

**ANALYSIS OF STATE TRUST FUNDS
REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER**

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**ANALYSIS OF THE STATE BONDING FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$2,302,806		\$1,865,551
Add estimated revenues				
Investment income	(\$400,000) ¹		\$150,000	
State bonding fund claims collections	90,000		55,000	
Other income	7,007		7,000	
Total estimated revenues		(302,993)		212,000
Total available		\$1,999,813		\$2,077,551
Less estimated expenditures and transfers				
Insurance Department administration (2007 SB 2010; 2009 HB 1010)	\$44,262		\$41,518	
State bonding fund claims losses	50,000		125,000	
Investment expense	30,000		10,000	
Claims-related expenditures	10,000		15,000	
Total estimated expenditures and transfers		134,262		191,518
Estimated ending balance		<u>\$1,865,551²</u>		<u>\$1,886,033²</u>

¹Through January 2009 the state bonding fund has had a decline in investment value of 16.15 percent during fiscal year 2009.

²Pursuant to North Dakota Century Code Section 26.1-21-09, premiums for the state bonding fund must be waived until the reserve fund for the state bonding fund has been depleted below \$2 million. Whenever the bond fund balance is less than \$2 million, premiums must be collected until the fund reaches a total of \$3 million. Based on current projections, the fund will be depleted below \$2 million prior to the end of the 2007-09 biennium. As of February 2009 the fund balance still exceeds \$2 million. The Insurance Commissioner is reviewing options for collecting premiums for the fund and will begin collections if the fund balance becomes less than \$2 million.

FUND HISTORY

The state bonding fund was created in 1915 and is maintained for bond coverage of public employees. The state bonding fund is managed by the Insurance Commissioner and the amount of coverage provided to each state agency, department, industry, and institution is determined by the commissioner based upon the amount of money and property handled and the opportunity for default. North Dakota Century Code Section 26.1-21-09, as amended by the 2003 Legislative Assembly in Senate Bill No. 2015, provides that premiums for bond coverage are to be determined by the Insurance Commissioner but must be waived if the state bonding fund's balance is in excess of \$2 million. Senate Bill No. 2015 (2003) lowered the minimum fund balance from \$2.5 million to \$2 million. No premium has been charged, possibly since 1953, because the bonding fund's balance has exceeded the minimum level established by the Legislative Assembly.

ANALYSIS OF THE BUDGET STABILIZATION FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2007-09 Biennium		2009-11 Biennium	
	Beginning balance		\$200,000,000	
Add estimated revenues				
Transfer from general fund	\$191,822,655 ^{1,2,4}		\$0	
Investment income	0 ²		0 ²	
Total estimated revenues		191,822,655		0
Total available		\$391,822,655		\$391,822,655
Less estimated expenditures and transfers				
None				
Total estimated expenditures and transfers		0 ^{2,3,4}		0 ³
Estimated ending balance		\$391,822,655 ²		\$391,822,655

¹North Dakota Century Code Chapter 54-27.2 provides that any amount in the general fund at the end of a biennium in excess of \$65 million must be transferred to the budget stabilization fund except that beginning July 1, 2009, the balance in the budget stabilization fund may not exceed 10 percent of the general fund budget approved by the most recently adjourned Legislative Assembly (see No. 4 below).

²**Through January 2009 the budget stabilization fund's market value of investments was \$183.0 million, \$17.0 million less than the original investment value.** The reduction is the result of investment losses based on the current market value of the investments. The Office of Management and Budget does not plan to transfer any additional funds to the budget stabilization fund from the general fund on June 30, 2009, to restore any losses based on the market value of investments. The Office of Management and Budget anticipates holding the investments until maturity which it believes will not result in an overall loss to the fund over the term of these investments.

³No transfers from the budget stabilization fund are anticipated.

⁴**House Bill No. 1419 makes the following changes to the budget stabilization fund:**

- Increases the maximum balance of the fund from 10 percent to 12.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly. This change increases the estimated June 30, 2009, transfer from the general fund by \$78,364,531, from \$113,458,124 to \$191,822,655 based on general fund appropriations as of crossover.
- Retains interest earnings in the fund unless the balance in the fund at the end of the biennium exceeds 12.5 percent of the general fund budget approved by the most recently adjourned Legislative Assembly.
- Allows the Governor to transfer one-half of any projected general fund revenue shortfall during a biennium from the budget stabilization fund to the general fund and to provide for the other half of any shortfall by making allotments to agency budgets.
- Provides guidance for transfers that may be made from the fund by future Legislative Assemblies if projected revenues are not sufficient to provide for current appropriation levels adjusted for specific cost-to-continue items.

FUND HISTORY

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

- Section 54-27.2-01 establishes the budget stabilization fund and provides that any interest earned on the balance of the budget stabilization fund must be retained in the fund. The section currently provides that any money in the fund in excess of 5 percent of the general fund budget as approved by the most recently adjourned Legislative Assembly must be deposited in the state general fund. The 2007 Legislative Assembly approved House Bill No. 1429 which transferred \$100,527,369 from the ending 2005-07 biennium general fund balance into the fund providing a total of \$200 million in the fund. The bill also

increases, effective July 1, 2009, the maximum balance allowed in the fund from 5 percent to 10 percent of the general fund budget approved by the most recently adjourned Legislative Assembly.

- Section 54-27.2-02 provides that any amount in the state 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 that 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 that general fund revenues for the biennium will be at least 2.5 percent less than estimated by the most recently adjourned Legislative Assembly. The amount transferred is limited 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. Any transfer made must be reported to the Budget Section.

**ANALYSIS OF THE CAPITOL BUILDING FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)¹**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$905,223		\$1,482,325
Add estimated revenues				
Investment income	\$62,849		\$30,109	
Rentals, royalties, bonuses, and contracts	957,327		277,634	
Total estimated revenues		1,020,176		307,743
Total available		\$1,925,399		\$1,790,068
Less estimated expenditures and transfers				
Administrative expenses	\$27,184		\$29,402	
Income payments to counties	4,390 ²		4,390 ²	
Capitol Grounds Planning Commission operating expenses (2007 HB 1522; 2009 HB 1015)	411,500		800,000	
Capitol Grounds Planning Commission continuing appropriation (North Dakota Century Code Section 48-10-02)	0		100,000	
Total estimated expenditures and transfers		443,074		933,792
Estimated ending balance		<u>\$1,482,325</u>		<u>\$856,276</u>

¹The analysis reflects the legislative appropriations for the 2007-09 and 2009-11 bienniums and does not include the land owned by the fund.

²The 1999 Legislative Assembly passed Senate Bill No. 2088, which provides that 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.

**ANALYSIS OF THE COAL DEVELOPMENT TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium ¹		2009-11 Biennium ¹	
Beginning balance		\$260,267		\$402,499
Add estimated revenues				
Investment income	\$1,579,852		\$1,007,247	
School construction loan income	1,339,872		1,740,000	
Oil, gas, and coal impact loan income	422,288		399,323	
Total estimated revenues		3,342,012		3,146,571
Total available		\$3,602,279		\$3,549,070
Less estimated expenditures and transfers				
Administrative expenses	\$99,780		\$89,858	
Transfer to the general fund	3,100,000		3,400,000	
Total estimated expenditures and transfers		3,199,780		3,489,858
Estimated ending balance		\$402,499		\$59,212

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 (NDCC) Section 57-62-02 and Article X, Section 21, of the Constitution of North Dakota. As of December 31, 2008, the total value of permanent fund assets was \$60.6 million, of which \$34.2 million was school construction loans receivable, \$5.3 million was coal impact loans receivable, and \$21.1 million was either invested or was a receivable of investment or other earnings.

North Dakota Century Code Section 57-62-02 and Article X, Section 21, 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 in 1979 with passage of House Bill No. 1257, now codified as various sections of NDCC Chapter 57-62. In 1980 the voters of North Dakota approved constitutional measure No. 5, creating Article X, Section 21, of the Constitution of North Dakota and establishing the coal development trust fund as a constitutional trust fund.

North Dakota Century Code Section 57-62-02 provides that 30 percent of the coal severance tax must be deposited in the coal development trust fund. Section 57-62-02 provides that 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.

North Dakota Century Code 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) remain in the coal development trust fund to be used for the purposes provided in Section 57-62-02.

**ANALYSIS OF THE COMMUNITY HEALTH TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$2,392,943		\$618,683
Add estimated revenues				
Transfers to date from the tobacco settlement trust fund	\$3,648,108 ¹		\$0	
Projected remaining transfers from the tobacco settlement trust fund	2,194,029		4,388,119	
Total estimated revenues		5,842,137 ²		4,388,119 ²
Total available		\$8,235,080		\$5,006,802
Less estimated expenditures and transfers				
State Department of Health (2007 HB 1004; 2009 SB 2004)				
Tobacco prevention and control	\$4,700,000 ³		\$2,180,371 ^{3,14}	
Dentists' loan program	360,000 ⁴		288,448 ⁴	
Community health grant programs	160,000 ⁵		0	
Community Health Grant Program Advisory Committee	70,000 ⁵		0	
Tobacco Quitline	1,069,000 ⁶		1,069,000 ^{6,14}	
Tobacco cessation coordinator and operating expenses	139,397 ⁷		139,397 ^{7,14}	
Physician loan repayment program	18,000 ⁸		72,500 ⁸	
Colorectal cancer screening initiative	150,000 ⁹		0	
Emergency medical services grants	300,000 ¹⁰		300,000 ¹⁰	
Dental grant program (2007 SB 2152)	0 ¹¹		10,000 ¹¹	
Governor's office				
Governor's Prevention and Advisory Council (2007 SB 2276)	100,000 ¹²		0	
Department of Human Services				
Breast and cervical cancer assistance (2007 SB 2012; 2009 HB 1012)	550,000 ¹³		790,015 ¹³	
Total estimated expenditures and transfers		7,616,397		4,849,731
Estimated ending balance		\$618,683		\$157,071

¹For the 2007-09 biennium, two transfers totaling \$3,648,108 have been made from the tobacco settlement trust fund as of February 2009. Total transfers of \$23,315,635 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 state general fund.

In 2006 certain tobacco companies began reducing their tobacco settlement payments to North Dakota contending that the Master Settlement Agreement allows for the payments to be reduced if they lose sales to small cigarette makers that did not participate in the agreement and if states do not enforce laws intended to make smaller tobacco companies set aside money for legal claims. The Attorney General's office has filed a lawsuit against the tobacco companies to collect full payment. Due to the uncertainty of the lawsuit, the Office of Management and Budget has further reduced the estimated tobacco settlement revenues for the 2007-09 biennium by 5 percent in the first year of the biennium and 3 percent in the second year. The community health trust fund share of the 5 percent and 3 percent reductions are \$184,218 and \$110,531, respectively. The Office of Management and Budget has reduced the estimated tobacco settlement revenues for the 2009-11 biennium by 3 percent. The community health trust fund share of the 3 percent reduction is \$221,062 for the 2009-11 biennium.

At the end of the 2007 legislative session, tobacco settlement revenues for the community health trust fund were estimated to be \$7,000,290 for the 2007-09 biennium. The decrease in the amount of estimated revenues to be collected from the tobacco settlement trust fund of \$1,158,153 is due to an increase in actual tobacco settlement revenues collected to date of which the community health trust fund's share is \$147,963, an estimated increase of \$73,687 due to a change in the estimated discount from 5 percent to 3 percent in the second year of the biennium, and an estimated decrease of \$1,379,803 resulting from initiated measure No. 3. Approved by voters in the November 2008 general election, the measure amends North Dakota Century Code (NDCC) Section 54-27-25 to provide that a portion of tobacco settlement funds received by the state be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, which began in 2008 and continues through 2017, will be deposited beginning in 2009 in the tobacco prevention and control trust fund. The amount received under subsection IX(c)(2) of the Master Settlement Agreement for 2008 was \$13,797,729. Remaining community health trust fund revenues have been estimated based on the Office of Management and Budget revised estimated collections less anticipated strategic contribution payments of \$13,797,729 per year, which was the actual amount of the 2008 strategic contribution payment. The measure provides that at least 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.

Initiated measure No. 3 will result in the following estimated allocation of the revised estimated collections for tobacco settlement payments through 2025:

	Actual and Estimated Total Tobacco Settlement Proceeds	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	\$36.5 million	N/A	\$16.4 million	\$16.4 million	\$3.7 million
Estimated payment April 2009	35.7 million	\$13.8 million	9.9 million	9.9 million	2.1 million
Estimated 2009-11 biennium	71.5 million	27.6 million	19.8 million	19.8 million	4.3 million
Estimated 2011-13 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2013-15 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2015-17 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2017-19 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2019-21 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2021-23 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2023-25 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Total	\$574.8 million	\$124.2 million	\$202.9 million	\$202.9 million	\$44.8 million

³North Dakota Century Code Section 54-27-25 provides that money in the community health trust fund may be used by the State Department of Health, subject to legislative appropriation, for community-based public health programs and other public health programs, including programs with an emphasis on preventing or reducing tobacco usage. The executive budget recommendation provides an appropriation of \$2.2 million, \$2.5 million less than the 2007-09 biennium appropriation, to the State Department of Health for tobacco prevention and control programs.

⁴The dentists' loan repayment program, which is administered by the Health Council, was established in 2001 Senate Bill No. 2276 (NDCC Chapter 43-28.1). Each year the Health Council is to select up to three dentists who agree to provide dental services in the state. The dentists are eligible to receive funds, not to exceed a total of \$80,000 per applicant, for the repayment of their educational loans. The funds are payable over a four-year period (\$20,000 per year). The dental loan repayment program is to provide the highest priority for acceptance into the program to dentists willing to serve the smallest and most underserved communities in

North Dakota. Senate Bill No. 2152 (2007) provides that a dentist practicing in Bismarck, Fargo, or Grand Forks must have received dental medical payments of at least \$20,000 in the form of medical assistance reimbursement or practiced at least two full workdays per week at a public health clinic or nonprofit dental clinic in order to qualify for the dentists' loan repayment program. Dentists accepted into the program per biennium include:

Biennium (Number of Dentists Accepted Into Program)	Communities Served
2001-03 biennium (3)	Minot (2) Larimore
2003-05 biennium (6)	Fargo Community Health Center New Rockford Grand Forks Fargo Bismarck West Fargo
2005-07 biennium (4)	Fargo Community Health Center Bismarck (serving special populations) Mott Minot
2007-09 biennium (6 to date)	Park River Bismarck Grand Forks Cando/Devils Lake Rugby Wishek

⁵The community health grant program was established in 2001 Senate Bill No. 2380 (NDCC Section 23-38-01) with the intent to prevent or reduce tobacco usage. The Community Health Grant Program Advisory Committee is to advise the State Department of Health regarding the community health grant program. The 2007 Legislative Assembly authorized \$360,000 for tobacco cessation grants (\$260,000) and the Community Health Grant Program Advisory Committee (\$100,000). The grants to cities and counties for cessation programs are to be matched with \$1 of local funds for every \$3 of state funds. The 2009-11 executive budget recommendation does not include funding for the community health grant program.

⁶The 2003 Legislative Assembly authorized the establishment of a telephone "Tobacco Quitline." The 2007 Legislative Assembly appropriated \$1,069,000, an increase of \$185,000 from the 2005-07 biennium appropriation of \$884,000, to operate the quitline for the 2007-09 biennium. The 2007 Legislative Assembly increased the funding for the quitline to provide nicotine replacement therapy and cessation counseling. The 2009-11 executive budget recommendation includes \$1,069,000 to fund the quitline for the 2009-11 biennium, the same as the 2007-09 biennium appropriation.

⁷The 2007 Legislative Assembly authorized one full-time equivalent tobacco prevention coordinator position and related funding for salaries and wages (\$117,101) and operating expenses (\$22,296) for the position. The 2009-11 executive budget recommendation includes funding of \$139,397 for the tobacco prevention coordinator position, the same as the 2007-09 biennium appropriation.

⁸North Dakota Century Code Chapter 43-17.2 provides for the state community matching physician loan repayment program. A qualifying physician may receive up to \$22,500 per year for up to two years for a total of \$45,000. Section 43-12.2-01 provides for mid-level practitioners to receive up to \$2,500 per year for up to four years for a total of \$10,000. Communities must contribute an amount at least equal to the amount of the state contribution for the physicians and mid-level practitioners. The 2007 Legislative Assembly appropriated \$150,000 from the community health trust fund for this program. The total 2007-09 biennium funding for this program is \$75,000 from the general fund and \$150,000 from the community health trust fund. The 2009-11 executive budget recommendation includes funding of \$75,000 from the general fund and \$72,500 from the community health trust fund for the program. Senate Bill No. 2227 (2009) removes the limit on the number of recipients and increases the limit on the maximum loan repayment from \$10,000 to \$30,000 for the medical personnel loan repayment program relating to mid-level practitioners, but does not provide an additional appropriation. Physicians accepted into the program per biennium include:

Biennium (Number of Physicians Accepted Into Program)	Communities Served
2007-09 biennium (3 to date)	Dickinson Devils Lake Wishek

Biennium (Number of Mid-Level Practitioners Accepted Into Program)	Communities Served
2007-09 biennium (3 to date)	Grafton Turtle Lake/McClusky Williston

⁹The 2007 Legislative Assembly appropriated \$150,000 from the community health trust fund and \$50,000 from the general fund for a grant to the North Dakota Cancer Coalition to provide for a colorectal cancer screening initiative. The 2009-11 executive budget recommendation does not include funding for the grant.

¹⁰The 2007 Legislative Assembly appropriated \$300,000 from the community health trust fund for emergency medical services training grants. The 2009-11 executive budget recommends \$300,000 for emergency medical services training grants, the same as the 2007-09 biennium appropriation.

¹¹Senate Bill No. 2152 (2007) provides for a dental grant program. A dentist who has graduated from an accredited dental school within the previous five years and is licensed to practice in North Dakota may submit an application to the Health Council for a grant for the purpose of establishing a dental practice in North Dakota cities with a population of 7,500 or less. The Health Council may award a maximum of two grants per year with a maximum grant award of \$50,000 per applicant to be used for buildings, equipment, and operating expenses. The community in which the dentist is located must provide a 50 percent match. The grant must be distributed in equal amounts over a five-year period and the dentist must commit to practice in the community for five years. The 2007 Legislative Assembly appropriated \$60,000 for the dental grant program; however, the department does not anticipate spending any of the funds for the program for the 2007-09 biennium. The 2009-11 executive budget recommends funding of \$10,000 for the dental grant program, \$50,000 less than the 2007-09 appropriation of \$60,000.

¹²Senate Bill No. 2276 (2007) provided an appropriation from the community health trust fund to the Governor for the Governor's Prevention and Advisory Council. The 2009-11 executive budget recommendation provides funding of \$200,000 from the general fund to the Department of Human Services (2009 House Bill No. 1012) for the Governor's Prevention and Advisory Council. This funding was removed by the House.

¹³The 2007 Legislative Assembly appropriated \$213,904, a decrease of \$40,452 from the 2005-07 biennium appropriation of \$254,356, to the Department of Human Services for providing the state matching funds for medical assistance coverage for women screened and found to have breast and cervical cancer. Because of greater than anticipated demand for the services, the department anticipates using additional special funds spending authority from within its 2007-09 biennium budget and spending a total of \$550,000 from the community health trust fund for the program for the 2007-09 biennium. The 2009-11 executive budget recommendation provides funding of \$790,015 for breast and cervical cancer assistance for the 2009-11 biennium, \$576,111 more than the 2007-09 appropriation.

¹⁴Initiated measure No. 3 provides that at least 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. Based on the estimated 2009-11 biennium transfers to the community health trust fund from the tobacco settlement trust fund of \$4,388,119, a minimum of \$3,510,000 (80 percent) is to be provided for tobacco prevention and control. Using the recommended appropriations of \$2,180,371 for tobacco prevention and control, \$1,069,000 for the Tobacco Quitline, and \$139,397 for the tobacco cessation coordinators and operating expenses, the executive budget recommendation includes total tobacco prevention and control funding from the community health trust fund of \$3,388,768 for the 2009-11 biennium, or 77 percent, approximately \$121,000 less than the 80 percent minimum requirement.

FUND HISTORY

North Dakota Century Code Section 54-27-25, created by 1999 House Bill No. 1475, established the community health trust fund. This section creates 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:

- Ten percent to the community health trust fund.
- Forty-five percent to the common schools trust fund.
- Forty-five percent to the water development trust fund.

In the November 2008 general election voters approved initiated measure No. 3 that amended NDCC 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 continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement relating to strategic contribution payments, which began in 2008 and continues through 2017, will be deposited beginning in 2009 into the newly created tobacco prevention and control trust fund. The measure also provides that 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.

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

**ANALYSIS OF THE ENVIRONMENT AND RANGELAND PROTECTION FUND FOR THE
2007-09 AND 2009-11 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$979,801		\$672,073
Add estimated revenues				
Pesticide registration fees	\$3,180,000 ¹		\$3,180,000	
Transfer from general fund (2007 SB 2009)	150,000 ²		0	
Transfer from pesticide enforcement fund (2007 SB 2009)	50,000 ³		0	
Weed seed-free forage (2009 HB 1270)	0		54,450	
Total estimated revenues		3,380,000		3,234,450
Total available		\$4,359,801		\$3,906,523
Less estimated expenditures and transfers				
Agriculture Commissioner				
Noxious weed control (2007 SB 2009; 2009 HB 1009)	\$1,683,355		\$1,794,069	
Pesticide disposal project (Safe Send) (2007 SB 2009; 2009 HB 1009)	597,462		569,346	
Pesticide programs (2007 SB 2009; 2009 HB 1009)	506,792		639,600	
Agriculture in the classroom project (2007 SB 2009; 2009 HB 1009)	100,000		110,000	
Farmer's market	29,500		29,500	
Endangered species (2007 SB 2009; 2009 HB 1009)	200,000		287,041	
Blackbird research (2007 SB 2179)	79,500		0	
Livestock pollution prevention (2009 HB 1009)	0		50,000	
Crop Protection Product Harmonization and Registration Board ⁴				
Crop protection product registration, labeling, and grants (2007 SB 2009; 2009 HB 1009)	25,000		50,000	
Minor use pesticide registration (2007 SB 2009)	200,000 ⁵		0	
Weed seed-free forage (2009 HB 1270)	0		0 ⁶	
State Department of Health				
Ground water testing (2007 HB 1004; 2009 SB 2004)	216,119		222,310	
North Dakota Stockmen's Association environmental services program (2007 HB 1004; 2009 SB 2004)	50,000		50,000	
Total estimated expenditures and transfers		3,687,728		3,801,866
Estimated ending balance		\$672,073		\$104,657

¹The 1999 Legislative Assembly approved Senate Bill No. 2009, which included a provision increasing the biennial pesticide registration fee by \$50, from \$300 to \$350, only for the 1999-2001 biennium. The \$350 pesticide registration fee was extended for the 2001-03 biennium (2001 House Bill No. 1009), the 2003-05 biennium (2003 Senate Bill No. 2319), and the 2005-07 biennium (2005 House Bill No. 1009). The \$350 pesticide registration fee was continued, without an expiration date, by 2007 Senate Bill No. 2323.

²Transfer from the general fund - Senate Bill No. 2009 (2007) provides for a transfer of \$150,000 from the general fund to the environment and rangeland protection fund for the endangered species program for the 2007-09 biennium.

³Transfer from pesticide enforcement fund - Senate Bill No. 2009 (2007) provides for a transfer of \$50,000 from the North Dakota State University Extension Service pesticide enforcement fund to the environment and rangeland protection fund for the endangered species program for the 2007-09 biennium.

⁴North Dakota Century Code Section 4-35-30, as created by House Bill Nos. 1328 and 1009 (2001), created the Crop Protection Product Harmonization and Registration Board. The duties of the board consist of:

- Identifying and prioritizing crop protection product labeling needs.
- Exploring the extent of authority given to North Dakota under the federal Insecticide, Fungicide, and Rodenticide Act.
- Identifying the data necessary to enable registration of a use to occur in a timely manner.
- Determining what research, if any, is necessary to fulfill data requirements for responsibilities of the board.
- Requesting the Agriculture Commissioner to pursue specific research funding options from public and private sources.
- Requesting the Agricultural Experiment Station to pursue specific research to coordinate registration efforts.
- Pursuing any opportunities to make more crop protection product options available to agriculture producers in this state through any means the board determines advisable.
- Administering a grant program through which agriculture commodity groups may apply for funds to be used to address issues related to the registration of crop protection products.

The members of the Crop Protection Product Harmonization and Registration Board consist of:

- The Governor or the Governor's designee (chairman).
- The Agriculture Commissioner or the commissioner's designee.
- The chairman of the House Agriculture Committee or the chairman's designee.
- The chairman of the Senate Agriculture Committee or the chairman's designee.
- A member of the House or Senate Agriculture Committee who is not a member of the faction in which the committee chairman is a member, appointed by the Legislative Council chairman.
- A crop protection product dealer in the state appointed by the Governor from a list of three nominees submitted by the North Dakota Agricultural Association.
- A consumer of crop protection products appointed by the Governor from a list of three nominees submitted by the North Dakota Grain Growers Association.
- A consumer of crop protection products appointed by the Governor from a list of three nominees submitted by the North Dakota Oilseed Council.
- A representative of the crop protection product manufacturing industry appointed by the chairman of the Legislative Council (nonvoting).
- The director of the Agricultural Experiment Station (nonvoting).

⁵This amount is transferred to the minor use pesticide fund and appropriated to the Crop Protection Product Harmonization and Registration Board on a continuing basis. House Bill No. 1328 (2001) changed the control of the minor use pesticide fund from the Agriculture Commissioner to the Crop Protection Product Harmonization and Registration Board.

⁶Appropriation authority from the environment and rangeland protection fund for the weed seed-free forage program created in House Bill No. 1270 (2009) is not reflected in this analysis. The Department of Agriculture anticipates that \$54,450 of appropriation authority will need to be added to the Department of Agriculture's 2009-11 appropriation for expenses associated with the program.

FUND HISTORY

North Dakota Century Code Section 19-18-02.1 created by 1991 Senate Bill No. 2451 establishes the environment and rangeland protection fund. The fund contains collections from pesticide registration fees. The biennial fee is \$350 per pesticide product registered in the state. Of this amount, \$300 is deposited in the environment and rangeland protection fund and \$50 in the general fund.

**ANALYSIS OF THE FIRE AND TORNADO FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$28,222,236		\$20,667,525
Add estimated revenues				
Premium collections	\$6,700,000		\$7,000,000	
Investment income	(4,000,000) ¹		1,000,000	
Boiler inspection fees	320,000		350,000	
Loss claims and insurance recoveries	7,700,000		1,000,000	
Anhydrous ammonia storage facility inspection fund (2007 SB 2010; 2009 HB 1010)	94,000		150,000	
Total estimated revenues		10,814,000		9,500,000
Total available		\$39,036,236		\$30,167,525
Less estimated expenditures and transfers				
Loss claims payments	\$12,548,028		\$5,000,000	
Claims-related payments	3,900,000		3,300,000	
Insurance Department administration and anhydrous ammonia inspection costs	1,440,683		1,754,159	
State Fire Marshal program (2007 SB 2003; 2009 HB 1003)	310,000		310,000	
North Dakota Firefighter's Association grant (2007 SB 2010; 2009 HB 1010)	170,000		170,000	
Total estimated expenditures and transfers		18,368,711		10,534,159
Estimated ending balance		\$20,667,525		\$19,633,366

¹Through January 2009 the fire and tornado fund has had a decline in investment value of 16.09 percent for fiscal year 2009.

FUND HISTORY

The state fire and tornado fund originated in 1919. The fund is maintained to insure the various political subdivisions and state industries against loss to public buildings and permanent fixtures. North Dakota Century Code Section 26.1-22-14 requires that if the fire and tornado fund balance is less than \$12 million, the Insurance Commissioner must increase assessments on policies.

ANALYSIS OF THE FOUNDATION AID STABILIZATION FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2007-09 Biennium		2009-11 Biennium	
		\$		\$
Beginning balance - July 1, 2007		\$29,009,838		\$63,935,139
Add estimated revenues				
Oil extraction tax allocations	\$34,925,301 ¹		\$24,892,171 ¹	
Total available		34,925,301		24,892,171
Less estimated expenditures and transfers				
Transfer to foundation aid program	\$0 ²		\$0 ²	
Estimated ending balance - June 30, 2009		<u>\$63,935,139</u>		<u>\$88,827,310</u>

¹Estimated revenues - Based on actual oil extraction tax collections transferred to the fund through February 2009 and estimated allocations for the remainder of the 2007-09 biennium and the 2009-11 biennium per the February 2009 legislative revenue forecast.

²Estimated expenditures - As provided in Article X, Section 24, of the Constitution of North Dakota, the principal of the foundation aid stabilization fund can only be used to offset foundation aid reductions made by executive action due to a revenue shortfall. No foundation aid reductions as a result of a revenue shortfall are currently anticipated for the 2007-09 biennium or the 2009-11 biennium.

FUND HISTORY

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

- Fifty percent (of the 20 percent) to the common schools trust fund.
- **Fifty percent (of the 20 percent) to the foundation aid stabilization fund.**

The principal of the foundation aid stabilization fund may only be spent upon order of the Governor to offset foundation aid reductions made by executive action due to a revenue shortfall. North Dakota Century Code Section 54-44.1-12 provides that the director of the budget may order an allotment to control the rate of expenditures of state agencies. This section provides that an allotment must be made by 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 that the allotment can be offset by transfers from the foundation aid stabilization fund.

Article X, Section 24, of the Constitution of North Dakota provides that 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. For the period July 1, 2007, through January 31, 2009, \$1,113,046 of interest from the foundation aid stabilization fund has been allocated to the general fund.

**ANALYSIS OF THE HEALTH CARE TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$2,821,191		\$3,318,722
Add estimated revenues				
Investment earnings	\$130,272		\$134,941	
Loan repayments - Principal and interest	1,092,856		1,046,697	
Total estimated revenues		1,223,128		1,181,638
Total available		\$4,044,319		\$4,500,360
Less estimated expenditures and transfers				
State Department of Health quick response unit pilot project (2007 HB 1004; 2009 SB 2004)	\$125,000		\$125,000	
State Department of Health state trauma system evaluation (2007 HB 1290)	75,000			
Department of Human Services nursing facility inflationary increases (medical assistance program) (2007 SB 2012)	525,597			
Department of Human Services nursing facilities (2009 HB 1012)			4,324,506	
Total estimated expenditures and transfers		725,597		4,449,506
Estimated ending balance		<u>\$3,318,722</u>		<u>\$50,854</u>

NOTE: Section 12 of Engrossed House Bill No. 1012 amends North Dakota Century Code Section 50-30-02 to provide that money in the health care trust fund may not be included in draft appropriation acts under Section 54-44.1-06.

FUND HISTORY

The health care trust fund was established by the 1999 Legislative Assembly (Senate Bill No. 2168) for providing nursing alternative loans or grants. The 2001 Legislative Assembly in House Bill No. 1196 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.**

**ANALYSIS OF THE LANDS AND MINERALS TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$14,056,683		\$23,726,311
Add estimated revenues				
Production royalties	\$18,122,669		\$8,889,008	
Mineral leases	432,599		432,599	
Oil and gas bonuses	7,779,976		2,287,157	
Investment earnings	1,107,512		1,233,182	
Loan repayments from facilities providing services to the developmentally disabled (1983 SB 2020; 1985 SB 2249)	835,306		372,372	
Total estimated revenues		28,278,063		13,214,318
Total available		\$42,334,746		\$36,940,629
Less estimated expenditures and transfers				
Payments to common schools trust fund - Developmentally disabled loan fund Nos. 2 and 3 (2005 SB 2013 - Continuing appropriation)	\$1,417,504 ¹		\$717,182	
Industrial Commission - Oil and Gas Division contingency (2007 HB 1014; 2009 SB 2014)	285,000 ²		515,207	
Transfer to the general fund (2007 HB 1014; 2009 SB 2013)	15,000,000		35,484,793 ³	
Office of Management and Budget - Heritage Center expansion (2007 SB 2341)	1,000,164 ⁴			
State Historical Society - Cold War missile site (2007 SB 2018)	250,000			
Administrative costs/other fees	655,766		222,227	
Total estimated expenditures and transfers		18,608,434		36,939,409
Estimated ending balance		\$23,726,312		\$1,220

¹Payments to common schools trust fund - North Dakota Century Code (NDCC) Section 15-08.1-09 provides an annual continuing appropriation from the lands and minerals trust fund of the amount necessary to make payments of principal and interest to the common schools trust fund for loans made to developmentally disabled loan fund Nos. 2 and 3.

²Industrial Commission - Oil and Gas Division contingency - House Bill No. 1014 (2007) provides a \$285,000 contingency appropriation from the lands and minerals trust fund to the Oil and Gas Division for the purpose of hiring, upon Emergency Commission approval, up to two full-time equivalent positions if the average drilling rig count exceeds 30 active rigs for each month in any consecutive three-month period. The Emergency Commission approved a transfer of \$285,000 at its March 14, 2008, meeting.

³**Transfer to general fund - Senate Bill No. 2013 (2009) provides for a transfer of \$43.5 million from the lands and minerals trust fund to the general fund during the 2009-11 biennium; however, based on revised projections, only approximately \$35.5 million will be available for transfer to the general fund during the 2009-11 biennium.**

⁴Office of Management and Budget - Senate Bill No. 2341 (2007) provided a contingent appropriation of \$1.5 million from the lands and minerals trust fund to the Office of Management and Budget for the Heritage Center expansion project. The appropriation was only available when the State Historical Society certified to the Office of Management and Budget that \$1.5 million of other funds had been received or pledged for the project. The State Historical Society certified to the Office of Management and Budget in May 2007 that \$1.5 million of other funds had been received or pledged for the project. The Office of Management and Budget estimates \$1,000,164 of the \$1.5 million will be transferred from the lands and minerals trust fund for the Heritage Center expansion project.

FUND HISTORY

The lands and minerals trust fund originated in 1977 when the Legislative Assembly transferred to the Board of University and School Lands possessory interest in properties obtained by the Bank of North Dakota, including tracts of real property and reserved mineral interests. All income from the sale, lease, and management of the mineral interests relating to these properties is deposited in the lands and minerals trust fund pursuant to NDCC Section 15-08.1-08. The principal and interest of the trust fund may be used only for purposes approved by the Legislative Assembly.

**ANALYSIS OF THE LIGNITE RESEARCH FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION AS OF CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$11,800,728		\$4,260,160
Add estimated revenues				
Separate two-cent coal severance tax	\$1,200,000		\$1,200,000	
Fifty percent of coal severance taxes deposited in the coal development trust fund (result of passage of measure No. 3 in June 1990)	3,375,000		3,375,000	
Twenty percent of coal severance taxes deposited in the coal development trust fund (committed to clean coal projects) (result of passage of constitutional amendment passed by voters in June 1994)	1,350,000		1,350,000	
Investment income on Dakota Gasification Company ammonia plant and Red Trail	2,000,000		3,374,860	
Three and one-half percent of the general fund share of coal conversion tax (2007 HB 1093)	1,750,000 ¹			
Five percent of the general fund share of coal conversion tax (2007 HB 1093)			2,500,000 ²	
Revenue bonds/short-term loan			3,900,000	
Interest income and return of funds	902,500		100,000	
Total estimated revenues		10,577,500		15,799,860
Total available		\$22,378,228		\$20,060,020
Less estimated expenditures and transfers ^{3,4}				
Administration	\$400,000		\$400,000	
Lignite feasibility studies (nonmatching grants)	760,000		1,000,000	
Small research grants	2,159,300		1,296,300	
Lignite marketing	2,000,000		1,600,000	
Lignite litigation	100,000 ⁵		400,000	
Demonstration projects	12,698,768		15,275,000	
Total estimated expenditures and transfers		18,118,068 ⁶		19,971,300 ⁶
Estimated ending balance		\$4,260,160		\$88,720

¹House Bill No. 1093 (2007) provides that 3.5 percent of the general fund share of coal conversion taxes be allocated to the lignite research fund for the period beginning July 1, 2007, and ending June 30, 2009. After June 30, 2009, 5 percent of the general fund share of coal conversion taxes is to be allocated to the lignite research fund through July 31, 2018.

²Pursuant to North Dakota Century Code (NDCC) 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 project can receive more than 37.5 percent of available funds.

⁴The Industrial Commission has waived the fund allocation policy and has committed \$22,000,000 through the 2009-11 biennium with \$1,360,750 to be spent during the 2003-05 biennium, \$2,243,391 during the 2005-07 biennium, \$7,475,000 during the 2007-09 biennium, and \$10,920,859 during the 2009-11 biennium for the Lignite Vision 21 Project. The object of the Lignite Vision 21 Project is to construct new lignite-fired power plants in North Dakota. (These amounts are net of funds expended and then subsequently returned when projects did not proceed.)

⁵Lignite litigation - House Bill No. 1093 (2007) provides that \$500,000 of the amount allocated to the lignite research fund in Section 1 of the bill 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 \$100,000 anticipated to be spent during the 2007-09 biennium and \$400,000 during the 2009-11 biennium.

⁶The 2007 Legislative Assembly appropriated \$19,410,600 for lignite research grants; however, the Industrial Commission anticipates spending \$18,118,068 for lignite research grants during the 2007-09 biennium. The executive budget recommendation for the 2009-11 biennium is \$19,971,300.

FUND HISTORY

North Dakota Century Code Section 57-61-01.5(2) and Article X, Section 21, of the Constitution of North Dakota provide for 70 percent of the taxes collected and deposited in the coal development trust fund to be deposited in the lignite research fund. 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.

**ANALYSIS OF THE PERMANENT OIL TAX TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION AS OF CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$143,270,662		\$475,091,147
Add estimated revenues				
Oil and gas production and extraction tax collections	\$477,537,026		\$291,392,000	
Total estimated revenues		477,537,026 ¹		
Other adjustments:				
Changes general fund share of oil tax revenues (2009 HB 1485) (Defeated)			39,000,000	
Changes cap on allocations to the oil and gas impact grant fund (2009 SB 2229) ³			10,000,000	
Increases allocation to the oil and gas research fund (2009 SB 2051)			(1,000,000)	
Changes cap on allocation to counties (2009 HB 1304) ⁴			(27,750,000)	
Total adjustments				311,642,000 ²
Total available		\$620,807,688		\$786,733,147
Less estimated expenditures and transfers				
Transfer to the general fund (2007 SB 2032)	\$115,000,000			
Office of Management and Budget - Centers of excellence (2007 HB 1018; 2009 HB 1015)	15,000,000		\$4,745,432	
Higher Education (2007 HB 1003)	7,783,315			
Grant assistance payments to tribally controlled community colleges (2007 HB 1395; 2009 HB 1394)	700,000		700,000	
Veterans' Home facility (2007 SB 2418)	6,483,226			
Agricultural research and extension services operating pool (2007 HB 1020)	750,000			
Property tax relief (2009 SB 2199)			295,000,000	
Water project grants (2009 HB 1305)			2,200,000	
Economic stimulus payments (2009 HB 1324)			100,000,000	
Energy Development Impact Office grants (2009 HB 1225)			5,000,000	
Disaster relief fund (2009 HB 1503)			44,000,000	
Total estimated expenditures and transfers		145,716,541		451,645,432
Estimated ending balance		\$475,091,147		\$335,087,715

¹Estimated revenues - 2007-09 - The February 2009 legislative revenue forecast for the 2007-09 biennium projects state oil and gas gross production tax and oil extraction tax revenues to exceed \$71 million by \$477.5 million; therefore, \$477.5 million is projected to be transferred to the permanent oil tax trust fund during the biennium.

²Estimated revenues - 2009-11 - The February 2009 legislative revenue forecast for the 2009-11 biennium projects state oil and gas gross production tax and oil extraction tax revenues to exceed \$110 million by \$291.4 million; however, proposed legislation to change the general fund share of oil and gas tax revenues from \$71 million to \$110 million was defeated. In addition, proposed legislation changes the cap on allocations of oil and gas tax revenues to the oil and gas impact grant fund, the oil and gas research fund, and to counties. Therefore, \$311.6 million is projected to be transferred to the permanent oil tax trust fund during the biennium.

³House Bill No. 1225 (2009) also changes the allocation to the oil and gas impact grant fund which would increase revenue by \$12 million rather than the \$10 million shown.

⁴Senate Bill No. 2229 (2009) also changes the allocation to counties which would reduce revenue by \$25.5 million rather than the \$27.75 million shown.

FUND HISTORY

North Dakota Century Code Section 57-51.1-07.2 (1997 Senate Bill No. 2366) establishes a permanent oil tax trust fund and provides that all revenues deposited in the general fund during a biennium and derived from taxes imposed on oil and gas under Chapter 57-51 (Oil and Gas Gross Production Tax) and Chapter 57-51.1 (Oil Extraction Tax) which exceed \$71 million are to be transferred into the permanent oil tax trust fund. The State Treasurer is to transfer the interest earned on the fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may only be spent upon a two-thirds vote of the members elected to each house of the Legislative Assembly.

ANALYSIS OF THE RESOURCES TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$32,655,609		\$77,946,191
Add estimated revenues				
Oil extraction tax collections	\$70,840,582		\$49,784,341	
Repayments and reimbursements	1,960,000		2,009,000	
Investment earnings/miscellaneous	2,490,000		770,000	
Total estimated revenues		75,290,582 ¹		52,563,341
Total available		\$107,946,191		\$130,509,532
Less estimated expenditures and transfers				
State Water Commission - Grants and administration (2009 HB 1020)	\$30,000,000 ²		\$130,167,532 ³	
State Water Commission - Beaver Bay embankment feasibility study (2009 SB 2305)	0		342,000	
Total estimated expenditures and transfers		30,000,000		130,509,532 ³
Estimated ending balance		\$77,946,191		\$0

¹Estimated revenues - 2007-09 - The estimated revenues for the 2007-09 biennium reflect actual revenues through January 2009 and estimated revenues for the remainder of the biennium based on the February 2009 legislative revenue forecast.

²Section 4 of Senate Bill No. 2020 (2007) provided \$69,352,698, or any additional amount that becomes available, from the resources trust fund for defraying the expenses of the State Water Commission. The State Water Commission estimates 2007-09 expenditures from the resources trust fund to be approximately \$30,000,000.

³Sections 1 and 4 of House Bill No. 1020 (2009) appropriate \$188,400,000, or any additional amount that becomes available, from the resources trust fund for defraying the expenses of the State Water Commission for the 2009-11 biennium. In addition, Senate Bill No. 2305 (2009) provides a \$342,000 appropriation from the resources trust fund to the State Water Commission for conducting a Beaver Bay embankment feasibility study. Total expenditures will be limited to funding available.

FUND HISTORY

The resources trust fund was created pursuant to passage of measure No. 6 in the November 1980 general election. 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.
- Energy conservation programs.

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

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

North Dakota Century Code Section 57-51.1-07 provides that oil extraction tax revenues be distributed as follows:

- Twenty percent to the resources trust fund.
- Twenty percent allocated as provided in Article X, Section 24, of the Constitution of North Dakota.
- Sixty percent to the general fund.

**ANALYSIS OF THE SENIOR CITIZENS SERVICES AND PROGRAMS FUND
FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
		\$0		\$0
Beginning balance		\$0		\$0
Add estimated revenues				
Allocation from sales, use, and motor vehicle excise tax collections	\$2,407,214 ¹		\$2,667,000	
Total estimated revenues		2,407,214		2,667,000
Total available		\$2,407,214		\$2,667,000
Less estimated expenditures and transfers				
State Treasurer - County senior citizen matching grants	\$2,379,226 ²		\$2,667,000	
Transfer to general fund	27,988 ³			
Total estimated expenditures and transfers		2,407,214		2,667,000
Estimated ending balance		\$0		\$0

¹The amount shown represents actual sales, use, and motor vehicle excise tax collections for fiscal years 2008 and 2009. For property taxes levied in 2007 and paid in 2008, a one mill statewide property tax levy generated \$1,953,097 in property taxes.

²The amount shown represents actual senior citizen matching grants for fiscal year 2008 and estimated senior citizen matching grants for fiscal year 2009.

³Any funds remaining at the end of each biennium are transferred to the general fund.

FUND HISTORY

The 2005 Legislative Assembly approved Senate Bill No. 2267, which created the senior citizens services and programs fund. Statutory provisions are contained in North Dakota Century Code Sections 57-15-56(5) and 57-39.2-26.2. 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 two-thirds 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. The amount of each county's annual grant is equal to two-thirds of the amount levied 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 for the 2005-07 biennium any remaining money in the fund at the end of the biennium was allocated to those counties that levied the statutory maximum for senior citizen programs in proportion to the amounts generated by those levies in those counties.

**ANALYSIS OF THE STATE AID DISTRIBUTION FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$0		\$0
Add estimated revenues				
Sales, use, and motor vehicle excise taxes (based on 4/10 of 1%)	\$106,443,764 ¹		\$107,566,782	
Other adjustments				
HB 1268 - Sales tax exemption for clothing			(3,040,000)	
HB 1289 - Sales tax exemption for irrigation equipment repair parts			(24,000)	
SB 2040 - Sales tax exemption for telecommunications infrastructure			(412,000)	
SB 2053 - Sales tax exemption for purchases by Indian tribes			(2,800)	
SB 2090 - Sales tax exemption for Montana residents			(12,000)	
SB 2184 - Motor vehicle excise tax exemption for manufacturers' incentives and discounts			(512,000)	
Total adjustments		106,443,764		103,563,982
Total available		\$106,443,764		\$103,563,982
Less estimated expenditures and transfers				
Payments to political subdivisions				
County share (53.7%)	\$57,160,301		\$55,613,858	
City share (46.3%)	49,283,463		47,950,124	
Total estimated expenditures and transfers		106,443,764		103,563,982
Estimated ending balance		\$0		\$0

NOTE: The amounts shown reflect the February 2009 legislative revenue forecast.

¹Total revenues of \$84,212,635 were anticipated to be deposited in the fund for the 2007-09 biennium based on the forecast at the close of the 2007 Legislative Assembly.

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 NDCC 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.

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			
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%

**ANALYSIS OF THE STATE TUITION FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
	Beginning balance		\$1,133,040 ¹	
Add estimated revenues				
Fines for violation of state laws	\$9,392,048 ²		\$9,300,000 ²	
Transfers from the common schools trust fund	66,800,000		77,000,000	
Total estimated revenues		76,192,048		86,300,000
Total available		\$77,325,088		\$87,425,088
Less estimated expenditures and transfers				
State aid to schools	\$76,200,000 ³		\$86,300,000 ³	
Total estimated expenditures and transfers		76,200,000 ¹		86,300,000 ¹
Estimated ending balance		\$1,125,088 ¹		\$1,125,088 ¹

¹Beginning/ending balance - North Dakota Century Code (NDCC) 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 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 - The amount of state tuition fund distributions from fines proceeds is shown below:

Fiscal Year	Revenue From Fines	Percentage Increase From Previous Year
1998	\$3,384,890 (actual)	
1999	\$3,818,890 (actual)	12.8%
2000	\$4,866,644 (actual)	27.4%
2001	\$4,241,256 (actual)	(12.9%)
2002	\$4,778,756 (actual)	12.7%
2003	\$4,607,423 (actual)	(3.6%)
2004	\$4,721,407 (actual)	2.5%
2005	\$4,507,137 (actual)	(4.5%)
2006	\$4,506,316 (actual)	(0.01%)
2007	\$4,590,395 (actual)	1.9%
2008	\$4,692,048 (actual)	2.2%
2009	\$4,700,000 (estimate)	0.2%
2010	\$4,650,000 (estimate)	(1.1%)
2011	\$4,650,000 (estimate)	0.0%

³State aid to schools - The 2007 Legislative Assembly, in Senate Bill No. 2200, 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.

NOTE: The estimated June 30, 2009, balance made at the end of the 2007 legislative session was \$909,009. The increase in the estimated balance of \$216,079 is due to the actual July 1, 2007, balance of \$1,133,040 being \$224,031 more than the July 1, 2007, balance estimated at the close of the 2007 legislative session of \$909,009 and fine proceeds for fiscal year 2008 being \$7,952 less than the amount projected at the end of the 2007 legislative session.

FUND HISTORY

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

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

North Dakota Century Code Section 15.1-28-01 provides that the state tuition fund consists of the net proceeds from all fines for violation of state laws and leasing of school lands (included in transfers from the common schools trust fund) and the interest income from the state 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 of Public Instruction apportioned the money in the tuition fund among the school districts in the state based on the number of school-age children in the district. The 2007 Legislative Assembly, in Senate Bill No. 2200, 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 of Public Instruction includes the money in the tuition fund in state school aid payments to school districts as determined by Chapter 15.1-27.

ANALYSIS OF THE STUDENT LOAN TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2007-09 Biennium ¹		2009-11 Biennium ¹	
Beginning balance		\$21,625,000		\$19,401,620
Add estimated revenues				
Fund earnings (net)	\$1,400,000 ²		\$1,150,000 ²	
Total available		\$23,025,000		\$20,551,620
Less estimated expenditures and transfers				
Transfer to the general fund	\$3,100,000 ³		\$0 ⁵	
Funding for veterinary medical education program	523,380 ⁴		990,970 ⁶	
Funding for the North Dakota University System information technology services	0		1,020,600 ⁷	
Total estimated expenditures and transfers		3,623,380		2,011,570
Estimated ending balance		<u>\$19,401,620</u>		<u>\$18,540,050</u>

¹This analysis reflects the estimated revenues, expenditures, and ending balance for the 1979 bond resolution only. The estimated June 30, 2011, ending balance for the 1996 bond resolution is \$29,014,000.

²The projected income is based on interest rates as of March 1, 2009, and the actual income for fiscal year 2008 of \$832,000.

³The 2007 Legislative Assembly provided for a transfer of \$3.1 million from the student loan trust fund to the general fund. The \$3.1 million is the projected income for both the 1979 and the 1996 student loan trust resolutions; however, the transfer to the general fund is only being made from the 1979 resolution.

⁴The 2007 Legislative Assembly provided a \$523,380 appropriation from the student loan trust fund for continuing the Kansas State University veterinary medical education program.

⁵The 2009-11 executive budget does not recommend transferring funds from the student loan trust fund to the general fund.

⁶The 2009-11 executive budget recommends a \$990,970 appropriation from the student loan trust fund for continuing the Kansas State University veterinary medical education program.

⁷The 2009-11 executive budget recommends a \$1,020,600 appropriation from the student loan trust fund to the North Dakota University System information technology services pool for ConnectND positions within the University System. The positions were previously paid for with funding from the Bank of North Dakota.

FUND HISTORY

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

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

The student loan trust is comprised of funds held under two general bond resolutions. The first general bond resolution includes funds from bonds issued in 1979, 1988, 1989, 1992, and 2004. The second general bond resolution referred to as the 1996 bond resolution includes funds from bonds issued in 1996, 1997, 1998, and 2000. All issuances prior to 2004 with bonds outstanding are insured by Ambac Assurance Corporation.

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

- Purchase of student loans.
- Payment of debt service to bondholders.
- Providing financial assistance to the North Dakota Student Loan Guarantee Agency.
- Payment of any rebate liability to the federal government.
- Administration of the student loan trust fund.

After all bonds in the 1979 and 1996 general bond resolutions have matured, been redeemed or defeased, and all expenses paid, any remaining assets held under the general bond resolution would be transferred to the Industrial Commission for use at its discretion. In order to use assets held under the 1979 general bond resolution for a purpose other than those stated in the general bond resolution, the administrators of the student loan trust fund must receive a certification from the trustee of the bond (Bank of North Dakota) that sufficient reserves remain for bond payments and other related program costs. In order to use assets held under the 1996 general bond resolution for a purpose other than those stated in the general bond resolution, the administrator of the student loan trust fund must receive permission from the bond issuer, and the trustee of the bond (Bank of North Dakota) would have to certify that sufficient reserves remain for bond payments and other related program costs.

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

**ANALYSIS OF THE TOBACCO PREVENTION AND CONTROL TRUST FUND
FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
	Beginning balance		\$0 ¹	
Add estimated revenues				
Tobacco settlement revenues collected to date	\$0		\$0	
Projected tobacco settlement revenues	13,797,729 ¹		27,595,458 ¹	
Investment income	28,634		338,578	
Total estimated revenues		13,826,363		27,934,036
Total available		\$13,826,363		\$41,697,996
Less estimated expenditures and transfers				
Appropriated expenditures	\$62,403 ²		\$12,882,000 ²	
Total estimated expenditures and transfers		62,403		12,882,000
Estimated ending balance		\$13,763,960		\$28,815,996

¹Revenue - In the November 2008 general election voters approved initiated measure No. 3 that amends North Dakota Century Code (NDCC) Section 54-27-25 to create a tobacco prevention and control trust fund to receive tobacco settlement funds under subsection IX(c)(2) of the Master Settlement Agreement, which began in April 2008 and continue through 2017. The strategic contribution amount received under subsection IX(c)(2) of the Master Settlement Agreement consists of a base amount to which the Master Settlement Agreement provides adjustments. Remaining strategic contribution payments have been estimated based on the amount received in 2008 of \$13,797,729.

The measure provides that interest earned on the balance in this fund be deposited in the fund, and if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan.

The measure will result in the following estimated allocation of the revised estimated collections of the tobacco settlement payments through 2025:

	Actual and Estimated Total Tobacco Settlement Proceeds	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	\$36.5 million	N/A	\$16.4 million	\$16.4 million	\$3.7 million
Estimated payment April 2009	35.7 million	\$13.8 million	9.9 million	9.9 million	2.1 million
Estimated 2009-11 biennium	71.5 million	27.6 million	19.8 million	19.8 million	4.3 million
Estimated 2011-13 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2013-15 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2015-17 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2017-19 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2019-21 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2021-23 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2023-25 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Total	\$574.8 million	\$124.2 million	\$202.9 million	\$202.9 million	\$44.8 million

²Because the tobacco prevention and control trust fund was established in December 2008, no expenditures or transfers were appropriated from the fund for the 2007-09 biennium. Section 1 of Senate Bill No. 2063 (2009), as amended by the Senate, appropriates \$12,882,000 from the tobacco prevention and control trust fund for the purpose of providing a level of funding that will meet the annual level recommended by the Centers for Disease Control and Prevention for North Dakota as published in its *Best Practices for Comprehensive Tobacco Control*. Section 2 of the bill provides a \$62,403 appropriation from the fund to the Comprehensive Tobacco Control Advisory Committee for expenses of the committee for the period beginning January 1, 2009, and ending July 1, 2009.

FUND HISTORY

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

Tobacco settlement payments received by the state under the Master Settlement Agreement are derived from two subsections of the Master Settlement Agreement. Subsection IX(c)(1) of the Master Settlement Agreement provides payments on April 15, 2000, and on April 15 of each year thereafter in perpetuity, while subsection IX(c)(2) of the Master Settlement Agreement provides for additional strategic contribution payments that begin on April 15, 2008, and continue each April 15 thereafter through 2017. North Dakota Century Code Section 54-27-25, created by 1999 House Bill No. 1475, did not distinguish between payments received under the separate subsections of the Master Settlement Agreement and provided for the deposit of all tobacco settlement money received by the state into the tobacco settlement trust fund. Money in the fund, including interest, was transferred within 30 days of deposit in the fund as follows:

- Ten percent to the community health trust fund.
- Forty-five percent to the common schools trust fund.
- Forty-five percent to the water development trust fund.

The measure provides for a portion of tobacco settlement dollars received by the state to be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement will continue to be deposited in the tobacco settlement trust fund and allocated 10 percent to the community health trust fund (with 80 percent used for tobacco prevention and control), 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement will be deposited into the tobacco prevention and control trust fund. Interest earned on the balance in this fund will be deposited in the fund. The fund will be administered by the executive committee created by the measure for the purpose of creating and implementing the comprehensive plan.

The measure also provides that if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan.

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

**ANALYSIS OF THE TOBACCO SETTLEMENT TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$0		\$0
Add estimated revenues				
Tobacco settlement revenues collected to date	\$36,481,077 ¹		\$0	
Projected tobacco settlement revenues	21,940,594		43,881,191	
Total estimated revenues		58,421,671 ²		43,881,191 ²
Total available		\$58,421,671 ^{3,4}		\$43,881,191 ^{3,4}
Less estimated expenditures and transfers				
Transfers to the community health trust fund	\$5,842,167		\$4,388,119	
Transfers to the common schools trust fund	26,289,752		19,746,536	
Transfers to the water development trust fund	26,289,752		19,746,536	
Total estimated expenditures and transfers		58,421,671 ⁴		43,881,191 ⁴
Estimated ending balance		\$0		\$0

¹As of February 2009 the state has received two tobacco settlement payments totaling \$36,481,077 for the 2007-09 biennium. The state has received total tobacco settlement collections of \$233,156,352.

²Revenues - House Bill No. 1475 (1999) (North Dakota Century Code (NDCC) Section 54-27-25) provides that interest on the money in the tobacco settlement trust fund must be retained in the fund, and the principal and interest must be allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. The interest earned on the money in the tobacco settlement trust fund will increase the amount available for transfers to the other funds. However, because of uncertainty regarding the timing of the receipt of the tobacco settlement proceeds, interest earned on the balance of the tobacco settlement trust fund has not been included in this analysis. Tobacco settlement revenues collected to date have been transferred immediately to the proper trust funds; therefore, no interest has been earned by the tobacco settlement trust fund to date.

In the November 2008 general election, voters approved initiated measure No. 3 that amends NDCC Section 54-27-25 to provide that a portion of tobacco settlement funds received by the state be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, which began in 2008 and continues through 2017, will be deposited beginning in 2009 in the tobacco prevention and control trust fund. The amount received under subsection IX(c)(2) of the Master Settlement Agreement for 2008 was \$13,797,729, which, because it was received prior to passage of the measure, is included in the tobacco settlement revenues collected to date above. Remaining tobacco settlement trust fund revenues have been estimated based on the Office of Management and Budget revised estimated collections less anticipated strategic contribution payments of \$13,797,729 per year, which were estimated based on the actual amount of the 2008 strategic contribution payment. The measure also provides that, if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan.

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

payment. Due to the uncertainty of the lawsuit, the Office of Management and Budget has further reduced the estimated tobacco settlement revenues for the 2007-09 biennium by 5 percent, or \$1,842,182, in the first year and by 3 percent, or \$1,105,309, in the second year. The Office of Management and Budget has reduced the estimated tobacco settlement revenues for the 2009-11 biennium by 3 percent, or \$2,210,618, for the biennium. The total original estimated tobacco settlement collections, including payments to be received under both subsection IX(c)(1) and subsection IX(c)(2) of the Master Settlement Agreement, and the total estimated collections as revised by the Office of Management and Budget to reflect anticipated volume adjustments and legal challenges are:

Biennium	1999 Original Estimated Collections	Office of Management and Budget Revised Estimated Collections
1999-2001	\$57,593,770	\$52,900,784
2001-03	61,143,578	53,636,363
2003-05	51,271,214	46,310,010
2005-07	51,271,214	43,654,951
2007-09	82,231,080	70,739,775
2009-11	82,231,080	71,476,648
2011-17 (\$82,231,080/\$73,687,266 per biennium)	246,693,240	221,061,798
2017-25 (\$58,591,490/\$52,503,832 per biennium)	234,365,960	210,015,328
Total	\$866,801,136	\$769,795,657

⁴Initiated measure No. 3 approved by voters in the November 2008 general election, will result in the following estimated allocation of the revised estimated collections of the tobacco settlement payments through 2025:

	Actual and Estimated Total Tobacco Settlement Proceeds	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	\$36.5 million	N/A	\$16.4 million	\$16.4 million	\$3.7 million
Estimated payment April 2009	35.7 million	\$13.8 million	9.9 million	9.9 million	2.1 million
Estimated 2009-11 biennium	71.5 million	27.6 million	19.8 million	19.8 million	4.3 million
Estimated 2011-13 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2013-15 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2015-17 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2017-19 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2019-21 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2021-23 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2023-25 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Total	\$574.8 million	\$124.2 million	\$202.9 million	\$202.9 million	\$44.8 million

FUND HISTORY

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

- Ten percent to the community health trust fund.
- Forty-five percent to the common schools trust fund.
- Forty-five percent to the water development trust fund.

In the November 2008 general election voters approved initiated measure No. 3 that amended NDCC Section 54-27-25 to establish a tobacco prevention and control trust fund. The measure provides for a portion of tobacco settlement funds received by the state to be deposited in a new fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, relating to strategic contribution payments which began in 2008 and continue through 2017, will be deposited beginning in 2009 into the newly created tobacco prevention and control trust fund.

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

**ANALYSIS OF THE VETERANS' POSTWAR TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS
(REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)**

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$5,117,955		\$3,546,685
Add estimated revenues				
Investment income (loss)	(\$1,200,000)		\$200,000	
Sale of vans	7,000		0	
Total estimated revenues		(1,193,000)		200,000
Total available		\$3,924,955		\$3,746,685
Less estimated expenditures and transfers				
Grants	\$285,000			
Operating expenses	0			
Administrative committee travel	5,000			
Veterans' Home activities	32,770			
Vehicles - Vans	35,000			
Veterans' transportation programs	5,500			
Other veterans' programs	10,000			
Appeals Committee	1,000			
New Veterans' Home construction project	0 ¹			
Stand Down (outreach to homeless veterans)	4,000			
Total estimated expenditures and transfers		378,270		0 ²
Estimated ending balance		\$3,546,685		\$3,746,685

¹The Administrative Committee on Veterans' Affairs pledged \$150,000 to enable the Veterans' Home to secure additional federal Department of Veterans' Affairs grants for construction of the new Veterans' Home but does not anticipate these funds will be spent during the 2007-09 biennium because the 2009 Legislative Assembly has appropriated funds from the general fund to secure the grants.

²The Administrative Committee on Veterans' Affairs has not yet determined its anticipated expenditures from the fund for the 2009-11 biennium. It plans to identify the anticipated expenditures at its next meeting in the spring of 2009.

NOTE: Since the 1993-95 biennium, the **principal balance of the fund has been identified as \$4,101,849**; however, due to reductions in the value of the fund's investments, as of January 31, 2009, the fund balance was \$3,708,843.

**FUND HISTORY
Established**

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

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 five 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 North Dakota Century Code 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 second 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 second 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.

ANALYSIS OF THE WATER DEVELOPMENT TRUST FUND FOR THE 2007-09 AND 2009-11 BIENNIUMS (REFLECTING LEGISLATIVE ACTION THROUGH CROSSOVER)

	2007-09 Biennium		2009-11 Biennium	
Beginning balance		\$8,989,953		\$13,548,706
Add estimated revenues				
Transfers to date from tobacco settlement trust fund	\$16,416,485 ¹		\$0	
Projected remaining transfers from tobacco settlement trust fund	9,873,267		19,746,536	
Total estimated revenues		26,289,752 ²		19,746,536 ²
Total available		\$35,279,705		\$33,295,242
Less estimated expenditures and transfers				
State Water Commission (2007 SB 2020)				
Water projects	\$6,670,375 ³		\$13,866,925 ⁴	
Bond payments	13,992,714 ³		16,976,076 ⁴	
Administrative expenses	1,067,910 ³		1,530,246 ⁴	
Total estimated expenditures and transfers		21,730,999		32,373,247
Estimated ending balance		<u>\$13,548,706</u>		<u>\$921,995</u>

¹For the 2007-09 biennium two transfers totaling \$16,416,485 have been made from the tobacco settlement trust fund as of February 2009. Total transfers of \$104,920,359 have been made from the tobacco settlement trust fund to the water development trust fund.

²Revenues - Interest earned on the water development trust fund is deposited in the state general fund.

In 2006 certain tobacco companies began reducing their tobacco settlement payments to North Dakota contending that the Master Settlement Agreement allows for the payments to be reduced if they lose sales to small cigarette makers that did not participate in the agreement and if states do not enforce laws intended to make smaller tobacco companies set aside money for legal claims. The Attorney General's office has filed a lawsuit against the tobacco companies to collect full payment. Due to the uncertainty of the lawsuit, the Office of Management and Budget has further reduced the estimated tobacco settlement revenues for the 2007-09 biennium by 5 percent in the first year of the biennium and 3 percent in the second year. The water development trust fund share of the 5 percent and 3 percent reductions is \$828,982 and \$497,389, respectively. The Office of Management and Budget has further reduced the estimated tobacco settlement revenues for the 2009-11 biennium by 3 percent. The water development trust fund share of the 3 percent reduction is \$994,778 for the 2009-11 biennium.

At the end of the 2007 legislative session tobacco settlement revenues for the water development trust fund were estimated to be \$31,501,306 for the 2007-09 biennium. The decrease in the amount of estimated revenues to be collected from the tobacco settlement trust fund of \$5,211,554 is due to an increase in actual tobacco settlement revenues collected to date of which the water development trust fund's share is \$665,832, an estimated increase of \$331,593 due to a change in the estimated discount from 5 percent to 3 percent in the second year of the biennium, and an estimated decrease of \$6,208,979 resulting from initiated measure No. 3. Approved by voters in the November 2008 general election, the measure amends North Dakota Century Code (NDCC) Section 54-27-25 to provide that a portion of tobacco settlement funds received by the state be deposited in the newly created tobacco prevention and control trust fund rather than the entire amount in the tobacco settlement trust fund. Tobacco settlement money received under subsection IX(c)(1) of the Master Settlement Agreement, which continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement, which began in 2008 and continues through 2017, beginning in 2009 will be deposited in the tobacco prevention and control trust fund. The amount received under subsection IX(c)(2) of the Master Settlement Agreement for 2008 was \$13,797,729. Remaining water development trust fund revenues have been estimated based on the Office of Management and Budget revised estimated collections less anticipated strategic contribution payments of \$13,797,729 per year, which was the actual amount of the 2008 strategic contribution payment. The measure also provides that if in any biennium the tobacco prevention and

control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan.

Initiated measure No. 3 will result in the following estimated allocation of the revised estimated collections of the tobacco settlement payments through 2025:

	Actual and Estimated Total Tobacco Settlement Proceeds	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	\$36.5 million	N/A	\$16.4 million	\$16.4 million	\$3.7 million
Estimated payment April 2009	35.7 million	\$13.8 million	9.9 million	9.9 million	2.1 million
Estimated 2009-11 biennium	71.5 million	27.6 million	19.8 million	19.8 million	4.3 million
Estimated 2011-13 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2013-15 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2015-17 biennium	73.7 million	27.6 million	20.8 million	20.8 million	4.5 million
Estimated 2017-19 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2019-21 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2021-23 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Estimated 2023-25 biennium	52.5 million	N/A	23.6 million	23.6 million	5.3 million
Total	\$574.8 million	\$124.2 million	\$202.9 million	\$202.9 million	\$44.8 million

³Section 5 of Senate Bill No. 2020 (2007) appropriated \$40,055,999, or any additional amount that becomes available, from the water development trust fund for the purpose of defraying the expenses of the State Water Commission. The agency anticipates expenditures will total \$21,730,999 for the 2007-09 biennium, including bond payments of \$13,992,714. The remaining balance of approximately \$7.7 million will be available for State Water Commission projects and administrative expenses.

⁴Sections 1 and 4 of House Bill No. 1020 (2009) appropriate \$32,373,247, or any additional amount that becomes available, from the water development trust fund for the purpose of defraying the expenses of the State Water Commission for the 2009-11 biennium. Total 2009-11 biennium bond payments will be \$16,976,076. The remaining balance of approximately \$15.4 million will be available for State Water Commission projects and administrative expenses.

FUND HISTORY

North Dakota Century Code Section 54-27-25, created by 1999 House Bill No. 1475, established a water development trust fund to be used for the long-term water development and management needs of the state. This section creates 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:

- Ten percent to the community health trust fund.
- Forty-five percent to the common schools trust fund.
- Forty-five percent to the water development trust fund.

In the November 2008 general election voters approved initiated measure No. 3 that amended NDCC 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 continue in perpetuity, will continue to be deposited into the tobacco settlement trust fund and allocated 10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. Tobacco settlement money received under subsection IX(c)(2) of the Master Settlement Agreement relating to strategic contribution payments, which began in 2008 and continues through 2017, will, beginning in 2009, be deposited into the newly created tobacco prevention and control trust fund. The measure also provides that if in any biennium the tobacco prevention and control trust fund does not have adequate funding for the comprehensive plan, money may be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the executive committee to adequately provide for the comprehensive plan.

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

North Dakota Century Code Section 61-02.1-04, created by 1999 Senate Bill No. 2188, provides that the principal and interest on bonds issued for flood control projects, the Southwest Pipeline Project, and an outlet to Devils Lake must be repaid with money appropriated from the water development trust fund.