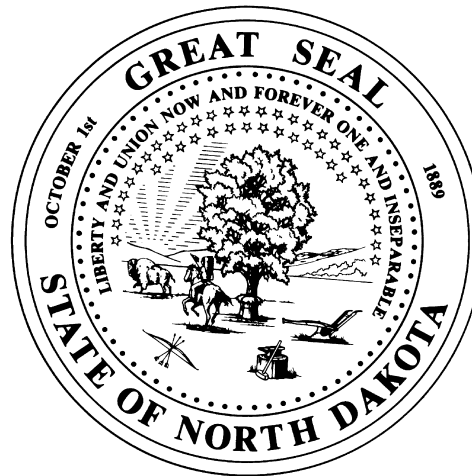


**ANALYSIS OF MAJOR SPECIAL FUNDS
FOR THE 2021-23 AND 2023-25 BIENNIUMS
REFLECTING LEGISLATIVE ACTION
THROUGH CROSSOVER**



**Prepared by the
North Dakota Legislative Council Staff
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**ANALYSIS OF THE ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$13,850,616		\$40,343,445
Add estimated revenues ¹				
Fees, forfeitures, transfers, and recoveries penalties	\$3,390,000		\$2,500,000	
Oil and gas tax collections (2019 HB 1014) ^{2,3}	15,640,000		14,820,000	
Federal funds ⁴	22,500,000		34,792,000	
Total estimated revenues		41,530,000		52,112,000
Total estimated available		\$55,380,616		\$92,455,445
Less estimated expenditures and transfers				
Reclamation of well sites placed into service after July 31, 1983 (2019 SB 2123) ⁵	\$9,000,000		\$1,000,000	
Reclamation of well sites placed into service on or before July 31, 1983 (2017 HB 1347)	0		1,000,000	
Orphaned well plugging and reclamation costs ⁶	5,350,000		31,468,000	
Brine pond and soil remediation studies (2017 HB 1347)	0		0	
Transfer to the environmental quality restoration fund ⁷	400,000		400,000	
Pipeline restoration and reclamation oversight program and postproduction royalty oversight program - Agriculture Commissioner (2021 HB 1009; 2023 SB 2009) ⁸	200,000		700,000	
Oil database information technology project (2019 HB 1014)	74,171		0	
Miscellaneous ⁹	13,000		14,350	
Total estimated expenditures and transfers		15,037,171		34,582,350
Estimated ending balance		<u>\$40,343,445</u>		<u>\$57,873,095</u>

¹Revenues to the fund include:

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

²House Bill No. 1014 (2019) decreased the allocation limit related to the fund balance by \$50 million, from \$100 million to \$50 million. Senate Bill No. 2059 (2023) increases the allocation related to the fund balance by \$50 million, from \$50 million to \$100 million.

³Estimated revenues - The estimated allocations for the 2021-23 biennium are based on actual oil and gas tax revenue allocations through December 2022 and the January 2023 legislative revenue forecast for the remainder of the 2021-23 biennium and for the entire 2023-25 biennium.

⁴The amount shown for the 2021-23 biennium reflects funding to be received by the Industrial Commission from the federal Infrastructure Investment and Jobs Act for initial grants. The amount shown for the 2023-25 biennium reflects funding anticipated to be received by the Industrial Commission from the federal Infrastructure Investment and Jobs Act for formula grants.

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

⁶The amount shown for the 2021-23 and 2023-25 bienniums reflect the estimated costs for plugging and reclaiming orphaned oil wells pursuant to the requirements under the federal Infrastructure Investment and Jobs Act.

⁷For the 2021-23 biennium to date through February 2023, the Department of Environmental Quality has not requested any transfers. As amended by Senate Bill No. 2190 (2015), North Dakota Century Code Section 38-08-04.5 allows for transfers from the abandoned oil and gas well plugging and site reclamation fund with the requirement that any transfers into the environmental quality restoration fund will be returned by the State Department of Health to the abandoned oil and gas well plugging and site reclamation fund.

⁸House Bill No. 1009 (2021) includes an appropriation of \$200,000 from the fund for the pipeline restoration and reclamation oversight program. As of January 31, 2023, the Department of Agriculture requested and received \$17,921. Senate Bill No. 2009 (2023) includes \$700,000 for the pipeline restoration and reclamation oversight program and postproduction royalty oversight program.

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

FUND HISTORY

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

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

**ANALYSIS OF THE ATTORNEY GENERAL REFUND FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance ^{1,2,3}		\$13,196,439		\$9,014,962
Add estimated revenues				
Refunds of consumer protection and antitrust expenditures, attorney's fees, and civil penalties ⁴	\$5,500,000		\$3,000,000	
Cash deposit bonds	10,000		5,000	
Tribal gaming, licensing, and investigation fees ⁵	0		0	
Background checks	31,600		30,000	
Interest on investments ^{1,2,6}	(151,630)		0	
Lawsuit proceeds - Opioid addiction prevention and treatment program ³	8,328,148		0	
Lawsuit proceeds - JUUL Labs, Inc. settlement ⁷	577,267		232,114	
Total estimated revenues		14,295,385		3,267,114
Total available		\$27,491,824		\$12,282,076
Less estimated expenditures and transfers authorized in North Dakota Century Code Section 54-12-18				
Refunds to specifically named consumers (Section 54-12-18(1)) ⁸	\$12,033		\$0	
Claims against cash deposit bonds (Section 54-12-18(2))	0		0	
Refund of cash deposit bond balance (Section 54-12-18(3))	0		0	
Consumer Protection and Antitrust Division expenditures (Section 54-12-18(4))	2,342,692		2,619,722	
Tribal gaming background investigations (Section 54-12-18(5)) ⁵	0		0	
Tribal gaming licensing expenditures (Section 54-12-18(5)) ⁵	0		0	
Tribal gaming enforcement expenditures (Section 54-12-18(5)) ⁵	0		0	
Less other estimated expenditures and transfers ⁹				
Bureau of Criminal Investigation (BCI) salaries and operating expenses ¹⁰	1,045,793		630,278	
State Crime Laboratory operating expenditures ¹⁰	897,891		392,757	
Information technology contractual program maintenance	1,071,984		1,033,393	
Information technology operating expenditures	684,873		100,500	
Criminal justice information sharing system improvements (2021 HB 1003; 2023 SB 2003) ^{10,11}	72,183		200,294	
Operating expenses of the Attorney General's office ¹⁰	360,917		430,000	
Automated fingerprint identification system replacement project (2019 SB 2003) ¹²	108,128			
Attorney salary equity increases (2019 SB 2003; 2023 SB 2003) ¹	370,682		0	
Medicaid Fraud Control Unit (MFCU) and BCI salary equity increases (2021 HB 1003; 2023 SB 2003) ²	1,240,027		0	
State Crime Laboratory salary equity increases (2021 HB 1506; 2023 SB 2003) ⁶	537,297		0	
Criminal history improvement system (2021 HB 1003; 2023 SB 2003) ¹³	50,000		350,000	
Opioid addiction prevention and treatment program - Transfer to the opioid settlement fund (2021 HB 1003; 2023 HB 1447) ³	9,220,548		0	
JUUL Labs, Inc. settlement - Transfer to the community health trust fund (2023 HB 1004) ⁶	461,814			
Total estimated expenditures and transfers		18,476,862		5,756,944
Estimated ending balance ¹⁴		\$9,014,962		\$6,525,132

Restricted fund income		
Reserve relating to attorney salary increases (2019 SB 2003; 2023 SB 2003) ¹	0	0
Reserve relating to MFCU and BCI salary equity increases (2021 HB 1003; 2023 SB 2003) ²	0	0
Reserve relating to State Crime Laboratory salary equity increases (2021 HB 1506; 2023 SB 2003) ⁷	0	0
Interest on investments ^{1,2,7}	0	0
Estimated balance - Unobligated	\$9,014,962	\$6,525,132

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

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

Revenue available for attorney salary equity increases during the 2019-21 biennium totaled \$1,263,086, of which \$1,215,561 was from lawsuit settlement proceeds and \$11,063 was from interest earned on lawsuit proceed investments. Investment returns for the 2021-23 biennium for all funds invested for Attorney General staff salary equity increases are estimated to total a \$151,630 investment loss.

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

In Senate Bill No. 2003 (2023), as approved by the Senate, funding of \$2,404,289 is adjusted for prior biennium salary equity increases, of which \$490,687 is for attorney positions, by reducing funding from the Attorney General refund fund and increasing funding from the general fund.

²In January 2021, the Consumer Protection Division of the Attorney General's office received a \$1,160,896 lawsuit settlement from Apple, Inc., related to Apple's 2016 decision to adjust the speed of consumer iPhones to address unexpected shutdowns in some devices and Apple's concealment of the issue, which led to a software update in December 2016 that reduced iPhone performance. The funding was deposited in the Attorney General refund fund.

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

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

In August 2021, the Attorney General invested \$2,185,895 with the State Investment Board. The Attorney General anticipates spending \$1,240,027 of the \$1,249,083 appropriation during the 2021-23 biennium resulting in \$1,337,597, excluding interest earned on investments, of the total \$2,577,624 of lawsuit proceeds remaining in the Attorney General refund fund available for the cost to continue salary equity increases during the 2023-25 biennium.

In Senate Bill No. 2003 (2023), as approved by the Senate, funding of \$2,404,289 is adjusted for prior biennium salary equity increases, of which \$1,337,597 is for BCI and MFCU positions, by reducing funding from the Attorney General refund fund and increasing funding from the general fund.

³In March 2021, the Consumer Protection Division of the Attorney General's office received a \$892,400 lawsuit settlement from McKinsey and Company for an opioid-related lawsuit. Section 5 of House Bill No. 1003 (2021) provided for a transfer of up to \$2,000,000 from opioid-related lawsuit settlement proceeds deposited in the Attorney General refund fund to the Department of Health and Human Services (DHHS) and appropriates the funding to DHHS for an opioid addiction prevention and treatment program during the 2021-23 biennium. The department is required to consult with the Attorney General on the use of funding for the program. The Attorney General is required to notify the Legislative Council and Office of Management and Budget of any lawsuit settlement proceeds that become available for transfer to DHHS for this program.

Through February 2023, the Attorney General has received an additional \$8,328,148 from various opioid-related lawsuits during the 2021-23 biennium, resulting in a total of \$9,220,548 of opioid-related lawsuit settlement proceeds received.

House Bill No. 1447 (2023), as approved by the House, requires the Office of Management and Budget to transfer all opioid-related lawsuit settlement proceeds deposited in the Attorney General refund fund since March 1, 2021, to the newly created opioid settlement fund during the 2021-23 biennium. The bill includes a \$8,000,000 appropriation from the opioid settlement fund to DHHS for opioid remediation and abatement efforts during the 2023-25 biennium.

⁴The Attorney General has indicated that it is not possible to separately identify refunds, attorney's fees, and civil penalties received, as a court judgement often includes a lump sum amount awarded for the payment of attorney's fees, investigation costs, or payment in lieu of civil penalties.

⁵House Bill No. 1212 (2021) created Section 53-06.1-11.2 and provides all gaming taxes, monetary fines, and interest and penalties are to be deposited in the newly created charitable gaming operating fund and provides the administrative and operating costs of charitable gaming be paid from the fund. Section 13 of House Bill No. 1003 (2021) further amended this section regarding allocations of gaming tax revenues. Adjustments were made to the Attorney General's budget to remove funding for gaming-related expenditures from the Attorney General refund fund beginning in the 2021-23 biennium.

⁶During the November 2021 special legislative session, in House Bill No. 1506, the Legislative Assembly appropriated \$537,297 to the Attorney General from the Attorney General refund fund for salary equity increases for 25 FTE State Crime Laboratory positions. In December 2021, the Attorney General invested \$508,578 from the Attorney General refund fund with the State Investment Board. The Attorney General anticipates spending the entire \$537,297 during the 2021-23 biennium.

In Senate Bill No. 2003, as approved by the Senate, funding of \$2,404,289 is adjusted for prior biennium salary equity increases, of which \$537,927 is for State Crime Laboratory positions, by reducing funding from the Attorney General refund fund and increasing funding from the general fund.

⁷In September 2022, the Attorney General's office announced an agreement had been reached between JUUL Labs, Inc. and 34 states and territories regarding JUUL Labs e-cigarette marketing and sales practices. Of the \$438.5 million total settlement, North Dakota was awarded \$6,028,211, which will be paid in installments for a period of 6 to 10 years. **House Bill No. 1004 (2023), as approved by the House, requires 80 percent of funding deposited in the Attorney General refund fund from the JUUL Labs, Inc. settlement during the 2021-23 biennium be transferred to the community health trust fund and requires 80 percent of additional funding received from the settlement be deposited directly in the community health trust fund beginning in the 2023-25 biennium.** The Attorney General anticipates a total of \$577,267 will be received during the 2021-23 biennium, of which \$461,814 would be transferred from the Attorney General refund fund to the community health trust fund. Estimated settlement funds for the 2023-25 biennium totals \$1,160,751, of which \$928,457 would be deposited in the community health trust fund and \$232,114 would be deposited in the Attorney General refund fund.

⁸The Attorney General has indicated that a court rarely awards refunds to specific consumers, instead awarding refunds to organizations such as the Housing Finance Agency.

⁹The other expenditures are not specifically authorized in Section 54-12-18 but are included as part of the Attorney General's biennial appropriation.

¹⁰In House Bill No. 1003 (2021), the Legislative Assembly removed \$2.12 million from the general fund in the Attorney General's budget for salaries and operating expenses in various line items. The bill restored \$1.2 million of these items from the Attorney General refund fund, of which \$283,227 is for salaries and wages of a BCI agent and a BCI administrative assistant, \$34,377 is for operating expenses of the State Crime Laboratory, \$271,889 is for operating expenses of the criminal justice information sharing system, and \$610,507 is for other operating expenses of the Attorney General's office, primarily related to information technology-related expenses. See footnote 11 below for additional information.

¹¹In Senate Bill No. 2003 (2019), the Legislative Assembly appropriated ongoing funding of \$140,000 from the Attorney General refund fund to the Attorney General for criminal justice information sharing improvements during the 2019-21 biennium. The Attorney General spent \$108,412 during the 2019-21 biennium. In House Bill No. 1003 (2021) \$271,889 was authorized for ongoing operating expenses of the criminal justice information sharing system, resulting in a total of \$411,889 authorized for the system each biennium beginning during the 2021-23 biennium.

¹²In Senate Bill No. 2003 (2019), the Legislative Assembly appropriated \$316,000, of which \$158,000 was from federal funds and \$158,000 was from the Attorney General refund fund, for the automated finger identification system replacement project, also known as the automated biometric identification system replacement project. The Attorney General spent \$47,872 from the Attorney General refund fund on the project during the 2019-21 biennium, resulting in \$108,128 remaining. The Attorney General received authority from the Capital Construction Carryover Committee, pursuant to Section 54-44.1-11, to continue this funding into the 2021-23 biennium. The Attorney General anticipates spending the remaining \$108,128 during the 2021-23 biennium.

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

Of the \$4,120,000 approved for the project since the 2011-13 biennium, actual expenditures through the 2019-21 biennium totaled \$3,800,595. The project has been substantially completed, although upgrades to the criminal history improvement system are periodically requested. The Attorney General anticipates spending \$50,000 of the \$400,000 appropriated for the 2021-23 biennium. **Section 17 of Senate Bill No. 2003 (2023), as approved by the Senate, provides the Attorney General an exemption to continue any unspent funding for the project into the 2023-25 biennium.** The Attorney General anticipates spending the remaining \$350,000 during the 2023-25 biennium.

¹⁴Section 54-12-18 provides at the end of each biennium, any balance in the Attorney General refund fund in excess of the amount necessary to fulfill the requirements of the fund must be deposited in the general fund. Section 18 of House Bill No. 1003 (2021) and **Section 15 of Senate Bill No. 2003 (2023), as approved by the Senate**, authorizes the Attorney General to retain the June 30, 2021, and June 30, 2023, balance in the Attorney General refund fund rather than transferring the balance to the general fund. As a result, no funding from the Attorney General refund fund was transferred to the general fund at the end of the 2019-21 biennium, allowing the Attorney General to use the remaining balance in the Attorney General refund fund during the 2021-23 biennium. No funding is anticipated to be transferred to the general fund at the end of the 2021-23 biennium, allowing the Attorney General to use the remaining balance in the Attorney General refund fund during the 2023-25 biennium. See the **FUND HISTORY** section for additional information on exemptions granted to the Attorney General.

FUND HISTORY

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

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

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

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

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

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

Biennium	Bill No.	Section	Exemption Limitation ¹
2001-03	1003	8	\$100,000
2003-05	2003	4	No limitation specified
2005-07	1003	11	No limitation specified
2007-09	2003	15	No limitation specified
2009-11	1003	13	No limitation specified
2011-13	2003	9	No limitation specified
2013-15	1003	3	No limitation specified
2015-17	2003	4	No limitation specified
2017-19	1003	16	No limitation specified
2019-21	2003	3	No limitation specified
2021-23	1003	18	No limitation specified
2023-25	2003	15	No limitation specified

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

ANALYSIS OF THE BUDGET STABILIZATION FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$748,943,600		\$974,342,517
Add estimated revenues				
Investment income (loss)	(\$38,589,849) ¹		\$28,360,128 ¹	
Oil and gas tax collections	9,646,249 ²		0 ²	
Transfer from general fund	254,342,517 ³		0	
Total estimated revenues		225,398,917		28,360,128
Total available		\$974,342,517		\$1,002,702,645
Less estimated expenditures and transfers				
Transfer to general fund	\$0		\$28,360,128 ¹	
Total estimated expenditures and transfers		0		28,360,128
Estimated ending balance		<u>\$974,342,517</u>		<u>\$974,342,517</u>

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

²Section 57-51.1-07.5 provides for the deposit of up to \$75 million of the state share of oil and gas tax collections into the budget stabilization fund each biennium. The entire \$75 million is not estimated to be deposited in the fund during either the 2021-23 or 2023-25 biennium due to the fund being at its maximum balance.

³Chapter 54-27.2 provides any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund, except that the balance in the budget stabilization fund may not exceed 15 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. The amount shown is based on a general fund appropriation amount of \$6,495,616,781 which reflects legislative action through crossover.

FUND HISTORY

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

- Section 54-27.2-01 establishes the budget stabilization fund and provides any interest earned on the balance of the budget stabilization fund must be retained in the fund. The section originally provided any money in the fund in excess of 10 percent of the general fund budget, as approved by the most recently adjourned Legislative Assembly, must be deposited in the general fund. House Bill No. 1451 (2011) decreased the maximum balance allowed in the fund from 10 to 9.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. House Bill No. 1155 (2017) increased the maximum balance allowed in the fund from 9.5 to 15 percent of the general fund budget, as approved by the most recently adjourned Legislative Assembly.
- Section 54-27.2-02 provides any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund.
- Section 54-27.2-03 provides the Governor may order a transfer from the budget stabilization fund to the general fund if the Director of the Office of Management and Budget projects a general fund revenue shortfall. The section originally limited the transfer to the difference between an amount 2.5 percent less than the original legislative general fund revenue forecast and the revised forecast prepared by the Office of Management and Budget. House Bill No. 1155 (2017) revised the section to allow for transfers from the budget stabilization fund to the general fund as follows:

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

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

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

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

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

ANALYSIS OF THE CAPITOL BUILDING FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS¹ (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$3,462,486		\$5,724,041
Add revenues				
Investment income	(\$3,257)		\$254,057	
Rentals, royalties, and bonuses	5,399,155		3,400,000	
Total revenues		5,395,898		3,654,057
Total available		\$8,858,384		\$9,378,098
Less expenditures and transfers				
Administrative expenses	\$95,080		\$115,000	
Income payments to counties ²	22,397		8,200	
Capitol Grounds Planning Commission continuing appropriation (North Dakota Century Code Section 48-10-02; 2023 SB 2015) ³	250,000		750,000	
Capitol Grounds Planning Commission operating expenses (2021 HB 1015; 2023 SB 2015)	25,000		25,000	
Facility Management projects (2021 HB 1015)	518,800			
Governor's residence exterior repairs and improvements (2023 SB 2015)			300,000	
Brynhild Haugland Room remodel (2023 SB 2015)			500,000	
Capitol window replacement (2023 SB 2015)			4,000,000	
Facility Management extraordinary repairs (2021 HB 1015)	500,000			
Facility consolidation study (2021 HB 1015; 2023 SB 2015)	250,000		100,000	
Special assessments (2021 HB 1015)	198,066			
Interior and exterior signs (2021 HB 1015)	500,000			
Accessibility improvements (2021 SB 2146)	750,000			
Accessibility compliance consultant (2021 HB 1012)	25,000			
Total expenditures and transfers		3,134,343		5,798,200
Ending balance		\$5,724,041		\$3,579,898

¹The analysis reflects the legislative appropriations for the 2021-23 and 2023-25 bienniums and does not include the land owned by the fund.

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

³Section 20 of Senate Bill No. 2015 (2019) amended Section 48-10-02 to increase a continuing appropriation to the Capitol Grounds Planning Commission from \$175,000 per biennium to \$250,000 per biennium of income and interest of the Capitol building fund. The amount that may be spent may not exceed 50 percent of the unencumbered balance of the fund on the 1st day of the biennium. Senate Bill No. 2015 (2023) increases the continuing appropriation from \$250,000 to \$750,000.

FUND HISTORY

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

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

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

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

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

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

**ANALYSIS OF THE COAL DEVELOPMENT TRUST FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium ¹		2023-25 Biennium ¹	
Beginning balance		\$124,463		\$448,464
Add estimated revenues				
Investment income ²	\$871,751		\$1,127,250	
School construction loan income ²	773,437		810,000	
Total estimated revenues		1,645,188		1,937,250
Total estimated available		\$1,769,651		\$2,385,714
Less estimated expenditures and transfers				
Investment expense	\$58,281		\$45,090	
Administrative expenses	5,392		6,000	
Transfer to the general fund ²	1,257,514		1,300,000	
Total estimated expenditures and transfers		1,321,187		1,351,090
Estimated ending balance		\$448,464		\$1,034,624

¹The beginning and ending balances do not include the value of permanent assets of the coal development trust fund, which must be maintained pursuant to North Dakota Century Code Section 57-62-02 and Section 21 of Article X of the Constitution of North Dakota. As of September 30, 2022, the total value of permanent fund assets was \$70.85 million, of which \$26.94 million was school construction loans receivable, \$8.80 million was coal impact loans receivable, and \$35.11 million was either cash or short-term investments.

Senate Bill No. 2014 (2017) reduces the allocation of coal severance tax allocations to the coal development trust fund from 30 to 15 percent and provides an allocation of 15 percent to the lignite research fund. The coal severance tax allocations become part of the fund assets which are not reflected in the amounts shown in the table. Senate Bill No. 2272 (2017) amends Section 15.1-36-02 to make available up to \$60 million from the fund for loans of up to \$2 million for unanticipated school construction projects or emergency repairs. House Bill No. 1185 (2023) allows schools with unanticipated construction inflation costs to access loans of up to \$5 million with an interest rate of 1.5 percent.

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

FUND HISTORY

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

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

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

ANALYSIS OF THE COMMON SCHOOLS TRUST FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

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

The following is a summary of actual and estimated assets, distributions, and investment returns for the common schools trust fund for the 1997-99 through 2023-25 bienniums:

Biennium	Fiscal Year	Beginning Assets (Excluding Land and Mineral Values)	Distributions	Total Average Investment Return (Interest Income and Capital Gains)
1997-99	1998	\$400,689,879	\$23,200,000	13.57%
	1999	\$444,823,559	\$23,200,000	7.50%
1999-2001	2000	\$467,059,293	\$23,775,000	11.05%
	2001	\$521,509,978	\$23,775,000	2.03%
2001-03	2002	\$533,360,593	\$28,896,500	(1.34%)
	2003	\$522,905,814	\$28,896,500	4.57%
2003-05	2004	\$547,047,877	\$30,000,000	12.60%
	2005	\$614,738,548	\$30,000,000	8.58%
2005-07	2006	\$686,273,875	\$31,100,000	7.51%
	2007	\$761,901,287	\$31,100,000	12.82%
2007-09	2008	\$887,092,909	\$33,400,000	(4.22%)
	2009	\$908,928,685	\$33,400,000	(13.75%)
2009-11	2010	\$846,314,086	\$38,589,000	14.48%
	2011	\$1,221,501,801	\$38,589,000	17.99%
2011-13	2012	\$1,622,412,984	\$46,257,000	2.42%
	2013	\$1,917,135,220	\$46,257,000	10.65%
2013-15	2014	\$2,417,363,782	\$65,163,000	13.85%
	2015	\$3,128,315,233	\$65,163,000	.50%
2015-17	2016	\$3,437,988,002	\$103,067,000	(0.63%)
	2017	\$3,512,355,582	\$103,067,000	9.50%
2017-19	2018	\$3,940,114,988	\$144,132,000	6.50%
	2019	\$4,318,989,728	\$144,132,000	3.87%
2019-21 ¹	2020	\$4,651,515,837	\$183,378,000	(1.87%)
	2021	\$4,628,066,674	\$183,378,000	21.67%
2021-23	2022	\$5,736,576,906	\$210,510,000	(4.99%)
	2023	\$5,655,342,224	\$210,510,000	²
2023-25	2024	²	\$249,930,000 ³	²
	2025	²	\$249,930,000 ³	²

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

biennium beginning July 1, 2019, and ending June 30, 2021. The State Treasurer transferred \$64,370,000 from the general fund to the common schools trust fund at the end of the 2019-21 biennium.

²Section 2 of Article IX of the Constitution of North Dakota was amended in November 2006 through voter approval of Measure No. 1 (House Concurrent Resolution No. 3037 (2005)). The measure changed the way distributions from the common schools trust fund and other permanent educational trust funds are determined. The amendment became effective July 1, 2009, and distributions are no longer based on interest and income earned by the fund. Distributions from the common schools trust fund are now based on a percentage of the 5-year average value of trust assets, excluding the value of lands and minerals. Therefore, the Board of University and School Lands does not project asset values, income, or investment return because it is no longer relevant to the calculation of distribution amounts. **The unaudited fund balance of the common schools trust fund was \$5,822,838,767 as of December 31, 2022.**

³The executive recommendation includes estimated distributions of \$501,832,000 from the common schools trust fund for state school aid. The Department of Trust Lands has indicated distributions from the common schools trust fund during the 2023-25 biennium will total \$499,860,000, or \$249,930,000 per year. The Senate version of Senate Bill No. 2013 (2023) provides \$499,860,000 from the common schools trust fund for state school aid.

MONEY DEPOSITED IN THE COMMON SCHOOLS TRUST FUND

Select Constitutional Provisions

Article IX, Section 1

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

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

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

Article IX, Section 5

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

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

Article X, Section 24

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

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

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

Select North Dakota Century Code Provisions

Sections 47-30.2-44

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

Section 54-27-25

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

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

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

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

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

DISTRIBUTIONS FROM THE COMMON SCHOOLS TRUST FUND Select Constitutional Provisions

Article IX, Section 1

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

Article IX, Section 2

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

- Biennial distributions from each educational trust fund must be 10 percent of the 5-year average value of the trust assets, excluding the value of lands and minerals. This section was amended in November 2006 through voter approval of Measure No. 1 (House Concurrent Resolution No. 3037 (2005)). The measure changed the way distributions from the common schools trust fund and other permanent educational trust funds are determined. Previously, distributions were based on the amount of interest and income earned by each trust during a fiscal year. The amendment became effective July 1, 2009, and distributions from the common schools trust fund for the 2009-11 biennium and all subsequent bienniums are based on the distribution formula.
- All fines for violation of state laws. (This money is not added to the trust fund, but is added to the distributions from the common schools trust fund and distributed to schools.)
- All other amounts provided by law.

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

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

Select North Dakota Century Code Provisions

Section 15-01-02

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

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

Section 47-30.2-46

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

INVESTMENT OF THE COMMON SCHOOLS TRUST FUND

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

**ANALYSIS OF THE COMMUNITY HEALTH TRUST FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$26,666,703		\$26,745,600
Add estimated revenues				
Transfers to date from the tobacco settlement trust fund	\$23,250,900 ¹		\$0	
Projected transfers from the tobacco settlement trust fund	21,000,000 ²		40,000,000 ²	
Transfers from the tobacco prevention and control trust fund (2021 SB 2004)	2,056,437 ²			
Refund of prior biennium expenditures from the fund	93,884			
Total estimated revenues		46,401,221 ²		40,000,000 ²
Total available		\$73,067,924		\$66,745,600
Less estimated expenditures and adjustments				
State Department of Health/Department of Health and Human Services - Public Health (2021 SB 2004; 2023 HB 1004)				
Tobacco prevention and control program grants to local public health units for tobacco prevention and control	\$6,250,000 ³		\$6,250,000 ³	
Tobacco prevention and control, including the Tobacco Quitline, cessation grants, other program grants, and operating expenses	5,043,000 ⁴		5,043,000 ⁴	
Tobacco cessation grants			500,000	
Youth vaping prevention grants			300,000	
Women's Way program	329,500		329,500	
Behavioral Risk Factor State Survey	200,000		200,000	
Dentists' loan repayment program	360,000 ⁵		360,000 ⁵	
Behavioral health loan repayment program	234,500 ⁶		234,500 ⁶	
Cancer programs	580,324 ⁷		580,324 ⁷	
Domestic violence offender treatment	300,000 ⁷		1,000,000 ⁷	
Local public health state aid	525,000 ⁷		3,275,000 ⁷	
Forensic examiner contract	1,000,000 ⁸		1,000,000 ⁸	
One-time funding for a statewide health strategies initiative	0 ⁸		0 ⁸	
One-time local public health pandemic response grants	0 ⁹		0 ⁹	
Domestic violence prevention			1,000,000 ¹⁰	
Department of Health and Human Services (2023 HB 1477) - Grants to rural emergency medical services and rural ambulance service districts			7,000,000	
Department of Human Services/Department of Health and Human Services - Human Services - (2021 HB 1012; 2023 SB 2012)				
Department of Human Services - Medical Services	31,500,000		0	
Department of Health and Human Services - Human Services - Child support system			20,400,000	
Total estimated expenditures and adjustments		46,322,324		47,472,324
Estimated ending balance		<u>\$26,745,600</u>		<u>\$19,273,276</u>

¹Through December 2022 the state has received tobacco settlement payments totaling \$23,250,900 for the 2021-23 biennium, all of which has been transferred from the tobacco settlement trust fund to the community health trust fund. Total transfers of \$150,227,873 have been made from the tobacco settlement trust fund to the community health trust fund.

²Revenues - Interest earned on the community health trust fund is deposited in the general fund. Community health trust fund revenues have been estimated based on actual revenues received through December 2022 and estimated revenues for the remainder of the 2021-23 biennium and for the 2023-25 biennium, based on the December 2022 executive budget revenue forecast. In Senate Bill No. 2004 (2021), the Legislative Assembly repealed the tobacco prevention and control trust fund and required the Office of Management and Budget to transfer any money remaining in the tobacco prevention and control trust fund to the community health trust fund on July 1, 2021.

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

	Actual and Estimated Total Tobacco Settlement Proceeds, Including Attorney General Costs	Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(2) Deposited in the Tobacco Prevention and Control Trust Fund	Allocation of Actual and Estimated Payments Under Master Settlement Agreement Subsection IX(c)(1)		
			Common Schools Trust Fund	Water Development Trust Fund	Community Health Trust Fund
Actual payment April 2008	\$36.4 million	N/A	\$16.4 million	\$16.4 million	\$3.6 million
Actual payment April 2009	39.2 million	\$14.1 million	11.3 million	11.3 million	2.5 million
Actual payments 2009-11 biennium	64.0 million	23.5 million	18.2 million	18.2 million	4.1 million
Actual payments 2011-13 biennium	63.0 million	22.8 million	18.1 million	18.1 million	4.0 million
Actual payments 2013-15 biennium	64.6 million	22.4 million	19.0 million	19.0 million	4.2 million
Actual payments 2015-17 biennium	63.5 million ¹	22.9 million	18.2 million	18.2 million	4.0 million
Actual payments 2017-19 biennium	74.1 million ¹	N/A	0	33.3 million	40.7 million
Actual payments 2019-21 biennium	43.9 million ²	N/A	0	0	44.1 million
Estimated 2021-23 biennium	44.3 million	N/A	0	0	44.3 million
Estimated 2023-25 biennium	40.0 million	N/A	0	0	40.0 million
Total	\$533.0 million	\$105.7 million	\$101.2 million	\$134.5 million	\$191.5 million

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

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

³In 2021 the Legislative Assembly provided \$6.25 million from the community health trust fund for grants to local public health units for tobacco prevention and control programs during the 2021-23 biennium. House Bill No. 1004 (2023) provides a total of \$6.25 million from the community health trust fund for grants to local public health units for tobacco prevention and control programs.

⁴Section 54-27-25 provides money in the community health trust fund may be appropriated for community-based public health programs and other public health programs, including programs with an emphasis on preventing or reducing tobacco usage. The 2003 Legislative Assembly authorized the establishment of a telephone "Tobacco Quitline." The 2007 Legislative Assembly increased the funding for the Tobacco Quitline to provide nicotine replacement therapy and cessation counseling. In 2021 the Legislative Assembly appropriated \$5,043,000 from the community health trust fund for tobacco prevention and control programs including \$2,833,504 for operating expenses and \$2,209,496 for other grants, including cessation. House Bill No. 1004 (2023) provides a total of \$5,043,000 for tobacco prevention and control programs.

⁵In 2021 the Legislative Assembly provided a total of \$540,000 for the dental loan repayment program, of which \$360,000 is from the community health trust fund and \$180,000 is from the general fund. House Bill No. 1004 (2023) provides a total of \$585,200 for the dental loan repayment program, of which \$360,000 is from the community health trust fund and \$225,200 is from the general fund.

⁶In 2021 the Legislative Assembly provided a total of \$392,125 for the behavioral health loan repayment program, of which \$234,500 is from the community health trust fund and \$157,625 is from the general fund. House Bill No. 1004 (2023) provides a total of \$528,480 for the behavioral health loan repayment program, of which \$234,500 is from the community health trust fund and \$293,980 is from the general fund.

⁷In 2021 the Legislative Assembly changed the funding source for cancer programs (\$580,324) and domestic violence offender treatment grants (\$300,000) from the tobacco prevention and control trust fund to the community health trust fund and provided \$5,250,000 for local public health unit state aid grants, of which \$4,725,000 is from the general fund and \$525,000 is from the community health trust fund. House Bill No. 1004 (2023) provides a total of \$580,324 for cancer programs and increases funding for domestic violence offender treatment to provide \$1,000,000 from the community health trust fund. In addition, House Bill No. 1004 (2023) increases funding from the community health trust fund by \$2,750,000 to provide a total of \$8,000,000 for local public health unit state aid grants, of which \$4,725,000 is from the general fund and \$3,275,000 is from the community health trust fund.

⁸In 2021 the Legislative Assembly added funding from the community health trust fund to increase the State Department of Health's forensic examiner contract with the University of North Dakota School of Medicine and Health Sciences (\$1 million) and to provide one-time funding (\$1.5 million) for a statewide health strategies initiative totaling \$3 million. The Legislative Assembly also provided the one-time funding from the community health trust fund for the statewide health strategies initiative is contingent on the State Department of Health securing \$1.5 million in dollar-for-dollar matching funds. House Bill No. 1004 (2023) continues to provide \$1 million from the community health trust fund for Public Health's forensic examiner contract with the University of North Dakota School of Medicine and Health Sciences and increased funding for the contract from the general fund to \$755,292, \$130,022 more than the 2021-23 biennium. House Bill No. 1004 (2023) also allows Public Health to continue the \$3 million of one-time funding, appropriated during the 2021-23 biennium for a statewide health strategies initiative, to the 2023-25 biennium and provides the \$1.5 million continued from the community health trust fund is contingent on the department securing dollar-for-dollar matching funds.

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

¹⁰In House Bill No. 1004 (2023), the House increased funding for domestic violence prevention to provide a total of \$5,936,285, of which \$4,596,285 is from the general fund, \$1,000,000 is from the community health trust fund, and \$340,000 is from the domestic violence and sexual assault prevention fund which receives revenue from marriage license fees.

FUND HISTORY

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

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

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

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

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

**ANALYSIS OF THE STATE DISASTER RELIEF FUND
FOR THE 2017-19, 2019-21, 2021-23, AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2017-19 Biennium Actual		2019-21 Biennium Actual		2021-23 Biennium Estimated		2023-25 Biennium Estimated	
Beginning balance		\$36,687,549		\$21,987,295		\$15,396,161		\$23,060,431
Add revenues								
Interest income	\$73,130		\$66,353		\$65,000		\$60,000	
Miscellaneous reimbursements	698,534		24,577		75,000		70,000	
Oil and gas tax collections	0 ¹		0 ⁵		15,511,903 ⁹		10,252,814 ¹²	
Total revenues		771,664		90,930		15,651,903		10,382,814
Total available		\$37,459,213		\$22,078,225		\$31,048,064		\$33,443,245
Less estimated expenditures								
STORM Act Funding							\$1,000,000 ¹³	
2009 flooding	\$57,462 ²							
2010 flooding	1,199,702 ²							
2011 flooding	2,923,747 ²		\$2,367,837 ⁶					
State disasters and flood mitigation efforts (road grade raising projects)	18,620 ²							
2013 Red River Valley flood	912,450 ²		210 ⁶					
2013 winter storm	628,258 ²		2,320 ⁶					
2014 rain storms	72,201 ²		100,182 ⁶					
2017 flooding			217,970 ⁶		\$104,377 ¹⁰			
Federal Emergency Management Agency (FEMA) mitigation programs			93,046 ⁶				100,000 ¹³	
Double Ditch Historic Site repairs	1,694,478 ³							
Dickey County FEMA repayment			200,000 ⁶					
Non-oil-producing township road maintenance and improvement	7,965,000 ⁴				7,450,000 ⁴		750,000 ⁴	
Emergency township road repairs			750,000 ⁷					
Dakota Access Pipeline law enforcement			703,432 ⁸					
2019 flooding			1,352,454 ⁸		638,813 ¹⁰		450,461 ¹³	
2020 COVID-19					2,584 ¹⁰		500,000 ¹³	
2020 flooding			894,613 ⁸		(464,139) ¹⁰		369,752 ¹³	
June severe storms 2021							110,002 ¹³	
Spring storm 2022							9,350,000 ¹³	
Winter storm 2022							355,000 ¹³	

Predisaster mitigation			255,998 ¹⁰		458,030 ¹³	
Total estimated expenditures and transfers	15,471,918	6,682,064		7,987,633 ¹¹		13,443,245
Estimated ending balance	<u>\$21,987,295</u>	<u>\$15,396,161</u>		<u>\$23,060,431</u>		<u>\$20,000,000</u>

¹This amount reflects actual oil tax revenue allocations for the 2017-19 biennium. House Bill No. 1152 (2017) amended North Dakota Century Code Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues designated for deposit in the general fund under Chapters 57-51 and 57-51.1 as follows:

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

²Section 1 of House Bill No. 1016 (2017) includes spending authority of \$8.5 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2017-19 biennium. Section 13 of House Bill No. 1016 (2017) includes carryover authority for amounts related to disaster costs for road grade raising projects.

³Section 5 of Senate Bill No. 2018 (2015) appropriates \$2 million from the state disaster relief fund for Double Ditch Historic Site repairs. Section 6 of House Bill No. 1018 (2017) appropriates \$500,000 from the state disaster relief fund for Double Ditch Historic Site repairs.

⁴Section 4 of Senate Bill No. 2016 (2019) provided a 2017-19 biennium appropriation of \$8.1 million from the state disaster relief fund to the State Treasurer for the purpose of providing distributions to townships in non-oil-producing counties for maintenance and improvement of township roads and bridges. Section 4 of House Bill No. 1015 (2021) provides a 2021-23 biennium appropriation of \$8.2 million from the state disaster relief fund to the State Treasurer for the purpose of providing distributions to townships in non-oil-producing counties for maintenance and improvement of township roads and bridges. Section 12 of House Bill No. 1012 (2023) provides an exemption allowing \$750,000 of the \$8.2 million appropriation to continue into the 2023-25 biennium.

⁵This amount reflects estimated oil tax revenue allocations for the 2019-21 biennium based on the 2021 legislative revenue forecast. House Bill No. 1066 (2019) and Senate Bill No. 2016 (2019) amend Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues under Chapters 57-51 and 57-51.1. As amended, the allocation provides that after \$685 million is deposited in the general fund, tax relief fund, budget stabilization fund, and lignite research fund, then the next \$15 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$15 million.

⁶Section 1 of Senate Bill No. 2016 (2019) includes spending authority of \$7.1 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2019-21 biennium.

⁷Section 4 of Senate Bill No. 2012 (2021) provides a 2021-23 biennium appropriation of \$750,000 from the state disaster relief fund to the Department of Transportation to provide grants to townships for emergency township road repairs.

⁸Section 1 of House Bill No. 1025 (2021) includes a deficiency appropriation of \$3,880,540 from the state disaster relief fund, including \$3,130,540 for expenses related to flooding in the spring of 2019, fall of 2019, and spring of 2020, and \$750,000 to repay loan interest relating to Dakota Access Pipeline law enforcement response costs.

⁹This amount reflects actual oil tax revenue allocations for the 2021-23 biennium. House Bill No. 1015 (2021) and Senate Bill No. 2249 (2021) amend Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues under Chapters 57-51 and 57-51.1. As amended, the allocation provides that after \$685 million is deposited in the general fund, tax relief fund, budget stabilization fund, and lignite research fund, then the next \$20 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$20 million.

¹⁰Section 1 of House Bill No. 1016 (2021) includes spending authority of \$6 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2021-23 biennium.

¹¹This amount is an estimated based on actual expenditures through January 31, 2023, and agency estimated expenditures through June 30, 2023.

¹²This amount reflects estimated oil tax revenue allocations for the 2023-25 biennium based on the 2023 legislative revenue forecast. Senate Bill No. 2367 (2023) amends Section 57-51.1-07.5 to provide for the allocation of the state's share of oil and gas tax revenues under Chapters 57-51 and 57-51.1. As amended, the allocation provides that after \$795 million is deposited in the general fund, tax relief fund, budget stabilization fund, and lignite research fund, then the next \$20 million is deposited in the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than \$20 million.

¹³Section 1 of Senate Bill No. 2016 (2023) includes spending authority of \$12.7 million from the state disaster relief fund for expenses related to unclosed state disasters in the 2023-25 biennium.

FUND HISTORY

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

**ANALYSIS OF THE ELECTRONIC HEALTH INFORMATION EXCHANGE FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance ¹		\$2,355,002		\$2,084,318
Add estimated revenues				
Funds from health information network participants	\$1,341,918		\$1,470,218	
Funds from the Department of Health and Human Services (DHHS) ²	1,113,269		1,308,880	
Federal funding from the Centers for Medicare and Medicaid Services (CMS) ³	0		0	
Transfer - Health information technology planning loan fund (2021 SB 2021; 2023 HB 1021) ^{4,5}	6,000,000		3,000,000	
Total estimated revenues		8,455,187		5,779,098
Total available		\$10,810,189		\$7,863,416
Less estimated expenditures and transfers				
Health information technology and exchange network ^{2,3,4,5}	\$8,725,871		\$5,725,871	
Total estimated expenditures and transfers		8,725,871		5,725,871
Estimated ending balance		\$2,084,318		\$2,137,545

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

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

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

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

The Information Technology Department received \$125,100 during the 2015-17 biennium from DHHS for advanced planning documents, a state Medicaid plan, and to conduct a care coordination study of NDHIN. The Information Technology Department received \$6,333,134 in the 2017-19 biennium and \$14,584,718 in the 2019-21 biennium from DHHS for the network. The Information Technology Department anticipates \$1,113,269 will be available during the 2021-23 biennium, resulting in an estimated total of \$22,156,221 of federal HITECH funds received for the network. No additional federal HITECH funds are expected to be available after the 2021-23 biennium. Estimated federal funding for the 2023-25 biennium is from funding received by DHHS from CMS.

³The Centers for Medicare and Medicaid Services certified NDHIN as a Medicaid management information system in February 2022, which may allow ITD to request up to 75 percent federal reimbursement for eligible network expenditures; however, ITD continues to work with CMS regarding which network costs are considered eligible for reimbursement and the appropriate cost allocation formula for expenditure reimbursements. When a cost allocation formula is approved by CMS, ITD will be able to submit expenditure reimbursement requests for costs incurred since October 2021 which were not reimbursable with HITECH funding. It is unknown how much federal funding will be available for reimbursement of 2021-23 and 2023-25 biennium expenditures of the NDHIN project.

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

Through January 31, 2023, the Chief Information Officer has requested the Bank transfer \$6 million of funding from the health information technology planning loan fund to the electronic health information exchange fund.

⁵House Bill No. 1021 (2023), as approved by the House, provides for a transfer of \$3 million, as requested by the Chief Information Officer, from the health information technology planning loan fund to the electronic health information exchange fund for the purpose of defraying the expenses of the Health Information Technology Office and the health information network during the 2023-25 biennium. The bill also includes a \$3 million ongoing appropriation from the general fund for the Health Information Technology Office and health information network.

FUND HISTORY

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

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

**ANALYSIS OF THE ENVIRONMENT AND RANGELAND PROTECTION FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$5,291,507		\$5,419,612
Add estimated revenues				
Pesticide registration fees (North Dakota Century Code Section 4.1-34-03) ¹	\$5,400,000		\$5,495,000	
Weed seed-free forage (Section 4.1-14-04) ²	30,000		30,000	
Fertilizer registration, inspection, and tonnage fees (Sections 4.1-40-02, 4.1-40-03, and 4.1-40-07) ^{3,4}	1,445,000		1,445,000	
Commercial feed registration, inspection, and tonnage fees (Section 4.1-41-19) ⁵	727,500		727,500	
Total estimated revenues		7,602,500		7,697,500
Total available		\$12,894,007		\$13,117,112
Less estimated expenditures and transfers				
Agriculture Commissioner (2021 HB 1009; 2023 SB 2009)				
Administrative Services Division	\$351,086		\$363,550	
Marketing and Information Division	269,026		257,291	
Wildlife Services program	433,800		433,800	
Animal Health Division (State Veterinarian)	117,637		123,306	
Plant Industries Division	1,782,396		1,913,877	
Pesticide and Fertilizer Division	3,441,836		3,735,092	
Grain Inspection and Feed Division	428,614		442,113	
Transfer to environmental impact mitigation fund (2023 SB 2009)			250,000	
Crop Protection Product Harmonization and Registration Board (2021 HB 1009; 2023 SB 2009)				
Crop protection product registration, labeling, and grants ⁶	75,000		75,000	
Minor use pesticide registration	325,000		325,000	
Department of Environmental Quality (2021 SB 2024; 2023 HB 1024)				
Ground water testing, including a \$50,000 grant for the North Dakota Stockmen's Association environmental services program	250,000		250,000	
Total estimated expenditures and transfers		7,474,395		8,169,029
Estimated ending balance		\$5,419,612		\$4,948,083

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

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

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

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

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

⁶Section 4-35-30, as created by the Legislative Assembly in House Bill Nos. 1009 (2001) and 1328 (2001), created the Crop Protection Product Harmonization and Registration Board. In Senate Bill No. 2027 (2017), Section 4-35-30 was rewritten as Section 4.1-39-02. The duties of the board relate to crop protection product labeling and registration. In House Bill No. 1009 (2021), the Legislative Assembly appropriated \$75,000 from the fund for the board for the 2021-23 biennium. Senate Bill No. 2009 (2023), as approved by the Senate, appropriates \$75,000 from the fund for the board for the 2023-25 biennium.

FUND HISTORY

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

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

ANALYSIS OF THE FOUNDATION AID STABILIZATION FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$381,570,138		\$492,466,278
Add estimated revenues				
Oil extraction tax allocations	\$254,670,000 ¹		\$224,430,000 ¹	
Total estimated revenues		254,670,000 ²		224,430,000 ²
Total available		\$636,240,138		\$716,896,278
Less estimated expenditures and transfers				
Department of Public Instruction (DPI) (2021 HB 1013; 2023 SB 2013)				
State school aid	\$143,454,500 ³		\$143,454,500 ³	
One-time funding to rewrite the state automated reporting system (STARS) application (2019 SB 2013)	319,360 ³			
Transfer to the school construction assistance revolving loan fund (2023 SB 2284)			75,000,000	
Total estimated expenditures and transfers		143,773,860 ⁴		218,454,500 ⁴
Estimated ending balance		\$492,466,278		\$498,441,778
Less required reserve of 15 percent of the general fund appropriation for state school aid and career and technical education grants to school districts and area centers during the prior biennium		257,328,931 ⁵		250,093,242 ⁶
Estimated ending balance available		<u>\$235,137,347</u>		<u>\$248,348,536</u>

¹Estimated revenues - Based on actual oil extraction tax collections deposited in the fund through December 2022. The estimated allocations for the remainder of the 2021-23 biennium and the estimated allocations for the 2023-25 biennium are based on the January 2023 legislative revenue forecast.

²Section 24 of Article X of the Constitution of North Dakota provides the interest income of the foundation aid stabilization fund must be transferred to the general fund on July 1 of each year. However, the State Treasurer allocates the interest income to the general fund on a monthly basis. For the period July 1, 2021, through January 31, 2023, \$649,276 of interest has been allocated to the general fund.

³The Legislative Assembly, in House Bill No. 1013 (2021), appropriated \$143,454,500 from the foundation aid stabilization fund to DPI to provide ongoing funding for state school aid. In addition, Section 16 of House Bill No. 1013 provides an exemption to allow DPI to continue up to \$600,000 of the unexpended amount remaining from a 2019-21 biennium one-time appropriation from the foundation aid stabilization fund for the STARS rewrite, for the purpose of continuing the STARS rewrite during the 2021-23 biennium. The department continued \$319,360 for the STARS rewrite during the 2021-23 biennium. Senate Bill No. 2013 (2023) provides \$143,454,500 from the foundation aid stabilization fund to DPI to provide ongoing funding for state school aid for the 2023-25 biennium.

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

⁵Amendments to the constitution approved by the voters, as provided in Senate Concurrent Resolution No. 4003 (2015), require the balance in the foundation aid stabilization fund be at least 15 percent of the general fund appropriation for state aid to school districts for the most recently completed biennium as determined by the Office of Management and Budget. Any excess balance in the fund is available for education-related purposes. The Legislative Assembly, in Senate Bill No. 2272 (2017) and House Bill No. 1155 (2017), amended North Dakota Century Code Section 54-44.1-12 to provide any reductions to the general fund

appropriation to the Department of Career and Technical Education for grants to school districts due to allotment are also to be offset by funding from the foundation aid stabilization fund. Senate Bill No. 2272 also created a new section to Chapter 54-27 indicating that state school aid includes general fund appropriations for state school aid, transportation aid, and special education aid in DPI as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education. In 2019, the Legislative Assembly provided \$2,178,702,429 for integrated formula payments, transportation aid, and special education grants during the 2019-21 biennium, of which \$377,764,000 is provided from the state tuition fund, \$110,000,000 is from the foundation aid stabilization fund, and \$1,690,938,429 is provided from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education, totaled \$24,587,780 during the 2019-21 biennium. Based on this level of funding from the general fund during the 2019-21 biennium, the required reserve balance for the 2021-23 biennium is \$257,328,931, \$42,497,227 more than the reserve required for the 2019-21 biennium.

⁶In 2021, the Legislative Assembly provided \$2,216,925,000 for integrated formula payments, transportation aid, and special education grants for the 2021-23 biennium, of which \$433,020,000 is from the state tuition fund, \$143,454,500 is from the foundation aid stabilization fund, and \$1,640,450,500 is from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education total \$26,837,780 for the 2021-23 biennium. Based on this level of funding from the general fund during the 2021-23 biennium, the required reserve balance for the 2023-25 biennium is \$250,093,242, \$7,235,689 less than the reserve required for the 2021-23 biennium.

FUND HISTORY

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

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

In November 2016 voters approved Senate Concurrent Resolution No. 4003 (2015), which amended the Constitution of North Dakota to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for education-related purposes. In addition, the Legislative Assembly approved Senate Bill No. 2039 (2015), which included certain provisions effective December 1, 2016, based on the approval of Senate Concurrent Resolution No. 4003 by voters. Those provisions of Senate Bill No. 2039 established a scholarship endowment fund and a school construction assistance loan fund and provided for transfers from the foundation aid stabilization fund to the school construction assistance loan fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016), and to the scholarship endowment fund (the lesser of \$200 million or 50 percent of the balance of the fund on December 1, 2016). Other provisions of Senate Bill No. 2039 provided any accessible funds that remain in the foundation aid stabilization fund, after completion of the required transfers to other funds, must be used for education-related purposes, including state aid to school districts and education-related property tax relief to school district patrons. The Legislative Assembly approved Senate Bill No. 2272 (2017), which provided for uses of the foundation aid stabilization fund and repealed Sections 9 and 10 of Chapter 153 of the 2015 Session Laws related to the transfers to the scholarship endowment fund and the school construction assistance loan fund.

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

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

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

**ANALYSIS OF THE HEALTH CARE TRUST FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$165,393		\$0
Add estimated revenues				
Investment earnings	\$500		\$500	
Loan repayments - Principal and interest	816,708		668,344	
Total estimated revenues		817,208		668,844
Total available		\$982,601		\$668,844
Less estimated expenditures and transfers				
Department of Human Services nursing facility operating margin increases (2021 HB 1012)	\$982,601		\$0	
Total estimated expenditures and transfers		982,601		0
Estimated ending balance		\$0		\$668,844

FUND HISTORY

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

**ANALYSIS OF THE HEALTH INFORMATION TECHNOLOGY PLANNING LOAN FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance ¹		\$7,419,876		\$2,996,237
Add estimated revenues				
Loan repayments - Principal	\$1,520,656		\$602,757	
Loan repayments - Interest and miscellaneous income	69,948		18,864	
Total estimated revenues		1,590,604		621,621
Total available		\$9,010,480		\$3,617,858
Less estimated expenditures and transfers				
Loans to health care entities ²	\$0		\$0	
Bank of North Dakota fees	14,243		10,224	
Transfer - Electronic health information exchange fund (2021 SB 2021) ³	6,000,000		3,000,000	
Total estimated expenditures and transfers		6,014,243		3,010,224
Estimated ending balance		\$2,996,237		\$607,634

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

²The Health Information Technology Advisory Committee has approved \$14,227,024 of loans since the program's inception in the 2009-11 biennium. Loans have not been issued since the 2017-19 biennium. The following is a summary of loans provided to health care facilities:

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

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

Through January 31, 2023, the Chief Information Officer has requested the Bank transfer \$6 million of funding from the health information technology planning loan fund to the electronic health information exchange fund.

⁴House Bill No. 1021 (2023), as approved by the House, provides for a transfer of \$3 million, as requested by the Chief Information Officer, from the health information technology planning loan fund to the electronic health information exchange fund for the purpose of defraying the expenses of the Health Information Technology Office and the health information network during the 2023-25 biennium.

FUND HISTORY

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

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

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

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

ANALYSIS OF THE HIGHWAY TAX DISTRIBUTION FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2021-23 Biennium		2023-25 Biennium	
		\$0		\$0
Beginning balance		\$0		\$0
Add estimated revenues ^{1,2}				
Motor vehicle fuel tax	\$178,100,000		\$182,102,368	
Special fuels taxes	163,400,000		165,000,000	
Motor vehicle registration fees	174,800,000		178,050,000	
Legacy fund earnings ³	0		60,000,000	
Total estimated revenues		516,300,000		585,152,368
Total available		\$516,300,000		\$585,152,368
Less estimated deductions and transfers				
Highway Patrol	\$9,346,781		\$11,989,604	
Motorboat safety account	200,000		200,000	
State snowmobile fund	200,000		200,000	
Rail safety fund	594,724		600,000	
Administrative assistance to transferees	5,500,000		5,500,000	
Ethanol production incentives	4,700,000		4,700,000	
Total estimated deductions before distributions		20,541,505		23,189,604
Total available for distributions and transfers		\$495,758,495		\$561,962,764
Less estimated distributions and transfers				
State highway fund	\$303,858,495		\$344,546,064	
Counties	109,100,000		123,657,080	
Cities	62,000,000		70,229,170	
Townships	13,400,000		15,126,700	
Transit	7,400,000		8,403,750	
Total estimated distributions and transfers		495,758,495		561,962,764
Estimated ending balance		\$0		\$0

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

²The amounts shown reflect actual revenue collections deposited in the fund through September 2022. The estimated revenue for the remainder of the 2021-23 biennium and the estimated collections for the 2023-25 biennium are based on DOT's revenue forecast and the effect on motor vehicle registration fees in House Bill No. 1295 (2023).

³North Dakota Century Code Section 21-10-13 provides for the State Treasurer to transfer up to \$60 million from the legacy earnings fund to the highway tax distribution fund on July 1 of each odd-numbered year beginning in 2023.

FUND HISTORY

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

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

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

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

the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

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

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

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

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

Motor Vehicle Fuel Tax

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

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

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

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

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

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

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

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

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

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

Special Fuels Excise Tax

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

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

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

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

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

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

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

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

Motor Vehicle Registration Fees

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

**ANALYSIS OF THE LEGACY EARNINGS FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$0		\$486,568,637
Add estimated revenues				
Earnings transferred from the legacy fund (2023 HB 1379; 2023 SB 2330) ¹	\$486,568,637		N/A	
Total estimated revenues		486,568,637		N/A
Total available		\$486,568,637		\$486,568,637
Less estimated expenditures and transfers				
Spending based on percent of market value calculation²				
Transfer to the legacy sinking and interest fund (2023 HB 1379) ³	\$0		\$150,000,000	
Transfer to the highway tax distribution fund (2023 HB 1379) ³	0		60,000,000	
Other designations (2023 HB 1014, 2023 HB 1018, 2023 HB 1040, 2023 HB 1379; 2023 SB 2009, 2023 SB 2012, 2023 SB 2019) ³	0		640,089,098	
Allocation of excess earnings⁴				
Transfer to the legacy fund to become part of principal (2023 HB 1379)	0		0	
Transfer to the strategic investment and improvements fund (2023 HB 1379)	0		0	
Total estimated expenditures and transfers		0		850,089,098
Estimated ending balance		\$486,568,637		(\$363,520,461)
Reserve for future bond payments ⁵		0		0
Estimated uncommitted ending balance		<u>\$486,568,637</u>		<u>(\$363,520,461)</u>

¹Based on the provisions of Section 26 of Article X of the Constitution of North Dakota, investment earnings in the legacy fund are transferred to the general fund at the end of the biennium. North Dakota Century Code Section 21-10-12 provides that the investment earnings are the realized earnings of the fund. Unrealized earnings remain in the fund. Senate Bill No. 2330 (2023) changes the definition of investment earnings to reflect a percent of market value calculation method using 7 percent of the 5-year average value of the legacy fund assets. House Bill No. 1380 (2021), as codified in Section 21-10-13, provides a process to immediately transfer legacy fund earnings from the general fund to the legacy earnings fund. Since the earnings are transferred at the end of the biennium, Section 21-10-13 clarifies the earnings are available for spending from the fund in the subsequent biennium.

The amount shown for the earnings reflects the estimates provided by the Retirement and Investment Office and the provisions of Senate Bill No. 2330 (2023).

²Section 21-10-13 establishes a percent of market value calculation to determine the amount of legacy fund earnings available for spending in the subsequent biennium. The percent of market value is based on 7 percent of the 5-year average of legacy fund assets using the June 30th fund balances for the 5-year period ending with the most recently completed even-numbered fiscal year.

For the 2023-25 biennium, the amount available for spending is \$486,568,637 based on the legacy fund balances of \$5,576,084,018 (June 30, 2018), \$6,122,227,871 (June 30, 2019), \$6,995,309,070 (June 30, 2020), \$8,115,202,181 (June 30, 2021), and \$7,946,079,492 (June 30, 2022).

³Pursuant to Section 21-10-13, the funding available for spending is allocated as follows:

- The first \$150 million to the legacy sinking and interest fund for bond payments related to infrastructure projects and programs and a transfer to the Public Employees Retirement System main system plan;
- The next \$60 million to the highway tax distribution fund; and
- Other purposes subject to legislative appropriation, including up to \$50 million for tax relief; up to \$30 million for the clean sustainable energy fund; and up to \$30 million for university research programs, the innovation loan fund, and workforce enrichment initiatives.

House Bill No. 1379 (2023) changes the allocations from the legacy earnings fund to provide total allocations of \$486.6 million from the amount available for spending. The bill also identifies additional allocations if the earnings transferred to the fund exceed the amount available for spending. However, based on the change to the definition of legacy fund investment earnings in Senate Bill No. 2330 (2023), there would not be any excess earnings available for additional allocations.

House Bill No. 1040 (2023) changes the allocations from the legacy earnings fund to provide a separate allocation to the Public Employees Retirement System main system plan and increases the allocation to \$70 million resulting in an additional \$22,620,461 for the main system plan.

Other appropriations and transfers from the legacy earnings fund include \$305 million for the oil and gas research fund and clean sustainable energy fund in House Bill No. 1014 (2023), \$20 million for the legacy investment for technology fund in House Bill No. 1018 (2023), \$6.5 million for the bioscience innovation fund in Senate Bill No. 2009 (2023), \$7 million for child care assistance programs in Senate Bill No. 2012 (2023), and \$2.4 million for cabin construction at a state park in Senate Bill No. 2019 (2023).

⁴Based on the provisions of Section 21-10-13, if the earnings transferred to the legacy earnings fund exceed the amount available to spend, the excess earnings are allocated as follows:

- A portion of the excess earnings are retained in the legacy earnings fund as a reserve for any bond payments;
- Up to \$100 million of excess earnings is transferred to the legacy fund to become part of the principal; and
- Any the remaining excess earnings are transferred to the strategic investment and improvements fund.

Transfers to the legacy fund from any source, including legacy fund earnings, become part of the principal. Subject to the provisions of the constitution, not more than 15 percent of the principal may be spent during a biennium, and any expenditure of principle requires a vote of at least two-thirds of the members elected to each house of the Legislative Assembly.

⁵House Bill No. 1379 (2023) removes the provision to retain a portion of the funding as a reserve for future bond payments.

FUND HISTORY

House Bill No. 1380 (2021), as codified in Section 21-10-13, created the legacy earnings fund and provided a process to immediately transfer legacy fund earnings from the general fund to the legacy earnings fund. The earnings available for spending are allocated to special funds and for other purposes designated by the Legislative Assembly. If the earnings transferred to the fund exceed the amount available to spend, a portion of the excess earnings are retained in the legacy earnings fund as a reserve for any bond payments, and up to \$100 million of excess earnings is transferred to the legacy fund to become part of the principal with the remaining excess earnings transferred to the strategic investment and improvements fund.

**ANALYSIS OF THE LEGACY FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$8,074,763,216		\$8,613,124,579
Add estimated revenues				
Oil and gas gross production and extraction tax collections (30 percent of collections) (2019 SB 2312) ¹	\$1,591,930,000		\$1,373,750,000	
Investment earnings (losses) (2021 HB 1015, 2021 HB 1425) ^{2,3,4,5}	(567,000,000)		520,000,000	
Transfer in from legacy earnings fund			0	
Total estimated revenues		1,024,930,000		1,893,750,000
Total available		\$9,099,693,216		\$10,506,874,579
Less estimated expenditures and transfers				
Transfer of realized earnings to the legacy earnings fund (2021 HB 1380; 2023 HB 1379; 2023 SB 2330) ⁶	\$486,568,637		N/A	
Expenditure of principal ⁷	0		\$0	
Total estimated expenditures and transfers		486,568,637		0
Estimated ending balance		\$8,613,124,579		\$10,506,874,579

¹The oil and gas tax revenues reflect allocations for August through July (24 months). The estimated allocations reflect the January 2023 legislative forecast.

²Based on the provisions of Section 26 of Article X of the Constitution of North Dakota, investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. North Dakota Century Code Section 21-10-12 provides that the investment earnings are the realized earnings of the fund. Unrealized earnings remain in the fund. Senate Bill No. 2330 (2023) changes the definition of investment earnings to reflect a percent of market value calculation method using 7 percent of the 5-year average value of the legacy fund assets. The schedule below provides more detail on the investment earnings and the transfers at the end of each biennium since the 2015-17 biennium.

	2015-17 Biennium Actual ³	2017-19 Biennium Actual ³	2019-21 Biennium Actual ³	2021-23 Biennium Estimated ⁴	2023-25 Biennium Estimated ⁴
Realized earnings (losses)	\$273,064,100	\$502,243,356	\$951,888,747	\$495,000,000	N/A
Unrealized earnings (losses)	252,305,388	167,170,302	935,625,936	(1,062,000,000)	N/A
Total investment earnings (losses)	\$525,369,488	\$669,413,658	\$1,887,514,683	(\$567,000,000)	\$520,000,000
End of biennium transfer		\$455,263,216	\$871,687,384	\$486,568,637	N/A

The investment earnings (losses) for the legacy fund for the 2021-23 biennium through December 31, 2022, were approximately (\$741.0 million), including realized earnings (losses) of \$430.4 million and unrealized earnings (losses) of (\$1,171.4 million).

³Due to the timing of the transfer and the reporting of earnings at the end of the each biennium, the realized and unrealized earnings reflect the amounts reported by the Retirement and Investment Office for July through June (24 months), but the transfers reflect the realized earnings from June through May (24 months).

⁴The estimated earnings reflect the estimates provided by the Retirement and Investment Office.

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

⁵House Bill No. 1425 (2021) designates a portion of the legacy fund investments to in-state fixed income investments and in-state equity investments. The performance of these investments may affect the earnings of the legacy fund. Senate Bill No. 2330 (2023) changes the amount designated for in-state investments from 20 to 9 percent.

⁶House Bill No. 1380 (2021), as codified in Section 21-10-13, provides a process to immediately transfer legacy fund earnings from the general fund to the legacy earnings fund and establishes a percent of market value calculation to determine the amount of legacy fund earnings available for spending each biennium. The percent of market value is based on 7 percent of the 5-year average of legacy fund assets. The earnings available for spending are allocated to special funds and for other purposes designated by the Legislative Assembly. If the earnings transferred to the fund exceed the amount available to spend, a portion of the excess earnings are retained in the legacy earnings fund as a reserve for any bond payments, and up to \$100 million of excess earnings is transferred to the legacy fund to become part of the principal with the remaining excess earnings transferred to the strategic investment and improvements fund.

House Bill No. 1379 (2023) changes the allocations from the legacy earnings fund. The bill also identifies additional allocations if the earnings transferred to the fund exceed the amount available for spending. However, based on the change to the definition of legacy fund investment earnings in Senate Bill No. 2330 (2023), there would not be any excess earnings available for additional allocations.

⁷The principal and earnings of the legacy fund were not available for spending until after June 30, 2017, pursuant to Section 26 of Article X of the Constitution of North Dakota. Up to 15 percent of the principal of the legacy fund may be spent during a biennium subject to approval by at least two-thirds of the members elected to each house of the Legislative Assembly.

FUND HISTORY

The legacy fund was created in 2010 when the voters of North Dakota approved a constitutional amendment--now Section 26 of Article X of the Constitution of North Dakota--to provide 30 percent of oil and gas gross production and oil extraction taxes on oil and gas produced after June 30, 2011, be transferred to the legacy fund. The principal and earnings of the legacy fund may not be spent until after June 30, 2017, and any expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the Legislative Assembly. Not more than 15 percent of the principal of the legacy fund may be spent during a biennium. The Legislative Assembly may transfer funds from any source to the legacy fund, and such transfers become part of the principal of the fund. The State Investment Board is responsible for investment of the principal of the legacy fund. Investment earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium.

Prior to July 1, 2015, if the unobligated balance of the strategic investment and improvements fund exceeded \$300 million at the end of any month, 25 percent of any revenues received for deposit in the strategic investment and improvements fund were deposited instead into the legacy fund in the subsequent month. In House Bill Nos. 1176 and 1377 (2015), the Legislative Assembly amended Section 15-08.1-08 to remove the provision related to the additional deposits of revenue in the legacy fund from the strategic investment and improvements fund.

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

**ANALYSIS OF THE LIGNITE RESEARCH FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$21,807,466		\$6,358,369
Add estimated revenues				
Separate two-cent coal severance tax	\$840,135		\$1,075,000	
50 percent of coal severance taxes deposited in the coal development trust fund ¹	1,181,439		1,470,000	
20 percent of coal severance taxes deposited in the coal development trust fund for clean coal projects ¹	472,576		630,000	
15 percent of coal severance taxes ¹	2,362,879		3,000,000	
5 percent of the general fund share of coal conversion tax	91,747		0	
Lignite research tax (2021 HB 1412) ¹	2,071,976		2,250,000	
Oil and gas tax allocation	10,000,000		10,000,000	
Investment income on Dakota Gasification Company ammonia plant and Spiritwood plant	180,000		180,000	
Revenue bonds/short-term loan ²	0		0	
Interest income, return of funds, and litigation contributions	102,865		70,000	
Total estimated revenues		17,303,617		18,675,000
Total estimated available		\$39,111,083		\$25,033,369
Less estimated expenditures and transfers ^{3,4}				
Administration	\$900,000		\$1,250,000	
Lignite feasibility studies (nonmatching grants)	6,571,150		2,839,249	
Small research grants	9,929,742		8,806,395	
Lignite marketing	2,187,000		2,187,000	
Lignite litigation ⁵	1,000,000		1,000,000	
Demonstration projects	1,367,678		1,367,678	
Advanced energy technology development	10,797,144		4,574,676	
Total estimated expenditures and transfers ⁶		32,752,714		22,024,998
Estimated ending balance		\$6,358,369		\$3,008,371

¹House Bill No. 1412 (2021) exempts 100 percent of the generation tax and 60 percent of the capacity tax from the coal conversion tax and creates a new lignite research tax to maintain the current level of allocations to the lignite research fund.

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

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

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

\$3,972,090 during the 2009-11 biennium, \$678,851 during the 2011-13 biennium, \$110,000 during the 2013-15 biennium, \$914,663 during the 2015-17 biennium, \$1,290,525 during the 2017-19 biennium, \$0 in the 2019-21 biennium, \$0 in the 2021-23 biennium, and anticipated expenditures of \$1,367,678 in subsequent bienniums. The objective of the Lignite Vision 21 Project is to construct new lignite-fired power plants in North Dakota. (These amounts are net of funds that were distributed but later returned when projects did not proceed.)

⁵Lignite litigation - House Bill No. 1093 (2007) provides that \$500,000 of the amount appropriated to the lignite research fund for the 2007-09 biennium is to be used to pay for fees associated with lignite litigation that may be brought by the state to protect and promote the continued development of lignite resources. Activities associated with the litigation have been initiated with \$83,379 spent during the 2007-09 biennium, \$153,907 spent during the 2009-11 biennium, \$652,519 spent during the 2011-13 biennium, \$983,288 during the 2013-15 biennium with \$451,555 of that amount paid by industry, \$259,159 during the 2015-17 biennium with \$122,866 of that amount paid by industry, \$44,962 spent during the 2017-19 biennium with \$14,760 of that amount paid by industry, \$0 spent during the 2019-21 biennium, and \$0 spent during the 2021-23 biennium.

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

From nonmatching funds within the lignite research fund, \$500,000 was designated for litigation expenses in the 2019-21 biennium, \$0 for the 2021-23 biennium. Of the nonmatching funds, \$313,483 was spent during the 2019-21 biennium, and the remaining \$186,517 anticipated to be spent in subsequent bienniums.

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

⁶The Industrial Commission has continuing appropriation authority for all money deposited in the lignite research fund pursuant to Section 57-61-01.6. The amount shown for the 2023-25 biennium includes \$250,000 of one-time funding for grant administration software pursuant to House Bill No. 1014 (2023).

FUND HISTORY

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

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

House Bill No. 1152 (2017) changed the allocation of the state's share of oil and gas tax revenue to provide up to \$3 million of allocations to the lignite research fund. House Bill No. 1066 (2019) increased the allocation of oil and gas tax revenue to the lignite research fund by \$7 million, from \$3 million to \$10 million.

**ANALYSIS OF THE MEDICAL MARIJUANA FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$1,234,230		\$1,748,330
Add estimated revenues				
Program fees:				
Dispensary and manufacturer registration fees	\$1,120,000		\$1,120,000	
Application fees, including patient and compassion center agent fees	968,074		821,000	
Total estimated revenues		2,088,074		1,941,000 ²
Total available		\$3,322,304		\$3,689,330
Less estimated Department of Health and Human Services expenditures (Pursuant to a continuing appropriation in North Dakota Century Code Section 19-24.1-40)				
Salaries and wages	\$989,435		\$1,157,555	
Indirect costs	145,447		170,161	
Operating expenditures	439,092		497,415	
Total estimated expenditures and adjustments		1,573,974 ^{1,2}		1,825,131 ²
Estimated ending balance		<u>\$1,748,330</u>		<u>\$1,864,199</u>

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

²The Department of Health and Human Services presented estimated expenditures to be made through the continuing appropriation, totaling \$1,746,384, including 5 FTE positions. Estimates have been increased \$52,435 for salary adjustments of 4 percent each year of the biennium and \$26,312 for increases in the health insurance rate. The estimated expenditures do not include the fiscal impact of Senate Bill No. 2201 (2023) which, if approved, would decrease revenue by \$280,000 and increase expenditures by \$26,400 during the 2023-25 biennium. The estimated expenditures for the 2021-23 biennium do not include the fiscal impact of House Bill No. 1478 (2023) which, if approved, would increase expenditures by \$4,000 during the 2021-23 biennium.

FUND HISTORY

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

**ANALYSIS OF THE NORTH DAKOTA OUTDOOR HERITAGE FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$8,936,144		\$3,808,122
Add estimated revenues				
Oil and gas gross production tax collections	\$15,000,000 ¹		\$15,000,000 ¹	
Interest income	90,000		90,000	
Refunds	911,978		900,000	
Total estimated revenues		16,001,978		15,990,000
Total available		\$24,938,122		\$19,798,122
Less estimated expenditures and transfers				
Grant award commitments	\$21,000,000 ²		\$18,000,000	
House Bill No. 1014 (2023) Transfer for grant management software expenses			250,000 ³	
Administrative expenses	130,000		200,000	
Total estimated expenditures and transfers		21,130,000		18,450,000
Estimated ending balance		\$3,808,122		\$1,348,122

¹North Dakota Century Code Section 57-51-15 established a maximum allocation of \$40 million (\$20 million per year) to the fund. Senate Bill No. 2014 (2021) limits oil and gas gross production tax revenue allocations to the fund to \$7.5 million annually for the 2021-23 biennium. For the 2023-25 biennium, House Bill No. 1014 (2023) limits the allocations to \$15 million.

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

³House Bill No. 1014 (2023) provides for a transfer up to \$250,000 from the North Dakota outdoor heritage fund to the Industrial Commission for grant management software expenses.

FUND HISTORY

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

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

For the 2013-15 biennium, pursuant to Section 57-51-15, 4 percent of the first 1 percent of oil and gas gross production tax collections is deposited in the North Dakota outdoor heritage fund, up to \$15 million per year. House Bill No. 1176 (2015) amended Section 57-51-15 to increase the amount deposited in the North Dakota outdoor heritage fund from 4 percent of the first 1 percent of oil and gas gross production tax collections to 8 percent, and to increase the maximum oil and

gas gross production tax collection deposits from \$15 million to \$20 million per year and from \$30 million to \$40 million per biennium. For the period September 1, 2017, through August 31, 2019, Senate Bill No. 2013 (2017), a maximum of \$10 million of oil and gas gross production tax collections may be deposited in the fund. For the period September 1, 2019, through August 31, 2021, House Bill No. 1014 (2019), a maximum of \$15 million of oil and gas gross production tax collections may be deposited in the fund. For the period September 1, 2021, through August 31, 2023, Senate Bill No. 2014 (2021) a maximum of \$7.5 million per year of oil and gas gross production tax collections may be deposited in the fund. The Industrial Commission has oversight of the North Dakota outdoor heritage fund. The North Dakota Outdoor Heritage Advisory Board (consisting of 12 voting and 4 ex officio members) makes recommendations to the commission on the funding of grants.

ANALYSIS OF THE RESOURCES TRUST FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$287,678,550		\$428,846,473
Add estimated revenues and transfers				
Oil extraction tax collections	\$522,080,000 ¹		\$460,080,000 ¹	
Bond proceeds from repayment of loans	74,500,000 ²			
Repayments and reimbursements	11,088,000		11,000,000	
Investment earnings/miscellaneous income	2,600,000		1,526,000	
Total estimated revenues		610,268,000		472,606,000
Total available		\$897,946,550		\$901,452,473
Less estimated expenditures and transfers				
Department of Water Resources - Grants, projects, and project administration, pursuant to House Bill No. 1020 (2021) for the 2021-23 biennium and Senate Bill No. 2020 (2023) for the 2023-25 biennium	\$310,628,400 ³		\$814,169,835 ⁴	
House Bill No. 1431 (2021) - Appropriation to the State Water Commission to provide funding for the Mouse River flood control project	2,486,950 ²		72,013,050 ^{2,4}	
Total estimated Department of Water Resources expenditures and loans		313,115,350		886,182,885
Transfer to renewable energy development fund (Section 57-51.1-07)	\$3,000,000		\$3,000,000	
Transfer to energy conservation grant fund (Section 57-51.1-07)	1,200,000		1,200,000	
Senate Bill No. 2345 (2021) - Transfer to water projects stabilization fund	151,784,727 ⁵			
Total estimated transfers		155,984,727		4,200,000
Estimated ending balance		<u>\$428,846,473</u>		<u>\$11,069,588</u>

¹Estimated oil extraction tax revenues - These amounts are based on the January 2023 legislative revenue forecast.

²House Bill No. 1431 (2021) allocates \$74.5 million of bond proceeds which are deposited into the resources trust fund for the repayment of outstanding loans of the Western Area Water Supply Authority. The bill also provides an appropriation of \$74.5 million from the resources trust fund to the State Water Commission for the Mouse River flood control project. Of the \$74.5 million, \$72 million is anticipated to be continued into the 2023-25 biennium.

³House Bill No. 1020 (2021) includes \$678,048,989 from the resources trust fund for the purpose of defraying the expenses of the Department of Water Resources for the 2021-23 biennium. This amount includes \$360,685,806 of new appropriations for the 2021-23 biennium and \$317,363,183 of water project funding continued from the 2019-21 biennium (carryover). The Department of Water Resources estimates it will expend \$313,115,350 during the 2021-23 biennium.

⁴Senate Bill No. 2020 (2023) includes \$886.2 million from the resources trust fund for defraying the expenses of the Department of Water Resources, including \$497.2 million of new appropriations for the 2023-25 biennium and \$389 million for carryover projects.

⁵The amount shown reflects the oil and gas tax revenue deposited in the resources trust fund in excess of the 2021 legislative revenue forecast for the period August 1, 2021, through February 28, 2023. Senate Bill No. 2345 (2021 special legislative session) created the water projects stabilization fund for the purpose of defraying planning and construction expenses of water-related projects, provided for a transfer of \$1 million from the resources trust fund to the water projects stabilization fund, and provided for the transfer of all oil extraction tax revenues deposited in the resources trust fund that exceed the amount included in the 2021 legislative forecast from August 1, 2021, through February 28, 2023, on a quarterly basis.

INFRASTRUCTURE REVOLVING LOAN FUND HISTORY

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

RESOURCES TRUST FUND HISTORY

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

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

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

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

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

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

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

The Legislative Assembly in Senate Bill No. 2014 (2013) authorized quarterly transfers of 5 percent of the amount credited to the resources trust fund to the renewable energy development fund--up to \$3 million per biennium and of .5 percent of the amount credited to the resources trust fund to the energy conservation grant fund--up to \$1.2 million per biennium. Funds in the newly created energy conservation grant fund are appropriated on a continuing basis to the Department of Commerce for grants to political subdivisions for energy conservation projects in nonfederal public buildings. In addition, effective January 1, 2015, the Legislative Assembly, in Senate Bill No. 2233 (2013), established an infrastructure revolving loan fund within the resources trust fund. The bill provides 10 percent of oil extraction tax revenue deposited in the resources trust fund is to be made available on a continuing basis to provide loans for water supply, flood protection, or other water development and water management projects. Loans are approved by the State Water Commission and administered by the Bank of North Dakota. House Bill No. 1020 (2017) reduced the allocation to the renewable energy development fund from 5 to 3 percent and the maximum allocation to the energy

conservation grant fund from \$1.2 million to \$200,000 for the 2017-19 biennium, restored the maximum allocation to the energy conservation grant fund to \$1.2 million after July 31, 2019, and provided for a \$26 million maximum allocation of resources trust fund revenues to the infrastructure revolving loan fund.

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

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

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

**ANALYSIS OF THE SENIOR CITIZEN SERVICES AND PROGRAMS FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
	Actual		Estimated	
Beginning balance		\$0		\$0
Add estimated revenues				
Allocation from sales, use, and motor vehicle excise tax collections	\$9,163,584 ^{1,2}		\$9,900,000 ^{1,2}	
Total estimated revenues		9,163,584		9,900,000
Total available		\$9,163,584		\$9,900,000
Less estimated expenditures and transfers				
State Treasurer - County senior citizen matching grants	\$8,464,733 ³		\$9,900,000 ³	
Transfer to the general fund	698,851 ⁴			
Total estimated expenditures and transfers		9,163,584		9,900,000
Estimated ending balance		\$0		\$0

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

Fiscal Year	Allocation From Sales, Use, and Motor Vehicle Excise Tax Collections	Percentage Increase (Decrease) From Previous Year
2014	\$2,311,346 (actual)	26.9%
2015	\$2,654,064 (actual)	14.8%
2016	\$3,169,878 (actual)	19.4%
2017	\$3,627,787 (actual)	14.4%
2018	\$3,886,950 (actual)	7.1%
2019	\$4,060,513 (actual)	4.5%
2020	\$4,163,710 (actual)	2.5%
2021	\$4,342,001 (actual)	4.3%
2022	\$4,529,472 (actual)	4.3%
2023	\$4,634,112 (actual)	2.3%
2024	\$4,950,000 (estimate)	6.8%
2025	\$4,950,000 (estimate)	0.0%

²Senate Bill No. 2162 (2013) increased the amount of general fund revenue to be allocated to the senior citizen services and programs fund from three-fourths of one mill levied statewide to 85 percent of one mill levied statewide effective for taxable years beginning after December 31, 2012. The bill also increased the amount of grants provided to counties that have approved a mill levy for senior citizen programs from three-fourths of the amount levied in the county for senior citizen programs to 85 percent of the amount levied up to one mill.

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

³The county senior citizen matching grants are shown below.

Fiscal Year	County Senior Citizen Matching Grants	Percentage Increase (Decrease) From Previous Year
2014	\$2,290,963 (actual)	28.0%
2015	\$2,650,725 (actual)	15.7%
2016	\$3,143,803 (actual)	18.6%
2017	\$3,504,725 (actual)	11.5%
2018	\$3,723,317 (actual)	6.2%
2019	\$3,823,071 (actual)	2.7%
2020	\$3,892,217 (actual)	1.8%
2021	\$4,067,236 (actual)	4.5%
2022	\$4,207,302 (actual)	3.4%
2023	\$4,257,431 (actual)	1.2%
2024	\$4,950,000 (estimate)	16.3%
2025	\$4,950,000 (estimate)	0.0%

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

FUND HISTORY

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

ANALYSIS OF THE STATE AID DISTRIBUTION FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2021-23 Biennium		2023-25 Biennium	
		\$0		\$0
Beginning balance		\$0		\$0
Add estimated revenues				
Sales, use, and motor vehicle excise taxes (based on 43.5 percent of an equivalent one-cent sales tax effective July 1, 2014)	\$227,423,288 ¹		\$242,033,810 ¹	
Total estimated revenues		227,423,288		242,033,810
Total available		\$227,423,288		\$242,033,810
Less estimated expenditures and transfers				
Payments to political subdivisions				
County share (53.7 percent)	\$122,126,305		\$129,972,156	
City share (46.3 percent)	105,296,983		112,061,654	
Total estimated expenditures and transfers		227,423,288		242,033,810
Estimated ending balance		\$0		\$0

¹The amounts shown for the 2021-23 biennium and the 2023-25 biennium are based on the January 2023 legislative revenue forecast and legislative action affecting sales and use tax and motor vehicle tax through crossover, including the effects of House Bill Nos. 1177 and 1402. This analysis does not reflect the effect of House Bill Nos. 1212, 1370, 1430, 1455, 1498, 1511, and 1513, and Senate Bill Nos. 2141 and 2334, because based on the fiscal notes, the effect of these bills cannot be determined.

FUND HISTORY

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

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

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

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

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

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

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

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

House Bill No. 1067 (2015), which became effective July 1, 2015, and expired on June 30, 2021, changes the state aid distribution formula from allocations based on the decennial census to allocations based on most recent actual or estimated census data. House Bill No. 1379 (2021) clarified the timing of the allocations from the state aid distribution fund and continued the method of allocating revenues based on the most recent actual or estimated census data.

**ANALYSIS OF THE STRATEGIC INVESTMENT AND IMPROVEMENTS FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
		\$		\$
Beginning balance		\$863,342,901		\$1,535,736,624
Add estimated revenues				
Production royalties (2017 SB 2134; 2019 SB 2211) ^{1,2}	\$280,340,662		\$217,118,000	
Oil and gas bonuses ^{1,2}	0		0	
Mineral revenue refund repayments (2017 SB 2134; 2019 SB 2211) ²	(37,901,738)		0	
Mineral leases ¹	5,137,352		0	
Investment earnings ¹	(2,732,343)		17,650,565	
Oil and gas tax collections (2021 HB 1015; 2021 SB 2014, 2021 SB 2249, 2021 SB 2319; 2023 HB 1014; 2023 SB 2161, 2023 SB 2367) ^{3,4}	932,180,000		559,260,000	
Total estimated revenues		1,177,023,933		794,028,565
Total available		\$2,040,366,834		\$2,329,765,189
Less estimated expenditures and transfers				
Secretary of State				
Information technology project (2023 SB 2002)			\$1,500,000	
Office of Management and Budget				
Information technology projects (2021 HB 1015)	\$3,251,304			
Transfer to the cultural endowment fund for the maintenance of public arts projects (2021 HB 1015)	1,000,000			
Deferred maintenance funding pool (2023 SB 2015)			20,000,000	
Information Technology Department				
Information technology projects (2023 HB 1021)			16,500,000	
Attorney General				
Litigation funding pool (2021 HB 1003)	3,000,000			
Tax Commissioner				
Reimbursements for the homestead tax credit program (2023 SB 2136)			135,000,000	
Public Employees Retirement System				
Transfer to the main system retirement plan (2023 HB 1014)			240,000,000	
North Dakota University System				
Capital building fund program (2021 SB 2003; 2023 HB 1003)	19,000,000		29,000,000	
Campus projects (2021 SB 2003)	2,863,000			
Bismarck State College				
Multipurpose academic and athletic center project (2023 HB 1003)			29,900,000	
Williston State College				
Medical health care building project (2023 HB 1003)			34,750,000	
University of North Dakota				
Science, engineering, and national security corridor project (2023 HB 1003)			57,400,000	
Science, technology, engineering, and math building project (2023 HB 1003)			52,000,000	
North Dakota State University				
Center for engineering and computational sciences project (2023 HB 1003)			59,000,000	

North Dakota State College of Science			
Agriculture, automation, and autonomous systems project (2023 HB 1003)			18,975,000
Dickinson State University			
Agriculture and technology education building project (2023 HB 1003)			17,100,000
Mayville State University			
Old Main renovation project (2023 HB 1003)			49,970,100
Minot State University			
Dakota Hall demolition project (2023 HB 1003)			765,000
Academic building project (2023 HB 1003)			7,600,000
Valley City State University			
McCarthy Hall renovation project (2023 HB 1003)			11,500,000
Dakota College at Bottineau			
Old Main renovation project (2023 HB 1003)			4,300,000
Veterans' Home			
Parking lot repairs (2023 HB 1007)			600,000
Department of Health and Human Services - Human Services Division			
Transfer to human service finance fund (2023 SB 2012)			21,600,000
Information technology projects (2023 SB 2012)			11,000,000
State Hospital project planning and design (executive budget)			5,000,000
Pregnant and parenting women residential facility projects (2023 SB 2012)			1,000,000
Southeast Human Service Center project (2023 SB 2012)			735,154
Transfer to a newly created pay for success fund (2023 HB 1480)			2,500,000
Insurance Commissioner			
Study of lignite coal industry insurance (2021 HB 1010)	200,000		
Industrial Commission			
Transfer to the oil and gas research fund (2021 SB 2014)	9,500,000		
Transfer to the State Energy Research Center fund - rare earth minerals study (2023 HB 1014)			3,000,000
Transfer to the State Energy Research Center fund - underground energy storage research project (2023 HB 1014)			22,000,000
Transmission line grant (2023 HB 1014)			25,000,000
Transfer to a newly created clean natural gas capture and emissions reduction fund (2023 SB 2089)			7,500,000
Bank of North Dakota			
Transfer to the innovation loan fund to support technology advancement (2021 HB 1141)	15,000,000		
Transfer to a newly created bulk propane storage tank revolving loan fund (2023 SB 2242)			15,000,000
Department of Corrections and Rehabilitation			
Information technology project (2023 HB 1015)			2,307,000
Heart River Correctional Center project (2023 HB 1015)			161,200,000
James River Correctional Center maintenance shop project (2023 HB 1015)			1,550,000
Adjutant General			
National Guard deferred maintenance projects (2021 HB 1016)	1,000,000		
Statewide interoperable radio network equipment (2023 SB 2016)			2,700,000
Department of Commerce			
Beyond visual line of sight unmanned aircraft systems (2021 SB 2018; 2023 HB 1018)	19,000,000		30,000,000
Enhanced use lease grants (2021 SB 2018; 2023 HB 1018)	7,000,000		28,000,000

Job development grant (2021 SB 2018)	1,500,000		
Workforce safety grant (2021 SB 2018)	1,500,000		
Transfer to North Dakota development fund - development programs (2023 HB 1018)			30,000,000
Transfer to North Dakota development fund - fertilizer grants (2023 HB 1018)			120,000,000
Rural workforce housing grants (2023 HB 1018)			7,000,000
Tourism marketing awareness initiative (2023 HB 1018)			5,000,000
Tourism destination development initiative (2023 HB 1018)			25,000,000
New Americans workforce development and training grants (2023 HB 1018)			2,000,000
Workforce safety grant (2023 HB 1018)			1,500,000
Agriculture Commissioner			
Grasslands grazing grant program (2021 HB 1009)	5,000,000		
Transfer to the bioscience innovation fund (2023 SB 2009)			5,500,000
Grasslands grazing grants (2023 SB 2290)			3,000,000
Upper Great Plains Transportation Institute			
Remote sensing infrastructure (2021 SB 2020)	225,000		
Transportation data intelligence center (2023 HB 1020)			432,600
Branch Research Centers			
Capital projects at the Carrington Research Center, the Central Grasslands Research Center, the Hettinger Research Center, and the Langdon Research Center (2021 SB 2020)	2,073,000		
NDSU Main Research Center			
Waldron Hall replacement, storage sheds, and deferred maintenance (2023 HB 1020)			99,400,000
Northern Crops Research Center			
Feed center project (2023 HB 1020)			3,900,000
State Historical Society			
Historic site projects (2023 SB 2018)			4,500,000
Exhibit projects (2023 SB 2018)			595,000
Parks and Recreation Department			
Various capital projects at parks and deferred maintenance (2023 SB 2019)			10,000,000
Local park district grants (2023 SB 2019)			750,000
State park matching grants (2023 SB 2019)			1,500,000
Lake Metigoshe reimagined project (2023 SB 2019)			250,000
Department of Transportation			
Matching federal funds (executive budget)			200,000,000
Transfer to a newly created state flexible transportation fund (2023 HB 1012)			115,000,000
Shortline railroad loan program enhancement (2023 HB 1012)			8,000,000
Preliminary engineering and studies for northern Red River Valley infrastructure projects (2023 HB 1012)			5,000,000
Transfer to the general fund (2021 HB 1015)	410,000,000		
Administrative costs/other fees	3,517,906		4,000,000
Total estimated expenditures and transfers		504,630,210	1,778,279,854
Estimated ending balance		\$1,535,736,624	\$551,485,335

Restricted fund income		
Reserve relating to potential title disputes (2017 SB 2134; 2019 SB 2211) ^{2,5}	68,349,040	68,349,040
Loan guarantees (2011 SB 2306; 2013 SB 2287; 2019 SB 2296; 2021 SB 2230; 2023 HB 1014) ⁶	80,000,000	140,000,000
Estimated ending balance - Unobligated	<u>\$1,387,387,584</u>	<u>\$343,136,295</u>

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

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

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

³Estimated revenues - The estimated allocations for the 2021-23 biennium are based on actual oil and gas tax revenue allocations through December 2022 and the January 2023 legislative revenue forecast for the remainder of the 2021-23 biennium and for the entire 2023-25 biennium.

⁴House Bill No. 1015 (2021) increases the oil and gas tax revenue allocation limit for the state disaster relief fund by \$5 million and aligns the allocations to the municipal infrastructure fund and the county and township infrastructure fund to provide allocations to the two funds at the same time after the initial allocation to SIIF. For the 2021-23 biennium only, Senate Bill No. 2014 (2021) limits the allocations to the North Dakota outdoor heritage fund to \$7.5 million per fiscal year. Senate Bill No. 2249 (2021) increases the oil and gas tax revenue allocation limit for the state disaster relief fund by \$5 million, the same as House Bill No. 1015 (2021). Senate Bill No. 2319 (2021) allocates a portion of the oil and gas tax revenue collected from oil wells that cross into a reservation to the tribes decreasing the state's share of oil and gas tax revenues. The combined effect of the bills results in an increase in the allocations to SIIF.

House Bill No. 1014 (2023) and Senate Bill Nos. 2161 and 2367 (2023) change the oil and gas tax revenue allocation formulas for the 2023-25 biennium. The combined effect of the bills results in a decrease in the allocations to SIIF.

⁵These amounts represent mineral revenues received from areas of the Yellowstone and Missouri Rivers and Lake Sakakawea where mineral rights are in dispute. Pursuant to action of the Board of University and School Lands, this portion of the fund balance is designated to be held in reserve. The assigned fund balance is adjusted only when approved by the board, which is usually done in August of each year.

⁶Senate Bill No. 2287 (2013) increased the guarantee reserve fund balance from 25 to 100 percent, not to exceed a total of \$25 million, through July 31, 2015. After July 31, 2015, the amount of reserves for all guaranteed loans must be determined by a formula that will provide an adequate amount of reserves as determined by the Bank of North Dakota. Money may be transferred from SIIF to reimburse lenders for guaranteed loans in default.

Senate Bill No. 2296 (2019) increased the limit for loan guarantees to \$50 million. Senate Bill No. 2230 (2021) increases the loan guarantee limit to \$80 million. House Bill No. 1014 (2023) increases the limit for loan guarantees to \$140 million related to a guarantee for a line of credit to provide pipeline capacity positions.

FUND HISTORY

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

All income from the sale, lease, and management of the mineral interests relating to these properties is deposited in SIIF, pursuant to North Dakota Century Code Section 15-08.1-08. The principal and interest of the fund may be used for one-time expenditures relating to improving state infrastructure or for initiatives to

improve the efficiency and effectiveness of state government. Money in the fund may be included in draft appropriation Acts under Section 54-44.1-06 and may be appropriated by the Legislative Assembly, but only to the extent the money is estimated to be available at the beginning of the biennium in which the appropriations are authorized.

Prior to July 1, 2015, if the unobligated balance of SIIF exceeded \$300 million at the end of any month, 25 percent of any revenues received for deposit in SIIF were deposited instead into the legacy fund in the subsequent month. In House Bill Nos. 1176 and 1377 (2015), the Legislative Assembly amended Section 15-08.1-08 to remove the provision related to the additional deposits of revenue in the legacy fund from SIIF. The unobligated balance in the fund is defined as the balance in the fund reduced by appropriations or transfers from the fund authorized by the Legislative Assembly, guarantee reserve fund requirements under Section 6-09.7-05, and any fund balance designated by the Board of University and School Lands relating to potential title disputes related to certain riverbed leases.

**ANALYSIS OF THE TAX RELIEF FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$200,199,146		\$201,176,153
Add estimated revenues				
Allocation of oil and gas tax revenues	\$200,000,000 ¹		\$250,000,000 ¹	
Refund of prior biennium county expenses				
Total estimated revenues		200,000,000		250,000,000
Total available		\$400,199,146		\$451,176,153
Less estimated expenditures and transfers				
Distributions to non-oil-producing counties (2021 HB 1015)	\$11,799,901 ²			
Transfer to human service finance fund (2021 HB 1015; 2023 SB 2015)	187,223,092		\$200,000,000 ³	
Total estimated expenditures and transfers		199,022,993		200,000,000
Estimated ending balance		<u>\$201,176,153</u>		<u>\$251,176,153</u>

¹Estimated revenues - These amounts reflect the January 2023 legislative revenue forecast and legislative action through crossover. Senate Bill No. 2367 (2023) increases the allocation from the state share of oil and gas taxes to the tax relief fund from \$200 million to \$250 million.

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

³Section 4 of Senate Bill No. 2015 (2023) provides for a transfer of \$200 million from the tax relief fund to the human service finance fund.

FUND HISTORY

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

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

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

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

ANALYSIS OF THE STATE TUITION FUND FOR THE 2021-23 AND 2023-25 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2021-23 Biennium		2023-25 Biennium	
Beginning balance		\$2,015,709 ¹		\$1,633,599 ¹
Add estimated revenues				
Fines for violation of state laws	\$11,621,881 ²		\$11,000,000 ²	
Transfers from the common schools trust fund	421,020,000		499,860,000	
Total estimated revenues		432,641,881		510,860,000
Total available		\$434,657,590		\$512,493,599
Less estimated expenditures and transfers				
State aid to schools (2019 SB 2013; 2021 HB 1013)	\$433,023,991		\$510,860,000	
Total estimated expenditures and transfers		433,023,991		510,860,000
Estimated ending balance		<u>\$1,633,599¹</u>		<u>\$1,633,599¹</u>

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

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

Fiscal Year	Revenue From Fines	Percentage Increase (Decrease) From Previous Year
2003	\$4,607,423 (actual)	(3.6%)
2004	\$4,721,407 (actual)	2.5%
2005	\$4,507,137 (actual)	(4.5%)
2006	\$4,506,316 (actual)	(0.01%)
2007	\$4,590,395 (actual)	1.9%
2008	\$4,692,048 (actual)	2.2%
2009	\$4,452,118 (actual)	(5.1%)
2010	\$4,593,325 (actual)	3.2%
2011	\$4,963,691 (actual)	8.1%
2012	\$5,769,861 (actual)	16.2%
2013	\$6,158,750 (actual)	6.7%
2014	\$6,844,632 (actual)	11.1%
2015	\$7,655,890 (actual)	11.9%
2016	\$6,945,206 (actual)	(9.3%)
2017	\$5,511,247 (actual)	(20.6%)
2018	\$6,055,397 (actual)	9.9%
2019	\$5,885,838 (actual)	(2.8%)
2020	\$5,093,885 (actual)	(13.5%)
2021	\$6,144,964 (actual)	20.6%
2022	\$5,791,042 (actual)	(5.8%)
2023	\$5,830,839 (estimate)	0.7%
2024	\$5,500,000 (estimate)	(5.7%)
2025	\$5,500,000 (estimate)	0%

FUND HISTORY

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

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

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

**ANALYSIS OF THE VETERANS' POSTWAR TRUST FUND
FOR THE 2021-23 AND 2023-25 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2021-23 Biennium		2023-25 Biennium	
Beginning balance ^{1,2}		\$8,179,087		\$7,675,987
Add estimated revenues				
Investment and interest income ^{3,4}	(\$250,000)		\$500,000	
Patriotic license plates	28,000		28,000	
Income tax return donations	55,000		55,000	
Commemorative memorial coin program sales	15,000		15,000	
Commemorative memorial coin program donations	3,000		3,000	
Impact Foundation donations ^{5,6}	30,000		30,000	
Other donations and income	3,500		3,500	
Total estimated revenues		(\$115,500)		634,500
Total available ⁶		\$8,063,587		\$8,310,487
Less estimated expenditures and transfers				
Investment management and consulting services	\$125,000		\$125,000	
Grants and related expenditures	190,000			
Veterans' transportation programs	600			
Commemorative memorial coin program expenditures	16,000		16,000	
Impact Foundation expenditures ^{5,6}	56,000		30,000	
Other programs that benefit veterans ⁷	0		240,000	
Total estimated expenditures and transfers		387,600		411,000
Estimated ending balance		\$7,675,987		\$7,899,487

¹During the 2019-21 biennium, the State Treasurer converted investment earnings reporting from a cost basis to a fair market value basis, resulting in an increase in the reported value of investments of the veterans' postwar trust fund.

²North Dakota Century Code Section 57-38-34.7 allows the Department of Veterans' Affairs to apply for, accept, and expend private donations, gifts, grants, or bequests that are offered or tendered with a specifically identified purpose or a restrictive condition which is related to a benefit or service for resident North Dakota veterans and appropriates those funds to the department on a continuing basis in accordance with the donor's instructions. During the 2019-21 biennium, the department received \$52,300 of donations, excluding donations from the Impact Foundation, for veterans' programs, of which \$9,600 was for hardship assistance grants, \$18,900 was for a hyperbaric oxygen therapy program for veterans with posttraumatic stress disorder, \$11,300 was for a Fisher House program to partner with a private organization to build comfort homes for military and veteran families when a family member is hospitalized, and \$12,500 was for a commemorative book provided free to Vietnam War veterans.

³Prior to July 2011, Section 37-14-14 appropriated on a continuing basis all income of the veterans' postwar trust fund to the Administrative Committee on Veterans' Affairs for programs that benefit veterans or their dependents. The Legislative Assembly in House Bill No. 1468 (2011) amended Section 37-14-14 to provide that all income earned in a biennium is appropriated to the Administrative Committee on Veterans' Affairs for authorized programs on a continuing basis in the following biennium, and not in the biennium in which it is earned. Therefore, the investment income earned by the fund during the 2019-21 biennium was not available for programs until the 2021-23 biennium and income earned by the fund during the 2021-23 biennium will not be available for programs until the 2023-25 biennium.

⁴The State Treasurer has not provided investment income estimates for the 2021-23 biennium. Actual investment losses through January 2023 were (\$396,500). Investment income estimates for the 2021-23 biennium are based on actual investment losses through January 2023 and estimated investment gains for February

through June 2023 based on 12 months of investment returns during the 2021-23 biennium that did not include abnormally high investment losses or abnormally high investment gains. Investment income estimates for the 2023-25 biennium are based on prior biennium investment returns.

⁵The North Dakota Veterans Emergency Needs Charitable Fund (also known as the North Dakota Support Our Veterans Fund) was established in April 2010 by the Impact Foundation to support emergency needs of North Dakota veterans and their eligible dependents. As noted in the March 28, 2018, *Performance Audit Report of the Department of Veterans' Affairs* prepared by the State Auditor, the department has received and expended funds from the Impact Foundation by combining these funds with those of the veterans' postwar trust fund without legislative or Emergency Commission approval. The State Auditor's report identified that these actions were in conflict with Section 18 of Article X of the Constitution of North Dakota and Section 37-18-12. In House Bill No. 1248 (2019), the Legislative Assembly created Section 57-38-34.7 to authorize the department to accept and expend donations and other funding, such as the funding received from the Impact Foundation.

⁶Estimated funds available for benefits during the 2021-23 biennium total approximately \$463,312, of which \$232,370 is from income earned on the fund during the 2019-21 biennium, \$81,142 is from income earned on the fund during prior bienniums but not yet spent, \$1,250 is the estimated short term interest earned on certificates of deposit approved by the Administrative Committee on Veterans' Affairs, \$18,000 is the estimated donations and sales related to the commemorative memorial coin program during the 2021-23 biennium, \$18,736 is from donations and sales related to the commemorative memorial coin program during the 2019-21 biennium that was not spent by the end of the biennium, \$30,000 is from revenue received from the Impact Foundation during the 2021-23 biennium, \$26,014 is from net proceeds from the Impact Foundation from prior bienniums, \$3,500 is the estimated amount donations and other income that will be collected during the 2021-23 biennium, and \$52,300 is from donations received during the 2019-21 biennium but not spent by the end of the biennium.

⁷Estimated funds available for benefits during the 2023-25 biennium, based on the average investment income earned on the fund during the 2021-23 biennium through January 2023, is approximately \$240,000, excluding any funding continued from prior bienniums and funding collected during the 2023-25 biennium for the commemorative memorial coin program, donations, and short-term interest.

FUND HISTORY **Established**

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

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

1988 Initiated Measure No. 4

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

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

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

Senate Bill No. 2009 (1989) transferred \$1,480,000--\$740,000 on July 1, 1989, and \$740,000 on July 1, 1990--from the state general fund to the veterans' postwar trust fund. The bill also appropriated up to \$274,000 of investment income earned on the veterans' postwar trust fund balance to the Veterans' Home for its

operating costs. Because of net budget reductions during the 1989-91 biennium, the transfer from the general fund to the veterans' postwar trust fund for the 2nd year of the 1989-91 biennium was reduced by \$95,005, from \$740,000 to \$644,995.

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

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

1996 Initiated Constitutional Measure No. 4

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

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

House Bill No. 1468 (2011)

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

House Bill No. 1439 (2013)

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

House Bill No. 1360 (2015)

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

Senate Bill No. 2183 (2017)

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

House Bill No. 1131 (2019)

The Legislative Assembly in House Bill No. 1131 (2019) amended Section 37-18-12 to allow the Department of Veterans' Affairs to accept private donations, gifts, grants, or bequests that benefit or service North Dakota veterans, which are available to the department pursuant to continuing appropriation authority.

House Bill No. 1248 (2019)

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

House Bill No. 1211 (2021)

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