

2009 HOUSE CONSTITUTIONAL REVISION

HCR 3054

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 02/26/09

Recorder Job Number: 9822

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3054.

Rep. Weiler: State Representative Dave Weiler of Bismarck. HCR 354 is before you to try to address what we hope to do over the course of the next year and a half and that is to put into the constitution what is called the legacy fund. We want to take a portion of the oil tax revenue that comes in and we set it aside for many purposes. I did hand out a sheet, and I would like to go over the details. (See Attachment #1) Current law in North Dakota states of all the oil tax revenue that comes into the state, there's a formula by how the money comes in. Then by either constitution or statute there are six different groups that get a percentage of that oil tax revenue right off the top. That will not change. Those groups are going to continue to get the percentage that they received before. We are not disrupting that. That stays as current law. Those groups will get their money before any of the other money goes into the legacy fund. One of the co-sponsors often refers to the permanent oil trust fund as general fund 2. It's really pretty accurate. That's how we treat the permanent trust fund, and so let's do something about that. The current law says after all those groups get their money, whatever is left over, the first \$71 million goes to the general fund. Whatever is left after that goes into the permanent oil trust fund. If this measure passes this committee, passes the house, passes the

senate, goes to the ballot in 2010 and passes, it would not go into effect until July 1, 2011.

After all those groups get their money, what this bill attempts to do is to instead of the first \$71 million going to the general fund, it's going to be the first \$100 million. Eighty percent of that first \$100 million, after those groups get their money, is going to go to the general fund and 20% is going to go to the newly created legacy fund. The second \$100 million, 70 to the general fund and 30 to the legacy fund. You can see as it goes down the next \$100 is 60/40. The next \$100 is 50/50 and everything over \$400 million will be 40% to the general fund and 60% to the legacy fund. In order to pass this, the principal amount of that legacy fund, it's going to take a 2/3 vote of each chamber to access that fund. Same provisions as was in HB 3045 two years ago up to 20% of the principal balance of that fund can be accessed one time per biennium. That does not change. The difference between 3045 two years ago and 3054 this year, 3045 was turned into Measure 1, that had a 3/4 vote and we had changed that to a 2/3 vote. What is different in this measure compared to the one two years ago is the new fund called the legacy fund. Interest from the principal balance of the legacy fund will go to the general fund. That is not different. However, the legacy fund will be invested with the State Investment Board versus the Bank of North Dakota which was the one two years ago. A couple of very important points about this bill the way it was drafted. The beauty in this is that when oil revenue to the state of North Dakota is average or low, the general fund is going to get obviously a huge majority of that money coming in. When times are good in the oil industry and revenue from oil is good in North Dakota, which is what we are currently seeing now, we are going to able to put a little bit more of the money away. The general fund is still getting what they have gotten in the past. It's going to be much better for budgeting purposes. It's just going to be a lot easier to budget using this formula in our revenue. When times are really

good in the oil industry we'll be able to take a little bit of that money, and we'll be able to set it aside.

Rep. Griffin: It would work like the percentages would work in the income tax does. You wouldn't take the total amount. You'd go by each \$100 million and follow that percentage.

Rep. Weiler: That is correct. If all we get is \$100 million after all those groups get their money, \$80 million will go to the general fund, and \$20 million will go to the legacy fund. If we get \$200 million, then it's going to be the first \$100 million, 80% to the general fund, the second \$100 million, 70% so the general fund would get 150%.

Rep. Conrad: We often talk about the fact that the general fund is like a person's checking account, and the oil trust fund is like a savings account because you can access it but you still set aside and say this is our savings. I'm hoping to keep it. Here you're eliminating that savings account.

Rep. Weiler: I think the reason for that is under current law the permanent oil trust fund is very much like the general fund. You take money out of that fund at a very easy rate. It comes out of there. Let's take some of the money from the oil revenue, and let's just give it to the general fund. Let's get real about what we're doing. Let's give the money to the general fund, but when there's excess or when we have this opportunity, let's create this other fund that is going to be a little more difficult to access. One of the points that I'd like to make is that today on the floor we had a bill that wanted to take money, \$7 million or so, out of the permanent oil trust fund, but as you know in the statute it says it takes a 2/3 vote to take money out of the oil trust fund. That's not true. It takes a 51% vote because you can't bind a future legislative body to the 67% vote. So, let's force this oil revenue and set some of it aside so the future generations of North Dakotans can benefit from what we're going through right now.

Rep. Conrad: Do you see any particular purpose that the legacy fund should be used for?

There's nothing stated in the bill. The interest, does that just go right into the general fund without any dedicated purpose?

Rep. Weiler: Correct. That is the way we set up the bill. I know that other states that have permanent trust funds from their oil. They do not have anything in their constitution that says the money has to be earmarked for something. We don't want to do that. We didn't want to do that. We chose not to do that because in 20 or 30 or 40 years from now, who knows when we might have a big need, and we don't want to say it's got to be used for whatever. We don't want to earmark it, because we feel like future legislative bodies need to have the flexibility to use that money as they see fit.

Rep. Schneider: Did you think about putting a fixed percentage in? One of the concerns of Measure 1 was putting a valued dollar amount in the constitution.

Rep. Weiler: The problem with the fixed percentage, I know there are a couple other constitutional amendments. One says 25% of the money left over goes to the trust fund and 75% to the general fund. The problem that I see with that is two things. One is a budgeting problem in that if three bienniums in a row and things are really good and the general fund is getting 75% of that money, and they get \$300 million because they got 75% every biennium and everything goes in the tank, 75% of \$50 million is not a lot. So we are going to set ourselves up for X amount of dollars every biennium, and then when things drop off, the general fund does not get what they were used to spending. I think that is (inaudible) that we currently have the way the system is now. So that would be the reason why I don't think that the percentage works. It's better than what we have now, but it's not as good as what we could have.

Sen. Triplett: My name is Connie Triplett, state senator from Grand Forks. I have the distinction of being the only person who put my name on all three of the constitutional proposals regarding the oil trust fund. I want to explain why I did that. I wasn't concerned about the details of whether it was a particular percentage or a varied percentage or whether it was a dedicated fund or non-dedicated fund or whether it comes off the top. I really am not too concerned about the details. I think it's important that all of these ideas get discussed and then we come up with some kind of structure that people can count on to put part of the oil money away. We simply cannot let ourselves become dependent on oil revenue. My concern is that if we don't do something to put part of this away, that we will have a continued quarrying for the next several years or as long as we have that extra oil money around from people wanting to upset the three legged stool. We really need a balance between income tax and sales tax and property tax and as we see in the last interim, (inaudible) slash income tax and as we see this legislative session as opposed to (inaudible) to get rid of property tax. There are provisions to cut corporate tax. There are provisions to cut sales taxes, and I think all of those are driven by the fact that various people in groups think we have too much money right now, and they think that because of the spike in oil that we have. My hope is that between these three proposals, that we will come to a concession of some kind of a structure that will allow us to put some away and that that will give the public confidence that we are not going to overspend.

Rep. Conrad: When the oil extraction tax was first established there was a school trust fund established. What are we going to use this trust fund for?

Sen. Triplett: (inaudible) money towards K-12 and higher education. A committee will have to decide. I'm not concerned about the details. I'm concerned that we have a plan that puts part of the money away.

Rep. Conrad: We often talked about the fact that we have a savings account, you can access it, but you put it aside for emergencies. So you don't think we have any need for any (inaudible) to fix?

Sen. Triplett: Of course we do. I don't believe we could use it for savings. You could spend all of the money. Certainly any one of us could spend it in a heartbeat. I just don't think it would be good politics.

Rep. Carlson: I'm Al Carlson, state representative in District 41. I want to respond to the issue of is the right amount of money for the state to save. I will tell you that right now the way the budget stands, we could put \$391 million of the budget in the stabilization fund which could be used for any purpose. On the other hand, if you take a look at oil revenues, last July we had \$45 million that we collected from oil revenues in one month. Last month it was \$10 million, and they expect this month to be between \$7 and \$8 million. It is extremely volatile. When we build our budgets on very volatile revenue sources, it's a dangerous budget. Right now, we've already spent about \$350 million out of the permanent trust fund that we have committed as a legislature in legislation we passed today. \$300 million in property taxes and \$295 million out of the senate. And then we've done some various other things. We actually even committed \$44 million to an emergency fund for emergencies like Northwood. So this has not been by any means (inaudible). It has been a deep well for us to go to for money for extra things. Everybody know that in this process we have a lot of needs that come up with infrastructure and those types of areas where we have to address one time spending. The key thing that Sen. Triplett said that is right on is what is the right amount of money to put in the bank and what is the standard level of spending when you get used to spending that money, what is that level. When a resource is as volatile as the one I tracked for the last year and watched our revenues rise and fall at unbelievable levels, both high and low, we have to be

very careful with what we do with that money. I don't know if this is the best formula or if a fixed rate is the best formula, but I can tell you goes back to the 80's and the 70's and go to western North Dakota and track what happened to oil, and subdivisions sat for 30 years without a house on them. It was because of oil. So we better be careful. That is why I support some version of putting that money aside while we still have access to it but only for the direst of emergencies.

Rep. Boucher: I'm Rep. Merle Boucher in the house from District 9. I come in support of this particular piece of legislation. What I see before us is an issue that needs to be addressed. Is this the one that we should send forth to the public. When you take a look at where we stand today and what we've done. We've created a permanent oil trust fund. It's (inaudible) permanent by how it works. There was a discussion about the general fund being a checking account and the permanent oil trust fund is a savings account. In many respects we use it that way. A lot of times we've ignored general funds spending and have gone directly to the savings account. By routing this money in the fashion that's laid out in this bill, we're routing money up front to the general fund and hope that as we move forward by doing it in this kind of a fashion that we would uphold and stay closer to the course of using general fund monies for various types of appropriations. I think it's very clear that we have various types of trust funds out there. The common schools trust fund benefits from what goes on in oil and mineral activity. It is a permanent fund. I'm not bringing up something that maybe isn't unknown, but something that's not always considered to the extent that it should be when you talk about the arguments of putting mineral money, oil money, coal money into a permanent trust fund. We've been doing that for a long time. Any lease of the royal money that comes from land that is owned by the state of North Dakota goes into the fund, the common schools trust fund. We are doing those kinds of things. I know I share some of the concerns about putting money into

trust funds because if you look at the common school's trust fund, if you looked at it last summer, it had a value of in excess of \$1 billion. If you look at the value of that account today, it's probably about \$760 or \$770 million. So it's like a 401K where the money is invested out there as fortunes go up and down with the fortunes of the economy. So when we do these things, we do them with risk involved. I think what I'd like to see is for us to develop a truth in budgeting that we are using general funds for general fund purposes. And may we direct those dollars to the general fund. We've got a lot of money in the bank. Let's develop a process that routes monies to the general fund. I really think the point I'm trying to make is to bring a truth to the process. The general fund has a purpose for general fund appropriations. The way the process is set up in this particular bill that the resources, trust funds and so forth, they are accessible in a different fashion.

Sen. O'Connell: David O'Connell, District 6 senator. I think we'll miss the boat if we don't do something this time around. I believe something should have been done years ago when oil first came in. I don't care how the formula is.

Greg Burns offered testimony in support of HCR 3054. See Attachment #2.

Rep. Conrad: I'm still kind of stuck on this savings account versus checking account. I like the permanent oil trust fund. Am I worrying about something that is unimportant?

Mr. Burns: (inaudible). Part of that money went to research. They wanted to know that there would be money available for their children and their children's children. I think it's a combination of the volatility and having control, and there is a desire to have a constitutionally protected trust. This measure is not a lock box but it makes certain a certain portion (inaudible). The voters want this because the money can't be accessed as easy.

Robert Harms offered testimony in support of HCR 3054. See Attachment #3.

Chairman Koppelman: Your recommended amendment would go to a straight 25%? Is that correct?

Mr. Harms: Yes.

Chairman Koppelman: How would that affect the figures? We're using the 25%. Not what the resolution calls for. Is that correct?

Mr. Harms: That is correct. On page 3 of my testimony, what I've done is I've assumed an application of a 75/25% formula. Seventy-five percent of the trust fund revenues based upon the forecast, the schedule on page 3 shows that we can do that. Save 75% and at the end of the coming biennium, still be left with \$496 million in the permanent oil trust fund.

Chairman Koppelman: Obviously you feel the percentages are better than the dollar amounts and the configuration that is in the resolution?

Mr. Harms: The reason I thought that you should at least consider that is for a couple of reasons. I think it is simple. Not simplistic, but it's simple. It will make forecasting clear, and I think the public is going to understand it better when it comes time to vote yes or no on the measure if you approve it. The other thing I am concerned about is the current resolution, I like the concept but I am concerned about the optics If you approve it, then certainly we want the public to approve it. I would want the public to see the resolution on the ballot that optically does not cause them to vote the wrong way.

Rep. Conrad: I'm trying to figure out how to compare your numbers to Rep. Weiler's numbers. He's saying \$500 million, and you're saying \$428 million. So you would say 75% of that would go into the fund?

Mr. Harms: Yes. I'm looking at the revenue forecast that was provided on February 9th, and I'm looking at OMB's projection for 2009-11 revenue. The revenue they used was \$427,577,667.

John Risch, United Transportation Union testified in support of HCR 3054. See Attachment #4.

Ron Ness offered testimony in support of HCR 3054. My children are why I got heavily involved in this resolution. I thought there were some questions yesterday on a previous measure and this is hot off the press from the state treasurer. (See Attachment #5) I think we all assume the oil production tax collections may approach \$1 billion this biennium. Then we're up to \$800 million and now I would assume we'd be somewhere between \$650 and \$800 million. You can see where the money goes. It's important to understand in 2008 the resources trust fund was over \$36 million and education which is the common schools trust fund and foundation aid got over \$36 million. They get 20% each of the extraction tax collection. You can see how the formula flows.

Sandy Clark, North Dakota Farm Bureau: We are here today to stand in support of HCR 3054. We feel it is very important to have some kind of a permanent savings account.

Jeb Oehlke: My name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce. We support HCR 3054.

Chairman Koppelman: Further support for HCR 3054. Opposition to HCR 3054. Neutral testimony on HCR 3054. We'll close the hearing on HCR 3054.

At the request of Rep. Eliot Glassheim, Kathy Strombeck, Tax Department Analyst, provided information via email and a spreadsheet regarding a comparison of forecasted oil tax revenues. See Attachment # 6.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 03/04/09

Recorder Job Number: 10216

Committee Clerk Signature

Lori Englemon

Minutes:

Chairman Koppelman opened the hearing on HCR 3054.

Rep. Hatlestad: I move a do pass.

Rep. Meier: I'll second it.

Chairman Koppelman: We have a motion for a do pass by Rep. Hatlestad. Seconded by Rep. Meier. Any discussion? There was some discussion. I had some briefly with the sponsor after the hearing. I don't know if he had other ideas. Of course if we do pass this, it certainly can go to the senate. I know some of the folks that testified had different ideas about how to do what. So whether the formula should be tweaked or not, the only question that I think may be a reasonable one was you have all these levels in the constitution. Should that change? And the other question of is this pretty complex and confusing. The final analysis with people that I talked with was like we don't know how to make it better at this point. With all the support it has, we don't want to jeopardize that either, so maybe let it go as it is. If something comes to light, we can certainly catch it on the senate, side and we can conference in order to give that a second look.

Rep. Conrad: I've been trying to figure this out. The way I figure it under Rep. Weiler's proposal, 20% of the oil tax is already committed to education. Twenty percent is already

committed to water. We have 40% of the oil tax that is already locked into dedicated funding. If we have the legacy fund at the top amount, 50% of that 50% would be in the legacy fund, and 40% would be in the general fund. Just for general knowledge, you have 24% of the oil tax going into the general fund and 76% in untouched, in funds that we cannot touch without a super majority for something like that. I think there's a misunderstanding that the oil tax somehow is all sitting in this savings account that we can get our hands on if we really want to. We now already have 40% of the oil tax totally dedicated. I think we need to acknowledge that. This one we have 76% in untouchable funds except for super majority.

Chairman Koppelman: What is the percentage now?

Rep. Conrad: Right now it's 20% in education and 20% in water.

Chairman Koppelman: Right but statutorily we've had the number of \$71 million in these proposals. I don't know how that relates to 76%.

Rep. Conrad: Right now it's hard to figure out what the percentages are. Winrich is proposing we would have 55% in untouched funds and 45% in the general fund.

Chairman Koppelman: So it would be an extra 15, is that correct.

Rep. Conrad: It's an extra 20.

Chairman Koppelman: So you have 40% locked up now.

Rep. Conrad: This one you're saying \$100 million and then you take 25%. It's hard to figure this out.

Chairman Koppelman: The big difference between the two proposals is that Rep. Weiler's is tiered, and I don't believe the other one is.

Rep. Conrad: No, it's not.

Chairman Koppelman: So the idea behind Rep. Weiler's is that in the years where oil revenues are lower, not as much would be locked up. In the years where it is plentiful, like it is

now, more would be locked up. Rep. Winrich's is simpler to understand, but it basically says across the board which is also what Mr. Harms recommended I think in Rep. Weiler's too. The percentages are a little different.

Rep. Griffin: The one thing to remember Rep. Winrich's proposed amendment wouldn't put that much into the (inaudible).

Chairman Koppelman: Further discussion? We have a motion before us for do pass. I'll ask the clerk to call the roll on a do pass recommendation.

The roll was called by the clerk.

8 yes, 1 no, 0 absent and not voting. Rep. Schneider was assigned to carry the resolution.

FISCAL NOTE

Requested by Legislative Council

02/20/2009

Bill/Resolution No.: HCR3054

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

HCR 3054 establishes a constitutional oil tax fund to be known as the North Dakota Legacy Fund.

B. **Fiscal impact sections:** Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

If enacted and approved by the voters, HCR 3054 will establish a North Dakota Legacy Fund that will receive a portion of the state's share of oil and gas tax revenues. This fund will first be established for production occurring in the 2011-13 biennium. There is no forecast of oil and gas tax revenues for that biennium, so the fiscal impact cannot be computed.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/25/2009

Date: 03/04/04
Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3054**

HOUSE CONSTITUTIONAL REVISIONS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Hartvested ? Seconded By Meier

Total Yes 8 No 1

Absent

Floor Carrier: Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 5, 2009 10:04 a.m.

library

Module No: HR-39-4087
Carrier: Schnelder
Insert LC: . **Title:** .

REPORT OF STANDING COMMITTEE

HCR 3054: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **DO PASS** (8 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3054
was placed on the Eleventh order on the calendar.

2009 SENATE FINANCE AND TAXATION

HCR 3054

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

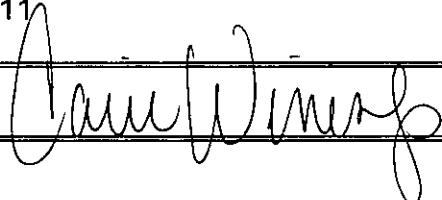
Senate Finance and Taxation Committee

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Hearing Date: 03/25/2009

Recorder Job Number: 11511

Committee Clerk Signature



Minutes:

Vice Chairman Miller: Opened the hearing on HCR 3054.

Representative Weiler, District 30: Testified in support of the bill. (Explained the bill) See Attachment #1 for information in testimony. See attachment #2a and #2b for a proposed amendment.

14.25 Senator Anderson: I guess you know that this committee was behind it the last time. I do agree that it was a little complicated. On this one now, this is after all groups get their percent of money. I have two questions. Let's say hypothetically that right now one of the groups that get their money is the great hall floor wax fund. Would they be able to increase their percentage? And also what would happen if a great hall floor wax fund were enacted into law in the future saying that it would get in ahead of this formula is that possible?

Representative Weiler: You are correct on both the counts. That is legislatively they can side track the amount of money that goes into the permanent oil trust fund or in this case it would be the legacy fund by simply enacting legislation to increase those numbers. That is one of the things that we like about 4030 that we sent over, however it is one thing that is very big concern. When you take money away from education and you take money away from water, they are the ones that care greatly and will be majorly opposed.

Senator Hogue: I wanted to make sure that I understand the primary problem that we are trying to solve. As I understood it, it is because we have been putting money into the statutory oil trust fund and then we have been raiding that for the last two biennium's without what you think are solid reasons to take money out of there, is that the issue you are concerned with?

Representative Weiler: It is. The fund was set up to try to save some of this oil tax revenue that is coming in and not spend it all, and we have not done that and we have become dependent on the oil revenue that has come into the state. I don't think that was a good thing. We should not be dependent on something that is not guaranteed. We understand that you cannot save this money legislatively because in the statute it says it takes a 67% majority vote to take money out of the permanent oil trust fund. It has been determined by legislative council that you cannot bind future legislators and so therefore a simple 50% majority overturns a 67%. We have to do this constitutionally to protect some of this money. There is a concern over taking money out of this fund and not saving it. When we have all the money coming in that we do now and we are spending it like we probably are going to, if there is a downturn we don't have the money to sustain that. It is a budgeting problem as well.

20.20 Bill Shalhoob, Chamber of Commerce: Testified in support of this bill. We want to save some of the money. Our concern with the Senate bill is that it defined where the money is going. We believe that we should not do that. It should go to the general fund. This is a non renewable resource. We think that if we can do this right we will have a trust fund that will be a good source of North Dakota's budgeting and long term economic viability.

23.45 Senator Anderson: You are in favor of this and you think that it should not go to a specific location?

Bill Shalhoob: Yes.

Senator Anderson: Didn't we change it so that it could be general fund?

Senator Hogue: We did change the language to read that it may be appropriated to education and higher education.

Bill Shalhoob: Our only concern is that the fund not be dedicated.

Senator Hogue: Do you think that is a weakness for this bill that the possibility of the legislature manipulating all of these different dedicated streams of revenue?

Bill Shalhoob: Yes it is a weakness in this bill and I am not sure how we address it.

26.28 Robert Harms, Self: Testified in support of the bill. See Attachment #3 for testimony included. 70% of the students in Wyoming go to college in Wyoming due to a fund very similar to the ones that are before you.

34.10 Senator Hogue: I know a lot of us have our opinions on how people voted on the measure last fall. Do you have any information on why they voted they way they did?

Robert Harms: No.

Josh Askvig, North Dakota Education Association: Testified in support of the bill. We prefer that you leave the bill in the state that it is in and not go with the amendments proposed. The resolution puts more money into the general fund than the current oil and trust. It provides a sliding scale depending on the revenues from the oil and tax that is balanced and makes budget projections easier to forecast. We describe this as you save more in good times and spend more in bad times. We do have some concerns about this measure placing a fixed dollar amount in the state constitution. Because the dollar amounts are tied to the triggers as percentages that will react in relation to the ups and downs of the state's economy, it preserves a balance between revenues and savings. The 67% threshold for a vote is better than the 75% in measure one.

37.27 Ron Ness, North Dakota Petroleum Council: Testified in support of the bill. Passed out the amendment for representative Weiler.

38.35 **Bev Nielson, North Dakota School Board Administration:** Testified in support of the bill. We believe that this the best measure proposed this session.

39.20 **Senator Anderson:** Have you had any post election comments?

Bev Nielson: Just what others have said, that it was too much and too fast. People were concerned about getting property tax relief.

Senator Anderson: We are going to get some sort of estimate through the tax department what the original percentage means as opposed or compared to the proposed amendment. Do you have a thought on either one of them?

Bev Nielson: I don't. It doesn't seem to change the very much.

40.30 **Sandy Clark, North Dakota Farm Bureau:** Testified in support of the bill. We would support the amendment as well. I think that presenting this in the easiest fashion is really important. On the Senate version our issue there was dedicated funds.

Senator Oehlke: Any further testimony?

Senator Dotzenrod: I have a question. Of the interest groups is there any awareness that any of you have that if it were placed on the ballot as it is written now that there would be someone out there that would actively want to oppose it?

Robert Harms: We have not seen any opposition this session.

Senator Oehlke: Closed the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

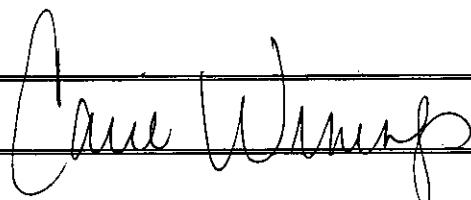
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/30/2009

Recorder Job Number: 11563

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on HCR 3054.

Senator Hogue: See Attachment #1 for a proposed amendment.

2.55 Chairman Cook: I could support this.

Senator Dotzenrod: the way 3054 came over from the House is the kind of version of this that I had attempted to amend in committee and on the floor. If you remember when we brought our resolution to the floor of the Senate, we passed it, but there were a number of legislators that got up and commented before the vote that they would prefer the issue of the 25% would be addressed. The question is whether or not the 25% would come off first or after the other allocations. Reviews what the sponsors said during the testimony. There were some worries on how this was going to go once it gets on the ballot. I like this version that was sent over to the House because it takes the 25% after we do the earlier allocations. Who knows what would happen if we got into a real election, who would come out.

Senator Hogue: I certainly hear what is being said. I do think we need to do some work helping people understand that for the most part the resolution we passed will not affect the interested parties because they are all presently capped. They will still get their money whether we take it first or last. The education is protected in the constitution. I am still

supporting this approach, because there is no reason to amend the constitution if this is all you want to do. You can do that by statute. We are amending it this way to help future legislative assemblies resist the temptation to start creating and looking for ways around a true trust fund. I know Mr. Harms said that it would not be that easy to create a wax fund like that, but it would be. We have a track record of doing just that. As soon as you start trying to show how this would impact, then you get a lot resistance.

Chairman Cook: The one thing that this would do that we cannot do statutorily is require a 2/3 vote on a large amount of money. Right now it is \$71 million. Here it only takes \$100 million and you have \$80 million in the general fund \$20 million into a constitutionally protected trust fund that could not be touched unless you have a 2/3 vote. To me I could support either one, or even doing nothing. If I went this route I would massage the figures a bit and get a lot more money for the legacy fund.

Senator Dotzenrod: Refers to a chart handed out to the committee, and agrees with Chairman Cook's figures.

12.53 **Chairman Cook:** I see that this is a general election vote with a 2/3 requirement. These are all different than we came out before.

Senator Triplett: I rather like the amendment proposed by Senator Hogue. I think that putting the resolutions together would be a good idea.

Chairman Cook: I agree.

Senator Hogue: What is the committee's sense on the resolution, to cap the foundation aid stabilization fund after the 2%, is that what are you referencing?

Senator Triplett: I am just referencing doing something there.

Chairman Cook: Whether you put them together or get rid of one completely, the more you put before the voter the more confused they are going to be.

Senator Triplett: I am saying one vote that covers all would be less confusing.

Chairman Cook: I see what you are saying.

Vice Chairman Miller: We would be better off putting it in one proposal, yes or no, because you never know where you are going to end up in the end.

Chairman Cook: SCR 4030 passed how?

Senator Hogue: It passed at 25% I believe.

Chairman Cook: Closed the discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

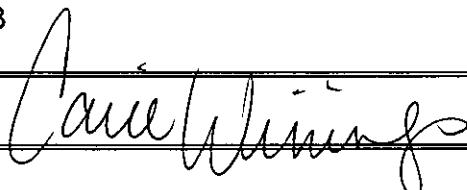
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 04/01/2009

Recorder Job Number: 11593

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on HCR 3054.

Senator Hogue: See attachment #1 for additional information.

Chairman Cook: I think they did 3059 not 3054.

Senator Hogue: You are correct.

Senator Triplett: How long did it take for them to run the numbers?

Senator Hogue: In a couple of days.

Senator Triplett: Then they should be able to do 3054 in a day.

Chairman Cook: I would like to see those.

Discussion: A short discussion occurred regarding the charts handed out.

Senator Hogue: I will see when I can get that done.

7.28 Discussion: The committee continued to look at the figures and discuss what the funds are doing and how they are would be affected if this resolution were passed.

8.55 Chairman Cook: To me this is putting into the constitution something that is even less of a savings account than what we have in statute. I certainly support what we passed out of here earlier and would be willing to defend and argue for that. I think that the 25% off the top we passed out of here is the best solution and I would be willing to argue for it.

Senator Oehlike: I get the feeling that this bill is a reaction to the adverse publicity that was generated for the potential savings in measure 1. Just because that one got defeated, doesn't mean the concept was wrong. Savings accounts should be done first. I don't think it is a bad thing that we did with 4030.

Senator Hogue: I acknowledge Senator Dotzenrod's concern. We want this approved by the people. I think the more important thing is to get it right. We cannot have confidence that future legislatures will not find a way around 3054. I guess the thing that jumps out to me is the \$55 million transferred to the general fund in 2005 -2007 and the \$115 million taken in 2007-2009. Those are substantial amounts, and then you have the appropriations for the center of excellence and the higher educational system. They took \$21 million in the 2005-2007 biennium and they took \$15 million in 2009. I think that is one interest group that has an appetite for that money and there is no way they are not going to ask for that to be continued. I think 3054 has support from the special interest groups, but in the end I don't think that it will accomplish anything.

Senator Dotzenrod: I am not sure where the centers of excellence would qualify in this resolution, and the transfers to the general fund in these categories?

Chairman Cook: That is where they are at, right there.

Senator Dotzenrod: Where do the centers of excellence get their money from?

Chairman Cook: It comes out after the \$71 million is put into the general fund. It comes out of the statutorily protected trust fund.

Senator Hogue: There is not a restriction in this about creating additional statutory provisions to impact grants, political subdivisions, and the oil and gas research fund that is capped at \$3 million. Why couldn't you raise that to \$20 million and give \$15 million to higher ed? Why

couldn't you create a new grant to political subdivisions; there is no restriction in this section that says you can't increase the statutory provisions.

Senator Anderson: Or create a great hall floor wax fund; to get 25% of nothing.

Chairman Cook: We can always create another statutory fund ahead of it. You could take 25% and tuck it away and have it so it is untouchable, but if it isn't at the top of the pecking order, you will always have the ability to pass a piece of legislation that takes the money before it ever gets into this statutory protected fund.

Senator Dotzenrod: I see the word statutory in there and that does create the opportunity that Senator Hogue talked about.

17.04 Senator Triplett: To throw a monkey wrench into this, I think we were talking about the concern about the one we just killed on the constitutional nature of the common schools trust fund and the foundation aid stabilization fund, a way of sort of curing that issue of how those two get read together, which is apparently an issue, we could change this instead of saying the first 25% of all revenue derived from both of the taxes to say the first 50% of all revenue derived just from the gross production tax. Then it wouldn't be quite as much money. It ends up being 3.5% on average. Then we leave the constitutional issues out entirely. Would that have any traction here?

Chairman Cook: I think we went down that road with 4030. Then you have a whole different set of people opposed to the bill.

Senator Triplett: I understand that. We would really be affecting the general fund and not the special funds.

Chairman Cook: If the trigger goes on in April the average of the oil extraction tax rate will be 1.3%. It will make the total of all oil taxes in North Dakota 6.3%. If the trigger off is the effective tax rate will be 4.6% for the extraction tax.

Senator Dotzenrod: That is current law?

Chairman Cook: Yes. That is all wells average.

21.30 Chairman Cook: Let's run some things up the flagpole. We have a long process here.

Discussion: A discussion occurred among members as to what happened to 4030.

23.25 Chairman Cook: There is strong intent language in this the keep the cities and counties whole.

Senator Hogue: I was going to ask Senator Triplett why you asked that it not be submitted on the ballot, that statement of intent, is that a rule that it cannot be on there?

Senator Triplett: I think that was a John Walstad thing. I don't know. Because the language the voters approve actually goes into the constitution.

Senator Hogue: I would find this helpful to the voters.

Senator Triplett: We can check on that with Mr. Walstad.

Chairman Cook: The words would be very obvious. It certainly sets a policy directive for the 62nd legislative assembly.

27.02 Chairman Cook: Comment on picture of legislature in 1985.

27.42 Chairman Cook: What do you want to do?

Senator Triplett: I want to see the numbers.

Chairman Cook: Closed discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

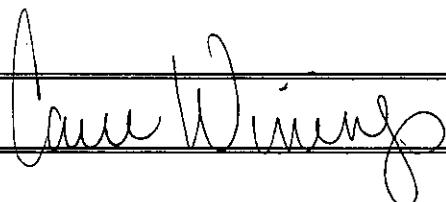
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 04/01/2009

Recorder Job Number: 11603

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on HCR 3054.

Senator Hogue: See Attachment #1 for additional information.

Discussion: A discussion followed among the committee members regarding the new figures in attachment #1 and how the bill would affect the fund.

Senator Dotzenrod: I may be the only member of the committee that really agrees with the sponsors of 3054. Representative Weiler talked about last election and what happened at the ballot box and after it was over and he took stock of what happened and tried to design something that they thought would be pretty explicable to the voters and overcome some of the objections that he had heard. There was also a lot of support for the bill as well. I would like to support this, but I don't think I have a lot of company here.

Chairman Cook: There are a few places to gather support, here, on the floor, and the ballot box.

Senator Hogue: I continue to believe that this resolution is flawed because it does not protect against future legislation. I don't support it in its current form, but I do support it with the amendments that essentially convert it to Senate concurrent resolution 4030.

Senator Hogue: Moved the amendments .0105

Vice Chairman Miller: Seconded.

Chairman Cook: Discussion?

Roll call vote was taken: Yea 6, Nay 1, Absent 0.

Motion passed.

Chairman Cook: Discussion?

Senator Hogue: Moved a Do Pass As Amended.

Vice Chairman Miller: Seconded.

A Roll Call Vote Was Taken: Yea 7, Nay 0, Absent 0.

Senator Hogue will carry the bill.

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

Page 1, line 20, replace "one" with "four" and replace "eighty" with "seventy-five"

Page 1, line 21, replace "twenty" with "twenty-five"

Page 1, line 22, remove "The next one hundred million dollars, seventy percent to the state general fund and"

Page 1, remove lines 23 through 25

Page 2, remove lines 1 and 2

Page 2, line 3, remove "5." and replace "forty" with "twenty-five"

Page 2, line 4, replace "sixty" with "seventy-five"

Renumber accordingly

March 26, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to article X of the Constitution of North Dakota, relating to establishment and use of a legacy fund; and to provide an effective date.

STATEMENT OF INTENT

This measure establishes a legacy fund and imposes limitations on use of moneys in the fund.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2010, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article X of the Constitution of North Dakota is created and enacted as follows:

The first twenty-five percent of all 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 principal of the legacy fund may not be expended, except revenue derived after December 31, 2040, may be expended if appropriated by a two-thirds vote of each house of the legislative assembly. The state investment board shall invest the principal of the legacy fund. The state treasurer shall transfer earnings of the legacy fund to the state general fund at the end of each fiscal year.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 2011.

SECTION 3. LEGISLATIVE INTENT. This section is adopted as a statement of intent and the secretary of state shall exclude this section when sections 1 and 2 of this measure are submitted to the qualified electors of North Dakota at the general election to be held in 2010. It is the intent of the sixty-first legislative assembly that if sections 1 and 2 of this measure are approved by the qualified electors of North Dakota, the sixty-second legislative assembly shall develop and enact legislation necessary to avoid any reduction in the relative shares of oil and gas production and extraction tax revenues which existed at the time of the 2010 general election for impact grants, political subdivisions, the oil and gas research fund, water development bond principal and interest payments and the resources trust fund, the common schools trust fund, and the foundation aid stabilization fund."

Renumber accordingly

Date: 04/01/09

Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 3-51

Senate Finance and Taxation Committee

<input type="checkbox"/> Check here for Conference Committee	<i>Amendment</i>
Legislative Council Amendment Number <u>0105</u> <u>March 26th</u>	
Action Taken	<input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass <input type="checkbox"/> Amended

Motion Made By Senator Hogue Seconded By Senator Miller

Total: Yes 6 No 1

Absent

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 04/01/09

Roll Call Vote #:

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 6**

Senate Finance and Taxation

Committee

3054

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Hogue Seconded By Senator Miller

Total: Yes No

Absent

Floor Assignment: Section H

Floor Assignment Senator Hogue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3054: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3054 was placed on the Sixth order on the calendar.

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to article X of the Constitution of North Dakota, relating to establishment and use of a legacy fund; and to provide an effective date.

STATEMENT OF INTENT

This measure establishes a legacy fund and imposes limitations on use of moneys in the fund.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,
THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2010, in accordance with section 16 of article IV of the Constitution of North Dakota.

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SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 2011.

SECTION 3. LEGISLATIVE INTENT. This section is adopted as a statement of intent and the secretary of state shall exclude this section when sections 1 and 2 of this measure are submitted to the qualified electors of North Dakota at the general election to be held in 2010. It is the intent of the sixty-first legislative assembly that if sections 1 and 2 of this measure are approved by the qualified electors of North Dakota, the sixty-second legislative assembly shall develop and enact legislation necessary to avoid any reduction in the relative shares of oil and gas production and extraction tax revenues which existed at the time of the 2010 general election for impact grants, political subdivisions, the oil and gas research fund, water development bond principal and interest payments and the resources trust fund, the common schools trust fund, and the foundation aid stabilization fund."

Renumber accordingly

2009 HOUSE CONSTITUTIONAL REVISION

CONFERENCE COMMITTEE

HCR 3054

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/20/09

Recorder Job Number: 11992

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Koppelman opened the hearing on 3054.

Chairman Koppelman: Maybe we can begin by asking the Senators to explain why they amended 3054, and what are your thoughts on it.

Sen. Hogue: First of all, we thought in order for it to function as a true constitutional trust fund, it should have a lock box. It should not be able to be invaded by future legislative assemblies.

That is the reason we put this in the constitution and not in statute. One of the issues with 3054 is that the 0100 version, on page 2, lines 8 and 9 it talks about permitting the legislature to take that money on a 2/3 vote. We didn't think that that would be a very good idea. For the purpose of discussion, back when the permanent oil trust fund was established by statute, everybody assumed that that would be a sacred fund that nobody could raid that fund. That's being done now. Given the fact that appropriations all seemed to pass with more than 2/3 majority, we don't think that 2/3 impediment is an impediment at all. The second area, when we first heard 4030 and 3054, we put all three bills on the table and tried to identify what were the best features of all of them. What we ultimately came up with was it is always going to be better to take it off the top. If you are going amend the Constitution, it is always going to be better to take it off the top. It's always going to be the best for the reason identified on page 1,

lines 15 through 18 which basically says that this money would only go to the legacy fund until after other constitutional statutory provisions are paid first. With the future legislatures having the continuous ability to keep creating more funds, we just didn't think that the legacy fund, if it is going to have viability, it has to get its money first. The other thing that I've been studying, as we start to tinker with the money from the oil producing counties, we know that the amount is going to go up under 1304, that's likely to pass with additional funding. But the caps are off of it. That's just another example of how legislative assemblies are going to have the ability to tinker with all of these funds so they can manipulate this legacy fund. If you support the legacy fund, you have to support taking that money off the top.

Chairman Koppelman: I don't think you would find anybody that disagrees with the reality that what we call the permanent oil trust fund in statute is not any such thing. As for your

concern about the ability of the legislature to access these funds, (regarding Measure 1) one of the things they talked about was they felt the 75% threshold was too high. Their theory was if there is an emergency, the legislature ought to be able to get at this money. That was one of the issues in our mind in going from a 3/4 majority which was in that bill rather to a 2/3.

Rep. Weiler: I, too, agree with you about the concerns over the not so permanent trust fund. The 2/3 vote, I would rather have it be a true lock box. Just like the common school's trust fund. There are many people that spent an enormous of their own personal money and their own personal time for a period of about seven or eight months. It was soundly defeated. Not because it wasn't a good idea. It was because of the opposition's money that came in mostly from out of state. The only concern that I would have with moving it from being a 2/3 majority vote to access the fund to not accessing the fund which I would rather have. The problem is if we pass something in the legislature that goes on the ballot in 2010, there's going to need to be some people from this body pushing the idea. I don't want to put anybody through what we

went through last fall when opposition came in and spent nearly \$600,000 because we cannot raise money for an issue like this. That is the concern. If Senate and other people feel like we are going to make the bill simpler, we're going to make just a straight percentage. We're going to make it inaccessible, and I'm fine with that. The money will come in. The opposition will come in. That's the concern that I have over that issue. Original 3054 the way we sent it over to you, was probably a little complicated. When something is important enough to go on the ballot, then we know a few things it can't be. One of them is complicated. Even though the people that opposed Measure 1 were firmly in support of the original 3054, I don't know that that would survive because the complexity of it may have been a little much. (Rep. Weiler distributes a proposed amendment. See Attachment #1.) I throw out this idea, not as an amendment, but just to throw out now for discussion by where the first \$400 million the general fund gets 75% and the legacy fund gets 25%. After that, it flips so the general fund is going to get 25% of everything over \$400 million. There are two reasons why two years ago a group of us worked on what was to become Measure #1. Number one was to not spend all this oil revenue that came in bunches because it happened in the 80's, and it happened in the 70's. The legislature took all the money and spent it. We ended up with nothing. Secondly, we needed to do something to help our budgeting process. If you take the scenario of three biennia in a row where oil revenue was really good, we know that the legislature is going to spend it. If you spend all the money, generally it is going to be on new programs and ongoing expenses. As Rep. Carlisle alluded to it, the oil trust fund is nothing more than general funds to be treated that way. 2/3 vote to get at that money isn't even needed. It's a 51%. It's Legislative Council's opinion that you cannot bind future legislative sessions.

Chairman Koppelman: We had passed a measure in the legislature saying that we couldn't access that money without 2/3 vote but because you can't bind future legislatures, all it takes to undo that is 50% plus.

Rep. Weiler: The statutory permanent oil trust fund in statute says it takes a 2/3 vote to spend the money. That's not true at all. It takes 51% or 50% plus. So we're back at the three biennia, if you do it strictly on a percentage basis, whether it's the first 25% to the legacy fund, if you have three biennia in a row where you have high oil revenue, the 75% that is going to go to the general fund is going to be spent on ongoing programs and ongoing expenses. Then the fourth biennium comes along, and the oil revenues dip way down. We don't have a way to make up for that money. That's the second problem with the current way that we have our oil trust fund set up. Our budgeting process is not made easier. Thirdly, we need to, when times are good in the oil industry and the taxes that the state of North Dakota receives, that's when we need to take a majority of the money that we can so that it can't all be spent. This idea of the first \$400 million, 75% goes to the general fund and 25% to the legacy and then flip it after \$400 million does just that. When times are not so good or average in the oil industry, the general fund is going to get the bulk of it. But when times are really good and you get a biennium where it is \$500, \$600, \$700 million in oil tax revenue, the general fund is still going to get their money up front. The general fund is going to see what they saw the previous biennium, but now we're going to be able to put more money away. The negatives to this would depend on what we do with whether we access the legacy fund or not. The other thing is, is even this too complicated? To the average North Dakotan that doesn't deal with this, are they going to look at this and say, I don't understand it. I don't believe the original 3054 is even workable. The original 3054, if you take the projected revenue for the current upcoming biennium, the difference in dollars that the general fund gets between original 3054 and this

one is \$25 million more to the general fund. I have been told that those who opposed Measure #1 didn't like this but they liked 3054. They liked the general fund getting less money to spend for education purposes, Human Services issues, etc.

Chairman Koppelman: I see this as something that should be for the good of the state and for our future.

Rep. Weiler: There are some good things in 4030.

Rep. Griffin distributed his proposed amendment. See Attachment #2.

Rep. Griffin: For the record, I'm Chris Griffin. I think we have to recognize the reality of trying to get something passed. This amendment would take 25% of the total revenue which includes revenue that is statutory and constitutional funds similar to 4030. In doing an analysis if we were to take it out of the constitutional and statutory funds, this 25% would be equal to about 33% (inaudible). The earnings would be added to the principal to grow the fund for 15 years. Then that would be transferred to the general funds for more of a permanent funding source. The principal is accessible by 2/3 vote, and up to 20% may be spent over a biennium. The third part of this more clearly does what the legislative intent section of the original 4030 did. It says the statutory programs that are in existence at the end of the 2009 legislative session, and then it goes through and lists the funds for what they are used for. One question I had was with this language what will happen in the current statutory permanent oil tax trust fund. You will notice that is not listed. That can be done away with. This would allow the legislature the ability to adjust those funds.

Rep. Weiler: The third paragraph where it says that these programs, statutory programs, so if the legislature were to come in in 2013 and said we want to increase the dollar amount that goes into the oil and gas research fund. Which fund is going to get less. Is it going to be the

legacy fund or the general fund? If the legislature comes in and adjusts these, it's the general fund that is going to be affected.

Rep. Griffin: Under the language in here 25% of the total oil revenue. If you had a billion dollars, no matter what, 250 is going to go into the trust fund or that legacy fund. The end of paragraph one, that is the language that allows the legislature to transfer money into the fund so if we did have a time period where we had a huge oil surplus, we could put some into the fund.

Chairman Koppelman: Is it your opinion then that if this were to pass in this version, that the legislature could also decide if, for example if we have money in the permanent oil trust fund and we decided this has been set aside from oil taxes, it should be set aside as part of this constitutional measure, the people have passed, that the legislature could vote to do that under this provision?

Rep. Griffin: Yes, that is exactly the way I interpret it. The opponents to Measure 1 have reviewed this and would be supportive of this amendment.

Rep Triplett made an inaudible comment.

Chairman Koppelman: I'm not sure if the opposition came from only the concern about the revenue source that was being sequestered as much as it was less money to spend every two years. Not as much in the general fund.

Chairman Koppelman closed the hearing on HCR 3054 with the committee not voting on the resolution.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/23/09

Recorder Job Number: 12163

Committee Clerk Signature

Lou Engle

Minutes:

Chairman Koppelman opened the hearing on HCR 3054.

Chairman Koppelman: When we last met we talked about a couple of different ideas with respect to this resolution. One was an amendment by Rep. Griffin. Another was an idea proposed by Rep. Weiler.

Rep. Schneider: I liked Rep. Griffin's amendment that he brought in. Unless we have a better idea I would suggest we start with that as a starting point and further amend instead of working off of one of the two bills.

Rep. Weiler: Although I do agree with some of the things in Rep. Griffin's amendments, I do have some concerns. It is not solving the problem that we have in our budgeting process when we do it by a straight percentage. Before I would give into that type of thinking, I would like to explore the two tier system. A straight out percentage does not solve the problem. Is it better than what we have? Yes, because it makes sure we are going to save some money. It doesn't solve the problem that we have because when oil tax revenue comes in in bunches, it doesn't solve our budgeting problem.

Sen. Triplett: I made a request by email today to Katheryn Strombeck in the Tax Department asking if she could analyze Rep. Griffin's proposal against the OMB's revenue projections from the oil and gas tax this next biennium.

Sen. Oehlke: Item 2 on Rep. Griffin's amendment proposal concerns me a little bit. I understand the theory of 2/3 of the members being able to get up to 20% of the corpus. The fact is if you kept taking 20% of the corpus out of that fund, I don't care how much we put into it. It isn't going to go anywhere. I think that that fund should have the dollars put into it and nothing except the interest should come off of it. I'm afraid that we won't have a significant opportunity to show a decent growth if we keep something like that in there.

Sen. Hogue: I'm starting to see the wisdom in Rep. Griffin's approach. If you take it off the top when we have a boom cycle, you don't stick that big boom away. One concern I have with that with Rep. Weiler's proposal is to me it is contrary to the notion that we need to make it as simple possible on the ballot. We also need to be able to sell the voters on it. I think 25% for future generations is a simple concept they can understand. I'm not crazy about being able to access it with only 2/3, but there certainly seems to me there's room to raise that up to a slightly higher percentage. Maybe reduce the amount that you could access.

Chairman Koppelman: The Senate version of 3054 mirrors 4030, and one of the provisions of that resolution is that the principal can't be accessed until the end of 2040. So it does lock that principal up for a period of time and do that catch up. I think what Rep. Weiler is getting at is that if we had a couple of boom cycles in the oil industry in the last few decades, and Rep. Kretschmar said if we had had the wisdom to lock up the oil revenue back in the 1950s when oil was discovered and do something like this, we'd be in great shape.

Sen. Oehlke: What if we looked at the idea of number 2. If it wouldn't be too cumbersome or confusing for voters, what if we said for the first five years there would be no access to it. After

that 2/3 or 70% could access it up to 20%. If we had a period of time where people could see how it actually worked, they might see the wisdom in leaving the corpus there and allowing it to keep growing without picking away at it.

Chairman Koppelman: I think that the question of locking it up whether it is for five years or whether it's til 2025 or whether it's til 2040 makes some sense. The problem is if you don't build a meaningful corpus or a meaningful principal and start picking away at it, there's not much there over time. It doesn't become nearly as significant as it could and should for the purpose we are trying to achieve here.

Sen. Oehlke: Five years would come in the middle of a biennium so then it would really get a chance for it. Then maybe we would leave it alone.

Chairman Koppelman: Of course it would be five years from the time of approval unless we put a different date in there.

Sen. Hogue: I did distribute the computations from legislative council. (See Attachment #1) I neglected to mention that I also asked them to go out a biennium so you'll see the 2011-2013 biennium. I basically asked them to take the assumptions based on what the current forecasts are in terms of number of barrels produced and an estimated price. That's why you have the next biennium.

Chairman Koppelman: So this is working off of which version of the resolution?

Sen. Hogue: Off of Rep. Griffin's.

Chairman Koppelman: Rep. Weiler, do you know how this clears with something like what you're proposing?

Rep. Weiler: The second column, state oil and gas tax revenue. Is that the total revenue off the top or is that money that went into the permanent oil trust fund minus the statutory \$71 million and \$63 million when they changed it from \$63 million to \$71 million?

Chairman Koppelman: If you look at the very top of the sheet it says the schedule below presents information on oil tax revenue deposited in the general fund and permanent oil tax trust fund since 1981, the total revenue that would have been available for transfer to a special fund pursuant to HCR 3054. I believe what that is is after the other funds have been already deposited into and what is left over from the general fund in the permanent oil trust fund.

Sen. Oehlke: Footnote 1 really answers that question. It is from the state's share.

Rep. Weiler: If the footnote 1 is 25% of state's share of oil and gas tax revenue, for instance the first biennium there, 81-83 biennium, \$144.2 million, is that money after the certain groups got their money because if that is the case then this would not be, because if we take the money off the top, it's a different number.

Sen. Oehlke: All I did was divide column 2 into column 1. That's why footnote 1 is the answer to your question.

Rep. Weiler: But I guess my question is again, if you look at the 07-09 biennium, \$548.5 million, is that the total oil and gas revenue or is it the total after those groups got their money.

Rep. Schneider: In column 3, that's the 25% transferred. Let's ask the question that I think Rep. Weiler has really been driving at and Sen. Hogue alluded to as well, and it seems to be one of the big questions as to whether we go to a tiered approach, whether it's as complex as 3054 initially was or if it is something more similar to the two tier that Rep. Weiler has talked about, and that is the issue of should you capture more during boom times and less during lower times. If oil revenue is huge, we should sock more if it away and not spend as much. If oil revenue is lean, we maybe have to spend a higher percentage of it in order to do what we need to do. That does two things. It ensures a stream of revenue, but it also assures putting money away for the long term.

Sen. Hogue: The original 3045 and 4030 were remarkably similar in their accumulated balances.

Chairman Koppelman: I see your point. You are saying is there a formula we use that gives us about the same income.

Sen. Hogue: 4030 took a little more in what you call the average bienniums, and 3054 took a lot more in the boom bienniums. I guess the thing about the Griffin amendment is that it's got the flexibility that allows us as a legislature to stick more into that fund if we have the political courage to do that. That gives us some ability to address the concerns of Rep. Weiler. It may be not a practical one as some would probably suggest. It's a choice between putting it in a permanent fund which isn't very sexy and spending it somewhere if we are going to spend it.

Sen. Triplett: How many divisions did we have at first?

Rep. Weiler: The original was for five years. 80, 70, 60, 50, 40.

Sen. Triplett: The current total has two.

Rep. Weiler: Up to the first \$400 million, the general fund gets 75%.

Sen. Triplett: Over 20 years, if we averaged out (inaudible). You're still going to have the ups and downs. I do see the beauty of yours. We have the flow of the oil reality. I think there would be a question in terms of making that (inaudible) how well we can sell it to people. I think it's more complex for people to understand. I think yours is better in terms how Rep. Koppelman's suggestion that at some level they need to (inaudible) our best effort through legislation. I think maybe you've gone a little too far in terms of your position, dropping down to two. Maybe five is too many. Maybe if we had three levels.

Rep. Weiler: I couldn't agree more. I think the tiered system is a better approach, and that's what we all try to do. It is best for North Dakota because it is much easier to budget in the future under that system with this source of revenue which is extremely volatile.

Rep. Schneider: The problem we are going to run into is with any tiered approach we come up with, we would have to put a dollar amount into the Constitution. That was one of the knocks on Measure 1 last go around. What's \$100 million now, twenty years from now may not be that much. I don't see a way around that if we put a tiered approach. As much as I like the simplicity of it in the sense that it makes for more money available during the bad years, I don't think it is going to be realistic because of the dollar amount. We're just going to have to go with a straight percentage.

Chairman Koppelman: The other option that we had discussed has been the idea that a third alternative to putting only a percentage or being forced to put a number in the Constitution would be to start with a number and put a timeframe. We could say for the next five years.

You run the risk of getting into complexity again. Something to the effect that says \$400 million and after said date, the number shall be adjusted upward by the legislative assembly according to an inflationary factor as determined by the legislative assembly. There was some discussion on one measure we looked at of referring to the CPI. We've seen a lot of other things adopted in the Constitution where the voters approved the principle concept and then give the legislative assembly the authority to do the tweaking, the adjustments. You could say the legislature could come in every session or however often and say what was \$400 million in 2009, in 2020 is \$500 million.

Rep. Weiler: I'm starting to realize that the committee's, probably the way we are going on this, is that the tiered system is, although best, probably would be a little complicated. The concern I would have with Rep. Griffin's amendment would be that we're not saving enough of the money. 25% is too low. I think we should be saving more than we're spending from this volatile source of revenue. I can see maybe 1/3 of the money being saved, although I would

love to have half, but I understand certain things just don't happen. I think 25% is too little. I could see 1/3 of the money.

(During the hearing two other calculations by Legislative Council regarding HBC 3054 and SCR 4030. See Attachment #2 and Attachment #3.)

Chairman Koppelman closed the hearing on HCR 3054.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/24/09

Recorder Job Number: 12223

Committee Clerk Signature

Lori Engison

Minutes:

Chairman Koppelman opened the hearing on HCR 3054.

Chairman Koppelman: Do we know if Allen Knudson and Kathy Strombeck are coming?

Sen. Hogue: We have a representative from Legislative Council. Allen called me this morning because the numbers that I distributed yesterday, he says there was a mistake. It goes to the issue Rep. Weiler raised. Are we talking about gross revenues or are we taking out the state's share. They were not reading Rep. Griffin's amendment closely enough. They took the 24% out of the state's share so they have new numbers that obviously reflect more revenue to set aside in our legacy fund.

Becky Keller: I'm Becky Keller, fiscal analyst, with the Legislative Council. The amendment that you have in front of you is the oil tax collections based on the HCR 3054. (See Attachment #1) What we've done is we've gone back to the 1981-83 biennium and pulled the net gross revenues from the Tax Department information, and that is what you will see in the state oil and gas tax revenue column. That's the total revenues rather than just the state share. The next column would be the amount available to transfer. That equals 25% of the state oil and gas tax revenues. The accumulated balance is the total of the transfer plus any interest accrued. The interest will go into the principal balance. The next column is the

average annual investment returns. We've taken the rate of return that the State Investment Board used for the fire and tornado fund. Where you see the 5.87% for 1981-83 through 1987-89 and then down below 2009-11 and 2013-15, we've used a ten-year average. I get that information from prior bienniums, and I didn't really want to project rates of returns into the future so we used the average. The next column, the investment earnings, is the earnings that would be earned on the accumulated balance.

Chairman Koppelman: Do you know what the balance of the current statutory permanent oil trust fund is roughly?

Becky Keller: I don't know what the current balance is.

Sen. Triplett: We all have our emails today from Legislative Council, an updated budget analysis.

Becky Keller: The updated analysis will give you what we expect our balance to be at the beginning of the next biennium and then throughout the biennium. It wouldn't tell us what our current balance is.

Chairman Koppelman: Is that projection based on terms of expected oil revenue? Are we basing it on today's production levels?

Becky Keller: It's actually based on the February legislative forecast. I think that's roughly \$45 to \$50 per barrel.

Chairman Koppelman: Allen, do you know how much is in the permanent oil trust fund right now?

Allen Knudson: No. I could get that.

Sen. Triplett: The 5.87% from the first four bienniums were based on a ten-year average and then also the projection into the future 3 bienniums were based on a ten-year average. Since

we are talking about two different groups of ten years, I'm wondering if you could explain why you used the same average.

Allen Knudson: If you read the footnote, it's a 20-year average we used. We really see this as we're getting information prior to 1989.

Chairman Koppelman: These projections show what would have happened had HCR 3054 been in place at the beginning of 1981. Do we have a projection that would show what is expected to happen moving forward? This is valuable because it shows us what would happen with history. As we look at the projection going forward, do we have any kind of analysis that would say what can we reasonably expect over the next few bienniums if this were enacted or something.

Allen Knudson: We got information from the Tax Department on the period 11 to 15. That's the \$933 million of oil and gas tax revenue. That's the assumption in footnote 6, \$62.50 per barrel and average production of 225,000 barrels.

Chairman Koppelman: Is the assumption in 11-13 and 13-15, we are going to see a bump? That's higher than we had in 07-09.

Allen Knudson: We relied on oil and gas division as far as their projections for 11-13 and oil production in the west has increased substantially. We were at 150,000 a day, now we're up over 200,000 barrels a day. These projections are at 225,000 barrels a day and at a price of \$62.50.

Chairman Koppelman: That's taking that target price and then the expected increases.

Sen. Triplett: Going back to the 2009-11 projections. That was based on the February 2009 legislative revenue forecast.

House Constitutional Revision Committee

Bill/Resolution No. HCR 3054

Hearing Date: 04/24/09

Chairman Koppelman: I just looked at the new analysis that came out today. It says a beginning balance of \$400 million. Is that the projected beginning balance for the end of this fiscal biennium?

Allen Knudson: July 1, 2009.

Chairman Koppelman: What difference would this make in terms of what's put away versus what we currently are anticipating with the statutory fund? This one projects \$480 million at the beginning of the biennium.

Chairman Koppelman: Rep. Weiler and I have been talking about the question of a two tiered system versus a fixed percentage.

Rep. Weiler: There were a few questions asked of me by a few committee members to try to explain what I mean by the budgeting process is easier with the tiered system versus the straight percentage. (Rep. Weiler distributes a handout. See Attachment #2) I based these numbers off of the 99830.01 which are considerably less than the actual total. Remember when I asked the question, is this state oil and gas tax revenue, is the total or is this the state share? Obviously that's just the state share. I took these numbers off of those. These numbers in reality are considerably larger.

Chairman Koppelman: Do you mean these numbers are larger than they should be or they should be larger than they are?

Rep. Weiler: These numbers are percentages of the state share, not percentages of the total share. These are not accurate numbers. These are way low. These are almost half of what they really should be. It's even going to be a bigger discrepancy. If you look at those numbers, you can see that they've grown from 97-99 from \$43.6 million to 07-09 of \$548.

Then I have 45% to the general fund. The reason that is not 75% is because if we were to take 25% off the top, about the next 30% is going to go to water and education. Really, the

general fund under the Griffin amendment, 25% goes to the legacy fund, approximately 30% goes to those groups, and the general fund is going to get about 45%. If you take a look at that last column, 45% to the general fund, you can see what we are going to be using to budget with and how that number grows and the projection for 11 and 13. If we get used to spending \$284 million and that money is going to the general fund, you know that money is going to be spent. What happens in 2013-2015, if everything goes south, the state general fund is only going to get about \$54 million. We've been budgeting for \$177 million four years ago and \$284 million two years ago, and now in 2013, we're only going to get \$54 million in the general fund. That's what I mean when I talk about the budgeting process. It's difficult now with the oil trust fund that we have. It's going to be difficult with a straight percentage. I don't think a straight percentage is the best way to go.

Chairman Koppelman: The one thing that I do think is positive about the two tier system, the fact is simply that we save more money during boom times, and we spend more money in hard times. I think people can grasp that very easily. The concern that I have is if you look at Rep. Weiler's projection, those were tough times fiscally in North Dakota. One of the reasons this whole discussion is here is because we don't want to see that repeated. What happens is you become dependent on the boom-time levels of revenue, and we obviously have to be reminded pretty vividly because we're sitting right now as almost a fiscal island in this country with states all around us struggling the shortfalls and having to literally cut. We're not looking at that enough to bridle all spending in our state. I think Rep. Weiler's concern is well founded in that if that money were there, it would be spent. We could end up in a scenario like the 80s when schools didn't get the money they were promised in the second year biennium. I know that we have some measures that we put into place to try to buffer that in the future, the

stabilization fund. These are the kinds of things that if we are really going to be responsible and look toward the future, that we need to consider.

Sen. Triplett: Last time we met we kind of started talking about this last time we met. I think you suggested you had a hint of an idea how we could word it to get past the concern about putting dollar numbers into the Constitution.

Chairman Koppelman: We had another measure in the Constitutional Revision Committee that we considered this session where there was a fixed something in the Constitution, but it had an inflator tied to the CPI. I didn't like that because the CPI can change and it can even cease to exist. I think language to the effect to say it starts out at \$400 million. If you put that number in the Constitution and then a phrase that says something like the legislative assembly may make an inflationary adjustment to this dollar amount every five years. What someone had raised concerns about saying the legislative assembly can adjust this, that was not my intent. To have narrowly crafted language that would simply let the voters know all we are saying here is, yes, we're putting a number in the Constitution, but we are also putting language in that says the legislative assembly can make an inflationary adjustment based upon a generally accepted inflationary index.

Sen. Oehlke: What if you didn't do that, but the legislature simply put money in once in awhile if they saw they had the ability to do that.

Chairman Koppelman: You could do that. We're back to the same system we have now where we have a statutory decision as to whether to put the money away or not. If it's there, it's the likelihood that it is actually going to get put away or get spent. That's the problem I would have in just putting a number in the Constitution and letting it stand.

Sen. Triplett: Instead of saying five years, if we said the legislature shall make a statutory adjustment every biennium according to a generally accepted inflationary adjustment so it just gets done.

Chairman Koppelman: I would certainly support that.

Rep. Weiler: I would like to know each person's thoughts on a tiered system versus a straight percentage, because that's probably the first decision we have to make is which one of these are we going to work with. It's not just your personal thoughts. It's your personal thoughts plus when we take these back to our respective chambers, what kind of support or opposition is there going to be with a tiered system or a straight percentage.

Rep. Schneider: I still don't think we can do a tiered system and easily explain it. With these budgeting concerns, I think whether it's a tiered system or a fixed percentage, you're going to have the same budgeting concerns because times on any system we do are going to be good, and they are going to be bad. When they are good, we are going to have bigger transfers back to the general fund, and it will get spent. I think the budgeting benefits of anything we pass is the fact that we won't be able to dump in the future, budget out of the permanent oil tax trust. In that sense, it will make it quite a bit simpler. Future legislative assemblies will just have to be careful with those transfers not to get to ahead of themselves. I still think a fixed percentage is appropriate.

Rep. Weiler: The other benefit that we haven't touched on in this meeting with the tiered system is that when you do get a biennium where things are really high as far as prices and production, it does allow you to take more money and put it in the fund. More money would automatically go in under a tiered system into the legacy fund.

Chairman Koppelman: The theory that I've heard expressed by some of the public is that you in the legislature can do this. We could have done that this time too. Without a mechanism to do it, I'm not sure we have the will.

Sen. Oehlke: I think consistency of putting it away is a lot more important than whether it's tiered or not tiered or involved with an inflation. It's the consistency of making sure it's done. We need to figure out what percentage would be reasonable and that we know we could probably handle.

Sen. Hogue: I concur with Rep. Schneider and Sen. Oehlke on the fixed percentage. I think we need to step back and figure out what are the reasons why they would oppose this. I share Rep. Weiler's point that in boom cycles, we should be putting aside more so that we don't spend it. My fundamental reason for supporting this is that it is the right thing to do for future generations. As future legislatures decide they want to go into this fund, then 2/3 of them have to say, or 70% or 75% have to say yes, it's time to use this money. The other thing is we haven't seen any language on the tiered approach other than the ones that have been offered. I'm always going back and questioning why we are putting this in the Constitution. The bottom line is we don't trust future legislatures to do the responsible things in boom cycle. As long as future legislatures have that ability to go and take off part of that stream, I don't think we're accomplishing much.

Chairman Koppelman: When you talk about restraining spending versus putting money away for future generations, I think that's a hand-in-glove question. If we don't restrain spending without something like this, we will not put money away for future generations.

Sen. Triplett: I like the way Sen. Hogue presented it by saying that the primary goal that we should be defining here is to put a certain amount of money away for future generations. I also

I think that a really strong secondary goal is to be able to provide sustainable budgeting. I think the tiered system does respond to that better.

Chairman Koppelman: What I'm hearing is there's enough interest in both concepts that I think we should move forward with some more concrete suggestions on both. Maybe get some analyses at the same time on both. I found it intriguing that some of the folks that were opposed to last election's Measure #1 actually endorsed the original 3054 which was a five tiered system. There have been a couple different ideas about the interest. One has been lock it up for a period of years. Most have said lock the principal up for awhile. Some even suggested lock everything up. Lock the interest up too, to allow it to catch up and grow. Others have said you can't do that. You have to at least have the interest coming out so that it's available to be spent. What if you at least require a vote of the legislature to extract the interest. Just a majority vote so that it wouldn't automatically show up in the general fund, and we say, let's go spend this. Instead it would be a conscious decision of each legislative assembly to say, we're entitled to take the interest out of the legacy fund, but do we really need to do that.

Sen. Hogue: What is attached to that legislative council memorandum is the Griffin amendment with Sen. Oehlke' suggestion that for the first two bienniums, the principal stays in the fund as well. The interest is going in. I'd ask them to amend that to say that the interest until June 30, 2015 goes in as well.

Chairman Koppelman: The Griffin amendment says the earnings are locked up until 2015. The interest was locked up until 2025. His locks up the interest until 2025.

Sen. Hogue: In subsection 2 we lock up the principal until 2015.

Chairman Koppelman: So the principal could be accessed in this proposal immediately with a sufficient vote. Twenty percent of the principal could be accessed immediately. The Griffin idea is kind of a flip flop of 4030.

Sen. Oehlke: The last sentence under number 1 in the Griffin amendment also says that the legislative assembly may transfer funds from any source into the fund, and they become part of the principal.

Chairman Koppelman closed the hearing on HCR 3054.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/27/09

Recorder Job Number: 12300

Committee Clerk Signature

Lou Engle

Minutes:

Chairman Koppelman opened the hearing on HCR 3054.

Rep. Schneider: One of the things I've been thinking about is the concept of thinking about the tiered approach and one way to address those concerns is not having the interest automatically transferred to the general fund every biennium. Leave both the principal and the interest in the fund, and make the principal accessible by 2/3 vote as we have it already but the interest accessible by a simple majority. That way, for budgeting purposes you wouldn't technically budget out of the permanent oil tax trust. It's locking up the money, but it's accessible by a 51% vote. It also addresses some of concerns we've tried to fix with the tiered approach in that when times are good, we don't necessarily need all that money. That way, let's say it is a \$400 million in interest, that money would stay in the permanent oil tax trust. Maybe we wouldn't need the whole \$400 million. If we got the whole \$400 million transferred to the general fund automatically, we'd probably spend it. Maybe we only need a portion of it.

Rep. Weiler: Last time we met, it looked to me like there were probably three people that were more in favor of a straight percentage and probably three of us that would prefer to see some type of a tiered approach. The concern that I have about the tiered approach, even though I believe it's probably a better way to do it, but when you put something on the ballot to

make it not be confusing, I've thought many different ways to do it. I don't know that it's possible to put it in wording on a ballot and make it not confusing to people. I think there are some provisions that Rep. Schneider talked about, that we could maybe dress up the straight percentage approach so I'm going to suggest that we put something together like working off of Rep. Griffin's amendment that we do a minimum of 1/3 versus 25%. I don't think 25% is high enough. I'd like to see 35%. I think if we put away 33% or 35% into a fund a couple things that I would like to see added there is that we take the principal of the legacy fund, and let's lock it up much like the common schools trust fund, but let's do it for a period of time. I think they had it out to 2040. Maybe that's a little long. Let's give it a little bit of time to grow. Maybe 2025. That gives it 12 years to lock up the principal, and after that maybe we can make it accessible with a 67% or 2/3 vote of both chambers. The idea about accessing the interest, if you just do a simple majority, they are always going to access it. At least it makes future legislative bodies give a conscious effort to doing that. If there is a biennium where there is an unbelievable amount of money and they just can't find ways to spend it, maybe they won't access the interest.

Chairman Koppelman: One of the reasons I suggested the votes, and it wasn't any preconceived idea, it just kind of came to us because we were talking about this last time. The idea that it really doesn't make a difference in terms of functionality and in terms of what can be accessed, whether it just goes into the general fund or whether we vote to take it out of the general fund. It does make a big difference in terms of forcing the legislature to think about it, and to say as you come into a session, we have the authority to go into the legacy fund and to withdraw the interest or any portion we want. At least it's a conscious effort. As for the two tier versus fixed percentage, I still think that a tiered approach has merit because it allows us to

take more out when times are good and spend it when times are lean and forces us to leave more in when times are good.

Sen. Hogue: I had some similar thoughts to what Rep. Schneider is talking about as far as accessing the interest versus the principal. I came up with a little bit different suggested solution. In terms of keeping it simple, I think it's important that we can access this money with a certain percentage of the vote, or you can access this money with a simple majority. What I would rather see is Sen. Oehlke suggested leaving the principal alone for five years, and the Griffin amendment has reinvesting the interest through 2025. My thought would be to leave the principal and the interest going into the fund for 5 years and then accessing either one after five years or after a set period of time.

Chairman Koppelman: I think one way you could alleviate that concern is by simply wording it in such a way that said the interest will be deposited into the general fund. It will just be, the legislature may vote to move the interest to the general fund. You don't have to mention percentages. You could get to your percentages when you talk about accessing, whether it's interest or whatever else you're dealing with.

Sen. Oehlke: On the Griffin amendment, the last sentence of #1, that could help us legislatively solve the problem of when you have an excess amount of revenue because that sentence would allow the legislative assembly to pass a bill or to take money from some fund and drop it in.

Rep. Weiler: It's my understanding that that language is not even needed. We can do that anyway. If we want to take money from the current not-so-permanent oil trust fund, take \$100 million out of there and put it into the common schools trust fund, we could do that.

Chairman Koppelman: I do like the language being there because it is clear, but if it is a problem for anybody, I don't mind getting rid of it for the reason that Rep. Weiler articulated.

We were told by some of our colleagues who have served on appropriations that they were of the opinion that the legislature could put money into a constitutional fund just by voting to do so. I double checked it with Legislative Council from the legal perspective, and they said that's true. You could vote to put money in. You could never vote to take it back out again.

Sen. Triplett: The state treasurer pointed out that none of what we have on the table deals with the fact the statutory permanent oil trust fund still being part of statute. Maybe we need to deal with that as part of this. If you don't want money going into both, you better be clear about that.

Chairman Koppelman: My opinion is that it is statutory. The legislature can change that anytime it wants. My assumption would be that if the voters pass this, that the legislature will respond to that. The next session, if this were to pass, the legislature would come back and address the issue of what do we do with what we have called the permanent oil trust fund.

Rep. Weiler: What we need to do is discuss what percentage we will use and then the details of what gets accessed, how it gets accessed. I do think working off of the Griffin amendment, let's get a percentage and then let's decide what we're going to access and how we are going to access it.

Chairman Koppelman closed the hearing on HCR 3054.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/28/09

Recorder Job Number: 12330

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3054.

Rep. Schneider distributed a proposed amendment. See Attachment #1.

Rep. Schneider: I think what we've got are really four issues on this bill. The first issue is the percentages. What percentage do we want to take off the top? 25%, 30%, 35% are some of the options. How much of the principal do we want to access? 15%, 20%. The third issue – by what vote of the legislature do we want to access the principal, 2/3 or 3/4, and then the fourth issue being how long do we want to lock up the principal or interest or both. The amendment I passed out are basically a revision of Rep. Griffin's earlier amendment. It does bring it up to 30%, and it does lock up the principal and interest until 2025.

Chairman Koppelman: Can you explain to us the main areas where your amendment differs from Rep. Griffins? I think the 30% is first.

Rep. Schneider: In section 2, the principal of the legacy fund may not be expended until 2025.

Chairman Koppelman: What I'd like to do is look at the numbers also and see what this does numerically.

Rep. Weiler distributed a proposed amendment. See Attachment #2.

Rep. Weiler: Sen. Hogue used an excel spreadsheet. This kind of explains what is in front of us. There are four decisions we have to make. We take 35% of the oil revenue and put it into a legacy fund. The principal of the fund should be untouchable through December 31, 2024. That gives it about 13 years from the time this act becomes effective or the first time that we can actually access it, that we would able to access it would be the 2013 session. It's really about 11 years from the time it becomes accessible that the principal only is locked up just like the common schools trust fund. After the year 2024, in order to access the principal of the fund, you need a 2/3 vote, and you can access up to 15% of the fund. The difference between Rep. Schneider's and Sen. Hogue's amendments, I'll just give a reason for my differences. If we're not going to do a tiered approach, I think we need to take a little bit more of the money and try to save it to let the fund grow. What I don't like about locking up the earnings, if we're going to lock up the principal, that's one thing.

Sen. Hogue distributed a proposed amendment. See Attachment #3.

Sen. Hogue: If you go to the spread sheet, after our past couple of meetings, these are the four issues that we've been debating. If you go over to the lock box date, now I would add two more based on the proposals by Rep. Schneider and Rep. Weiler. Rep. Schneider's is 2025 and Rep. Weiler's is 2024. If you go to the spreadsheet, the ones that are boldfaced are my proposals. I boldfaced the ones that are my amendments to the Griffin amendment and that is the percentage of revenue, 30%; the percent that would be spendable per biennium. I took 15%. It seemed like that was a compromise between what Sen. Oehlke and Sen. Triplett were talking about. The percent to appropriate, I chose 75. As far as the lock box, I chose 2016. That was based on a couple of things. A suggestion from Sen. Oehlke, and the other one was his conversation with a particular interest group that said that is something that is agreed to without losing their support for the bill.

Chairman Koppelman: The only other thing that I see that was talked about that is not listed here was the idea of the legislature being able to access the interest, but not requiring a particular vote, but also not saying that it automatically spills into the general fund.

Sen. Triplett: We need to add what do you do with the interest. We've discussed the choices. Do you put that interest along with the principal or whether you have it go directly into the general fund. My preference has always been that I would prefer the interest spill directly into the general fund. There is some opposition to doing this at all. At least saying that you will always have the interest available.

Sen. Hogue: That should be the fifth column. My amendment does address that. It basically says that the interest would go into the general fund after that 2016 lock up date without further legislative action.

Rep. Weiler: I couldn't agree more with Sen. Triplett on the interest. If you're going to lock up the principal and you're going to lock up the interest for five or ten or fifteen years, you're taking money from a volatile resource. I can see the opposition coming unglued saying, you're going to put this money away 25%, 30%, 35%, you're going to put it away and not even be able to touch the interest? I don't agree with locking up the interest. The purpose of a fund is to put money in a fund, let the principal grow, and use the interest.

Chairman Koppelman: We are talking about a percentage and a relatively small percentage of oil revenue in North Dakota. While the rest of that money is sequestered in places like the common schools trust fund, the foundation aid stabilization fund, etc., a good chunk of the it is currently spendable and will remain spendable by the legislature.

Rep. Schneider: I would be supportive of the 30% and the 15%. I think 2/3 important. I think that was the deal breaker. I don't think we can go to 3/4. As far as the lock box, I think five years is reasonable to lock both the interest and the principal up to give it a chance to

compound. These are numbers that Rep. Griffin received. (See Attachment #4) It shows the beauty of compound interest. The top numbers are based on \$400 million in revenue with 25% being \$100 million. This is with interest and principal combined. At year 15 you would have \$1 billion trust fund at even 4%. If you go down to the lower number, that's based on \$600 million, \$150 million being 25%, you're getting upwards of possibly a \$2 billion trust fund. The handwriting on the bottom is if we transfer the interest over to the general fund and leave just the principal. We'd have \$700 million with \$100 million put away per biennium over seven years or that \$150 million would be \$1 billion. That's where I'm at. I'd be supportive of the 30%, 15%, 2/3 and 2016.

Chairman Koppelman: If I'm understanding the graph, if you have \$100 million invested for 15 years and both the interest and the principal are locked up, depending on whether you're earning 4, 5 or 6%, the numbers are \$1.1, \$1.2, and \$1.3 billion in terms of what accumulates in that fund. If, however, the interest is drawn off during those years, \$700 million is in the fund by the time that period of time is done. In the second example, if you have \$150 million sequestered for that same period of time, you're looking at \$1.6, \$1.8 and \$1.9 million versus \$1.05 million if we allow the interest to flow automatically during that time.

Chairman Koppelman: Let's talk about the percentage of revenue to be locked up. 20, 30, 33, or 35.

Sen. Hogue: I'll move 30.

Rep. Schneider: I'll second it.

The motion passed on a voice vote.

Chairman Koppelman: Percent spendable per biennium. 10, 15, 20, 25.

Rep. Weiler: I move 15%.

Sen. Triplett: Second.

The motion passed on a voice vote.

Chairman Koppelman: Percentage of vote to appropriate principal. 51, 2/3, 70, 75 or 100?

Rep. Schneider: I'll move 2/3.

Rep. Weiler: Second.

The motion passed on a voice vote.

Chairman Koppelman: Lock box date. 2016 to infinity and beyond, 2025 or 2024.

Rep. Weilder: I move that we lock up the principal until 2020 and that the interest automatically goes to the general fund starting right away.

Sen. Triplett: Second.

Sen. Hogue: I'll disagree with Rep. Weiler on that one. I'll use one of his main concerns to oppose it and that is trying to get support from this from the interest groups. I think if we start locking this away for too long, we're going to lose that needed support. That's why I would support 2016 for the principal and for the interest, and let the interest start going into the general fund without a separate vote after that time.

Chairman Koppelman: The original amendment we were presented to consider was from a member of the legislature, Rep. Griffin, and that was 2025. By the time this would be acted on and effected then, 2020 would only be four years longer than the five year proposal so it would be nine years.

Rep. Weiler: And actually we would not be able to access the money until the 2013 session so it's really only seven years. Under the 2020, it is only going to be seven years that the principal is inaccessible. It gives the principal a little bit more time to grow. I disagree with the interest being locked up for any period of time. I think that defeats the purpose of what a trust fund does.

Chairman Koppelman: 2020 thoughts? My only comment would be we're looking at what is good for the state and future.

Rep. Schneider: Is the motion on just the principal? Or is it the principal and transfer the interest immediately.

Chairman Koppelman: The principal is the motion.

Chairman Koppelman took a voice vote, followed by a hand vote. The motion failed.

Sen. Hogue: I'll move June 30, 2016 for the principal.

Rep. Schneider: Second.

The motion passed on a voice vote.

Sen. Hogue: I'll move same date for interest, 2016, and then thereafter it spills over to the general fund.

Chairman Koppelman: A five year lockup then if this motion were to pass of both interest and principal and after that, it would automatically spill into the general fund.

Rep. Schneider: Second.

Motion passed on a hand vote.

Chairman Koppelman closed the hearing on HCR 3054.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/29/09

Recorder Job Number: 12366

Committee Clerk Signature

Wui Engison

Minutes:

Chairman Koppelman opened the hearing on HCR 3054 and passed out two amendments.

See Attachment #1 and Attachment #2.

Chairman Koppelman: I'm passing out an amendment which reflects the positions we took yesterday on the various issues. Then I am going to pass out another one which is intended to reflect a conversation that I understand took place after we adjourned with regard to dates.

The only difference between the two sets of amendments you are looking at are going to be the effective date in number 2, the amount of time those funds would be locked up. The one we talked about initially in our meeting was June 30, 2016. That came from Sen. Hogue's amendment. There was a discussion afterward about the concern that these funds will be inaccessible for two legislative sessions. If you figure the 2013 and 2015 sessions and their respective budget cycles, you would need to move to that 2017 date in order to accomplish that. For the benefit of those here, I'll reiterate the items that we determined. The percentage of the revenue is 30%. The percentage spendable per biennium is 15%. The percentage of the vote of the legislature required to access the principal is 2/3, 66 2/3%. As mentioned the amount of time that it would be sequestered is different in each amendment.

Sen. Oehlke: I like .0118. Probably the main reason I like it is because I think it is something that can go on the ballot and not be terribly confusing to the folks that are going to vote. It has some potential for giving us a good feel of what could possibly be.

Chairman Koppelman: It moves away from the two tier. It also moves up in a couple other areas to strengthen what we are doing.

Rep. Weiler: As I look at the original bill, we're going to get rid of page 1, lines 15 through 25. On page 2 of the bill we're removing lines 1 through 10. The concern I have there is that starting with line 5, page 2, I think that needs to stay in the bill, the fact that the State Investment Board shall invest the principal of the North Dakota legacy fund. The state treasurer shall transfer earnings of the legacy fund to the state general fund at the end of each fiscal year. The principal of the North Dakota fund may not be expended. And that probably needs to come out because it already in. I would like to see a clean copy of the bill because it is something that is going to go on the ballot. We'd better make sure that we've got all the language in here correct and numbered correctly. Lines 5 and 6 should stay and line 7, at the end of each fiscal year. That should stay. But the rest of it is duplication.

Chairman Koppelman: The effective date does stay.

Rep. Weiler: The effective date would stay.

Sen. Oehlke: So off of .0100 then basically from line 15 through 25, that would disappear, and 1 through 4 on page 2 would disappear. Starting on line 5 to the period on line 7 would remain. The rest of it would disappear, and Section 2 would remain.

Chairman Koppelman: If everyone is clear on what he's talking about, we could amend .0118 with that change.

Sen. Hogue: I wonder if we can get the treasurer's thoughts on whether the State Investment Board should be managing the money or if she should be managing this money.

Kelli Schmidt, State Treasurer: Any time that you have a fund that is a perpetuity that you want to go on and on, that is invested in equities. The state treasurer does not have the skills to be investing.

Sen. Triplett: What we're coming to hear is the notion that any legislative session could expend 15% of the principal. If you have language in there, it's saying the State Investment Board would be responsible for investing it. Could you give us a clue as to how they would look at that.

Kelli Schmidt: What this fund would be would be comingled with the other investments we have with the State Investment Board. At the time when there would be a calling for these funds it would be put back in to the reallocation of the pool.

Sen. Triplett: I am in agreement with Sen. Oehlke that .0118 is the way to go. It does accomplish the objective of the five-year notion.

Sen. Triplett: I might want to change the phrase "at the end of each fiscal year" to reflect the other changes that we're making.

Chairman Koppelman: Sensing that is the sense of the committee what I would recommend is that we instruct Legislative Council to draft a version of this off of .0118 with that language adapted.

Rep. Weiler: On .0118, subsection 1, the last sentence where it says the Legislative Assembly may transfer funds from any source into the legacy fund. Such transfers become part of the principal of the legacy fund. Does that even need to be in there?

Sen. Oehlke: We did discuss that a couple days ago. I don't believe it has to be in there, but at the same time, I think it's a good idea if it's there so that future legislators have that reinforced. I think it's a good idea to keep it.

Chairman Koppelman: That was just to clarify and amplify on our discussion a little bit. That was the opinion of counsel. Legally it doesn't need to be there because legally the legislature has the authority right now to do that.

Sen. Hogue: It does clarify it because when you say it becomes part of the principal. Notice how we treat the principal and earnings differently. Now it takes a 2/3 to take that money out.

Chairman Koppelman: The corollary is if we can vote now to add money, for example, to the common schools trust fund, and it becomes part of the common schools trust fund. So it would work that way.

Chairman Koppelman closed the hearing on HCR 3054.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3054

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 04/29/09

Recorder Job Number: 12381

Committee Clerk Signature

Lori Engison

Minutes:

Chairman Koppelman opened the hearing on HCR 3054. He distributed a proposed amendment. See Attachment #1.

Chairman Koppelman: I have taken the liberty of having the amendments drafted that would reflect those changes. I'll point out the basic differences. I believe the essential difference is on page 2. What this one does is it removes lines 1 through 4 which deal with the things that are addressed in subsections 1, 2 and 3. It leaves in lines 5 and 6 and a portion of the rest of the sentence that begins on line 6 in line 7. That is the portion that deals with the investment board. It gets rid of the language on lines 7, 8, and 9 that deals with the principal of the fund because that is addressed in 1, 2, and 3. It leaves the effective date in. The one other little tweak is page 2, line 6. It adds "accruing after June 30" and it replaces "fiscal year" with "biennium" on line 7. The difference there is that you wouldn't want the money to be transferred in at the end of the fiscal year when we're not in session because all you do is lose interest, and you wouldn't be spending it until the next session anyway.

Rep. Weiler: I'll move a do pass as amended.

Chairman Koppelman: The actual motion would be that we adopt the amendment .0119

which involves the senate receding from its amendments and conference committee amends.

● **Sen. Triplett:** Second.

Chairman Koppelman: Moved by Rep. Weiler. Seconded by Sen. Triplett.

The clerk called the roll. Motion carried.

6 yes, 0 no, 0 absent and not voting. Chairman Koppelman was assigned to carry the resolution.

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "1. Twenty-five 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. Earnings of the legacy fund must accrue and become part of the principal of the fund through June 30, 2025, after which time the treasurer shall transfer earnings of the legacy fund to the state general fund at the end of each fiscal year. 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 of the legacy fund may not be expended except upon a vote of two-thirds of the members elected to each house of the legislative assembly and not more than twenty percent of the principal 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."

Page 2, remove lines 1 through 10

Renumber accordingly

April 23, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "1. Twenty-five 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. Earnings of the legacy fund must accrue and become part of the principal of the fund through June 30, 2025, after which time the treasurer shall transfer earnings of the legacy fund to the state general fund at the end of each fiscal year. 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 of the legacy fund may not be expended until after June 30, 2015, and an expenditure after that date requires a vote of two-thirds of the members elected to each house of the legislative assembly. Not more than twenty 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."

Page 2, remove lines 1 through 10

Renumber accordingly

Attachment #1

93111.0112

Title.

Prepared by the Legislative Council staff for

Senator Schneider

April 27, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on pages 1144 and 1145 of the House Journal and on page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "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. Earnings of the legacy fund must accrue and become part of the principal of the fund through June 30, 2025, after which time the treasurer shall transfer earnings of the legacy fund to the state general fund at the end of each fiscal year. 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 of the legacy fund may not be expended until after June 30, 2025, and an expenditure after that date requires a vote of at least two-thirds of the members elected to each house of the legislative assembly and not more than twenty percent of the principal 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."

Page 2, remove lines 1 through 10

Renumber accordingly

Attachment #2

93111.0113

Title.

Prepared by the Legislative Council staff for

Representative Weiler

April 27, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "1. Thirty-five 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.
2. The principal of the legacy fund may not be expended until after December 31, 2024, and an expenditure 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."

Page 2, remove lines 1 through 10

Renumber accordingly

Attachment #3

93111.0114
Title.

Prepared by the Legislative Council staff for
Senator Hogue

April 27, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "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, 2016, and an expenditure of principal after that date requires a vote of at least seventy-five percent of the members elected to each house of the legislative assembly. The state treasurer shall transfer earnings accruing after June 30, 2016, to the general fund. Not more than twenty 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."

Page 2, remove lines 1 through 10

Renumber accordingly

Attachment #1

93111.0117
Title.

Prepared by the Legislative Council staff for
Representative Koppelman
April 28, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "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, 2016, 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. The state treasurer shall transfer earnings accruing after June 30, 2016, to the general fund. 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."

Page 2, remove lines 1 through 10

Renumber accordingly

Attachment #2

93111.0118
Title.

Prepared by the Legislative Council staff for
Representative Koppelman
April 28, 2009

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "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. The state treasurer shall transfer earnings accruing after June 30, 2017, to the general fund. 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."

Page 2, remove lines 1 through 10

Renumber accordingly

VR
4/29/09

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3054

That the Senate recede from its amendments as printed on pages 1144 and 1145 of the House Journal and page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "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."

Page 2, remove lines 1 through 4

Page 2, line 6, after the first "fund" insert "accruing after June 30, 2017,"

Page 2, line 7, replace "fiscal year" with "biennium" and remove "The principal of the North Dakota legacy fund may not be"

Page 2, remove lines 8 through 10

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HCR 3054, as (re)engrossed:

Date: 04/29/09 p.m.

Your Conference Committee Constitutional Revision

For the Senate:

For the House:

	YES / NO		YES / NO
✓ Sen. Hague	✓	Chairman Koppelman	✓
✓ Sen. Oehlke	✓	Rep. Weiler	✓
✓ Sen. Triplett	✓	Rep. Schneider	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____ and place _____ on the Seventh order.

✓, adopt (further) amendments as follows, and place _____ on the
Seventh order:

_____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Weiler

SECONDED BY: Triplett

OTE COUNT 6 YES 0 NO 0 ABSENT

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HCR 3054: Your conference committee (Sens. Hogue, Oehlke, Triplett and Reps. Koppelman, Weiler, Schneider) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1144-1145, adopt amendments as follows, and place HCR 3054 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1144 and 1145 of the House Journal and page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "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."

Page 2, remove lines 1 through 4

Page 2, line 6, after the first "fund" insert "accruing after June 30, 2017."

Page 2, line 7, replace "fiscal year" with "biennium" and remove "The principal of the North Dakota legacy fund may not be"

Page 2, remove lines 8 through 10

Renumber accordingly

HCR 3054 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HCR 3054

Sixty-first
Legislative Assembly
of North Dakota

AMENDMENT TO HOUSE CONCURRENT RESOLUTION NO. 3054

Delete: lines 20 through 25, page 1

Lines 1 through 4, page 2

Insert:

Twenty-five percent to the state general fund and seventy-five percent to the North Dakota legacy fund.

Details of HCR 3054

After all groups get their % of money	General Fund	Legacy Fund
1 st 100 million	80%	20%
2 nd 100 million	70%	30%
3 rd 100 million	60%	40%
4 th 100 million	50%	50%
Over 400 million	40%	60%

2/3 vote to access fund (*HCR 3045 ¾ vote*)

20% of fund may be accessed each biennium

1. *Disaster Relief Fund*
2. *Federal funds for disasters*

Legacy Fund invested with the SIB

Interest returns to General Fund

On ballot November 2010

Into effect July 1st 2011

(Hypothetical)

If Legacy Fund had been in effect last 5 biennia

	<u>Total Oil Tax Revenue</u>	General Fund	Legacy Fund
1999-01	\$75,179,298	\$60,143,438	\$15,035,860
2001-03	\$69,565,225	\$55,652,180	\$13,913,045
2003-05	\$120,478,335	\$94,334,835	\$26,143,500
2005-07	\$240,798,265	\$174,478,959	\$66,319,306
2007-09	\$548,537,026	\$319,414,810	\$229,122,216
Projected			
2009-11	<u>\$500,000,000</u>	<u>\$300,000,000</u>	<u>\$200,000,000</u>

Attachment #2

Testimony re: HCR 3054

House Constitutional Review Committee

February 26, 2009

Greg Burns, Executive Director, North Dakota Education Association

Mr. Chairman, members of the committee, as you know the NDEA was actively opposed to Measure #1 in the last election. Without going into all of the reasons for our opposition, we did state that we would support a constitutional measure establishing a permanent oil trust fund if it was sound public policy, and if it provided a proper balance between funding important programs and saving for the future. HCR 3054 appears to meet those criteria.

First, this resolution puts more money into the general fund than the current oil trust. Second, it provides a sliding scale, depending on the revenues from the oil tax that is balanced and makes budget projections easier to forecast. The sliding scale represents a balanced approach to saving for the future and maintaining revenues to sustain and enhance programs that are important to North Dakotans such as education, health care, care for the elderly and all of the other programs that are necessary for the citizens of this state to have a great quality of life.

While this measure would require placing fixed dollar amounts into the state's constitution, these dollar amounts are triggers tied to percentages that will react in relation to the ups and downs of the state's economy, while preserving this balance between revenues and savings.

The 67% vote required to access the fund's principal is a high threshold but a supportable one. It is far superior to a 75% threshold. We have a concern about whether accessing only 20% of the principal per biennium would be sufficient in a dire emergency, but this is not enough to impair the other qualities of this measure.

Mr. Chairman and members of the committee, we support putting this measure on the ballot for North Dakota voters to consider.

February 27, 2009

Constitutional Revision Committee

ND House of Representatives

SUPPORT: HCR 3054

History

The permanent oil tax trust fund (POTTF) was created in 1995 under Governor Ed Schafer, initially calling for deposits of gross production and extraction taxes in the Permanent Oil Tax Trust Fund. Initially the general fund received \$62 million before the POTTF was funded.

Then in 2003, in Section 26 of the OMB Appropriations bill (SB 2015) we raised that threshold from \$62 million to \$71 million to be deposited to the general fund before any deposits were made to the POTTF.

The POTTF law provides:

57-51.1-07.2. (Contingent repeal - See note) Permanent oil tax trust fund - Deposits - Interest - Adjustment of distribution formula. All revenue deposited in the general fund during a biennium derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds seventy-one million dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. The state treasurer shall transfer interest earnings of the permanent oil tax trust fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a two-thirds vote of the members elected to each house of the legislative assembly.

Governor Schafer's vision was to preserve oil revenues, rather than base spending on a declining revenue stream that was based upon a depletable natural resource.

USE OF POTTF

The current statutory structure has been marginally successful in accomplishing its goal. Certainly it has accumulated funds in recent years. But, the POTTF has been used as a short term savings account to withdraw for special projects and spending that has doubled in the last 3 biennium. Some of those uses include:

2005-07

\$350,000 Peace Garden Music Camp

\$21,300,000 Centers of Excellence

\$3,667,820 Department of Human Service (MMIS)
\$55,300 General Fund
(\$80,617,820) Total transfers POTTF Balance: \$135,177,443

2007-09

\$15,000,000 Centers of Excellence
\$7,783,315 Higher Education
\$ 700,000 Grants to Tribal Colleges
\$6,483,226 Veterans Home
\$ 750,000 Ag Research and Extension

\$115,000,000 Transfer to General Fund (Property tax rebate)

(\$145,716,541) Total transfers POTTF Balance: \$135,478,847*

*Feb 9, 2009 Rev. Forecast shows: POTTF Balance: \$475,091,147

2009-11

\$300,000,000 Property tax rebate to school districts

POTTF Balance (6/30/2011) \$602,668,814*

*Includes revenues of \$427,577,667 for 2009-11 bienniums.

POLICY: Why is HCR 3054 necessary?

To save a part of a depletable resource (should save, more than we spend)

To guard against future programmatic cuts, or tax increases that will be required if we fund ongoing expenditures with an uncertain revenue source. Whether it's this year, or the next-- oil revenues will decline sometime in our future.

To share with future generations of the one-time harvest of wealth represented by the oil.

Finally, imagine what we could do as a state, if we were patient and we accumulated oil revenues for long term benefits, rather than spend them on short term spending programs. (If we use current forecast revenues (\$425 million), at 25%/75% split as proposed in the amendment ND will have \$1 billion in trust in 4 biennium, with which to provide funding for tax relief, education, infrastructure etc.

Some will say we shouldn't have HCR 3054: You may hear: "Lock box" (75% vote to access funds too great), not enough interest, we shouldn't put it in the Constitution, and Measure #1 was rejected by the voters" or "we can't afford it".

Each of these concerns has been addressed or warrants a response. HCR 3054 provides for a lower threshold to access the principal, if invading the corpus of the fund is necessary. Interest is also addressed through investment by the State Investment Board. The Trust Fund is necessary to be placed in the Constitution, because we are demonstrating a growing reliance on oil revenues (doubling withdrawals in each of the last 3 biennium).

As to the election, in my view, the voters did not reject Measure #1 as a concept. Several things converged with regard to Measure #1:

1. Measure #1 was coupled with Measure #2 to tell the public both were bad
2. \$500,000 campaign funded by AARP, NDEA, and ND Public Employees amplifying this theme
3. Those campaigns were coupled with similar campaigns by publicly sponsored organizations
4. The public was told they would not have property tax relief, if the Measures passed, even though Measure #1 became effective on July 1, 2009 and had no impact on the surplus.

Finally, can we afford it? Yes, but more importantly, we cannot afford NOT to have a POTTF that allows us to save more than we are spending. We can use recent revenue forecast figures to demonstrate this:

	<u>Current</u>	<u>HCR 3054</u>
Estimated POTTB Balance 6/30/09	\$475,000,000	\$475,000,000
Estimated revenue for 2009-11	\$428,000,000 X75%	\$321,000,000
Less \$300,000,000 property tax	(\$300,000,000)	-(\$300,000,000)
<u>Ending POTTB Balance:</u>	<u>\$603,000,000</u>	<u>\$496,000,000*</u>

*This figure contemplates 75% of oil taxes into the Legacy Fund.

Clearly we can afford it. I strongly support and urge your recommendation of a DO PASS on HCR 3054.

Robert W. Harms

815 Mandan Street

Bismarck, ND

Sixtieth Legislative Assembly of North Dakota

In Regular Session Commencing Wednesday, January 3, 2007

HOUSE CONCURRENT RESOLUTION NO. 3045
(Representatives Weiler, Boehning, Kasper, Skarphol, Thoreson)
(Senator Stenehjem)

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota, relating to establishment and use of a permanent oil tax trust fund; and to provide an effective date.

STATEMENT OF INTENT

This measure establishes a permanent oil tax trust fund and imposes limitations on use of moneys in the fund.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article X of the Constitution of North Dakota is created and enacted as follows:

All revenue deposited in the general fund during a biennium derived from taxes imposed on oil and gas at the time of production or extraction which exceeds one hundred million dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. Beginning in 2011, at the beginning of each biennium immediately following a biennium in which revenue from taxes imposed on oil and gas was deposited in the permanent oil tax trust fund, the state treasurer shall adjust the dollar threshold amount as determined under this section for transfers to the permanent oil tax trust fund by applying to that amount the rate of change since the beginning of the previous biennium in the consumer price index for all urban consumers, all items, United States city average, or any successor index, as calculated by the United States department of labor, bureau of labor statistics. The state treasurer shall transfer interest earnings of the permanent oil tax trust fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a vote of three-fourths of the members elected to each house of the legislative assembly and not more than twenty percent of the principal may be expended during any biennium.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 2009.



JOHN RISCH

North Dakota Legislative Director

united transportation union

Attachment #4

750 Augsburg Avenue
Bismarck, ND 58504-7009
Office: 701-223-0061
Fax: 701-223-0061
E-mail: utu@bis.midco.net

Support HCR 3054

UTU endorsed and worked to pass Measure 1,

Believed in it. And wished it would have passed, if wishes were horses.

No offence, but governments in general are poor at long-term budgeting.....

Just the nature of things.

This measure if passed will help even out the bumps providing revenue for the future.

Most important thing to remember about this debate is we are dealing with money from a non-renewable resource oil and gas.

One day the oil and gas will be gone, but our need for revenues will continue.

It is simply not fair or right for this generation to spend all the money on ourselves

The common schools trust fund is a great example of how these things should work. The federal government set aside land for the operations of schools.

The government at that time could have said sell the land and spend the money to reduce taxes and pay for all sorts of things, but they didn't look out for us and provided this wonderful trust fund

I said yesterday almost a \$1b the land trusts funds had \$900M last fall and \$766 at the end of January.

More important number is the \$77M this fund contributed to k-12 education this biennium.

Now that is a good thing.

HCR 3054 would be another good thing.

Office of State Treasurer
FY 2008 Oil Tax Distribution

395,017,182.77

Gross Production

212,743,947.81

20%

42,548,789.56		
Oil Impact	General Fund	Permanent Oil
6,000,000.00	12,244,290.42	24,304,499.14

80%

170,195,158.25



Oil Extraction

182,273,234.96

60%

State Share 109,433,817.19		
General Fund	Permanent Oil	Research Fund
31,696,279.65	76,446,530.48	1,291,007.06

20%

Resources Trust
36,419,708.87

20%

Education 36,419,708.90		
Permanent Education	Foundation Aid	
18,209,854.45		

Oil Impact	State General	Resources Trust	Counties	Schools	Cities	Permanent Oil	Research Fund	Permanent Education	Foundation Aid
6,000,000.00	31,696,279.65	36,419,708.87				76,446,530.48	1,291,007.06	18,209,854.45	18,209,854.45
	12,244,290.42		22,357,340.56			24,304,499.14	1,708,992.94		
	27,059,429.93					97,217,996.56			
6,000,000.00	71,000,000.00	36,419,708.87	22,357,340.56	14,073,058.59	7,778,339.67	197,969,026.18	3,000,000.00	18,209,854.45	18,209,854.45

2%

18%

9%

6%

4%

2%

50%

1%

5%

Attachment #5

Glassheim, Eliot A.

Attachment #6

From: Walstad, John M.
Sent: Wednesday, April 01, 2009 12:35 PM
To: Glassheim, Eliot A.
Subject: FW: HCR 3054 and SCR 4030
Attachments: const meas.xls

Eliot- Kathy prepared a comparison of the trust fund measures. I hope this is timely.

-----Original Message-----

From: Strombeck, Kathy L.
Sent: Wednesday, April 01, 2009 10:48 AM
To: Walstad, John M.
Subject: HCR 3054 and SCR 4030

John;

Attached is a comparison of the distribution of oil revenues under the provisions of the measures. As we discussed, an official forecast for the 2011-13 biennium does not exist, so I made one up using a \$62.50 oil price and 225,000 BOPD production forecast. Both are reasonable, given today's environment.

You had mentioned that the locals got hurt under these proposals. Perhaps I'm missing something, because it looks to me like both proposals seek to keep all distributions whole, except of course the State General Fund and the Legacy Fund. How they accomplish this and whether this is possible remains to be seen. On the attachment, I assumed this was accomplished, and I kept all the distributions at the current law level.

If you wish to assume something else, such as keeping the distributions at the 2009-11 level, just let me know and I will modify the spreadsheet.

Kathy

**Comparison of Forecasted Oil Tax Revenues
For the 2009-11 and 2011-13 Biennia**
Under Current Law Distributions and Under the Provisions of HCR 3054 and SCR 4030

2009-11 Biennium				Resources		Education		Impact		Research					
Current Law Dist.		SGF/POTTF		Trust Fund		Funds		Grant Fnd		Subdivisions		Fund		Total	
Oil Ext Tax	FY 10	\$ 37,395,000	\$ 12,719,000	\$ 12,719,000						\$ 763,000	\$ 63,596,000				
	FY 11	\$ 111,195,000	\$ 37,065,000	\$ 37,065,000							\$ 185,325,000				
Gr Prod Tax	FY 10	\$ 117,932,000						\$ 6,000,000	\$ 41,047,000	\$ 2,237,000	\$ 167,216,000				
	FY 11	\$ 161,218,000							\$ 32,164,000			\$ 193,382,000			
	Biennial Total	\$ 427,740,000	\$ 49,784,000	\$ 49,784,000	\$ 6,000,000	\$ 73,211,000	\$ 3,000,000			\$ 609,519,000					
2011-13 Biennium				Resources		Education		Impact		Research					
Current Law Dist. (1)		SGF/POTTF		Trust Fund		Funds		Grant Fnd		Subdivisions		Fund		Total	
Oil Ext Tax	FY 12	\$ 133,999,000	\$ 45,333,000	\$ 45,333,000						\$ 2,000,000	\$ 226,665,000				
	FY 13	\$ 147,332,000	\$ 49,111,000	\$ 49,111,000							\$ 245,554,000				
Gr Prod Tax	FY 12	\$ 171,103,000						\$ 6,000,000	\$ 58,417,000	\$ 1,000,000	\$ 236,520,000				
	FY 13	\$ 210,467,000							\$ 45,763,000			\$ 256,230,000			
	Biennial Total	\$ 662,901,000	\$ 94,444,000	\$ 94,444,000	\$ 6,000,000	\$ 104,180,000	\$ 3,000,000			\$ 964,969,000					
2011-13 Biennium				Resources		Education		Impact		Research					
HCR 3054 (2)		SGF		Trust Fund		Funds		Grant Fnd		Subdivisions		Fund		Legacy Fund	
Oil Ext Tax	FY 12	\$ 103,799,300	\$ 45,333,000	\$ 45,333,000						\$ 2,000,000	\$ 30,199,700	\$ 226,665,000			
	FY 13	\$ 94,998,601	\$ 49,111,000	\$ 49,111,000							\$ 52,333,399	\$ 245,554,000			
Gr Prod Tax	FY 12	\$ 106,200,700						\$ 6,000,000	\$ 58,417,000	\$ 1,000,000	\$ 64,902,300	\$ 236,520,000			
	FY 13	\$ 60,161,799							\$ 45,763,000			\$ 150,305,201	\$ 256,230,000		
	Biennial Total	\$ 365,160,400	\$ 94,444,000	\$ 94,444,000	\$ 6,000,000	\$ 104,180,000	\$ 3,000,000			\$ 297,740,600		\$ 964,969,000			
2011-13 Biennium				Resources		Education		Impact		Research					
SCR 4030 (2)		SGF		Trust Fund		Funds		Grant Fnd		Subdivisions		Fund		Legacy Fund	
Oil Ext Tax	FY 12	\$ 100,499,250	\$ 45,333,000	\$ 45,333,000						\$ 2,000,000	\$ 33,499,750	\$ 226,665,000			
	FY 13	\$ 110,499,000	\$ 49,111,000	\$ 49,111,000							\$ 36,833,000	\$ 245,554,000			
Gr Prod Tax	FY 12	\$ 128,327,250						\$ 6,000,000	\$ 58,417,000	\$ 1,000,000	\$ 42,775,750	\$ 236,520,000			
	FY 13	\$ 157,850,250							\$ 45,763,000			\$ 52,616,750	\$ 256,230,000		
	Biennial Total	\$ 497,175,750	\$ 94,444,000	\$ 94,444,000	\$ 6,000,000	\$ 104,180,000	\$ 3,000,000			\$ 165,725,250		\$ 964,969,000			

(1) An official forecast for the 2011-13 biennium does not exist. This version assumes an average price of \$62.50 and average production of 225,000 BOPD.

(2) The distributions under the proposed concurrent resolutions assume legislation is enacted that holds all other distributions constant with current law.

Details of HCR 3054

After all groups get their % of money	General Fund	Legacy Fund
1 st 100 million	80%	20%
2 nd 100 million	70%	30%
3 rd 100 million	60%	40%
4 th 100 million	50%	50%
Over 400 million	40%	60%

2/3 vote to access fund

20% of fund may be accessed each biennium

Legacy Fund invested with the SIB

Interest returns to General Fund

On ballot November 2010

Into effect July 1st 2011

#20

Proposed Amendment

After all groups get their % of money	General Fund	Legacy Fund
1 st 400 million	75%	25%
Over 400 million	25%	75%
Projected 09-11 Bienium	\$325M	\$175M

HG

March 25, 2009
Finance and Taxation Committee
ND Senate

SUPPORT HCR 3054

History

The permanent oil tax trust fund (POTTF) was created in 1995 under Governor Ed Schafer, initially calling for deposits of gross production and extraction taxes in the Permanent Oil Tax Trust Fund. Initially the general fund received \$62 million before the POTTF was funded.

Then in 2003, in Section 26 of the OMB Appropriations bill (SB 2015) we raised that threshold from \$62 million to \$71 million to be deposited to the general fund before any deposits were made to the POTTF.

Governor Schafer's vision was to preserve oil revenues, rather than base spending on a declining revenue stream that relied upon a finite natural resource.

USE OF POTTF

The current statutory structure has been marginally successful in accomplishing its goal. Certainly it has accumulated funds in recent years. But, the POTTF has been used as a short term savings account to withdraw for special projects and spending that has doubled in the last 3 biennium. Some of those uses include:

2005-07

\$350,000	Peace Garden Music Camp
\$21,300,000	Centers of Excellence
\$3,667,820	Department of Human Service (MMIS)
\$55,300	General Fund
<u>(\$80,617,820)</u>	<u>Total transfers</u> <u>POTTF Balance: \$135,177,443</u>

2007-09

\$15,000,000	Centers of Excellence
\$7,783,315	Higher Education
\$ 700,000	Grants to Tribal Colleges
\$6,483,226	Veterans Home
\$ 750,000	Ag Research and Extension
<u>\$115,000,000</u>	<u>Transfer to General Fund (Property tax rebate)</u>
<u>(\$145,716,541)</u>	<u>Total transfers</u> <u>POTTF Balance: \$135,478,847*</u>

*Feb 9, 2009 Rev. Forecast shows: POTTF Balance: \$475,091,147

2009-11

\$300,000,000 Property tax rebate to school districts

POTTF Balance (6/30/2011) \$602,668,814*

*Includes revenues of \$427,577,667 for 2009-11 biennium.

POLICY: What purposes should a permanent oil trust fund provide?

- To save a part of a non-renewable resource, to share the wealth with future generations
- To avoid creating a spending dependency on a revenue stream that is not sustainable. Whether it's this year, or the next-- oil revenues will decline sometime in our future.
- To convert a non-renewable resource to a fund that will provide long term benefits to future generations of North Dakota citizens (thus the name "Legacy Fund").

Reasons to support HCR 3054:

- Meets each of the goals set forth above
- Addresses criticisms from 2008 election (lock box too tight, low investment rate, "saved" too much with a rigid formula). Current draft addresses each of those concerns.

Some additional comments:

-we can afford it. (ending fund balance of POTTF for 6/30/2011 is \$603 million).

- we also agree with suggested amendments, particularly the use of a 2 or 3 tier system that will have more appeal to voters and deliver nearly the same amounts to the general fund and to the legacy fund over time.

For these reasons, I support HCR 3054 and ask for your DO PASS recommendation to the North Dakota Senate.

Robert W. Harms
815 Mandan Street
Bismarck, ND

OIL TAX COLLECTIONS - HOUSE CONCURRENT RESOLUTION NO. 3059

The schedule below presents information on oil tax revenue deposited in the general fund and permanent oil tax trust fund since 1981, the total revenue that would have been available for transfer to a special fund pursuant to House Concurrent Resolution No. 3059, investment returns, and the investment earnings for the 1981-83 through 2007-09 bienniums.

House Concurrent Resolution No. 3059 provides a constitutional amendment that if approved would transfer 25 percent of the state's share of oil and gas tax revenue which exceeds \$100 million to an oil tax trust fund.

Biennium	State Oil and Gas Tax Revenue	Amount Available for Transfer ¹	Accumulated Balance	Average Annual Investment Returns ²	Investment Earnings ³
1981-83	\$144,212,200	\$11,053,050	\$11,053,050	5.87%	
1983-85	\$272,086,000	\$43,021,500	\$54,074,550	5.87%	\$1,297,628
1985-87	\$141,612,675	\$10,403,169	\$64,477,719	5.87%	\$6,348,352
1987-89	\$98,622,552	\$0	\$64,477,719	5.87%	\$7,569,684
1989-91	\$114,005,856	\$3,501,464	\$67,979,183	9.57%	\$12,341,035
1991-93	\$82,222,377	\$0	\$67,979,183	9.48%	\$12,888,853
1993-95	\$52,888,685	\$0	\$67,979,183	5.33%	\$7,246,581
1995-97	\$55,029,975	\$0	\$67,979,183	7.81%	\$10,618,348
1997-99	\$43,676,727	\$0	\$67,979,183	11.39%	\$15,485,658
1999-2001	\$75,200,000	\$0	\$67,979,183	5.87%	\$7,980,756
2001-03	\$69,600,000	\$0	\$67,979,183	2.32%	\$3,154,234
2003-05	\$120,500,000	\$5,125,000	\$73,104,183	8.14%	\$11,067,011
2005-07	\$240,800,000	\$35,200,000	\$108,304,183	8.80%	\$12,866,336
2007-09 ⁴	\$548,537,026	\$112,134,257	\$220,438,439	(14.11%)	(\$30,563,440)

¹House Concurrent Resolution No. 3059 provides a constitutional amendment that if approved would transfer 25 percent of the state's share of oil and gas tax revenue which exceeds \$100 million to an oil tax trust fund.

²The average annual investment returns reflect the average State Investment Board rate of return on investments of the fire and tornado fund. Investment rate information is not available for the 1981-83 through 1987-89 bienniums; the percentages shown for these bienniums reflect an average rate of return for the 20-year period ended February 28, 2009.

³House Concurrent Resolution No. 3059 also provides that interest income is transferred to the general fund at the end of each fiscal year. Investment earnings were calculated based on the assumption that oil and gas tax revenue would be transferred to an oil tax trust fund near the end of each biennium.

⁴The amounts shown for the 2007-09 biennium reflect revenue estimates based on the February 2009 legislative revenue forecast and an estimated rate of return based on actual rates through February 2009.

April 2009

OIL TAX COLLECTIONS - HOUSE CONCURRENT RESOLUTION NO. 3054 WITH PROPOSED AMENDMENTS

The schedule below presents information on oil tax revenue deposited in the general fund and permanent oil tax trust fund since 1981, the total revenue that would have been available for transfer to a special fund pursuant to House Concurrent Resolution No. 3054 with proposed amendments, investment returns, and the investment earnings for the 1981-83 through 2011-13 bienniums.

House Concurrent Resolution No. 3054 with proposed amendments (attached) provides a constitutional amendment that if approved would transfer 25 percent of the state's share of oil and gas tax revenue to the North Dakota legacy fund.

Biennium	State Oil and Gas Tax Revenue	Amount Available for Transfer ¹	Accumulated Balance	Average Annual Investment Returns ²	Investment Earnings ³
1981-83	\$144,212,200	\$36,053,050	\$36,053,050	5.87%	\$2,116,314
1983-85	\$272,086,000	\$68,021,500	\$106,190,864	5.87%	\$8,473,945
1985-87	\$141,612,675	\$35,403,169	\$150,067,978	5.87%	\$15,539,815
1987-89	\$98,622,552	\$24,655,638	\$190,263,431	5.87%	\$20,889,641
1989-91	\$114,005,856	\$28,501,464	\$239,654,536	9.57%	\$43,142,288
1991-93	\$82,222,377	\$20,555,594	\$303,352,418	9.48%	\$55,566,948
1993-95	\$52,888,685	\$13,222,171	\$372,141,537	5.33%	\$38,965,546
1995-97	\$55,029,975	\$13,757,494	\$424,864,577	7.81%	\$65,289,387
1997-99	\$43,676,727	\$10,919,182	\$501,073,146	11.39%	\$112,900,768
1999-2001	\$75,200,000	\$18,800,000	\$632,773,913	5.87%	\$73,184,097
2001-03	\$69,600,000	\$17,400,000	\$723,358,011	2.32%	\$33,160,132
2003-05	\$120,500,000	\$30,125,000	\$786,643,142	8.14%	\$125,613,329
2005-07	\$240,800,000	\$60,200,000	\$972,456,471	8.80%	\$165,854,739
2007-09 ⁴	\$548,537,026	\$137,134,257	\$1,275,445,466	(14.11%)	(\$340,581,067)
2009-11 ⁵	\$394,092,000 ⁵	\$98,523,000	\$1,033,387,399	5.87%	\$115,536,381
2011-13 ⁶	\$631,901,000 ⁶	\$157,975,250	\$1,306,899,030	5.87%	\$144,156,799

¹House Concurrent Resolution No. 3054 with proposed amendments provides a constitutional amendment that if approved would transfer 25 percent of the state's share of oil and gas tax revenue to the North Dakota legacy fund.

²The average annual investment returns reflect the average State Investment Board rate of return on investments of the fire and tornado fund. Investment rate information is not available for the 1981-83 through 1987-89 bienniums and the 2009-11 and 2011-13 bienniums; the percentages shown for these bienniums reflect an average rate of return for the 20-year period ended February 28, 2009.

³House Concurrent Resolution No. 3054 also provides that interest income is accrued and becomes part of the principal balance of the fund. Investment earnings were calculated based on the assumption that oil and gas tax revenue would be transferred to the legacy fund near the middle of each biennium.

⁴The amounts shown for the 2007-09 biennium reflect revenue estimates based on the February 2009 legislative revenue forecast and an estimated rate of return based on actual rates through February 2009.

⁵The amounts shown for the 2009-11 biennium reflect revenue estimates based on the February 2009 legislative revenue forecast, under which oil prices are anticipated to average from \$40 per barrel at the beginning of the biennium to \$55 at the end of the biennium. The amounts shown also include a \$25 million decrease to reflect the provisions of House Bill No. 1304.

⁶The oil and gas tax revenue amounts shown for the 2011-13 biennium were provided by the Tax Department and are based on an average price of \$62.50 per barrel and average production of 225,000 barrels per day. The revenue amounts shown also include a \$31 million decrease to reflect the provisions of House Bill No. 1304.

ATTACH:1

Attachment #2

Prepared by the North Dakota Legislative Council
staff

April 24, 2009

2009-11 BUDGET STATUS SUMMARY AS OF APRIL 23, 2009

Beginning Balance and Revenues	
Legislative budget estimate of unobligated general fund cash balance - July 1, 2009	\$310,550,704 1
Add 2009-11 estimated revenues	
Proposed executive budget general fund revenues	\$2,783,873,000
Legislative revenue changes	
Major increases	
HB 1279 - Reduces individual income tax rates (executive recommendation) (Defeated)	100,000,000
SB 2199 - Provides for a transfer from the permanent oil tax trust fund	295,000,000
SB 2014 - Increases the transfer from the State Mill and Elevator	4,479,128
Major decreases	
February 2009 revenue forecast revision	(93,002,000)
HB 1010 - Reduces transfers from the insurance regulatory trust fund	(1,000,000)
HB 1209 - Provides individual income tax credit for long-term health care premiums	(1,500,000)
HB 1256 - Provides an income tax reduction for certain qualified dividends	(4,600,000)
HB 1317 - Reduces the pull tab excise tax	(3,683,070)
HB 1324 - Reduces individual income tax rates for tax years 2010 and 2011	(57,000,000)
HB 1407 - Decreases the general fund share of motor vehicle excise taxes	(2,700,000)
HB 1428 - Raises the maximum aggregate income tax credit for renaissance zone investments	(2,500,000)
HB 1485 - Maintains the general fund share of oil and gas taxes at \$71 million	(39,000,000)
SB 2004 - Provides for emergency medical services grants	(1,500,000)
SB 2012 - Decreases the general fund share of motor vehicle excise taxes	(29,789,750)
SB 2013 - Reduces the transfer from the lands and minerals trust fund	(8,500,000)
SB 2014 - Removes the transfer from the Bank of North Dakota	(60,000,000)
SB 2040 - Provides a sales and use tax exemption for telecommunications infrastructure	(4,738,000)
SB 2184 - Excludes manufacturer incentives and discounts from motor vehicle excise tax	(4,416,000)
SB 2199 - Reduces individual and corporate income taxes	(43,000,000)
SB 2221 - Creates a credit against coal conversion privilege taxes	(7,420,000)
Other increases (decreases)	(2,206,894)
Total legislative changes affecting revenues	<u>\$32,923,414</u>
Total estimated general fund revenues and beginning balance - 2009-11	<u>\$3,127,347,118</u>
Appropriations	
Executive budget general fund appropriations - 2009-11	\$3,110,921,665
Legislative appropriations changes	
Major increases	
SB 2199 - Property tax relief	295,000,000
SB 2030 - State Penitentiary project	28,465,804
SB 2018 - Department of Commerce	13,171,831
SB 2444 - Flood disaster relief	12,500,000
SB 2025 - Veterans' Home construction	7,944,991
HB 1350 - Grant for construction of applied energy research center	5,000,000
HB 1006 - State Tax Commissioner	4,522,665
SB 2075 - Veterans' Home improvements (conference committee)	3,389,414
SB 2007 - Veterans' Home and Veterans' Affairs	3,280,911
HB 1400 - Education programs	2,800,000
SB 2201 - Property tax credit for disabled veterans	2,700,000
SB 2332 - North Dakota Health Information Technology Steering Committee	2,250,000
SB 2225 - Child care provider grants	1,750,000
SB 2020 - Agricultural research and extension services	1,540,000
HB 1540 - Reimbursement of economic assistance programs in Indian counties	1,215,650
HB 1043 - Dementia care services program	1,200,000
SB 2333 - Local public health unit immunizations	1,200,000
Major decreases	
SB 2012 - Department of Transportation	(115,400,000)
SB 2003 - North Dakota University System	(42,045,804)
HB 1012 - Department of Human Services	(33,104,539)
SB 2015 - Department of Corrections and Rehabilitation	(30,584,934)
HB 1013 - Department of Public Instruction	(8,501,138)
HB 1015 - Office of Management and Budget	(8,545,191)
SB 2009 - State Fair	(8,000,000)
SB 2014 - Industrial Commission	(6,041,542)
SB 2021 - Information Technology Department	(5,234,666)
Other increases (decreases) net	1,808,705
Total legislative changes affecting appropriations	<u>\$132,282,157</u>
Total 2009-11 general fund appropriations	<u>\$3,243,203,822</u>
Estimated Ending Balance	
Estimated budget status general fund balance - June 30, 2011	<u>(\$115,856,704)</u>

Comparison of 2009-11 General Fund Appropriations to 2007-09 Appropriations

Current status of 2009-11 general fund appropriations	\$3,243,203,822
2007-09 legislative general fund appropriations	<u>2,461,973,956</u> ²
Increase (decrease)	<u>\$781,229,866</u>
Percentage increase (decrease)	31.73%

Footnotes

¹ Beginning balance - Executive budget unobligated general fund cash balance - July 1, 2009	\$502,933,109 ^a
Legislative action affecting the July 1, 2009, balance	
February 2009 revenue forecast revision	18,920,389
SB 2012 - Provides cost-sharing funds for weather-related costs	(71,500,000)
SB 2012 - Provides a transfer to the disaster relief fund	(43,000,000)
SB 2025 - Supplemental funding for Veterans' Home reflected as 2009-11 appropriation	12,036,404
SB 2090 - Provides tax exemption for Montana residents	(46,000)
SB 2393 - Provides for emergency snow removal grants	(1,000,000)
HB 1023 - Decreases general fund deficiency appropriations	2,057,184
HB 1083 - Changes filing date for monthly sales tax filers for May in odd-numbered years	(15,560,000)
HB 1012 - Provides additional general fund turnback and carryover authority	<u>30,030,000</u>
Total legislative changes affecting the beginning balance	<u>(\$68,062,023)</u>
Estimated general fund cash balance prior to budget stabilization fund transfer	\$434,871,086
Less transfer to budget stabilization fund	<u>(124,320,382)</u> ^b
Estimated unobligated general fund cash balance - July 1, 2009	<u>\$310,550,704</u>

^a The beginning balance is based on the 2007-09 general fund beginning balance of \$295,541,176, the 2007-09 revised general fund revenue forecast of \$2,681,898,795 and appropriation authority of \$2,474,506,863 (general fund appropriations of \$2,461,973,956 plus proposed deficiency appropriations of \$10,496,503 and less estimated general fund turnback of \$10 million).

^b North Dakota Century Code Chapter 54-27.2 provides that 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, beginning July 1, 2009, the balance in the budget stabilization fund may not exceed 10 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The amount shown reflects the current estimated 2009-11 biennium general fund appropriations of \$3,243,203,822; therefore, the maximum balance in the fund is limited to \$324,320,382.

² Includes a \$5 million contingent general fund appropriation for school district deferred maintenance and physical plant improvement grants, which became effective in February 2008.

Permanent Oil Tax Trust Fund - 2009-11 Biennium

Beginning balance	\$480,386,579 ¹
Estimated revenues	
Oil and gas production tax and oil extraction tax collections - Legislative forecast	\$291,392,000
Adjustments	
Changes allocation to oil and gas research fund (SB 2051)	1,000,000
Changes allocation to oil and gas impact grant fund (HB 1225)	12,000,000
Changes allocations to counties (HB 1304)	(20,300,000)
Changes general fund share of oil tax revenues (HB 1485) (Defeated)	<u>39,000,000</u>
Total estimated revenues	<u>323,092,000</u>
Total available	\$803,478,579
Less estimated expenditures	
Transfer to general fund (SB 2199)	295,000,000
Transfer to property tax relief sustainability fund (SB 2199)	295,000,000
Revenue replacement grants (SB 2199)	1,720,000
Tribal college assistance grants (HB 1394)	700,000
2007-09 centers of excellence projects (HB 1015)	4,745,432
Oil and gas impact grants (HB 1225)	8,000,000
Funding for operations of Dickinson State University (SB 2003)	350,000
Funding for operations of Dickinson Research Center (SB 2020)	925,000
Heritage Center addition (HB 1481)	<u>7,000,000</u>
Total estimated expenditures	<u>613,440,432</u>
Ending balance	\$190,038,147

¹ Reflects 2007-09 turnback of \$5,295,432 for centers of excellence.

Budget Stabilization Fund - 2009-11 Biennium

Beginning balance	\$324,320,382
Estimated revenues	
None	<u>\$0</u>
Total estimated revenues	<u>324,320,382</u>
Less estimated expenditures	
None	<u>\$0</u>
Total estimated expenditures	<u>0</u>
Ending balance	\$324,320,382

Estimated June 30, 2011, Fund Balance Summary

	Executive Recommendation	Current Budget Status	Increase (Decrease)
General fund	\$64,792,277	(\$115,856,704)	(\$180,648,981)
Permanent oil tax trust fund	829,047,147	190,038,147	(639,009,000)
Budget stabilization fund	311,092,167	324,320,382	13,228,215
Total	<u>\$1,204,931,591</u>	<u>\$398,501,825</u>	<u>(\$806,429,766)</u>

This summary and additional detail are available online at www.state.nd.us/r/fiscal/biennium-reports/61-2009/budget-status/.

% of Revenue	% Spendable per biennium	% Vote to Appropriate Principal	Lockbox date
25	10	51	2016
30	15	66 (2/3)	To infinity & beyond
33	20	70	
35	25	75	
		100	

OIL TAX COLLECTIONS - SENATE CONCURRENT RESOLUTION NO. 4030

The schedule below presents information on oil tax revenue deposited in the general fund and permanent oil tax trust fund since 1981, the total revenue that would have been available for transfer to a special fund pursuant to Senate Concurrent Resolution No. 4030, investment returns, and the investment earnings for the 1981-83 through 2007-09 bienniums.

Senate Concurrent Resolution No. 4030 provides a constitutional amendment that if approved would transfer the first 25 percent of all oil and gas tax revenue to a legacy fund.

Biennium	State Oil and Gas Tax Revenue	Amount Available for Transfer ¹	Accumulated Balance	Average Annual Investment Returns ²	Investment Earnings ³
1981-83	\$144,212,200	\$36,053,050	\$36,053,050	5.87%	\$4,232,628
1983-85	\$272,086,000	\$68,021,500	\$104,074,550	5.87%	\$12,218,352
1985-87	\$141,612,675	\$35,403,169	\$139,477,719	5.87%	\$16,374,684
1987-89	\$98,622,552	\$24,655,638	\$164,133,357	5.87%	\$19,269,256
1989-91	\$114,005,856	\$28,501,464	\$192,634,821	9.57%	\$36,870,305
1991-93	\$82,222,377	\$20,555,594	\$213,190,415	9.48%	\$40,420,903
1993-95	\$52,888,685	\$13,222,171	\$226,412,586	5.33%	\$24,135,582
1995-97	\$55,029,975	\$13,757,494	\$240,170,080	7.81%	\$37,514,566
1997-99	\$43,676,727	\$10,919,182	\$251,089,262	11.39%	\$57,198,134
1999-2001	\$75,200,000	\$18,800,000	\$269,889,262	5.87%	\$31,684,999
2001-03	\$69,600,000	\$17,400,000	\$287,289,262	2.32%	\$13,330,222
2003-05	\$120,500,000	\$30,125,000	\$317,414,262	8.14%	\$51,675,042
2005-07	\$240,800,000	\$60,200,000	\$377,614,262	8.80%	\$66,460,110
2007-09 ⁴	\$548,537,026	\$137,134,257	\$514,748,518	(14.11%)	(\$145,262,032)

¹Senate Concurrent Resolution No. 4030 provides a constitutional amendment that if approved would transfer the first 25 percent of all oil and gas tax revenue to a legacy fund.

²The average annual investment return reflects the average State Investment Board rate of return on investments of the fire and tornado fund. Investment rate information is not available for the 1981-83 through 1987-89 bienniums; the percentages shown for these bienniums reflect an average rate of return for the 20-year period ended February 28, 2009.

Senate Concurrent Resolution No. 4030 also provides that interest income is available for appropriation by the Legislative Assembly for support of elementary, secondary, and higher education. The investment earnings are not included in the accumulated balance. Investment earnings were calculated based on the assumption that oil and gas tax revenues would be transferred to the legacy fund toward the beginning of each biennium.

⁴The amounts shown for the 2007-09 biennium reflect revenue estimates based on the February 2009 legislative revenue forecast and an estimated rate of return based on actual rates through February 2009.

OIL TAX COLLECTIONS - HOUSE CONCURRENT RESOLUTION NO. 3054 WITH PROPOSED AMENDMENTS

The schedule below presents information on state oil tax revenue since 1981, the total revenue that would have been available for transfer to a special fund pursuant to House Concurrent Resolution No. 3054 with proposed amendments (attached), investment returns, and the investment earnings for the 1981-83 through 2013-15 bienniums.

House Concurrent Resolution No. 3054 with proposed amendments provides a constitutional amendment that if approved would transfer 25 percent of all oil and gas tax revenue to the North Dakota legacy fund.

Biennium	State Oil and Gas Tax Revenue	Amount Available for Transfer ¹	Accumulated Balance	Average Annual Investment Returns ²	Investment Earnings ³
1981-83	\$335,603,323	\$83,900,831	\$83,900,831	5.87%	\$4,924,979
1983-85	\$327,408,227	\$81,852,057	\$170,677,866	5.87%	\$15,232,866
1985-87	\$189,120,054	\$47,280,014	\$233,190,746	5.87%	\$24,601,257
1987-89	\$128,997,712	\$32,249,428	\$290,041,430	5.87%	\$32,157,822
1989-91	\$150,341,626	\$37,585,407	\$359,784,659	9.57%	\$65,265,860
1991-93	\$115,593,085	\$28,898,271	\$453,948,791	9.48%	\$83,329,135
1993-95	\$78,478,929	\$19,619,732	\$556,897,658	5.33%	\$58,319,559
1995-97	\$97,225,533	\$24,306,383	\$639,523,600	7.81%	\$97,995,258
1997-99	\$79,630,104	\$19,907,526	\$757,426,383	11.39%	\$170,274,263
1999-2001	\$129,888,009	\$32,472,002	\$960,172,649	5.87%	\$110,818,162
2001-03	\$119,679,520	\$29,919,880	\$1,100,910,691	2.32%	\$50,388,115
2003-05	\$192,770,836	\$48,192,709	\$1,199,491,515	8.14%	\$191,354,332
2005-07	\$357,693,267	\$89,423,317	\$1,480,269,164	8.80%	\$252,658,121
2007-09 ⁴	\$800,801,635	\$200,200,409	\$1,933,127,693	(14.11%)	(\$517,280,357)
2009-11 ⁵	\$581,520,571	\$145,380,143	\$1,561,227,479	5.87%	\$174,754,292
2011-13 ⁶	\$933,969,000	\$233,492,250	\$1,969,474,020	5.87%	\$217,510,255
2013-15 ⁶	\$933,969,000	\$233,492,250	\$2,420,476,525	5.87%	\$270,457,949

¹House Concurrent Resolution No. 3054 with proposed amendments provides a constitutional amendment that if approved would transfer 25 percent of all oil and gas tax revenue to the North Dakota legacy fund.

²The average annual investment returns reflect the average State Investment Board rate of return on investments of the fire and tornado fund. Investment rate information is not available for the 1981-83 through 1987-89 bienniums and the 2009-11 through 2013-15 bienniums; the percentages shown for these bienniums reflect an average rate of return for the 20-year period ended February 28, 2009.

³House Concurrent Resolution No. 3054 with proposed amendments also provides that interest income is accrued and becomes part of the principal balance of the fund through June 30, 2025. Investment earnings were calculated based on the assumption that oil and gas tax revenue would be transferred to the legacy fund near the middle of each biennium.

⁴The amounts shown for the 2007-09 biennium reflect actual revenues through June 30, 2008, revenue estimates based on the February 2009 legislative revenue forecast for fiscal year 2009, and an estimated rate of return based on actual rates through February 2009.

⁵The amounts shown for the 2009-11 biennium reflect revenue estimates based on the February 2009 legislative revenue forecast.

⁶The oil and gas tax revenue amounts shown for the 2011-13 biennium were provided by the Tax Department and are based on an average price of \$62.50 per barrel and average production of 225,000 barrels per day. The same amounts and assumptions are shown for the 2013-15 biennium.

ATTACH:1

April 2009

OIL TAX COLLECTIONS - HOUSE CONCURRENT RESOLUTION NO. 3054

The schedule below presents information on oil tax revenue deposited in the general fund and permanent oil tax trust fund since 1981, the total revenue that would have been available for transfer to a special fund pursuant to House Concurrent Resolution No. 3054, investment returns, and the investment earnings for the 1981-83 through 2007-09 bienniums.

House Concurrent Resolution No. 3054 provides a constitutional amendment that if approved would transfer 20 percent of the first \$100 million, 30 percent of the second \$100 million, 40 percent of the third \$100 million, 50 percent of the fourth \$100 million, and 60 percent of revenue exceeding \$400 million of the state's share of oil and gas tax revenue to the North Dakota legacy fund.

Biennium	State Oil and Gas Tax Revenue	Amount Available for Transfer ¹	Accumulated Balance	Average Annual Investment Returns ²	Investment Earnings ³
1981-83	\$144,212,200	\$33,263,660	\$33,263,660	5.87%	\$1,952,577
1983-85	\$272,086,000	\$78,834,400	\$112,098,060	5.87%	\$8,532,733
1985-87	\$141,612,675	\$32,483,803	\$144,581,863	5.87%	\$15,067,111
1987-89	\$98,622,552	\$19,724,510	\$164,306,373	5.87%	\$18,131,739
1989-91	\$114,005,856	\$24,201,757	\$188,508,130	9.57%	\$33,764,348
1991-93	\$82,222,377	\$16,444,475	\$204,952,605	9.48%	\$37,300,078
1993-95	\$52,888,685	\$10,577,737	\$215,530,342	5.33%	\$22,411,741
1995-97	\$55,029,975	\$11,005,995	\$226,536,337	7.81%	\$34,525,408
1997-99	\$43,676,727	\$8,735,345	\$235,271,683	11.39%	\$52,599,933
1999-2001	\$75,200,000	\$15,040,000	\$250,311,683	5.87%	\$28,503,744
2001-03	\$69,600,000	\$13,920,000	\$264,231,683	2.32%	\$11,937,406
2003-05	\$120,500,000	\$26,150,000	\$290,381,683	8.14%	\$45,145,528
2005-07	\$240,800,000	\$66,320,000	\$356,701,683	8.80%	\$56,943,336
2007-09 ⁴	\$548,537,026	\$229,122,216	\$585,823,898	(14.11%)	(\$132,990,359)

¹House Concurrent Resolution No. 3054 provides a constitutional amendment that if approved would transfer 20 percent of the first \$100 million, 30 percent of the second \$100 million, 40 percent of the third \$100 million, 50 percent of the fourth \$100 million, and 60 percent of revenue exceeding \$400 million of the state's share of oil and gas tax revenue to the North Dakota legacy fund.

²The average annual investment returns reflect the average State Investment Board rate of return on investments of the fire and tornado fund. Investment rate information is not available for the 1981-83 through 1987-89 bienniums; the percentages shown for these bienniums reflect an average rate of return for the 20-year period ended February 28, 2009.

³House Concurrent Resolution No. 3054 also provides that interest income is transferred to the general fund at the end of each fiscal year. Investment earnings were calculated based on the assumption that oil and gas tax revenue would be transferred to the legacy fund near the middle of each biennium.

⁴The amounts shown for the 2007-09 biennium reflect revenue estimates based on the February 2009 legislative revenue forecast and an estimated rate of return based on actual rates through February 2009.

Attachment #3

Biennium	Total State Share	45% to Gen. Fund
97-99	43.6M	19.6M
99-2001	75.2M	33.8M
2001-2003	69.6M	31.32M
2003-2005	120.5M	54.2M
2005-2007	240.8M	108.3M
2007-2009	548.5m	246.8M
2009-2011	394.1M	177.3M
2011-2013	631.9M	284.4M
2013-2015	120M	54M

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
\$100 million	4%	104.00	208.16	216.49	325.15	338.15	451.68	469.74	588.53	612.08	736.56	766.02	896.66	932.53	1,069.83
	5%	105.00	210.25	220.76	331.80	348.39	465.81	489.10	613.56	644.23	776.45	815.27	956.03	1,003.83	1,154.02
	6%	106.00	212.36	225.10	338.61	358.92	480.46	509.29	639.84	678.24	818.93	868.06	1,020.15	1,081.36	1,246.24
\$150 million	4%	156.00	312.24	324.73	487.72	507.23	677.52	704.62	882.80	918.11	1,104.84	1,149.03	1,344.99	1,398.79	1,604.74
	5%	157.50	315.38	331.14	497.70	522.59	698.72	733.65	920.33	966.35	1,164.67	1,222.90	1,434.05	1,505.75	1,731.04
	6%	159.00	318.54	337.65	507.91	538.39	720.69	763.93	959.77	1,017.35	1,228.39	1,302.10	1,530.22	1,622.04	1,869.36

interest
to general
fund → $\frac{700 \text{ million}}{1.65 \text{ billion}}$