

Fiscal Analysis Department

Minnesota House of Representatives



ISSUE BRIEF

Closed Landfill Investment Fund Update January 2019

The Closed Landfill Investment Fund was originally created in 1999 legislation. By statute money in the fund cannot be spent until after fiscal year 2020. Starting in 2010 and continuing through 2015 money was transferred out of the fund in order to balance the state's general fund budget. This brief details the transfers out of the fund, the repayment schedules, interest accrued to the fund and repayments to the fund. The current state of the Closed Landfill Program and the estimated future obligations are also presented. The Closed Landfill Investment Fund currently has a value of just over \$84 million and it is anticipated that the Legislature will enact appropriation authority prior to FY 2021.

The Closed Landfill Investment Fund

The Closed Landfill Investment Fund (CLIF) was originally established by the Minnesota Legislature in 1999ⁱ. The purpose of the fund was to provide for the state's obligation for the long term care of the closed landfills in the Closed Landfill Program (CLP). There are 110 landfills currently considered closed landfills in the CLP with a state obligation. Four additional landfills qualify for the CLP but have not yet entered into the program. In order for a landfill to enter the program a Landfill Cleanup Agreement needs to be executed and the state must issue a Notice of Compliance. The four additional qualifying landfills have not yet been issued a Notice of Compliance.

When the fund was created it was not made available for use until after fiscal year 2020. The 20 year period before CLIF funds could be used had two purposes: 1) it was intended to allow the fund to grow to a value that could support the long term care of the CLP; and 2) it allowed for enough time to complete known work so the fund would only be supporting the operation and maintenance as well as unanticipated construction and repair. The fund was initially credited with transfers of \$5.1 million in each of the fiscal years 2000, 2001, 2002 and 2003 from the Solid Waste Fundⁱⁱ. Any interest and earnings from the balance in the fund are also credited to the fund. In 2003, the legislature changed how insurance recovery settlements for environmental response costs related to qualified facilities were credited to the stateⁱⁱⁱ. The state's share of the settlements were split equally between the Remediation Fund and the CLIF. Settlement efforts concluded in fiscal year 2011 and no significant revenue is expected in the future.

In September 2013, the Pollution Control Agency provided information on the closed landfills and the expected future obligations. At that point estimated future obligations of the CLP were \$142 million between FY 2014 and FY 2043. The CLIF is intended to provide for the costs into perpetuity, the 30 year time period was only used to provide an estimate. The estimate includes pre FY 2020 funds used for construction and maintenance work. Based on the Pollution Control

Agency's estimate the CLIF obligations beyond FY 2020 are between \$100 million and \$200 million. Funding for the pre FY 2020 work that is being completed is through the Remediation Fund and general obligation bonds.

2010 Transfers from CLIF

The CLIF balance for FY 2010 was \$48.113 million based on the February 2010 forecast. In March of 2010, \$8 million was transferred from CLIF to the State's General Fund to help balance the general fund budget. The fund was to be repaid \$4 million in both FY 2014 and FY 2015. The repayments were to include "...interest and other earnings that would have accrued to the fund if the transfers to the general fund under this paragraph had not been made..."^{iv}. In May of 2010, the \$8 million transfer was increased to \$48 million. The repayment was to be \$12 million per year for each of the fiscal years 2014, 2015, 2016 and 2017 with no change being made on the language concerning interest and other earnings^v. The Fund Balance Statement for the General Fund included tracking of \$100,000 in each of the fiscal years as payment for interest and other earnings since the transfer was made.

2013 Legislative Changes to Repayment Schedule

In May of 2013, the repayment schedule was changed to \$9.9 million in FY 2015, \$12.55 million in FY 2016 and FY 2017, and \$13 million in FY 2018^{vi} with no changes being made to the language concerning interest and other earnings. At this point the Fund Balance Statement for the General Fund still included tracking estimates of \$100,000 in each of the years as payment for interest and other earnings.

2014 Payments

On July 14th, 2014 Minnesota Management and Budget transferred \$9.9 million to CLIF from the General Fund for the FY 2015 principal payment. This was the first of four transfers scheduled towards repaying the principal amount to CLIF. Minnesota Management and Budget consulted with the State Board of Investment to calculate the interest and other earnings that would have accrued to the fund as the law requires. The amount of past interest and other earnings from FY 2010-FY 2014 was calculated to be \$51,376,234.61. On August 18th, 2014, Minnesota Management and Budget transferred this amount to CLIF from the General Fund. The FY 2016-18 payments have been revised to include a more accurate estimate of the interest and other earnings in future years, the tracking estimates are: \$15.293 million in FY 2016, \$14.390 million in FY 2017 and \$13.936 million in FY 2018. These future payments include a total of \$5.519 million in interest and other earnings. This was calculated using the five-year average of the Environmental Trust Fund as a proxy for the rate of return. The total repayment to the CLIF which was previously tracked as \$48.4 million was now being tracked as \$104.895 million.

The rates of return used to determine the interest and other earnings are 30.83 percent in FY 2011, 5.49 percent in FY 2012, 20.51 percent in FY 2013, and 24.48 percent in FY 2014. The rate used for the future years was calculated at 7.2 percent per year. Based on the laws of 2014 CLIF would be fully repaid with interest and other earning on July 1, 2017.

2015 Legislative Changes to CLIF

The 2015 Legislature made several changes to CLIF. The three remaining payments scheduled for FY 2016, FY 2017 and FY 2018, estimated to total \$43.619 million, were repealed^{vii}. Additionally the Commissioner of Management and Budget was required to transfer \$63.215 million from CLIF to the General Fund by June 30th 2016. Of the \$63.215 million transfer \$5 million was authorized in the Jobs and Economic Development Finance Bill^{viii} and \$58.215 million was authorized in the Environment and Natural Resources Finance Bill^{ix}. The amounts transferred out of CLIF were scheduled to be transferred back to CLIF if revenue was available in the general fund based upon the revenue priority schedule specified in Minnesota Statutes 2014, Section 16A.152, Subdivision 2. The provision states “if on the basis of a forecast of general fund revenues and expenditures, the Commissioner of Management and Budget determines there will be a positive unrestricted budgetary general fund balance at the close of the biennium, the commissioner of management and budget must allocate money to the following accounts and purposes in priority order”. The repayment of CLIF was established as priority five and the provision expired when the entire \$63.215 million is transferred^x.

The 2015 Legislature adjourned leaving \$865.1 million positive unrestricted budgetary general fund balance for the FY 2016-17 biennium making it likely the CLIF would be repaid at the time of the November 2015 Forecast. The November 2015 Forecast projected a general fund balance of \$1.8715 billion^{xi}. Based on that positive balance the entire \$63.215 million was transferred to CLIF. Since the Commissioner of Management and Budget was not required to transfer money out of the fund until June 30th, 2016 and had not yet transferred the money out of CLIF, the transfers in and out of CLIF were made simultaneously. The simultaneous transfers made it possible to avoid liquidating the assets held in CLIF and avoid the transaction costs associated with selling and repurchasing those assets. With the November 2015 Forecast all transfers and repayments specified in law have been satisfied.

2017 Legislative Changes to CLIF

The 2017 legislature made the first appropriation out of the CLIF. The appropriation had “notwithstanding” language in relation to the statutory date of FY 2020. The appropriation was for \$3 million for “...settling obligations with the federal government, remedial investigations, feasibility studies, engineering, and clean-up related activities for purposes of environmental response actions at a priority qualified facility...”^{xii}. The facility that qualifies as a priority facility is the Freeway Landfill in Burnsville. Of the appropriation \$812,212 has been spent towards work related to this site as of December 12, 2018.

2019 Updates to CLIF and CLP

Information provided by the Pollution Control Agency estimates current FY 2019 obligations for the CLP at \$23.782 million. These obligations are currently being paid for from other sources such as the Remediation Fund and Bonding Funds. Estimates of future obligations for FY 2020 through FY 2048 are in excess of \$250 million. The time frame specified is only to provide an estimate of costs, the state continues to have obligations into perpetuity. Of the total estimated future obligation \$112 million is related to the Freeway Landfill for remedial actions, and operation and maintenance. The estimated value of the invested CLIF funds as of December 31, 2018 was \$84.136 million.

The Future of CLIF in FY 2020 and beyond

Under current statute there are no appropriations out of CLIF effective beyond the FY 2020 date when the funds become available. Statutory language specifies the purposes for which the commissioner may spend money from the fund but does not appropriate the money to the commissioner at this time. “Money in the fund may be spent by the commissioner after fiscal year 2020 in accordance with sections 115B.39 to 115B.444”^{xiii}. The Pollution Control Agency included the estimated amount the legislature would need to appropriate in the November 2017 Fund Balance as approximately \$3.6 million per year^{xiv}.

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ⁱ Minnesota Laws 1999, Chapter 231, Section 143 became Minnesota Statutes, Section 115B.421

ⁱⁱ Minnesota Laws 1999, Chapter 231, Section 143 became Minnesota Statutes, Section 115B.421

ⁱⁱⁱ Minnesota Laws 2003, Chapter 128, Article 2, Section 30

^{iv} Minnesota Laws 2010, Chapter 215, Article 3, Section 3, Subdivision 6

^v Minnesota Laws 2010, First Special Session, Chapter 1, Article 6, Section 6

^{vi} Minnesota Laws 2013, Chapter 114, Article 3, Section 9

^{vii} Minnesota Laws 2015, First Special Session, Chapter 4, Article 3, Section 12

^{viii} Minnesota Laws 2015, First Special Session, Chapter 1, Article 1, Section 10

^{ix} Minnesota Laws 2015, First Special Session, Chapter 4, Article 3, Section 2, Subdivision 6

^x Minnesota Laws 2015, First Special Session, Chapter 4, Article 4, Section 2

^{xi} November 2015 Fund Balance (December 3, 2015)

^{xii} Minnesota Laws 2017, Chapter 93, Article 1, Section 2, Subdivision 6

^{xiii} Minnesota Statutes, Section 115B.421

^{xiv} November 2018 Fund Balance (December 6, 2018)