

Building a Legacy? North Dakota's Oil and Gas Legacy Fund an Exercise in Public Policy and Political Action

Ryan M. Yonk¹

¹ American Institute for Economic Research, USA

Correspondence: Ryan M. Yonk, American Institute for Economic Research, 250 Division Street Great Barrington MA, USA. Tel: 1-613-947-3592. E-mail: ryan.yonk@aier.org

Received: May 11, 2023 Accepted: July 8, 2023 Online Published: July 9, 2023

doi:10.5539/par.v12n2p22

URL: <http://dx.doi.org/10.5539/par.v12n2p22>

Abstract

From at least 2006, Western North Dakota experienced an oil boom that resulted in a dramatic increase in economic activity, and tax revenue. In response to this boom, North Dakota, through a constitutional ballot measure, established the Legacy Fund. This fund reserved 30% of monthly oil tax revenue collected by the state for future use. On July 1, 2017, the State Legislature, per the constitutional provisions creating the Legacy fund, became able to spend the interest (as well as some of the principal, with numerous limitations) from the fund.

How to allocate these funds has become a state-wide public finance policy and political issue. Governor Burgum and others have proposed a variety of ways to use the funds on public projects and tax relief. Decisions about the long-term purpose of the fund and how best to use its earnings have increased in urgency with both the availability of the funds and the volatility of oil and other tax revenues.

Deciding how to best use the Legacy Fund is both a fiscal and political question. Legislators must sort out how the interest earnings will be used, who should benefit, or if the fund should be used at all. I explore how these decisions are made, the possible implications of those decisions, the proposals that have been put forward, and propose a framework for how these decisions might be made.

Keywords: sovereign wealth fund, fiscal policy, oil and gas revenue, fiscal policy

1. Introduction

North Dakota voters approved a constitutional measure in 2010 for the creation of a “Legacy Fund” [North Dakota Voting Information and Central Election Systems [ND VOICES], 2010]. The Legacy Fund would invest tax revenues from the oil and gas industry to create additional funding for the future. A decade later, competing visions for the fund and numerous proposals for its use have divided policymakers, and elected officials.

In this paper, I identify a framework to categorize proposals related to the Legacy Fund. I apply a public choice perspective that explores how the interests of the various parties interact and then to analyze how decisions to use the fund's earnings will be made and what will drive those decisions. Using this approach, I explore two primary areas of interest. First, I analyze the types of proposals that have been put forth and determine their likely impact on the citizens of North Dakota. Second, I explore the political framework in which the budgetary process operates for the allocation of funds. This includes examining the process for getting a proposal approved and the incentives faced by politicians, bureaucrats, and special interests. The goal of this paper is to provide a clear examination of a real-world policy decision and identify the institutions and incentives at work in that decision. This paper is not intended to be a full examination of the policy making process in North Dakota but rather an examination of the incentives, opportunities, and limits of using this particular policy instrument.

1.1 Background

In 2009, the North Dakota Legislature passed House Concurrent Resolution No. 3054, or the Legacy Fund proposal, placing the question of the Legacy Fund on the 2010 North Dakota general election ballot. A previous ballot initiative, known as the “North Dakota Permanent Oil Tax Trust Fund Referendum” failed in 2008 [ND VOICES, 2008]. In 2010, Constitutional Measure 1, listed as the “North Dakota State Legacy Fund Establishment,” passed with 63.6 percent of the statewide vote [ND VOICES, 2010]. The Legacy Fund was instituted into law as Article X, Section 26, of the North Dakota Constitution:

“1. Thirty percent of total revenue derived from taxes on oil and gas production, or extraction must be transferred by the state treasurer to a special fund in the state treasury known as the legacy fund. The legislative assembly may transfer funds from any source into the legacy fund and such transfers become part of the principal of the legacy fund.

2. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and an expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the legislative assembly. Not more than fifteen percent of the principal of the legacy fund may be expended during a biennium.

3. Statutory programs, in existence as a result of legislation enacted through 2009, providing for impact grants, direct revenue allocations to political subdivisions, and deposits in the oil and gas research fund must remain in effect but the legislative assembly may adjust statutory allocations for those purposes.

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

According to the North Dakota State Treasurer’s Office, the North Dakota Legacy Fund has total lifetime deposits of \$6 billion and total lifetime distributions of \$455 million (as of March 2021) [ND Office of State Treasurer, n.d.-a]

1.2 Sovereign Wealth Funds

The North Dakota Legacy Fund is in form a sovereign wealth fund (SWF). The purposes and goals for the Fund are shared with a many of the funds in existence, goals that often are varied and sometimes contradictory. Sovereign wealth funds are “government-owned investment entities set up for a variety of macroeconomic purposes” [Bahgat 2008]. The primary funding agents for SWFs worldwide include the taxation of commodity exports, transferred reserves from central banking institutions, and “budgetary surpluses, proceeds from privatization, or transfers from their government’s main budget” [Chwieroth 2014]. Arguably, the most prominent type of SWF concerns the taxation of commodity production and exports, similar to the North Dakota Legacy Fund. The first SWFs were permanent funds established in U.S. states, notably Texas and New Mexico, to invest proceeds generated from oil and gas production and finance public spending [Alsweilem & Rietveld, 2018].

SWFs can play an important role in the economic health of a state or nation. Research has suggested that SWFs serve three primary functions: “1] the stabilization of macroeconomic variables; 2] serving as a vehicle for the investment of accumulated public savings; and 3] the generation and diversification of fiscal income and national wealth” [Alsweilem & Rietveld, 2018]. In addition, they allow for the “... accumulation of savings for future generations in resource-rich countries to offset the future lack of natural resources” [Alhashel, 2015]. Experts advocate for each fund to have a clear, established purpose. The defined purpose should determine the path for how the fund is used, invested, and allocated.

To illustrate the function of such funds I outline four examples of state-owned SWFs in the U.S. and abroad with revenues generated from commodity exports. In the U.S., I focus on funds in Alaska, Wyoming, and New Mexico. There are numerous SWFs abroad, but I chose to look at the Norwegian Pension Fund, the largest SWF in the world that takes its revenues from the same commodity as the North Dakota Legacy Fund—oil. I selected these four funds in part because they were all mentioned in the Legacy Fund Earnings Study Background Memorandum, which was prepared by the North Dakota Legislative Council [2019].

Sovereign wealth funds in the U.S. and abroad provide useful examples for exploring the framework surrounding the North Dakota Legacy Fund and its use. Due to their similarities, many of the guidelines surrounding these four funds helped provide the foundational vision for the Legacy Fund and give some insight into the policy reality faced by those funds. In fact, the Alaska Permanent Fund was continually brought up in discussions about how to structure the fund. Consultants were brought in to share their experience with implementing and administering the Alaska Permanent Fund and its dividend. They warned North Dakota, however, not to institute a dividend program to individuals [Teal, 2019].

The Norwegian Pension Fund was also frequently cited as an example of how to model the Legacy Fund. As policymakers and citizens evaluate proposals for using the Legacy Fund, comparisons to other funds and their effects on the short-term and long-term economy are likely to continue and provide important lessons on how particular decisions involving the fund can lead to differing results.

1.2.1 The Alaskan Permanent Fund

The Alaskan Permanent Fund is a state-owned corporation with a total value of more than \$75 billion [as of February 2021] [Alaska Permanent Fund Corporation [APFC], 2021]. The fund was established by a statewide general election ballot in 1976 to preserve Alaska's mineral and natural resource wealth. Greater than 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mining revenue sharing payments and bonuses received by the state are placed in the fund. All of the income from the permanent fund is deposited into the Alaska general fund. Much of the fund is invested in the stock market and other similar investments, though the portfolio includes bonds and real estate holdings as well [Berman & Reamey, 2016].

Alaska's SWF is unique in that it is used to support the Permanent Fund Dividend. This fund was established by the Alaska Legislature in 1980 "to generate political support for conservative management of the fund, [and] to increase the likelihood that the principal would be protected over time" [Berman & Reamey, 2016, p. 2]. Since 1982, the fund has been paying out an annual equal dividend to every resident of Alaska [APFC, n.d.].

1.2.2 The Permanent Wyoming Mineral Trust Fund

The Permanent Wyoming Mineral Trust Fund [PWMTF] is a SWF created by the Wyoming Legislature in 1974 to cushion the impact of boom-and-bust revenue cycles and act as an endowment to preserve the state's wealth. The fund is financed by severance taxes on mineral revenues extracted in the state [Kenton 2020], with total assets of \$23.3 billion [as of June 2023] [Sovereign Wealth Fund Institute, n.d.]. The primary spending tool for the fund is a 2.5 percent transfer from the PWMTF to the Wyoming general fund [Wyoming Statute § 9-4-719, 2018]. With the exception of the Alaska dividends, the PWMTF operates similarly to the Alaska Permanent Fund and the Severance Tax Permanent Fund in New Mexico.

1.2.3 The Severance Tax Permanent Fund (STPF)

The Severance Tax Permanent Fund (STPF) in New Mexico was created in 1973 (one year prior to the PWMTF), making it the oldest U.S. SWF reviewed here. The fund accumulates revenue from severance taxes on natural resource gains. Investment gains from the STPF are annually distributed into the New Mexico general fund at 4.7 percent of the fund's five-year average [New Mexico State Investment Council [NM SIC], n.d.]. The value of the STPF is about \$5 billion [as of 2018] [NM SIC, 2018].

1.2.4 The Norwegian Pension Fund

The Norwegian Pension Fund was "set up to shield the economy from ups and downs in oil revenue. It also served as a financial reserve as a long-term savings plan so that both current and future generations get to benefit from oil wealth" [Norges Bank, 2019]. The fund is nearly identical to the North Dakota Legacy Fund in structure, as earnings from oil and gas production are transferred to the fund. However, the Norwegian Pension Fund does not give out consistent transfers, nor does it have a system of consistent payments. Rather, it is used to cover budget shortfalls in bad times.

"Budget surpluses are transferred to the fund, while deficits are covered with money from the fund. In other words, the authorities can spend more in hard times and less in good times" [Norges Bank, 2019]. In addition, spending is limited to a rate of about 3 percent per year [Norges Bank, 2019].

2. Public Choice Framework

I apply a public choice framework to evaluate the North Dakota Legacy Fund and the proposals for its use. The public choice perspective of political and economic analysis "takes the same principles that economists use to analyze people's actions in the marketplace and applies them to people's actions in collective decision-making... [The] main motive, whether they are voters, politicians, lobbyists, or bureaucrats, is self-interest" [Shaw, n.d.]. In other words, public choice looks at both the institutional factors and incentives the actions of politicians and other decision-makers and the effects on the public policy process and outcomes they jointly have.

3. Analyzing North Dakota's Legacy Fund Institutional Framework

The principal and earnings of the Legacy Fund became available for use on July 1, 2018. Since then, there have been numerous proposals for use of the fund, including proposals to allow the fund to grow; proposals related to budget stabilization; and proposals for spending projects such as infrastructure, innovation and research, human services, and tax reductions. As the SWF literature shows, a sovereign wealth fund is generally guided by the institutional framework surrounding it and the vision, whether stated or implied, shared by policymakers and citizens.

3.1 Institutional Framework

Decisions about how to use the Legacy Fund will be made within a set of formal and informal institutions. The formal institutions include the North Dakota Legislature, the Legacy Fund Earnings Committee, Legislative Management and Legislative Council, the Retirement and Investment Office, the State Investment Board, and the Legacy Fund and Budget Stabilization Advisory Board.

Per Article X, Section 26, of the North Dakota Constitution, the North Dakota Legislative Assembly clearly has the power to approve the use of the principal of the fund. Although the process for spending Legacy Fund earnings is not explicitly outlined, the budgeting and appropriation authority of the Legislature makes clear their primary role in governing the use of the Legacy Fund's principal and earnings. Despite this relative clarity, much uncertainty remains relating to the process for spending Legacy Fund earnings. Therefore, the Legacy Fund Earnings Committee was tasked with creating a proposal to outline how this spending would occur [Wardner, R., personal communication, 2020, June 30].

The Legacy Fund Earnings Committee was established during the 2019 legislative session through Senate Bill No. 2015 § 32. The committee was comprised of 11 members and charged to “study the potential uses of Legacy Fund earnings, including the use of earnings to provide tax relief, provide for reinvestment of Legacy Fund earnings, fund research and technological advancements, promote economic growth and diversification, and promote workforce development and career and technical education. The committee may consider public input on the use of Legacy Fund earnings and review the operation of other funds, such as Norway’s sovereign wealth fund” [ND Legislative Branch, n.d.-a].

The committee held public hearings throughout the state of North Dakota to receive proposals and suggestions for using the Legacy Fund earnings. In addition to their legislative votes, committee members are likely to have the most direct knowledge and input from experts and the public, giving them influence to make recommendations to the Legislature.

Legislative Management is the group of legislators who manage the interim work between legislative sessions. This includes directing studies to be conducted and determining the membership of interim committees. When the Legislature is not in session, Legislative Management wields significant power. Legislative Management also “employs the Legislative Budget Analyst and Auditor who, with the assistance of a fiscal staff, provides technical expertise to budget and appropriation committees, reviews audit reports for the Legislative Audit and Fiscal Review Committee [LAFRC], and assists in conducting LAFRC studies designed to improve the state’s fiscal practices” [ND Legislative Branch, n.d.-b]. In 1995, the North Dakota Legislature voted to give the Legislative Management authority to reconvene the legislative assembly [ND Legislative Branch, n.d.-b]. Through these and other mechanisms, Legislative Management has a wide array of tools with which to impact decisions regarding use of the Legacy Fund.

Beyond the legislative assembly, several other institutional actors are able to influence how the Legacy Fund is managed and used. The most prominent executive actor is the governor. As the most visible statewide elected official and head of the executive agencies, the governor wields substantial agenda-setting abilities. Part of that agenda-setting power can be exerted through the governor’s proposed budget each biennium. By bringing public attention to certain issues and establishing a vision for the fund, the governor can influence legislative discussion and public opinion.

The North Dakota State Retirement and Investment Office was established in 1989 to coordinate the activities of two agencies: the State Investment Board (SIB) and the Teachers’ Fund for Retirement (TFFR). North Dakota Century Code Section 54-52.5-02 states, “The state investment board shall govern the state retirement and investment office.” Moreover, the SIB “is charged with implementing policies and asset allocation and investing the assets of the legacy fund in the manner provided in Section 21-10-07” [ND Legislative Branch, 2017]. The SIB manages the Legacy Fund’s investments and controls the goals, objectives, and asset allocation for the fund.

In addition to the SIB, the Legacy and Budget Stabilization Fund Advisory Board (known as “advisory board”) is charged with the responsibility of recommending policies on investment goals and asset allocation of the Legacy Fund [ND Century Code § 21-10]. The advisory board is comprised of four legislators. Although the SIB and advisory board do not have independent power to determine how funds should be spent, they do influence how the Legacy Fund’s investments are allocated and the availability of funds in a given year.

3.2 Competing Visions – Then and Now

The Legacy Fund was promoted as a way for the state to prudently invest and save revenues from the cyclical oil boom in western North Dakota. Members of the Legacy Fund Founders Committee stated, “The Legacy Fund

would secure North Dakota's financial future by providing a consistent state revenue stream for our children and grandchildren, long after the oil industry takes a downturn" [Legacy Fund Founders Committee, 2010]. In a 2010 op-ed, proponents argued, "It's prudent to put some money away when we're making the big bucks on the oil field... This isn't going to last forever" [Beitsch & Gehring, 2010].

The intent to secure funds for the future is clear. However, visions and plans differed for guiding the use of the funds after the seven-year mandatory freeze. In fact, four prominent North Dakota newspapers supported the creation of the Legacy Fund, but each endorsed it for different reasons. The Forum of Fargo-Moorhead touted "a brighter economic picture for future generations," while The Bismarck Tribune focused on limiting government spending to avoid future tax increases [Ballotpedia, n.d.].

An advertisement appearing in multiple North Dakota newspapers encouraged voters to support the measure for a variety of reasons, including: "Leave a legacy for your children and grandchildren;" "It's the fiscally responsible thing to do;" and "Earnings are available long after the oil industry takes a downturn."

With few legal constraints on how legislators can use the funds, the number of proposals has grown both in number and scope. Numerous interests began to engage the process since 2017, garnering significant discussion and opposing viewpoints. Public officials have endorsed a wide variety of approaches for using the Legacy Fund. For example, North Dakota Governor Doug Burgum has frequently discussed his vision for the Legacy Fund in his State of the State address.

In his 2018 State of the State presentation, Gov. Burgum discussed the budget shortfalls for the upcoming biennium: "I may have to use [Legacy Fund earnings] again to get us through this period of time where we're just using it to fund government. But certainly, all the young people who are here, in your lifetime, there's going to be an opportunity to use the Legacy Fund earnings for something that is really transformative" [Burgum, 2018]. Burgum did not elaborate on specific policies except to say that he opposed spending the principal of the fund.

The next year, in his 2019 address, Gov. Burgum advocated for a variety of specific spending projects using the Legacy Fund earnings, such as funding for career academies, scholarships, a new hospital, and infrastructure. He stated, "This – and all of our Legacy Fund proposals – will have lasting impacts beyond our current generation" [Burgum, 2019].

In his 2020 State of the State Address, Gov. Burgum declared, "Our number one priority should be protecting ourselves and future generations from these downturns [in oil revenues], which can occur from market forces and world events beyond our course." Burgum further indicated that until oil is no longer a source of revenue for the state, "... I should never put ourselves in a position where legacy funds are funding core government because then we're going to be in a huge bind down the road" [Burgum, 2020].

These remarks demonstrate the variable and evolving views an elected official has toward the Legacy Fund based on the political and economic realities of a given year. North Dakota state senator Rich Wardner, vice chairman of the Legacy Fund Earnings Committee, explained his vision of the Legacy Fund: "[The] purpose of the Legacy Fund was to provide a revenue stream to the state general fund when oil production and oil tax revenue ended in North Dakota without raising any taxes. Therefore, legislators are not interested in spending the principal unless there would be an extreme emergency" [Wardner, R., personal communication, 2020, June 30].

Sen. Wardner's comments indicate that he and other legislators view the Legacy Fund as a revenue replacement tool when oil extraction subsides on a permanent basis. [These comments echo some of the sentiments expressed by Gov. Burgum while also revealing a competing vision with Burgum's desire for "transformational" projects.] This view contrasts with a variety of proposals made by citizens at hearings around the state. These competing narratives reflect the myriad of visions held by elected officials and members of the public. Importantly, the Legislature's actions will likely set a precedent for future use of the funds.

4. Evaluating Approaches to Using the Legacy Fund

Evaluating proposals for using the Legacy Fund is a complex process with political ramifications. In evaluating the proposals, it is likely that some key questions:

What was the initial intended purpose for which the Legacy Fund was established?

What are the best uses for the Legacy Fund's earnings, and perhaps for the principal, in achieving its purpose?

What are the political constraints surrounding approaches to using the fund?

These questions which cover both the intent, the goals of the program, as well as the political interest of those engaging in the decision process are all likely to be a substantial part of the decision process.

As previously discussed, there appeared to be some initial consensus on the purpose of the fund namely to create a fund to preserve resources generated from the current oil boom and provide for future generations. This intent, and the precedents set by the Legislature's actions, will likely impact the long-term decision-making process.

4.1 Three Types of Proposals

Guided by the questions above, I reviewed the various proposals and identified three main categories of Legacy Fund proposals:

- 1) Reinvesting the earnings into the Legacy Fund
- 2) Using the earnings as a budget stabilization fund
- 3) Using the earnings on novel projects to transform government

Our analysis focuses on proposals related to the Legacy Fund's earnings. I view the use of the fund's principal as unlikely. Still, our framework can be applied to the principal with the understanding that there is a higher threshold for agreement, thus making decisions to use the principal less likely to occur.

4.2 Reinvesting the Legacy Fund

The first type of proposal focuses on reinvesting all or part of the Legacy Fund's earnings. This may occur as a deliberate policy action or as the result of inaction. If the Legislature does not allocate funds to be spent from the Legacy Fund, they are automatically reinvested. This was the case during the 2019 Legislative Assembly.

Calls to reinvest the Legacy Fund's earnings and allow the fund to grow have been popular since the fund was instituted. This option has many potential long-term benefits.

A 2014 Great Plains Institute report titled "Recommendations of the North Dakota Legacy Fund" studied this issue by meeting with key North Dakota stakeholders to discuss policy recommendations. The report featured projections under different scenarios of spending and reinvestment. According to their projections, spending 100 percent of the earnings would yield just under \$50 million by 2039; reinvesting 100 percent of the earnings [spending zero percent] would yield over \$100 million by 2039; and reinvesting 75 percent of the earnings while spending 25 percent would yield approximately \$90 million [Great Plains Institute, 2014]. Though the exact rate of return is not guaranteed, these projections give an estimate of the likely difference in returns under different strategies.

The Legacy Fund Earnings Committee released its own projections in November 2019 under three different scenarios: transferring 100 percent of the earnings to the General Fund; 50 percent of the earnings to the General Fund; and zero percent of the earnings to the General Fund. Their projections were lower across-the-board than the projections released by the Great Plains Institute in 2014. For example, returning 100 percent of the earnings back to the Legacy Fund was predicted to generate a balance of \$48.33 billion by 2041 [ND Legislative Council, 2019b, p. 3]. These lower projections are the result of a decrease in the price of oil. At the start of 2014, the Brent crude oil price was just over \$100 per barrel. In 2019, it started at about \$55 and continued to decline [MacroTrends, n.d.].

Despite the unpredictability of oil markets, these projections help show the long-term advantages of reinvesting the earnings to grow the total principal of the Legacy Fund. The difference in the size of the fund between the different scenarios should give policymakers pause in spending the earnings. Preserving the funds for the future could have a much greater impact on the state.

4.3 Using the Legacy Fund as a Budget Stabilization Tool

The second type of proposal focuses on using the earnings to fill budgetary shortfalls, similar to a budget stabilization fund. Budget stabilization funds, also known as rainy day funds, "allow states to set aside surplus revenue for times of unexpected revenue shortfall or budget deficit" [Rueben & Randall, 2017, p. 1]. Using the Legacy Fund as a budget stabilization fund would allow the state to maintain consistent spending levels.

North Dakota created a Budget Stabilization Fund in 1987 to limit revenue shortfalls. The guidelines for funding the Budget Stabilization Fund state: "The State Treasurer is required to transfer any funds in the General Fund exceeding \$65,000,000 at the end of each biennium [...] to the Budget Stabilization Fund to achieve the fund's maximum balance. If there is not enough in the General Fund to meet the cap, then the Budget Stabilization Fund will retain its earnings until the cap is met. Once the cap is met the earnings are deposited in the General Fund" [ND Office of State Treasurer, n.d.-b].

The primary revenue stream for North Dakota's Budget Stabilization Fund, besides transfers from the General Fund, are oil and gas production taxes. Using the Legacy Fund as a budget stabilization tool would duplicate an

existing fund in both the source of its funds and its purpose. The use the earnings in this way as it could lead to a perpetual reliance on the Legacy Fund for this purpose, transforming the short-term and long-term goals of the fund, and while attractive in solving immediate budget issues is viewed skeptically by those interested managing government spending proactively.

The state is currently facing a difficult economic situation with the price of oil remaining low and businesses and individuals still recovering from the coronavirus pandemic. During difficult budgetary cycles, proposals to use the Legacy Fund to alleviate shortfalls have become increasingly attractive.

4.4 Using the Legacy Fund to Transform Government

The third and final type of proposal focuses on allocating some or all of the earnings for specific spending projects. Spending proposals have received significant attention from elected officials and the public.

This type of proposal has the largest short-term benefit because it allows the funds to be put to immediate use. However, any proposal requires a majority vote by the Legislature which is difficult given the political realities of North Dakota. During the 2019 Legislative Assembly, legislators failed to pass several spending proposals [see Figure 3]. These proposals also face budgetary constraints. Biannual earnings are placed in the General Fund at the beginning of each session, but the amount transferred is finite and varied.

These proposals have assumed a variety of forms [see Figure 2] but can broadly be narrowed into two categories:

- 1) Using the earnings to reduce income or property taxes for residents of North Dakota
- 2) Using the earnings to support appropriations for increases in government spending

Each category has distinct features, and I will discuss them separately in the sections that follow.

Figure 1. A list of failed proposals related to appropriating legacy fund dollars for new projects in 2019

HB 1484	would have appropriated \$275 million from the General Fund derived from Legacy Fund earnings for various purposes, including a transfer of \$100 million to a health and human services stabilization fund.
HB 1504	would have deposited a portion of the Legacy Fund earnings into the General Fund with the remainder transferred to a legacy earnings fund; the amount deposited in the General Fund would have been equal to five percent of the four-year average of Legacy Fund assets.
HB 1509	would have transferred \$5 million from the General Fund derived from Legacy Fund earnings to a paid family medical leave fund
HB 1523	would have transferred excess state agency fund balances to the Legacy Fund after August 2021.
HB 1530	would have transferred 50 percent of Legacy Fund earnings to a legacy income tax reduction fund to provide income tax rate reductions.
SB 2141	would have provided a funding allocation to each child at birth managed by the Bank of North Dakota and would have deposited unspent funding in the Legacy Fund.
SB 2276	would have expanded the investments of the Legacy Fund to include investments in state programs
SB 2282	would have transferred 15 percent of Legacy Fund earnings to an economic diversification research grant fund.
Senate Concurrent Resolution 4005	proposed constitutional amendment to create a fund for grants and loans to political subdivisions for infrastructure projects; the amendment would have transferred 15 percent of the principal of the Legacy Fund and 15 percent of the earnings to the fund.

Figure 2. A list of the most common suggestions for spending legacy fund earnings; provided by North Dakota Majority Leader Senator Rich Wardner

Transportation infrastructure funding
Capitalize low interest revolving infrastructure loan fund for cities
Capitalize a low interest revolving loan fund for school building construction
20 percent funding assistant to school construction for school districts that qualify
Fund more career and technology programs
Funding for behavioral health programs
Increase funding to research and innovation
Funding for homeless programs
Property tax reduction through state K-12 funding
Income tax reduction

4.4.1 Reducing Taxes

Some of the more popular proposals relating to the Legacy Fund have focused on using the fund's earnings to offset reductions to the state income tax or property tax collections. Proponents of these proposals argue that lower taxes will lead to in-migration and economic growth. However, potential issues could emerge from using the Legacy Fund in this way. I explore a proposal to lower the income tax rate to highlight these issues.

Reducing or replacing the state's income tax with revenues from the Legacy Fund is possible, especially as the fund continues to grow. During the 2017-2019 biennium, North Dakota collected \$781,710,694 in individual income tax revenue, which was roughly 8.9 percent of the total net collections during that period [Rauschenberger, 2019, p. 11]. This represents a proportionally small amount of the state's income. Oil and gas taxes accounted for more than \$4.6 billion [about 52.7 percent of the state's total income], and sales and use taxes were more than \$1.9 billion [about 22.4 percent] [Rauschenberger, 2019, p. 11]. The total revenue generated from income tax collections is relatively small, but the expected economic benefits are similarly small.

Several studies have been conducted to examine how reducing income taxes affects economic growth and other variables. Complicating matters for advocates, there is not conclusive evidence to link lowering income taxes with real, consequential impacts on economic outcomes [Leachman & Mazerov, 2015]. Moreover, North Dakota's income tax burden is already relatively low compared to other states [McCann, 2020].

Opposition to this proposal has emerged from Gov. Burgum's administration. In the 2019 legislative session, a bill, which failed, was proposed to "... divert half of the Legacy Fund earnings each two-year budget cycle to an 'income tax rate reduction fund,' as long as the transfer is at least \$50 million" [ND Legislative Assembly, 2019b]. In reference to this bill, Burgum said the proposal is not "good policy" because, "You're taking tax revenue from one industry and then spreading it out to everybody." Burgum has stated a preference for using the Legacy Fund on one-time projects instead of residual spending proposals [Hageman, 2019].

4.4.2 Spending Proposals

Several interesting proposals have been put forth by Gov. Burgum, elected officials, and the general public to spend the Legacy Fund's earnings on diverse projects. Proposals have ranged from research advancements and workforce development to spending on infrastructure and health and human services. Other proposals have focused on funding narrow programs that represent a small group of stakeholders. Due to the wide scope of these proposals, I will not explore each one in detail. Overall, this category of proposals seeks to increase total government spending by allocating additional funds based on the availability of Legacy Fund earnings.

A proposal was put forth during the 2019 legislative session to create a new fund, with an initial allocation of \$275 million from the Legacy Fund's earnings, to finance a variety of projects [ND Legislative Assembly, 2019a]. Although the bill failed, this approach is potentially popular among elected officials because it would allow different proposals to access a bucket of funds.

If legislators decide to use the fund in this way, it could lead to a shift in the purpose of the Legacy Fund. Functionally, a portion of the Legacy Fund's earnings would be added to the total revenue taken into the North Dakota General Fund each biennium.

5. Discussion and Conclusion

The question of how best to use the Legacy Fund's principal and earnings is complex and politically fraught. Isought to apply the lessons of public choice economics to study this dynamic issue. Given the institutional constraints surrounding the use of the Legacy Fund, public choice dictates that "... legislators, officials, and voters [will] all use the political process to advance their private interests, just as they do in the marketplace" [Butler, 2012, p. 25]. Those private interests may be financial or electoral. For example, elected officials will consider two questions: 1) Is this good policy? and 2) How will my constituents feel about this policy during the next election?

With self-interest at play, legislators will most likely face some pressure to spend money on one-time or residual spending projects that help their constituents. These projects are beneficial in the short-term and allow politicians to tout claims of progress and material betterment. This is true generally regarding the interests of politicians. However, the specific politics of North Dakota may push legislators to favor more fiscally conservative approaches.

With many voters in the state opposed to increased government spending, some legislators have instead focused on strong anti-tax sentiments among the electorate. Although these proposals are attractive to voters, the impact of these decisions remains uncertain and tax reductions—while popular in the short-term—may become problematic during periods of economic decline.

As a result of the coronavirus pandemic and the associated economic downturn, there has been growing interest among officials and the public to use Legacy Fund earnings as a budget stabilization tool. With legislators hesitant to cut programs or raise taxes, it becomes increasingly attractive to tap into the Legacy Fund as an available source of revenue during times of economic distress.

Special interests will also attempt to use the Legacy Fund's earnings to support their causes and preferred policy outcomes. The impact of these groups through direct campaign support, indirect public influence, and other avenues is likely to help steer policy discussions.

All of these issues interplay with the electoral and political realities faced by individual actors. The issue is further complicated by the knowledge that pursuing one vision for the Legacy Fund will likely foreclose opportunities to pursue other uses.

With these factors in mind, it appears that the most likely policy outcomes are the second and third proposals: using the fund's earnings for budget stabilization or spending the earnings to transform government. However, the alternative course – to reinvest the earnings for the future – may be favored by legislators and officials considering the long-term benefits for themselves and the state. Understanding that the current oil revenues will eventually run out, these institutional actors may favor an approach that stabilizes North Dakota's future.

Acknowledgments

I wish to acknowledge the support of the Center for the Study of Public Choice and Private Enterprise at North Dakota State University for support in conducting this research. In particular the research assistance of Kole Nichols, Colby Warzecha, Caden Wurzbacher was an important part of this project.

References

- Alaska Permanent Fund Corporation. (2021, February). *Alaska Permanent Fund Performance Report*. (2020, April 10).
- Alaska Permanent Fund Corporation. (n.d.). *Homepage*. Retrieved November 18, 2020, from <https://apfc.org/>
- Alhashel, B. (2015). Sovereign Wealth Funds: A literature review. *Journal of Economics and Business*, 78, 1–13. <https://doi.org/10.1016/j.jeconbus.2014.10.001>
- Alsweilem, K., & Rietveld, M. (2018). *Sovereign Wealth Funds in Resource Economies: Institutional and Fiscal Foundations*. Columbia University Press. <https://doi.org/10.7312/alsw18354>
- Bahgat, G. (2008). Sovereign Wealth Funds: Dangers and Opportunities. *International Affairs*, 84(6), 1189-1204. <https://doi.org/10.1111/j.1468-2346.2008.00764.x>
- Ballotpedia. (n.d.). *North Dakota State Legacy Fund Establishment, Measure 1* (2010).
- Beitsch, R., & Gehring, B. (2010, September 13). Voters to decide on two measures. *Bismarck Tribune*.
- Berman, M., & Reamey, R. (2016). *Permanent Fund Dividends and Poverty in Alaska*. University of Alaska Anchorage Institute of Social and Economic Research.
- Burgum, D. (2018, 23 January). *2018 State of the State Address*. North Dakota Office of the Governor.
- Burgum, D. (2019, 3 January). *2019 State of the State Address*. North Dakota Office of the Governor.

- Burgum, D. (2020, 29 January). *2020 State of the State Address*. North Dakota Office of the Governor.
- Butler, E. (2012). *Public Choice - A Primer*. The Institute of Economic Affairs. <https://doi.org/10.2139/ssrn.3918451>
- Chwieroth, J. (2014). Fashions and Fads in Finance: The Political Foundations of Sovereign Wealth Fund Creation. *International Studies Quarterly*, 58(4), 752-763. <https://doi.org/10.1111/isqu.12140>
- Great Plains Institute. (2014). *North Dakota's Legacy Fund: Building a Bridge to the Future*.
- Hageman, J. (2019, February 7). Burgum says proposal using Legacy Fund earnings to reduce North Dakota income taxes isn't 'good policy'. *Grand Forks Herald*.
- Kenton, W. (2020, August 28). *Permanent Wyoming Mineral Trust Fund (PWMTF)*. Investopedia. Retrieved from <https://www.investopedia.com/terms/p/permanent-wyoming-mineral-trust-fund.asp>
- Leachman, M., & Mazerov, M. (2015, May 14). *State Personal Income Tax Cuts: Still a Poor Strategy for Economic Growth*. Center on Budget and Policy Priorities.
- Legacy Fund Founders Committee. (2010, August 9). *North Dakota Legacy Fund* (Appendix C or Appendix V).
- MacroTrends. (n.d.). *Crude Oil Prices - 70 Year Historical Chart*.
- McCann, A. (2020, June 24). *2020's Tax Burden by State*. WalletHub.
- New Mexico State Investment Council. (2018). *60 Years Anniversary Report*.
- New Mexico State Investment Council. (n.d.). *Severance Tax Permanent Fund*.
- Norges Bank. *About the Fund*. (2019, February 27). <https://www.nbim.no/en/the-fund/about-the-fund/>
- North Dakota Century Code § 21-10 State Investment Board.
- North Dakota Century Code § 54-52.5 State Retirement and Investment Office.
- North Dakota Constitution. (1889). Article X: Finance and Public Debt.
- North Dakota Legislative Assembly. (2019a). *House Bill No. 1484*. Regular Session – 66th Legislative Assembly. LC# 19.1095.03000.
- North Dakota Legislative Assembly. (2019b). *House Bill No. 1530*. Regular Session – 66th Legislative Assembly. LC# 19.0812.03000.
- North Dakota Legislative Branch. (2017). *North Dakota Legacy Fund: Investment Policy Statement* (Appendix B).
- North Dakota Legislative Branch. (n.d.-a). *Legacy Fund Earnings Committee 66-2019*.
- North Dakota Legislative Branch. (n.d.-b). *Legislative Management*.
- North Dakota Legislative Council. (2019a). *Legacy Fund Earnings Study: Background memorandum* (Memorandum 21.9015.01000, prepared for the Legacy Fund Earnings Committee).
- North Dakota Legislative Council. (2019b, November). *Legacy Fund Projections* (Memorandum 21.9145.01000, prepared for the Legacy Fund Earnings Committee).
- North Dakota Office of State Treasurer. (n.d.-a). *North Dakota Legacy Fund*. Retrieved from <https://www.treasurer.nd.gov/north-dakota-legacy-fund-0>
- North Dakota Office of State Treasurer. (n.d.-b). *North Dakota Government Funds*. Retrieved from <https://www.treasurer.nd.gov/north-dakota-government-funds>
- North Dakota Voting Information and Central Election Systems. (2008). *Official 2008 General Election Results*.
- North Dakota Voting Information and Central Election Systems. (2010). *Official 2010 General Election Results*.
- Rauschenberger, R. (2019). *54th Biennial Report*: For the biennial period of July 1, 2017, through June 30, 2019. Office of North Dakota Tax Commissioner.
- Rueben, K. S., & Randall, M. (2017, November). *Budget Stabilization Funds: How states save for a rainy day*. Urban Institute.
- Shaw, J. S. (n.d.). *Public Choice Theory*. The Concise Encyclopedia of Economics.
- Sovereign Wealth Fund Institute. (n.d.) *Permanent Wyoming Mineral Trust Fund*.
- Teal, D. (2019, November 13). *Alaska's Permanent Fund and Its Impact on the State Budget: Implications for North Dakota*.

Wyoming Legislative Statute § 9-4-719. (2018). *Investment earnings spending policy permanent funds*.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).