\$377,885,532		\$433,020,000	
Total expenditures and transfers		377,885,532		433,020,000
Ending balance		\$2,015,709 ¹		\$1,831,209 ¹

¹Beginning/ending balance - North Dakota Century Code Section 15.1-28-03 provides for the distribution of money in the state tuition fund in August, September, October, November, December, January, February, March, and April of each fiscal year. Fine proceeds deposited in the state tuition fund during May and June of each fiscal year are carried forward for distribution in August of the subsequent year.

²Fines for violation of state laws - Fine proceeds estimated to be deposited in the state tuition fund during the 2021-23 biennium are based on actual fines deposited into the fund through March 2022 and estimated fine proceeds for the remainder of the 2021-23 biennium based on the 2021 legislative revenue forecast. The amount of state tuition fund distributions from fine proceeds is shown below.

Fiscal Year	Revenue From Fines	Percentage Increase (Decrease) From Previous Year
2001	\$4,241,256 (actual)	N/A
2002	\$4,778,756 (actual)	12.7%
2003	\$4,607,423 (actual)	(3.6%)
2004	\$4,721,407 (actual)	2.5%
2005	\$4,507,137 (actual)	(4.5%)
2006	\$4,506,316 (actual)	(0.01%)
2007	\$4,590,395 (actual)	1.9%
2008	\$4,692,048 (actual)	2.2%
2009	\$4,452,118 (actual)	(5.1%)
2010	\$4,593,325 (actual)	3.2%
2011	\$4,963,691 (actual)	8.1%
2012	\$5,769,861 (actual)	16.2%
2013	\$6,158,750 (actual)	6.7%
2014	\$6,844,632 (actual)	11.1%
2015	\$7,655,890 (actual)	11.9%
2016	\$6,945,206 (actual)	(9.3%)
2017	\$5,511,247 (actual)	(20.6%)
2018	\$6,055,397 (actual)	9.9%
2019	\$5,885,838 (actual)	(2.8%)
2020	\$5,093,885 (actual)	(13.5%)
2021	\$6,144,964 (actual)	20.6%
2022	\$5,815,500 (estimate)	(5.4%)
2023	\$6,000,000 (estimate)	3.2%

³In January 2020 the Department of Career and Technical Education returned funding remaining from \$250,000 of carryover authority transferred to the department from funds remaining in the grants - state school aid line item after the Superintendent of Public Instruction complied with all statutory payment obligations imposed for the 2011-13 biennium. The carryover funding was made available to the department to provide autism spectrum disorder technology grants during the 2013-15 and 2015-17 bienniums.

NOTE: The estimated June 30, 2023, balance made at the end of the 2021 regular legislative session was \$1,613,691. The increase in the estimated balance of \$217,518 is due to the beginning 2021-23 biennium balance being \$402,018 more than anticipated, due to estimated revenues from fines being \$363,902 more than estimated during the 2019-21 biennium and transfers being \$38,116 less than anticipated, and 2021-23 biennium to date estimated revenue from fines being \$184,500 less than estimated.

FUND HISTORY

The state tuition fund originated in 1889 with the enactment of the Constitution of North Dakota. The original constitutional provisions have not changed significantly since enactment and are currently contained in Section 2 of Article IX of the Constitution of North Dakota, which provides that payments to the common schools trust fund of the state include:

- Distributions from the common schools trust fund;
- All fines for violation of state laws; and
- All other amounts provided by law.

Section 15.1-28-01 provides the state tuition fund consists of the net proceeds from all fines for violation of state laws and distributions from the common schools trust fund. Section 15.1-28-03 directs the Office of Management and Budget, on or before the third Monday in January, February, March, April, August, September, October, November, and December of each year, to certify to the Superintendent of Public Instruction the amount of the state tuition fund. Prior to the 2007-09 biennium, the Superintendent apportioned the money in the state tuition fund among the school districts in the state based on the number of school-age children in the district. Senate Bill No. 2200 (2007) consolidated funding for the state school aid program, including per-student payments, teacher compensation payments, special education average daily membership payments, revenue supplemental payments, and tuition apportionment payments, into a new state school aid funding formula with a new distribution methodology; therefore, beginning with the 2007-09 biennium, the Superintendent includes the money in the state tuition fund in state school aid payments to school districts as determined by Chapter 15.1-27.

ANALYSIS OF THE VETERANS' POSTWAR TRUST FUND FOR THE 2019-21 AND 2021-23 BIENNIUMS

	2019-21 Biennium		2021-23 Biennium	
	Actual		Estimated	
Beginning balance ¹		\$6,742,353		\$8,179,087
Add revenues				
Investment and other income ^{2,3,4}	\$1,709,577		\$500,000	
Patriotic license plates	26,355		27,000	
Commemorative memorial coin program sales	14,210		15,000	
Commemorative memorial coin program donations	5,415		3,000	
Income tax return donations	46,602		55,000	
Impact Foundation donations ⁵	30,000		30,000	
Other donations (2019 HB 1131) ⁶	52,300		50,000	
Total revenues		1,884,459		680,000
Total available ^{7,8}		\$8,626,812		\$8,859,087
Less expenditures and transfers				
Investment management and consulting services	\$116,214		\$139,000	
Grants and related expenditures	288,624			
Veterans' transportation programs	1,823			
Commemorative memorial coin program expenditures	12,942		13,000	
Impact Foundation expenditures ⁵	28,122		30,000	
Other programs that benefit veterans ^{7,8}	0		338,617	
Total expenditures and transfers ^{7,8}		447,725		520,617
Ending balance		<u>\$8,179,087</u>		<u>\$8,338,470</u>

¹The 2019-21 biennium beginning balance differs from the balance reported in the previous analysis due to a change in reporting on a PeopleSoft basis rather than information reported by the Department of Veterans' Affairs.

²Prior to July 2011, North Dakota Century Code Section 37-14-14 appropriated on a continuing basis all income of the veterans' postwar trust fund to the Administrative Committee on Veterans' Affairs for programs that benefit veterans or their dependents. The Legislative Assembly in House Bill No. 1468 (2011) amended Section 37-14-14 to provide that all income earned in a biennium is appropriated to the Administrative Committee on Veterans' Affairs for authorized programs on a continuing basis in the following biennium, and not in the biennium in which it is earned. Therefore, the investment income earned by the fund during the 2019-21 biennium was not available for programs until the 2021-23 biennium and income earned by the fund during the 2021-23 biennium will not be available for programs until the 2023-25 biennium.

³During the 2019-21 biennium, the State Treasurer converted investment earnings reporting from a cost basis to a fair market value basis, resulting in an increase in the reported value of investments of the veterans' postwar trust fund.

⁴The State Treasurer has not provided investment income estimates for the 2021-23 biennium. Investment income estimates for the 2021-23 biennium are based on investment income earned in previous bienniums prior to the conversion from cost basis to fair market value basis.

⁵The North Dakota Veterans Emergency Needs Charitable Fund (also known as the North Dakota Support Our Veterans Fund) was established in April 2010 by the Impact Foundation to support emergency needs of North Dakota veterans and their eligible dependents. As noted in the March 28, 2018, *Performance Audit Report of the Department of Veterans' Affairs* prepared by the State Auditor, the department has received and expended funds from the Impact Foundation by combining these funds with those of the veterans' postwar trust fund without legislative or Emergency Commission approval. The State Auditor's report identified

that these actions were in conflict with Section 18 of Article X of the Constitution of North Dakota and Section 37-18-12. In House Bill No. 1248 (2019), the Legislative Assembly created Section 57-38-34.7 to authorize the department to accept and expend donations and other funding, such as the funding received from the Impact Foundation. See footnote 6.

⁶Section 57-38-34.7 allows the Department of Veterans' Affairs to apply for, accept, and expend private donations, gifts, grants, or bequests that are offered or tendered with a specifically identified purpose or a restrictive condition which is related to a benefit or service for resident North Dakota veterans and appropriates those funds to the department on a continuing basis in accordance with the donor's instructions. During the 2019-21 biennium, the department received \$52,300 of donations, excluding donations from the Impact Foundation, for veterans' programs, of which \$9,600 was for hardship assistance grants, \$18,900 was for a hyperbaric oxygen therapy program for veterans with posttraumatic stress disorder, \$11,300 was for a Fisher House program to partner with a private organization to build comfort homes for military and veteran families when a family member is hospitalized, and \$12,500 was for a commemorative book provided free to Vietnam War veterans.

⁷Funds available for benefits during the 2019-21 biennium totaled \$509,704, of which \$308,550 is from income earned on the fund during the 2017-19 biennium, \$59,300 is from income earned on the fund during the 2015-17 biennium but not spent by the end of the biennium, \$19,625 is from donations and sales related to the commemorative memorial coin program during the 2019-21 biennium, \$12,054 is from donations and sales related to the commemorative memorial coin program during the 2017-19 biennium that was not spent by the end of the biennium, \$3,739 is from short-term interest, \$30,000 is from revenue received from the Impact Foundation during the 2019-21 biennium, \$24,136 is from net proceeds from the Impact Foundation from the 2017-19 biennium, and \$52,300 is from donations.

⁸Estimated funds available for benefits during the 2021-23 biennium total approximately \$483,667, of which \$232,370 is from income earned on the fund during the 2019-21 biennium, \$52,747 is from income earned on the fund during the 2017-19 biennium but not spent by the end of the biennium, \$18,000 is the estimated donations and sales related to the commemorative memorial coin program during the 2021-23 biennium, \$18,736 is from donations and sales related to the commemorative memorial coin program during the 2019-21 biennium that was not spent by the end of the biennium, \$3,500 is the estimated short-term interest earned during the 2021-23 biennium, \$30,000 is from revenue received from the Impact Foundation during the 2021-23 biennium, \$26,014 is from net proceeds from the Impact Foundation from prior bienniums, \$50,000 is the estimated amount donations that will be collected during the 2021-23 biennium, and \$52,300 is from donations received during the 2019-21 biennium but not spent by the end of the biennium.

Estimated funds available for benefits during the 2023-25 biennium, based on the average investment income earned on the fund during the 2021-23 biennium through March 2022, is approximately \$250,000, excluding any funding continued from prior bienniums and funding collected during the 2023-25 biennium for the commemorative memorial coin program, donations, and short-term interest.

FUND HISTORY **Established**

The fund was created by Section 6 of Senate Bill No. 2271 (1981):

SECTION 6. TRANSFER OF VIETNAM BONUS FUNDS TO VETERANS' POSTWAR TRUST FUND. All unobligated moneys in the Vietnam veterans' adjusted compensation funds in the state treasury after July 1, 1981, shall be transferred by the state treasurer to the veterans' postwar trust fund. Any obligations of such funds as a result of any amendment of section 37-25-10 by the forty-seventh legislative assembly shall be paid out of the veterans' postwar trust fund and the moneys necessary to meet those obligations are hereby appropriated.

1988 Initiated Measure No. 4

Initiated Measure No. 4, approved by the voters in the November 1988 general election, provided the following:

- Established the veterans' postwar trust fund as a permanent fund.
- Required the State Treasurer to transfer \$740,000 per year for 5 years commencing July 1, 1989, from the state general fund or other sources as appropriated by the Legislative Assembly to the veterans' postwar trust fund to total \$3.7 million.
- Appropriated the income from the veterans' postwar trust fund on a continuing basis to the Administrative Committee on Veterans' Affairs to be spent for veterans' programs as authorized by law.
- Required the State Treasurer to invest the fund in legal investments as provided by Section 21-10-07.

The principal balance in the fund on December 8, 1988, was \$401,849.

Senate Bill No. 2009 (1989) transferred \$1,480,000--\$740,000 on July 1, 1989, and \$740,000 on July 1, 1990--from the state general fund to the veterans' postwar trust fund. The bill also appropriated up to \$274,000 of investment income earned on the veterans' postwar trust fund balance to the Veterans' Home for its operating costs. Because of net budget reductions during the 1989-91 biennium, the transfer from the general fund to the veterans' postwar trust fund for the 2nd year of the 1989-91 biennium was reduced by \$95,005, from \$740,000 to \$644,995.

Senate Bill No. 2001 (1991) transferred \$1,575,005 from the general fund to the veterans' postwar trust fund during the 1991-93 biennium. This amount restored the \$95,005 which was not transferred during the 1989-91 biennium because of net budget reductions. Because of budget allotments ordered by the Governor during the 1991-93 biennium, the transfer from the general fund to the veterans' postwar trust fund for the 2nd year of the 1991-93 biennium was reduced by \$5,670, from \$740,000 to \$734,330.

House Bill No. 1001 (1993) transferred \$745,670 from the general fund to the veterans' postwar trust fund during the 1993-95 biennium. This was the final transfer required by the initiated measure and included \$5,670 to restore the reduction made during the 1991-93 biennium because of budget reductions.

1996 Initiated Constitutional Measure No. 4

Initiated Constitutional Measure No. 4, approved by the voters in the November 1996 general election, created the following new section to Article X of the Constitution of North Dakota:

The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund as authorized by legislative enactment. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. All income received from investments is to be utilized for programs which must be of benefit and service to veterans, who are defined by legislative enactment, or their dependents, and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon those programs selected at the discretion of the administrative committee on veterans' affairs.

House Bill No. 1468 (2011)

The Legislative Assembly in House Bill No. 1468 (2011) amended Section 37-14-14 to provide that all income earned in a biennium is appropriated to the Administrative Committee on Veterans' Affairs on a continuing basis in the following biennium, and not in the biennium in which it is earned, for authorized programs.

House Bill No. 1439 (2013)

The Legislative Assembly in House Bill No. 1439 (2013) provided \$250,000 from the general fund to increase the principal balance of the veterans' postwar trust fund.

House Bill No. 1360 (2015)

The Legislative Assembly in House Bill No. 1360 (2015) created Section 39-04-10.15 to require an initial fee of \$25 for patriotic license plates, of which \$20 is deposited in the highway tax distribution fund and \$5 is deposited in the veterans' postwar trust fund. The revenue deposited in the veterans' postwar trust fund must be added to the principal of the fund.

Senate Bill No. 2183 (2017)

The Legislative Assembly in Senate Bill No. 2183 (2017) created Section 37-18-15 to establish a commemorative memorial coin program to provide commemorative memorial coins to a family member of a deceased North Dakota veteran during military funeral honors and to allow for the purchase of commemorative memorial coins from the Department of Veterans' Affairs. The bill provided legislative intent that the Administrative Committee on Veterans' Affairs considering providing funding from the veterans' postwar trust fund to the department for the purpose of funding at least 4,000 commemorative memorial coins during the 2017-19 biennium.

House Bill No. 1248 (2019)

The Legislative Assembly in House Bill No. 1248 (2019) created Section 57-38-34.7 to allow an individual to make a contribution to the veterans' postwar trust fund on the individual's income tax return for taxable years beginning after December 31, 2018. The Tax Commissioner is required to transfer the contributions to the State Treasurer for deposit in the veterans' postwar trust fund.

House Bill No. 1211 (2021)

The Legislative Assembly in House Bill No. 1211 (2021) expanded the State Treasurer's ability to invest funds of the veterans' aid fund and the income from the veterans' postwar trust fund by allowing investment in assets not held by the Bank of North Dakota.