

## LEGACY FUND APPROPRIATIONS

This memorandum is in response to questions relating to when the Legislative Assembly may appropriate money deposited in the legacy fund. Specifically, this memorandum addresses the following questions:

- May the Legislative Assembly, during the 2017 regular session, appropriate legacy fund money for the 2017-19 biennium?
- Because transfers from the legacy fund to the general fund are made at the end of each biennium, is the Legislative Assembly prohibited from appropriating legacy fund money until the next biennium?

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

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

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

Subsection 2 prohibits the expenditure of the principal and earnings of the legacy fund until after June 30, 2017. Appropriating money and expending money can be distinguished as separate acts. Appropriating money means designating and authorizing an expenditure. Expenditure of money means disbursement of money. Article X, Section 12, of the Constitution of North Dakota, provides that public money of the state may be "disbursed only pursuant to appropriation first made by the legislature". Based upon the meaning of the terms "appropriating" and "expending," it appears during the 2017 legislative session the Legislative Assembly may appropriate funds from the legacy fund before June 30, 2017, but the funds may not be disbursed or expended until after that date.

The minutes from the conference committee during the debate on House Concurrent Resolution No. 3054 indicate the members of the conference committee intended to make the legacy fund money available for appropriation during the 2017 legislative session. When discussing an amendment to change the date after which the principal and earnings of the legacy fund may be expended, the Chairman of the conference committee suggested if the intent would be to "lock up" the funds through the 2013 and 2015 legislative sessions and the corresponding biennial budget cycles, the prohibition on the use of the funds under subsection 2 should be amended to June 30, 2017.

Earnings from the legacy fund are required to be transferred to the general fund at the end of each biennium, but the constitutional provision creating the legacy fund does not prohibit the Legislative Assembly from appropriating money directly from the legacy fund before any transfer is made to the general fund. The only limitations on appropriating money from the legacy fund are the provisions in subsection 2 which prohibit the expenditure of the principal and earnings until after June 30, 2017, require at least a two-thirds vote of the members elected to each house of the Legislative Assembly for an expenditure of any of the principal of the fund, and prohibit expending more than 15 percent of the principal during a biennium.