



# North Dakota Legislative Council

Prepared for Senator Klein  
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## LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD - STATUS REPORT TO THE BUDGET SECTION DECEMBER 15, 2021

### ADVISORY BOARD OVERVIEW

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

### BUDGET STABILIZATION FUND Asset Allocation Plan

As of September 2021, the asset allocation of the fund is 99 percent short-term fixed income and 1 percent in cash and equivalents. More detailed information regarding the balance of the budget stabilization fund by asset class, as reported by the Retirement and Investment Office (RIO), is attached as [Appendix A](#).

#### Investment Returns

The schedule below provides information on budget stabilization fund investment returns as reported by RIO.

	One Year Ended September 30, 2021			Five Years Ended September 30, 2021		
	Actual	Target	Variance	Actual	Target	Variance
Unaudited investment returns, net of fees	2.60%	0.30%	2.30%	2.48%	1.89%	0.59%

#### Balance and Transfers

Pursuant to Chapter 54-27.2, any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund, except that the balance in the budget stabilization fund may not exceed 15 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The schedule below provides information on the balance of the budget stabilization fund and transfers between the budget stabilization fund and the general fund as reported by RIO.

	Fund Balance - Market Value	Transfer to the General Fund	Transfer from the General Fund
Fiscal Year 2020 - June 30, 2020 <sup>1</sup>	\$726,903,611	\$369,136	N/A
Fiscal Year 2021 - June 30, 2021 <sup>2</sup>	\$749,374,748	\$5,575,109	N/A

<sup>1</sup>For June 30, 2020, the 15 percent statutory maximum for the balance of the budget stabilization fund was \$726,534,475 based on total 2019-21 general fund appropriations of \$4,843,563,166 as approved by the 2019 Legislative Assembly.

<sup>2</sup>For June 30, 2021, the 15 percent statutory maximum for the balance of the budget stabilization fund is \$748,943,600 based on total 2021-23 general fund appropriations of \$4,992,957,330 as approved by the 2021 Legislative Assembly. The June 30, 2021, balance exceeds the 15 percent statutory maximum because the transfer to the general fund was based on the May 31, 2021, balance of \$754,518,709 and did not include earnings or changes in the value of investments during June 2021.

### LEGACY FUND Asset Allocation Plan

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

During the 2015-17 biennium, the Legacy and Budget Stabilization Fund Advisory Board authorized the SIB to transfer the investments in the Bank of North Dakota's CD match program from the budget stabilization fund to

the legacy fund after the budget stabilization fund was liquidated during the 2015-17 biennium due to a budget shortfall. During the 2019-21 biennium, the advisory board approved an increase in the amount available from the legacy fund for investment in the CD match program to provide up to \$400 million. Currently, the SIB has \$45.5 million of the legacy fund invested in the CD match program.

The Legislative Assembly approved House Bill No. 1425 (2021) directing the advisory board to develop an asset allocation plan for the legacy fund targeting 10 percent of fixed income and 10 percent of equity investments for in-state investment programs. In February 2021, the advisory board approved a change to the asset allocation plan for the legacy fund authorizing the SIB to target 3 percent (with a range of 0 to 6 percent) of the legacy fund investments in private capital markets for an in-state investment program. The SIB has selected 50 South Capital to manage the in-state investment "growth fund." More detailed information regarding the balance of the legacy fund by asset class, as reported by RIO, is attached as [Appendix B](#). As of December 2021, RIO is in the process of issuing a request for proposal to study the legacy fund asset allocation plan.

### Revenue Deposits

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

	Oil and Gas Tax Revenue Deposits	Transfers from the Strategic Investment and Improvements Fund <sup>1</sup>	Total Legacy Fund Deposits
2011-13 biennium	\$1,132,412,536	\$146,001,725	\$1,278,414,261
2013-15 biennium	1,679,854,750	201,879,330	1,881,734,080
2015-17 biennium	815,796,247		815,796,247
2017-19 biennium	1,248,613,201		1,248,613,201
2019-21 biennium	965,917,312		965,917,312
<b>Total</b>	<b>\$5,842,594,046</b>	<b>\$347,881,055</b>	<b>\$6,190,475,101</b>

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

### Investment Returns

The schedule below provides information on legacy fund investment returns as reported by RIO.

	One Year Ended October 31, 2021			Five Years Ended October 31, 2021		
	Actual	Target	Variance	Actual	Target	Variance
Unaudited investment returns, net of fees	21.71%	20.90%	0.81%	10.13%	9.62%	0.51%

### Balance and Transfers

The schedule below provides information on the balance of the legacy fund and transfers to the general fund as reported by RIO. Cumulative net earnings of the legacy fund totaled \$3.54 billion from inception through October 31, 2021. Pursuant to a November 2016 Attorney General's opinion, all earnings accruing through the end of the 2015-17 biennium (\$436,839,672) became part of the principal of the legacy fund. Realized earnings after June 30, 2017, as defined in Section 21-10-12, are transferred to the general fund at the end of each biennium.

	Fund Balance - Market Value	Total Net Investment Earnings	Transfer to the General Fund <sup>1</sup>
2017-19 biennium - June 30, 2019	\$6,122,227,871	\$669,413,658	\$455,263,216
2019-21 biennium - June 30, 2021	\$8,115,202,181	\$1,887,514,683	\$871,687,384

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

House 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. During the 2021-22 interim, a Legacy Fund Earnings Committee will study the potential uses of legacy fund earnings.

ATTACH:2