

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HCR 3033

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HCR 3033
3/06/2023

Relating to annual sessions of the legislative assembly; and to provide an effective date.

Chairman Louser called the meeting to order 10:18 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Member absence: Representative Kasper

Discussion Topics:

- Royalties into the fund
- Reinvestment dedication
- Return in intellectual property
- Diversification as a state

In favor:

Representative Corey Mock, District 18, Grand Forks, ND (no written testimony).
Former Representative Dave Weiler, District 30, Bismarck ND, (no written testimony).

Chairman Louser adjourned the meeting 11:47 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HCR 3033
3/08/2023

Relating to annual sessions of the legislative assembly; and to provide an effective date.

Chairman Louser called the meeting to order 3:09 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Committee work

Representative Corey Mock, District 18, Grand Forks, ND, with testimony, additional information, and a proposed amendment, #23394, #23395

Representative Koppelman moved to adopt LC #23.3092.01004 with additional changes to Page 2, line 2 after "transfer" add "70% of the".
Representative Kasper seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	N
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	N
Representative Bill Tveit	N
Representative Scott Wagner	N
Representative Jonathan Warrey	N

Motion passed 7-6-1

Representative Kasper moved a do not pass as amended.
Representative Tveit seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	N
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	N
Representative Hamida Dakane	N
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	N
Representative Dan Ruby	N
Representative Austen Schauer	AB
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	N

Motion fails 5-8-1

Representative Koppelman moved a do pass as amended.
Representative Boschee seconded.

Roll call vote:

Roll call vote: Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	N
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	N
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	N
Representative Bill Tveit	N
Representative Scott Wagner	N
Representative Jonathan Warrey	Y

Motion passed 8-5-1.

Representative Koppelman to carry the bill.

Chairman Louser adjourned the meeting 4:32 PM

Diane Lillis, Committee Clerk

March 8, 2023

AG
3-8-23
(1-1)

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3033

Page 1, line 2, remove "depositing in the legacy fund a portion of royalties or other payments related"

Page 1, line 3, replace "to intellectual property developed using legacy fund earnings" with "the transfer of earnings from the legacy fund"

Page 1, line 5, remove "a portion of the royalties or other payments related to intellectual"

Page 1, line 6, replace "property developed using legacy fund earnings to be deposited in the legacy fund" with "the legislative assembly to approve a transfer of earnings from the legacy fund each biennium and would define the earnings based on a percent of the value of the fund"

Page 1, line 18, remove "A portion of the royalties or other payments related"

Page 1, remove line 19

Page 1, line 20, remove "must be deposited in the legacy fund as provided by law."

Page 1, line 24, replace ". An" with "but an"

Page 2, line 7, overstrike "North Dakota"

Page 2, line 8, overstrike "The" and insert immediately thereafter:

"5. On July first of each odd-numbered year, the"

Page 2, line 8, after "transfer" insert "seventy percent of the"

Page 2, line 8, overstrike "of the North Dakota" and insert immediately thereafter "from the"

Page 2, line 9, overstrike "to the state general fund at the end of each biennium" and insert immediately thereafter "to a legacy earnings fund subject to approval by the legislative assembly each biennium. Any earnings not transferred from the legacy fund become part of the principal of the legacy fund."

6. For purposes of this section, "earnings" means up to eight percent of the five-year average value of legacy fund assets as reported by the state investment board using the value of legacy fund assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HCR 3033: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HCR 3033 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "depositing in the legacy fund a portion of royalties or other payments related"

Page 1, line 3, replace "to intellectual property developed using legacy fund earnings" with "the transfer of earnings from the legacy fund"

Page 1, line 5, remove "a portion of the royalties or other payments related to intellectual"

Page 1, line 6, replace "property developed using legacy fund earnings to be deposited in the legacy fund" with "the legislative assembly to approve a transfer of earnings from the legacy fund each biennium and would define the earnings based on a percent of the value of the fund"

Page 1, line 18, remove "A portion of the royalties or other payments related"

Page 1, remove line 19

Page 1, line 20, remove "must be deposited in the legacy fund as provided by law."

Page 1, line 24, replace ". An" with "but an"

Page 2, line 7, overstrike "North Dakota"

Page 2, line 8, overstrike "The" and insert immediately thereafter:

"5. On July first of each odd-numbered year, the"

Page 2, line 8, after "transfer" insert "seventy percent of the"

Page 2, line 8, overstrike "of the North Dakota" and insert immediately thereafter "from the"

Page 2, line 9, overstrike "to the state general fund at the end of each biennium" and insert immediately thereafter "to a legacy earnings fund subject to approval by the legislative assembly each biennium. Any earnings not transferred from the legacy fund become part of the principal of the legacy fund."

6. For purposes of this section, "earnings" means up to eight percent of the five-year average value of legacy fund assets as reported by the state investment board using the value of legacy fund assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year"

Renumber accordingly

2023 SENATE INDUSTRY AND BUSINESS

HCR 3033

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HCR 3033
3/20/2023

A concurrent resolution relating to the transfer of earnings from the legacy fund.

9:02 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Transfer of earnings
- Legacy fund
- Rapid growth
- Earnings definition

9:00 AM Representative Cory Mock, District 18, Grand Forks, introduced HCR 3033 and testified in favor. No written testimony.

9:32 AM Dave Weiler, Lobbyist, and representing himself, testified in support of HCR 3033. No written testimony.

9:42 AM Jan Murtha, Executive Director, ND Retirement and Investment Office, testified neutral on HCR 3033. # 25856

9:52 AM Ryan Skor, CFO & COO, Retirement, and Investment Office provided additional information, and testified neutral on HCR 3033. No written testimony.

9:56 AM Jan Murtha answered questions from the committee on HCR 3033.

Additional written testimony:

Jan Murtha #25893

9:58 AM Chairman Luick adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HCR 3033
3/29/2023

A concurrent resolution to amend and reenact section 26 of article X of the Constitution of North Dakota, relating to spending and transfers from the legacy fund.
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10:30 AM Vice Chair Kessel called the meeting to order.
Members present are Vice Chair Kessel, Senator Klein, Boehm and Barta.
Absent: Chair Larson

Discussion Topics:

- Amendments
- Financial insurance

10:35 AM Representative Mock introduced amendments [23.3092.2002 – 23.3092.02004]
27208

10:44 AM Lynn Helms, Director of North Dakota Department of Mineral Resources, answered questions for the committee. No written testimony.

10:48 AM Scott Anderson, Chief Investment Officer, ND Retirement and Investment Office, testified. # 27207

11:13 AM Ryan Skor, Chief Financial Officer, ND Retirement and Investment Office, testified. No written testimony.

11:19 AM Representative Mock, answered question for the committee. No written testimony.

11:21 AM Scott Anderson answered questions for the committee. No written testimony.

11:28 AM Vice Chair Kessel adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HCR 3033
4/3/2023

A concurrent resolution relating to the transfer of earnings from the legacy fund.
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10:09 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Legacy fund
- Earnings adjustment
- Percentage adjustment

10:17 AM Scott Anderson, Chief Investment Officer, ND Retirement, and Investment Office, answered questions from the committee. No written testimony.

10:36 AM Ryan Skor, CFO, ND Retirement, and Investment Office, provided information for the committee. No written testimony.

10:43 AM Committee discussion.

10:54 AM Chairman D. Larsen adjourned.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HCR 3033
4/4/2023

A concurrent resolution relating to the transfer of earnings from the legacy fund.
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10:22 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

10:28 AM Senator Kessel moved to adopt an amendment to HCR 3033. LC 23.3092.02007

10:29 AM Senator Boehm seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0- Motion passed.

10:30 AM Senator Kessel moved to DO PASS AS AMENDED HCR 3033.

10:30 AM Senator Barta seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0- Motion passed.

Senator Larsen will carry the bill.

10:34 AM Chairman D. Larsen adjourned.

Brenda Cook, Committee Clerk

April 4, 2023

DR
181
4/4-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE CONCURRENT RESOLUTION
NO. 3033

- Page 1, line 2, replace "the transfer of earnings" with "spending and transfers"
- Page 1, line 4, remove "require the legislative assembly to approve a transfer of earnings from the"
- Page 1, remove line 5
- Page 1, line 6, replace "the fund" with "decrease the amount of principal available for spending each biennium and would clarify the distributions from the legacy fund"
- Page 1, line 19, overstrike "and such transfers become part of" and insert immediately thereafter "Transfers under this subsection and earnings accruing prior to July 1, 2017, are"
- Page 1, line 21, overstrike "and earnings"
- Page 1, line 21, after "expended" insert an underscored comma
- Page 1, line 24, overstrike "fifteen" and insert immediately thereafter "five"
- Page 2, line 5, overstrike "principal of the"
- Page 2, line 5, after "Dakota" insert "moneys in the"
- Page 2, line 7, overstrike "transfer"
- Page 2, line 7, remove "seventy"
- Page 2, line 8, remove "percent of the"
- Page 2, line 8, overstrike "earnings"
- Page 2, line 8, after "Dakota" insert "make a distribution"
- Page 2, line 10, replace "subject to approval by the legislative assembly each biennium" with "as provided by law, but a distribution may not result in an expenditure of principal"
- Page 2, line 10, remove "Any"
- Page 2, remove lines 11 through 15
- Page 2, line 16, remove "ending with the most recently completed even-numbered fiscal year"
- Page 2, line 16, overstrike the period
- Renumber accordingly

REPORT OF STANDING COMMITTEE

HCR 3033, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3033 was placed on the Sixth order on the calendar. This resolution does not affect workforce development.

Page 1, line 2, replace "the transfer of earnings" with "spending and transfers"

Page 1, line 4, remove "require the legislative assembly to approve a transfer of earnings from the"

Page 1, remove line 5

Page 1, line 6, replace "the fund" with "decrease the amount of principal available for spending each biennium and would clarify the distributions from the legacy fund"

Page 1, line 19, overstrike "and such transfers become part of" and insert immediately thereafter ". Transfers under this subsection and earnings accruing prior to July 1, 2017, are"

Page 1, line 21, overstrike "and earnings"

Page 1, line 21, after "expended" insert an underscored comma

Page 1, line 24, overstrike "fifteen" and insert immediately thereafter "five"

Page 2, line 5, overstrike "principal of the"

Page 2, line 5, after "~~Dakota~~" insert "moneys in the"

Page 2, line 7, overstrike "transfer"

Page 2, line 7, remove "seventy"

Page 2, line 8, remove "percent of the"

Page 2, line 8, overstrike "earnings"

Page 2, line 8, after "~~Dakota~~" insert "make a distribution"

Page 2, line 10, replace "subject to approval by the legislative assembly each biennium" with "as provided by law, but a distribution may not result in an expenditure of principal"

Page 2, line 10, remove "Any"

Page 2, remove lines 11 through 15

Page 2, line 16, remove "ending with the most recently completed even-numbered fiscal year"

Page 2, line 16, overstrike the period

Renumber accordingly

2023 CONFERENCE COMMITTEE

HCR 3033

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HCR 3033
4/17/2023

Conference Committee

Relating to annual sessions of the legislative assembly; and to provide an effective date.

Chairman Kasper called the meeting to order 2:43 PM

Members Present: Chairman Kasper, Representatives Mock, Thomas, Senators Larsen, Klein, Kessel

Discussion Topics:

- 15% to 5%
- Performance
- Prudent
- Definition

Senator Larsen gave an update on the Senate amendments.

Representative Mock moved the House accede to Senate Amendments.
Senator Larsen seconded.

Motion passed 6-0-0

House carrier Representative Kasper
Senate carrier Senator Larsen

Chairman Kasper adjourned the meeting 3:02 PM

Diane Lillis, Committee Clerk

Reconsider on April 19, 2023

2023 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

RESOLUTION NO. HCR 3033 engrossed

House Industry Business and Labor Committee

- Action Taken HOUSE accede to Senate Amendments
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
 Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Mock Seconded by: Larsen

Representatives	4-17		Yes	No	Senators	4-17		Yes	No
Chairman Jim Kasper	X		X		Chairman Doug Larsen	X		X	
Representative Corey Moch	X		X		Senator Jerry Klein	X		X	
Representative Paul Thomas	X		X		Senator Greg Kessel	X		X	
Total Rep. Vote					Total Senate Vote				

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Kasper Senate Carrier Larsen

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HCR 3033
4/19/2023

Conference Committee

Relating to annual sessions of the legislative assembly; and to provide an effective date.

Chairman Kasper called the meeting to order 9:03 AM

Members Present: Chairman Kasper, Representatives Mock, Thomas, Senators Larsen, Klein, Kessel

Discussion Topics:

- Committee work

Committee discussion.

Senator Klein moved to reconsider conference committee report voted on April 17, 2023
Senator Larsen seconded.

Motion passed 6-0-0

Chairman Kasper adjourned the meeting 9:30 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HCR 3033
4/19/2023

Conference Committee

Relating to annual sessions of the legislative assembly; and to provide an effective date.

Chairman Kasper called the meeting to order 4:36 PM

Members Present: Chairman Kasper, Representatives Mock, Thomas, Senators Larsen, Klein, Kessel

Discussion Topics:

- Committee work

Committee discussion.

Representative Thomas moved the House accede to Senate Amendments.
Senator Kessel seconded.

Motion passed 6-0-0

House carrier is Representative Thomas
Senate carrier is Senator Larsen

Chairman Kasper adjourned the meeting 4:37 PM

Diane Lillis, Committee Clerk

**2023 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HCR 3033 as engrossed

House Industry Business and Labor Committee

- Action Taken** **HOUSE accede to Senate Amendments**
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Thomas Seconded by: Senator Kessel

Representatives	4-19		Yes	No		Senators	4-19		Yes	No
Chairman Jim Kasper	X		X			Chairman Doug Larsen			X	
Representative Corey Mock	X		X			Senator Jerry Klein			X	
Representative Paul Thomas	X		X			Senator Greg Kessel			X	
Total Rep. Vote			3	0		Total Senate Vote			3	0

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Thomas Senate Carrier Larsen

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HCR 3033, as engrossed: Your conference committee (Sens. Larsen, Klein, Kessel and Reps. Kasper, Mock, Thomas) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1797-1798 and place HCR 3033 on the Seventh order.

Engrossed HCR 3033 was placed on the Seventh order of business on the calendar.

TESTIMONY

HCR 3033



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Corey Mock

District 18
P.O. Box 12542
Grand Forks, ND 58208-2542
C: 701-732-0085
crmock@ndlegis.gov

COMMITTEES:

Appropriations

March 8, 2023

Chairman Scott Louser and House Industry, Business and Labor Committee
North Dakota State Capitol – Room JW327C
HCR 3033 – Legacy Fund Constitutional Amendment (Work Session Notes)

Chairman Louser and Members of House IBL Committee,

Thank you for again for the opportunity to work with the committee as you consider HCR 3033. I greatly appreciate the committee's discussion during our initial hearing on Monday, March 6, 2023.

Attached to these notes are amendments developed following our extended discussion. Those amendments are designed to provide options related to the Legacy Fund and may be combined with one another, if so desired.

Summarizing HCR 3033 and why the resolution was introduced:

North Dakota's Legacy Fund was proposed during the 2009 Legislative Session, approved by voters in 2010, and began receiving 30% of all extraction and production taxes for oil and gas in 2011. This is the only constitutionally directed source of revenue into the fund's principal (fund was designed to receive funds from other revenue sources in the future.)

Earnings were constitutionally required to be reinvested in the principal for the first 7 years; intentionally allowing the fund to mature with the help of compound interest.

At the end of the 2017-19 biennium (and at the end of each biennium moving forward), earnings of the legacy fund must be deposited into the general fund.

HCR 3033 was drafted to update the constitutional guidance for the legacy fund, including the inclusion of a proposed new source of revenue. As introduced, HCR 3033 would require a portion of royalties or other payments related to intellectual property developed using earnings of the legacy fund to be deposited into the principal.

Our state currently permits the North Dakota Development Fund (NDCC 10-30.5) "... to take equity positions in, provide loans to, or use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state." Under current law, loan repayment, dividends, royalties, and other payments made to NDDF remain within their fund for ongoing economic development activities.

NDDF has a continuing appropriation; transfers to NDDF for new economic development initiatives have been limited. HB 1018 (Department of Commerce) has appropriated \$150 million from SIIF for program expansion and a fertilizer development program. \$5 million from COVID recovery funds is also reauthorized to NDDF for continued economic development use.

Amendments proposed to HCR 3033 broaden yet clarify the bill as introduced.

Following other discussions regarding the legacy fund (and revenue sources) there is an additional amendment to also transfer 30% of any taxes / fees collected for carbon storage and sequestration (pore space) into the principal. This would dedicate extraction / production of resources from subsurface pore space AND long-term storage of carbon within subsurface pore space as the constitutional foundation for our legacy fund.

Tax policy regarding long-term pore space utilization is in its infancy. Requiring 30% of any future taxes at the onset would allow future legislatures to consider those factors when creating or modifying pore space tax policies.

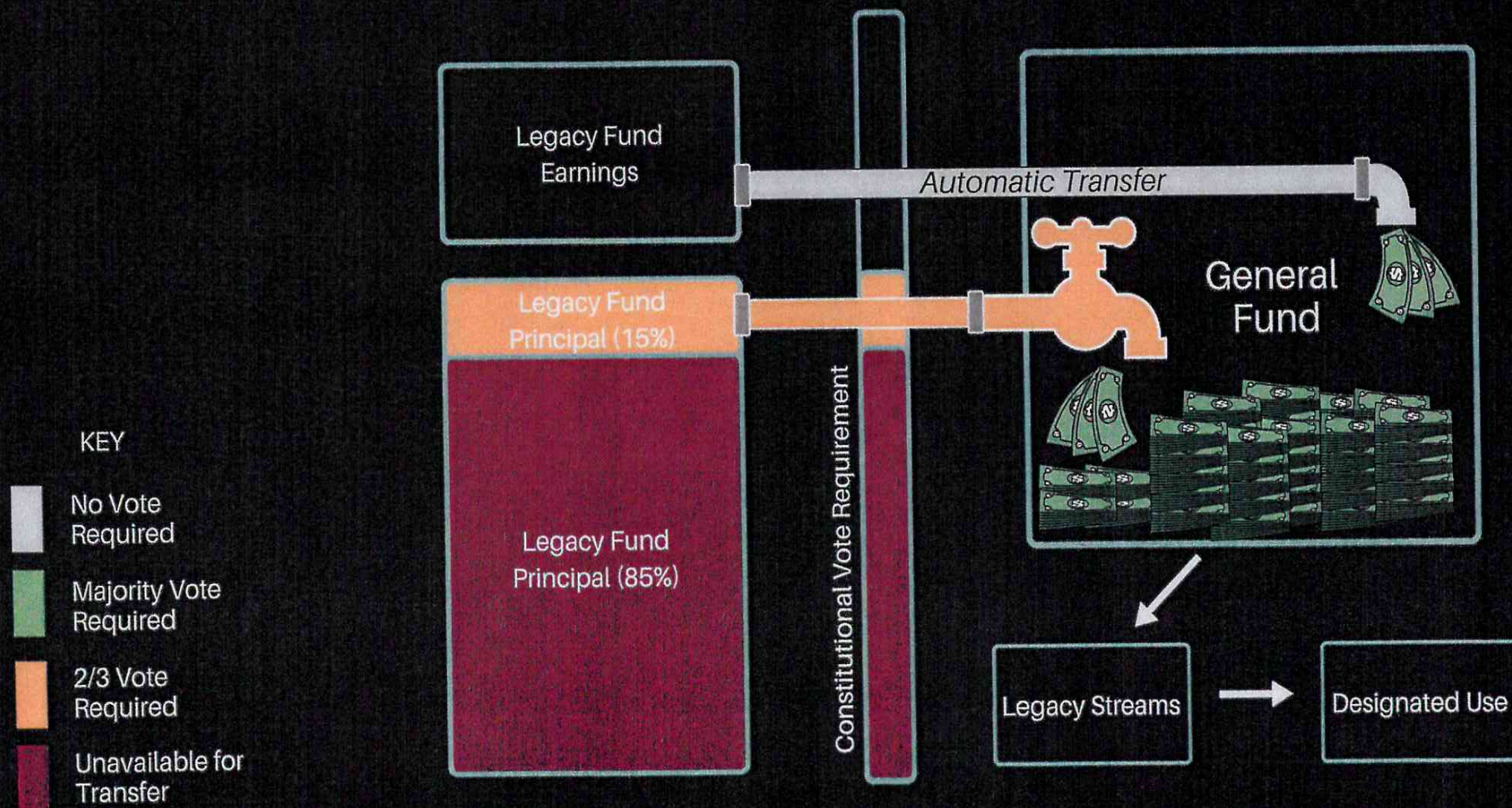
Finally, an amendment was proposed that would place in our Constitution an updated definition of "earnings" that align with "smoothing" practices used today. This amendment would require a legislative transfer of earnings – up to 8% of the 5-year fund average, or approximately 4% annual balance for each year of the biennium. Any earnings not transferred to the general fund would automatically be reinvested in the principal.

Not only would this require mindful action regarding the use of legacy fund earnings by each legislature in perpetuity, it ensures our statutory definition of "earnings" is consistent with our constitution.

Each amendment may be considered independently; they may also be merged if more than one concept were supported by this committee.

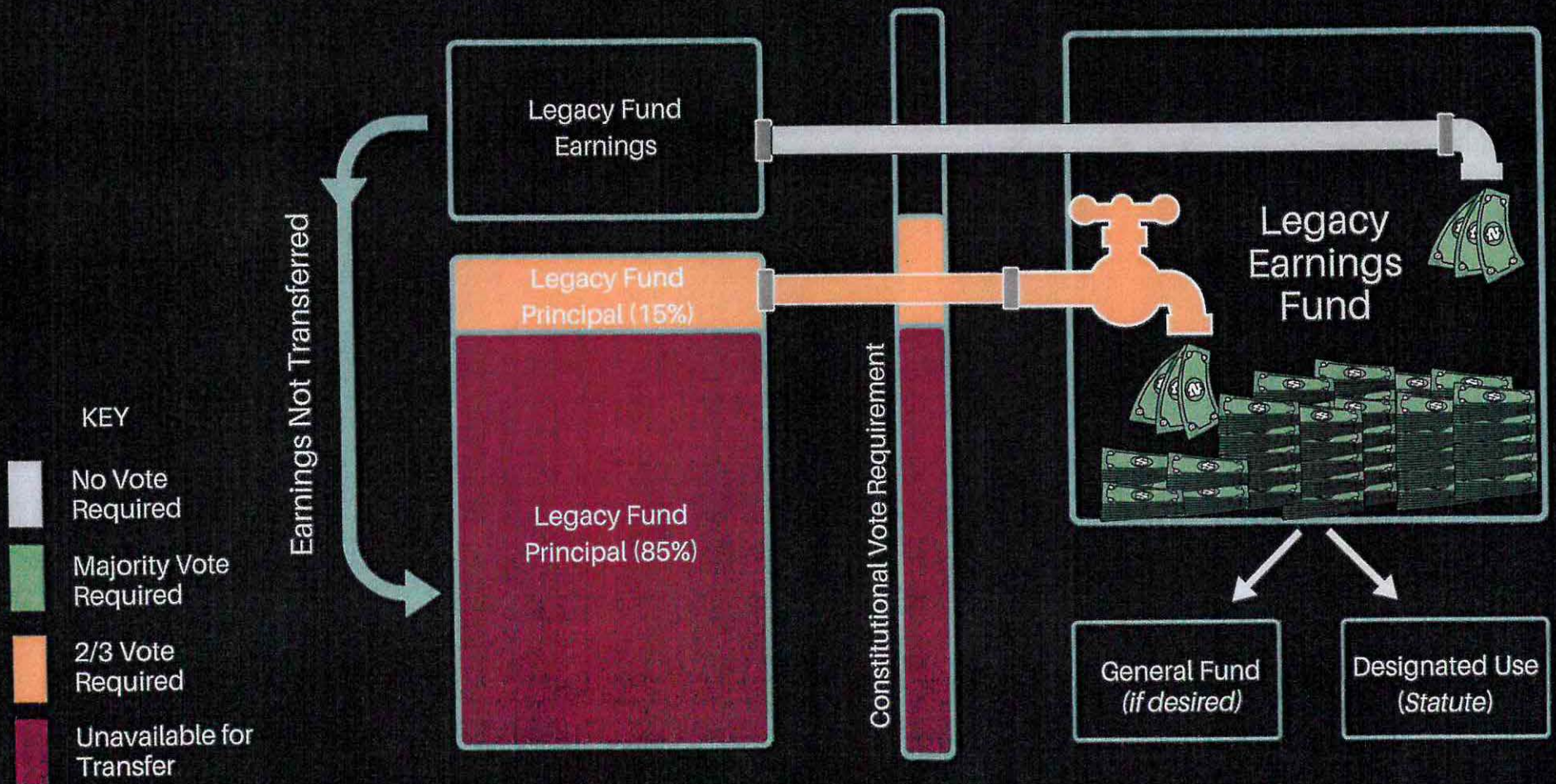
Legacy Fund: Currently

North Dakota's Legacy Fund was proposed by the 61st Legislative Assembly (2009) and adopted in our Constitution by voters in 2010. As established, 30% of oil tax revenue is deposited in the Legacy Fund in perpetuity. Realized earnings were reinvested in the principal through June 30, 2017; realized earnings at the end of each biennium automatically transfer to the general fund. Up to 15% of the principal may be transferred to the general fund with 2/3 approval by each legislative chamber.



Legacy Fund: Earnings Fund

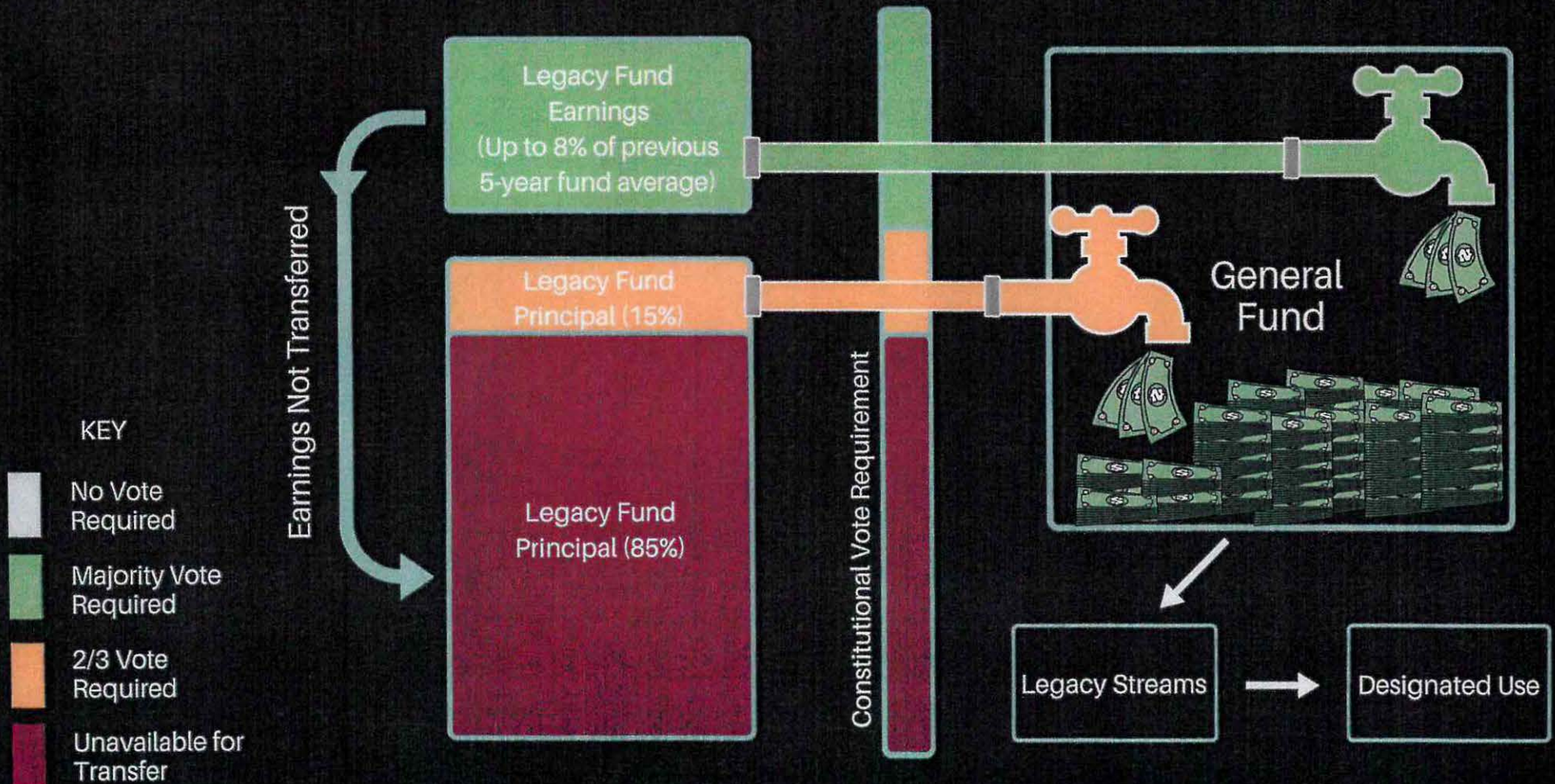
North Dakota's Legacy Fund was proposed by the 61st Legislative Assembly (2009) and adopted in our Constitution by voters in 2010. As established, 30% of oil tax revenue is deposited in the Legacy Fund in perpetuity. Realized earnings were reinvested in the principal through June 30, 2017; realized earnings at the end of each biennium automatically transfer to the general fund. Up to 15% of the principal may be transferred to the general fund with 2/3 approval by each legislative chamber.



Legacy Fund: Earnings 50% + 1

North Dakota's Legacy Fund was proposed by the 61st Legislative Assembly (2009) and adopted in our Constitution by voters in 2010. As established, 30% of oil tax revenue is deposited in the Legacy Fund in perpetuity. Realized earnings were reinvested in the principal through June 30, 2017; realized earnings at the end of each biennium automatically transfer to the general fund.

Up to 15% of the principal may be transferred to the general fund with 2/3 approval by each legislative chamber.



House Concurrent Resolution 3033
North Dakota Retirement and Investment Office (RIO)
Neutral Testimony relating to HCR 3033 before the Senate Industry &
Business Committee
Senator Doug Larsen, Chair
Senator Greg Kessel, Vice Chair

Janilyn Murtha, JD, MPAP – Executive Director
Ryan Skor, CPA, MBA – Chief Financial Officer/Chief Operating Officer

I. Introduction

The Retirement and Investment Office (hereinafter “RIO”) was created by the 1989 Legislative Assembly to capture administrative and investment cost savings in the management of the investment program of the State Investment Board (SIB) and the retirement program of the Teachers’ Fund for Retirement (TFFR). Statutory authority for the agency is found in North Dakota Century Code chapter 54-52.5 and the programs are governed by chapters 21-10 (SIB) and 15-39.1 (TFFR).

The State Investment Board has the statutory responsibility to administer the investment program for 28 funds including the Legacy Fund, TFFR, PERS, and WSI. It also maintains contractual relationships for the investment management of multiple political subdivisions and governmental funds. Currently the SIB is responsible for the investment of the Legacy Fund, seven pension funds and 20 other non-pension funds for a total of 28 separate client funds with an overall fund value of more than \$19.2 billion as of January 31, 2023.

II. Neutral Testimony for HCR 3033

During 2022 the Legacy and Budget Stabilization Fund Advisory Board (Advisory Board) selected a consultant, RVK, Inc. to assist with a Legacy Fund Asset Allocation Study. As a result of this study and recommendations by RVK, changes to the Legacy Fund Investment Policy Statement were approved by both the Advisory Board and the SIB in December 2022. At the last meeting, it was discussed that RVK and the Advisory Board intend to meet in Q2 2023 to review recommendations for updates to the Legacy Fund asset allocation and discuss a pacing schedule. RVK did note in their presentations to the Advisory Board that changes to the structure of the in-state investment program in code could improve returns for the Legacy Fund and enhance opportunities for the in-state investment program.

S.B. 2330 reflects changes to the structure of the in-state investment that could enhance opportunities for growth both for the Legacy Fund and for the in-state investment program. One such change was to create a more predictable stream of earnings with a percent of market value definition for earnings.

A percent of market value definition of earnings, much like the Land Trust definition of earnings, provides a much more predictable earnings stream for spending and enables more asset allocation options to maximize returns for a given level of risk and better fund implementation options. The result would be higher Legacy returns over time. The current realized gains and income definition requires the asset allocation to focus on income and capital gains generation with the asset allocation and implementation plans. Freeing the Legacy fund from this constraint increases the potential earnings stream and reduces uncertainty for allocating earnings.

While the percent of market value language for earnings in HCR 3033 is similar to that of SB 2330 and seeks to move the definition of earnings from Century Code to the N.D. Constitution, the proposed earnings definition in HCR 3033 is nonetheless variable within the biennium and doesn't achieve the same benefit to the Legacy Fund as the fixed percent of market value definition proposed in SB 2330.

III. Summary

We respectfully note for your consideration that while the percent of market value language for earnings in HCR 3033 is similar to that of SB 2330, the proposed earnings definition in HCR 3033 is nonetheless variable within the biennium and doesn't achieve the same benefit to the Legacy Fund as the fixed percent of market value definition proposed in SB 2330.

North Dakota Legacy Fund

RVK Analysis of the Investment Implications of
SB2330 Relative to HB1425

Section 1

Fixed Income Investments within the state – target allocation is reduced from ten percent to six percent.

***RVK Note:** A reduction of this requirement adds to expected long-term returns for the Legacy Fund, as it reduces the required allocation to lower returning investments. Over the long-term, this should increase the flow of returns to the state via the spending policy (discussed below)*

Infrastructure loans to political subdivisions, at a fixed target rate of 1.5 % - is removed.

***RVK Note:** Removal of this provision increases expected long-term returns to the Legacy Fund, as it (a) eliminates a required allocation to loans that would generate very low investment returns and (b) also removes a potential liquidity constraint related to the potential call on these funds allowing incrementally greater use of higher returning illiquid private investments.*

Section 2

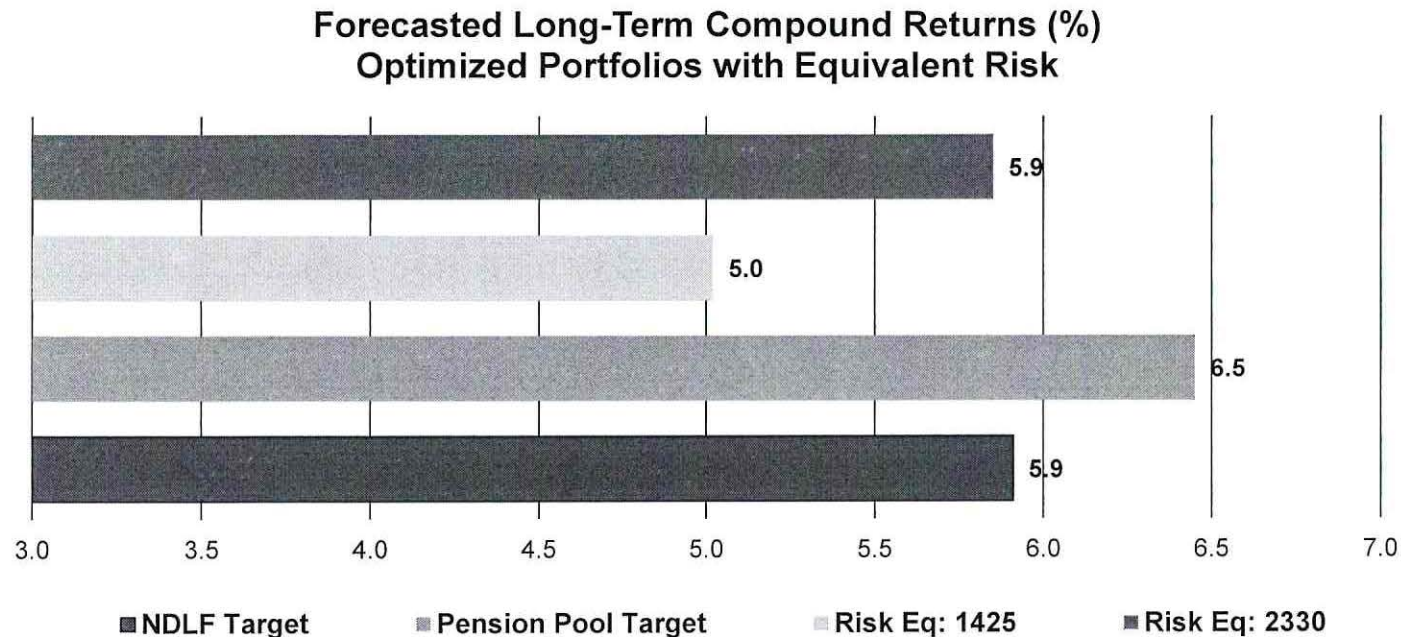
Earnings – definition is changed from a net income approach to a percentage of market value approach.

***RVK Note:** We believe this is an important change to the structure of the Legacy Fund. This adjustment is beneficial to the investment strategy and operation of the investment portfolio and provides greater predictability of distribution amounts. By removing the net income approach to distributions, the strategic asset allocation decision can be focused on maximizing long-term wealth that the Legacy Fund represents for North Dakota by eliminating the need to make explicit trade offs between current income and future growth.*

Appendix

- Preliminary Asset Allocation Modeling and Estimated Impact on Future Wealth Values

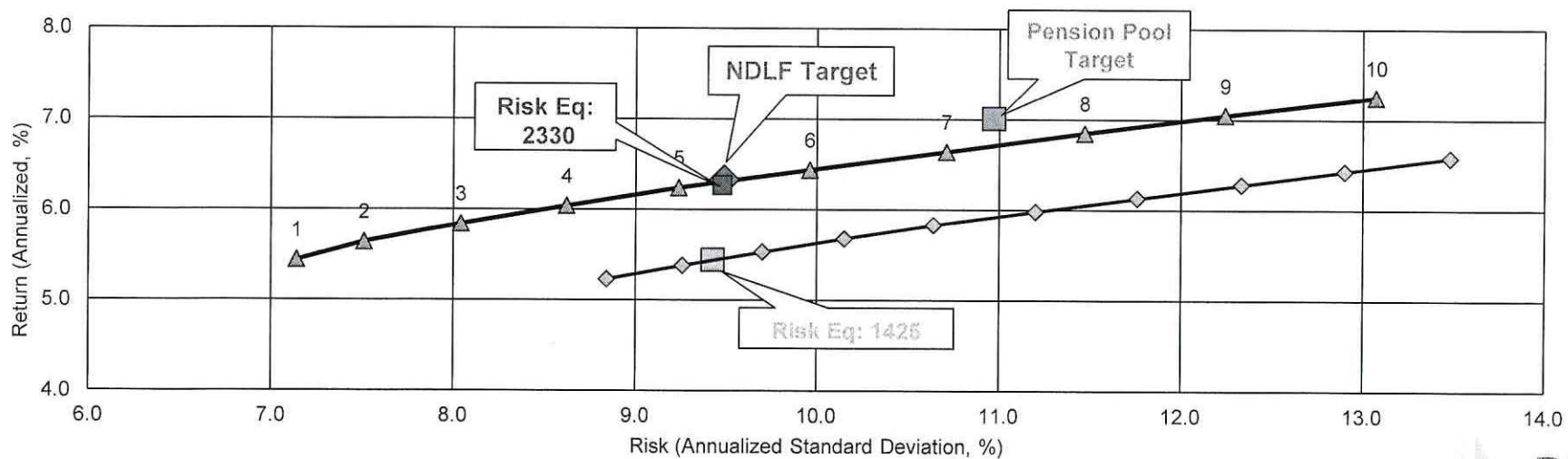
Estimated Return Implications



- Assets invested in the Legacy Fund are projected to annualize at a lower rate of long-term returns with **HB1425** implemented as currently written (Risk Eq: 1425).
 - Utilizing the assumptions described, a portfolio with 20% in-state investments (10% equity and 10% fixed income) could **reduce total Legacy Fund annualized long-term returns by approximately 0.9%** assuming a risk profile similar to the current policy.
- Assets invested in the Legacy Fund under the proposed **HB2330** (Risk Eq: 2330) are projected to have practically the same long-term annualized returns as the current target.

Efficient Frontier 2: Proposed HB2330 Allocations

	Min	Max	1	2	3	4	5	6	7	8	9	10	NDLF Target	Pension Pool Target	Risk Eq: 1425	Risk Eq: 2330	Diff from NDLF Target
Broad US Equity	20	40	20	20	20	20	20	22	24	27	29	30	30	29	20	22	-8
Broad International Equity	10	30	10	11	14	18	20	22	24	27	29	30	20	19	14	21	1
Private Equity	0	10	0	0	0	0	2	3	3	3	3	10	1	8	0	2	1
In-State Private Equity	3	3	3	3	3	3	3	3	3	3	3	3	0	0	10	3	3
US Agg Fixed Income	10	40	40	37	36	35	31	26	21	16	11	10	29	17	36	32	3
High Yield Fixed Income	0	8	0	0	0	0	0	0	0	0	0	0	0	8	0	0	
Private Credit	6	6	1	7	8	8	8	8	8	8	8	1	3	0	0	4	1
BND CD Match	0	0	6	6	6	6	6	6	6	6	6	6	2	0	6	6	4
Infrastructure Loans	0	7	0	0	0	0	0	0	0	0	0	0	0	0	4	0	
TIPS	0	5	7	7	5	2	4	5	5	5	5	5	5	0	5	0	-5
Private Core Infrastructure	0	8	5	5	5	5	5	5	5	5	5	5	5	7	5	5	
Core Real Estate	0	0	8	4	3	3	1	0	0	0	0	0	5	12	0	5	
Total			100	100	100	100	100	100	100	100	100	100	100	100	100	100	
Expected Arithmetic Return			5.4	5.6	5.8	6.0	6.2	6.4	6.6	6.9	7.1	7.3	6.3	7.0	5.4	6.3	
Expected Risk (Standard Deviation)			7.1	7.5	8.0	8.6	9.2	10.0	10.7	11.5	12.2	13.1	9.5	11.0	9.4	9.5	
Expected Compound Return			5.2	5.4	5.5	5.7	5.8	6.0	6.1	6.2	6.4	6.5	5.9	6.5	5.0	5.9	
Expected Return (Arithmetic)/Risk Ratio			0.8	0.8	0.7	0.7	0.7	0.7	0.6	0.6	0.6	0.6	0.7	0.6	0.6	0.7	
RVK Expected Eq Beta (LCUS Eq = 1)			0.4	0.5	0.5	0.5	0.6	0.6	0.6	0.7	0.7	0.8	0.6	0.6	0.5	0.6	
RVK Liquidity Metric (T-Bills = 100)			72	70	70	70	70	70	70	71	71	71	79	68	69	70	





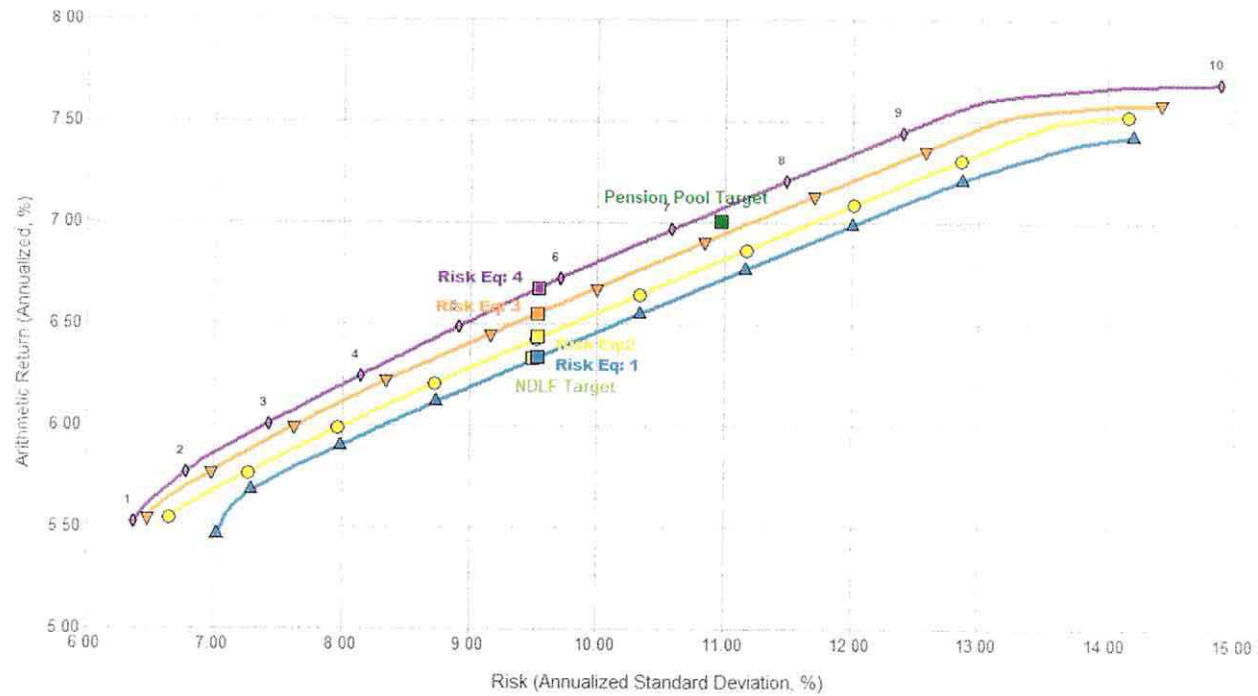
HCR3033

MARCH 29, 2023

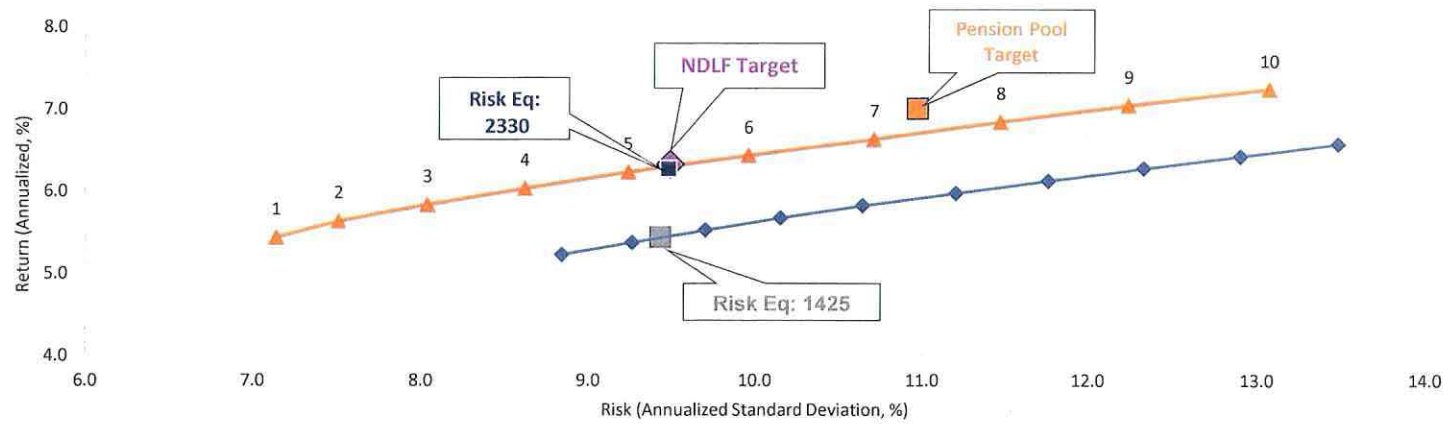
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Dakota
Be Legendary.

Retirement & Investment

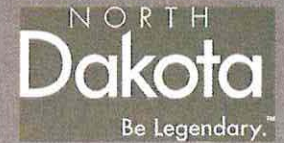
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Efficient Frontier 2: Proposed HB2330 Allocations



Estimated Return Implications



- Assets invested in the Legacy Fund are projected to annualize at a lower rate of long-term returns with **HB1425** implemented as currently written (Risk Eq: 1425).
 - Utilizing the assumptions described, a portfolio with 20% in-state investments (10% equity and 10% fixed income) could **reduce total Legacy Fund annualized long-term returns by approximately 0.9%** assuming a risk profile similar to the current policy.
- Assets invested in the Legacy Fund under the proposed **HB2330** (Risk Eq: 2330) are projected to have practically the same long-term annualized returns as the current target.

APPENDIX



PRELIMINARY MODEL - RVK

23.3092.02001

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

**ENGROSSED HOUSE CONCURRENT
RESOLUTION NO. 3033**

Introduced by

Representatives Mock, Hagert, Ista, Kempenich, Kreidt, Schatz

Senators Cleary, Meyer

1 A concurrent resolution to amend and reenact section 26 of article X of the Constitution of North
2 Dakota, relating to the transfer of earnings from the legacy fund.

STATEMENT OF INTENT

3
4 This measure would require the legislative assembly to approve a transfer of earnings from the
5 legacy fund each biennium and would define the earnings based on a percent of the value of
6 the fund.

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

9 That the following proposed amendment to section 26 of article X of the Constitution of
10 North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the
11 general election held in 2024, in accordance with section 16 of article IV of the Constitution of
12 North Dakota.

13 **SECTION 1. AMENDMENT.** Section 26 of article X of the Constitution of North Dakota is
14 amended and reenacted as follows:

15 **Section 26.**

- 16 1. Thirty percent of total revenue derived from taxes on oil and gas production or
17 extraction must be transferred by the state treasurer to a special fund in the state
18 treasury known as the legacy fund. The legislative assembly may transfer funds from
19 any source into the legacy fund and such transfers become part of the principal of the
20 legacy fund.
- 21 2. The principal and earnings of the legacy fund may ~~not~~ be expended ~~until after~~
22 ~~June 30, 2017, and an~~ but an expenditure of principal ~~after that date~~ requires a vote of
23 at least two-thirds of the members elected to each house of the legislative assembly.
24 Not more than fifteen percent of the principal of the legacy fund may be expended
25 during a biennium.

Sixty-eighth
Legislative Assembly

- 1 3. Statutory programs, in existence as a result of legislation enacted through 2009,
2 providing for impact grants, direct revenue allocations to political subdivisions, and
3 deposits in the oil and gas research fund must remain in effect but the legislative
4 assembly may adjust statutory allocations for those purposes.
- 5 4. The state investment board shall invest the principal of the ~~North Dakota~~ legacy fund.
6 The
- 7 5. On July first of each odd-numbered year, the state treasurer shall transfer ~~seventy-~~
8 ~~percent of the~~ earnings of the ~~North Dakota~~ from the legacy fund accruing after
9 ~~June 30, 2017, to the state general fund at the end of each biennium~~ to a legacy
10 earnings fund subject to approval by the legislative assembly each biennium. Any
11 earnings not transferred from the legacy fund become part of the principal of the
12 legacy fund.
- 13 6. For purposes of this section, "earnings" means ~~up to eight~~ seven percent of the five-
14 year average value of legacy fund assets as reported by the state investment board
15 using the value of legacy fund assets at the end of each fiscal year for the five-year
16 period ending with the most recently completed even-numbered fiscal year.

Sixty-eighth
Legislative Assembly
of North Dakota

**ENGROSSED HOUSE CONCURRENT
RESOLUTION NO. 3033**

Introduced by

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Senators Cleary, Meyer

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2 Dakota, relating to the transfer of earnings from the legacy fund.

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4 This measure would require the legislative assembly to approve a transfer of earnings from the
5 legacy fund each biennium, and would define the earnings based on a percent of the value of
6 the fund.

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

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17 extraction must be transferred by the state treasurer to a special fund in the state
18 treasury known as the legacy fund. The legislative assembly may transfer funds from
19 any source into the legacy fund and such transfers become part of the principal of the
20 legacy fund.

21 2. The principal and earnings of the legacy fund may ~~not~~ be expended ~~until after~~
22 ~~June 30, 2017, and an~~ but an expenditure of principal ~~after that date~~ requires a vote of
23 at least two-thirds of the members elected to each house of the legislative assembly.

24 Not more than ~~fifteen~~ five percent of the principal of the legacy fund may be expended
25 during a biennium.

Sixty-eighth
Legislative Assembly

- 1 3. Statutory programs, in existence as a result of legislation enacted through 2009,
2 providing for impact grants, direct revenue allocations to political subdivisions, and
3 deposits in the oil and gas research fund must remain in effect but the legislative
4 assembly may adjust statutory allocations for those purposes.
- 5 4. The state investment board shall invest the principal of the ~~North Dakota~~ legacy fund.
6 The
- 7 5. On July first of each odd-numbered year, the state treasurer shall transfer ~~seventy-~~
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9 June 30, 2017, to the state general fund at the end of each biennium to a legacy
10 earnings fund subject to approval by the legislative assembly each biennium. Any
11 earnings not transferred from the legacy fund become part of the principal of the
12 legacy fund.
- 13 6. For purposes of this section, "earnings" means ~~up to eight~~seven percent of the five-
14 year average value of legacy fund assets as reported by the state investment board
15 using the value of legacy fund assets at the end of each fiscal year for the five-year
16 period ending with the most recently completed even-numbered fiscal year.

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE CONCURRENT
RESOLUTION NO. 3033

Introduced by

Representatives Mock, Hagert, Ista, Kempenich, Kreidt, Schatz

Senators Cleary, Meyer

1 A concurrent resolution to amend and reenact section 26 of article X of the Constitution of North
2 Dakota, relating to the transfer of earnings from the legacy fund.

3 **STATEMENT OF INTENT**

4 This measure would require thirty percent of total tax and fee revenue related to carbon dioxide
5 storage or sequestration to be deposited in the legacy fund. would require the legislative
6 assembly to approve a transfer of earnings from the legacy fund each biennium, and would
7 define the earnings based on a percent of the value of the fund.

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

10 That the following proposed amendment to section 26 of article X of the Constitution of
11 North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the
12 general election held in 2024, in accordance with section 16 of article IV of the Constitution of
13 North Dakota.

14 **SECTION 1. AMENDMENT.** Section 26 of article X of the Constitution of North Dakota is
15 amended and reenacted as follows:

16 **Section 26.**

- 17 1. Thirty percent of total revenue derived from taxes on oil and gas production or
18 extraction and thirty percent of total revenue derived from taxes and fees on carbon
19 dioxide storage or sequestration must be transferred by the state treasurer to a special
20 fund in the state treasury known as the legacy fund. The legislative assembly may
21 transfer funds from any source into the legacy fund and such transfers become part of
22 the principal of the legacy fund.
- 23 2. The principal and earnings of the legacy fund may ~~not~~ be expended ~~until after~~
24 ~~June 30, 2017, and an~~ but an expenditure of principal ~~after that date~~ requires a vote of
25 at least two-thirds of the members elected to each house of the legislative assembly.

Sixty-eighth
Legislative Assembly

- 1 Not more than fifteen percent of the principal of the legacy fund may be expended
2 during a biennium.
- 3 3. Statutory programs, in existence as a result of legislation enacted through 2009,
4 providing for impact grants, direct revenue allocations to political subdivisions, and
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