Prepared by the North Dakota Legislative Council
staff for the Higher Education Committee
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HISTORY OF LEGISLATIVE REVIEW AND CHANGES TO THE APPROPRIATION OF SPECIAL FUNDS

This memorandum provides a history of legislative review and changes to the appropriation of special funds as background information for the Higher Education Committee's study of higher education funding.

1963-65

The Legislative Audit and Fiscal Review Committee received information that many times public funds were not being deposited in the state treasury and spent pursuant to an appropriation which is required by Section 186 (now Article X, Section 12) of the North Dakota Constitution.

Section 12 of Article X of the North Dakota Constitution is very specific pertaining to the handling of public moneys. The provisions relating to public moneys in subdivision 1 of Section 12 are as follows:

> All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature . . . .

Section 12 of Article X of the North Dakota Constitution is attached as Appendix A.

The Legislative Audit and Fiscal Review Committee recommended Senate Bill No. 28, which was passed by the 1965 Legislative Assembly, entitled the Fiscal Practice of State Agencies Act. The Act amended law relating to the depositing of public moneys in the state treasury in the Bank of North Dakota and the withdrawal of such moneys by vouchers and abstracts approved by state officials, and generally provided uniform fiscal procedures for state agencies.

1965-67

The Legislative Audit and Fiscal Review Committee reviewed the depositing of public funds in the state treasury and determined that student service and activity fees collected and expended by the institutions of higher education were not deposited in the state treasury. Not only did this appear contrary to the constitution, but the committee, knowing that some of these fees were spent for the same functions as appropriated funds were expended for, concluded that the Appropriations Committees and the executive Office of the Budget were not being presented complete budget programs.

In recognition of the committee's concern, the executive Office of the Budget and the State Board of Higher Education, in the preparation of the 1967-69 biennial budget, divided the student service fees into the portion which is being used for instructional and related operational expenditures and that to be used for strictly student activities. The amounts to be used for instructional and related operational activities were included in the budget as income and budgeted as expenditures. This action was taken to improve the budgeting process by allowing budget requests to detail entire programs rather than only portions of them.

The committee also reviewed the necessity for legislation regarding federal funds administered by the state. The committee recommended House Bill No. 553, passed by the 1967 Legislative Assembly, requiring agencies and departments to receive authority from the Emergency Commission, with the advice and consent of the Department of Accounts and Purchases, before receiving and spending federal funds not previously anticipated by the Legislative Assembly.

Also the 1967 Legislative Assembly appropriated federal/special funds for the first time for the State Highway Department and the University of North Dakota Medical Center.

1975-77

The Legislative Council's Budget "A" Committee received reports from the State Auditor that the expenditure of federal funds of the Social Service Board and the Department of Public Instruction were not pursuant to legislative appropriations and that indirect and administrative cost reimbursements received by the state colleges and universities from the federal government were not included in the appropriations, institutional collections, or otherwise subject to direct legislative control.

The committee recommended that all federal funds received by the Social Service Board and the Department of Public Instruction be included in their budgets and be subject to the appropriation process in accordance with the state constitution. The committee also supported the State Auditor's recommendation that funds received by the institutions of higher education as indirect and administrative cost reimbursements pursuant to federal grants and contracts be included in future biennial budget requests as estimated income.

The 1977 Legislative Assembly appropriated federal funds for the first time for Job Service North Dakota (formerly the Employment Security Bureau).

1979-81

The 1979 Legislative Assembly appropriated funds from the state tuition fund for the first time. The state tuition fund is the interest and income from the common schools trust fund.

During this interim the Legislative Audit and Fiscal Review Committee studied the use of special funds and cash accounts maintained in the state treasury. The committee recommended a bill transferring excess funds in the abandoned motor vehicle disposal fund to the general fund and for the suspension of the tax on certificates of title (Senate Bill No. 2079 passed by the 1981 Legislative Assembly); a bill to provide for the transfer of the balance of moneys in the Vietnam veterans' adjusted compensation fund to the general fund (Senate Bill No. 2080 failed to pass the 1981 Legislative Assembly); a bill to provide for central microfilm revenue to be deposited in the general fund, eliminating the necessity of a central microfilm special fund (House Bill No. 1072 passed by the 1981 Legislative Assembly); and a bill to allow the Bank of North Dakota to cease collection efforts on loans made from the state scholarship revolving loan fund which are determined to be uncollectible (House Bill No. 1071 passed by the 1981 Legislative Assembly).

1987-89

The 1987 Legislative Assembly appropriated $1.439 billion in special fund appropriations for state government for the 1987-89 biennium. In addition, the 1987 Legislative Assembly provided language in appropriation bills for the appropriation of additional income and other special funds, without a specific amount, that may become available to state agencies and institutions during the 1987-89 biennium. Those sections included the appropriation of additional moneys from federal grants at the institutions of higher education, the appropriation of any additional income not appropriated at the institutions of higher education, the Extension Service and the experiment stations, and the appropriation of additional federal funds for Job Service North Dakota, the Housing Finance Agency, and Geological Survey.

During this interim the Budget Committee on Government Finance, pursuant to 1987 Senate Concurrent Resolution No. 4053, studied the policy of appropriating special funds, the extent to which exceptions have been made to the practice of appropriating special funds, and the need to continue reporting special fund appropriations. The committee recommended a bill amending or repealing current law to remove continuing appropriation provisions that were no longer needed (Senate Bill No. 2035 passed by the 1989 Legislative Assembly). The committee also recommended the state continue the current practice of discouraging the use of continuing appropriations and that continuing appropriations be used only when necessary.

1993-95

The 1993 Legislative Assembly provided a specific appropriation for agricultural commodity groups for the 1993-95 biennium and removed them from the appropriation process for future bienniums by providing a statutory continuing appropriation. The agricultural commodity groups are to provide, during each legislative session, a report to the House and Senate Agriculture Committees.

Prior to the 1993-95 biennium, any operating fund income received by higher education institutions in excess of the estimated income line item appropriated to the entity was appropriated but could be spent only upon authorization from the Emergency Commission. The 1993 Legislative Assembly provided higher education institutions the ability to spend up to three percent of excess estimated income upon approval from the State Board of Higher Education. Any additional excess funds were also appropriated and could be spent upon authorization of the Emergency Commission.

1997-99

The 1997 Legislative Assembly appropriated higher education local funds for the first time. The local funds were appropriated as a separate line item for each institution of higher education for the 1997-99 biennium. The total local funds appropriated were $92.8 million.

Section 11 of 1997 Senate Bill No. 2003 states that local funds are derived from indirect cost recoveries, special course program fees, utility sales, building and equipment lease rental, excess property sales, sales and services of educational departments, and miscellaneous local funds. Section 11 further provides that any additional funds from local fund sources beyond the amount appropriated are appropriated and may be spent subject to approval of the North Dakota University System and reported to the Budget Section of the Legislative Council.

The 1997 Legislative Assembly provided an appropriation for three funding pools to the North Dakota University System for the 1997-99 biennium. A technology pool of $22,813,400 was created by removing technology funding from each higher education institution's appropriation. A salaries and wages pool of $393,461,542 was created by removing the salaries and wages appropriation from each higher education institution's appropriation. The third pool was a salary initiative pool in the amount of $3.2 million from the general fund. The funds from salaries and wages and technology pools were to be allocated to each of the institutions based on the guidelines contained in Section 16 of Senate Bill No. 2003, and the salary initiative pool was to be allocated to the institutions under the control of the State Board of Higher

Education for faculty and staff salary initiatives to address performance, market, and equity problems. A copy of Section 16 of Senate Bill No. 2003 is attached as Appendix B.

House Bill No. 1019 (1997) removed state aid distributions from the appropriation process by providing a continuing appropriation for payments to political subdivisions from the state aid distribution fund.

The 1997 Legislative Assembly was the first time higher education institutions were required to use the statewide integrated budget and reporting (SIBR) system to enter budget request information detailing faculty and staff pay plan information. Prior to the 1997 Legislative Assembly, higher education pay plan information was generated by a separate computer system, and a paper copy of salaries and wages information was made available to the Office of Management and Budget. Including the higher education pay plan information in the SIBR system provided members of the Legislative Assembly with additional detailed information regarding salaries and wages at the institutions of higher education.

1999-2001

The 1999 Legislative Assembly provided an appropriation for three funding pools to the North Dakota University System for the 1999-2001 biennium. A technology pool of $21,948,467 was created by removing technology funding from the University of North Dakota and the North Dakota State University appropriations and was to be allocated to institutions based on guidelines contained in Section 15 of House Bill No. 1003. A critical salary pool in the amount of $2,630,992 was to be allocated to institutions based on guidelines contained in Section 16 of House Bill No. 1003, and an equity and special needs pool in the amount of $4,290,128 created by removing a portion of each institution's salaries and wages appropriation and combining that with funds from the general fund was to be allocated to institutions based on guidelines contained in Section 17 of House Bill No. 1003. A copy of Sections 15, 16, and 17 of House Bill No. 1003 is attached as Appendix C.

The 1999 Legislative Assembly appropriated higher education local funds as a separate line item for each institution. The total local funds appropriated were $523.8 million. Section 11 of House Bill No. 1003 further provides that any additional funds from local fund sources are appropriated and may be spent subject to approval from the State Board of Higher Education and reported to the Budget Section of the Legislative Council.

The 1999 Legislative Assembly also increased the percentage of excess income which could be spent upon approval from the State Board of Higher Education by six percent to approximately nine percent of the estimated income appropriated. As before, any additional excess funds were appropriated and could be spent upon authorization of the Emergency Commission.

RELATED STATE LAW

North Dakota Century Code Chapter 54-16 provides for the establishment of the Emergency Commission. Section 54-16-04.1, which is attached as Appendix D, provides that the Emergency Commission may authorize the State Treasurer to receive any moneys for new programs not appropriated by the Legislative Assembly that are made available by the federal government or any agency thereof which the Legislative Assembly has not indicated an intent to reject. The section allows the Emergency Commission to authorize any state agency to expend such moneys from the date such moneys become available until July 1 following the next regular legislative session providing that such expenditures be consistent with state law and with the terms of the grant and provided, further, that the program shall not commit the Legislative Assembly for matching funds for future bienniums unless the program has first been approved by the Legislative Assembly.

North Dakota Century Code Section 54-16-03, which is attached as Appendix E, provides that the Emergency Commission may not approve an expenditure of institutional income, other than gifts or grants, in excess of the institutional income appropriated to the institution by the Legislative Assembly.

North Dakota Century Code Section 54-44.1-09, which is attached as Appendix F, provides that all expenditures of the state and of its budget units of moneys drawn from the state treasury must be made under the authority of biennial appropriation acts, which must be based upon a budget as provided by law, and no money shall be drawn from the treasury, except by appropriation made by law as required by Section 12 of Article X of the North Dakota Constitution.

ATTACH:6

Section 12.

1. All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the Bank of North Dakota, and required for the payment of losses, duly approved, payable from the state hail insurance fund, state bonding fund, and state fire and tornado fund, and required for the payment of compensation to injured employees or death claims, duly approved, payable from the workmen's compensation fund, and required for authorized investments made by the board of university and school lands, and required for the financial operations of the state mill and elevator association, and required for the payment of interest and principal of bonds and other fixed obligations of the state, and required for payments required by law to be paid to beneficiaries of the teachers' insurance and retirement fund, and required for refunds made under the provisions of the Retail Sales Tax Act, and the State Income Tax Law, and the State Gasoline Tax Law, and the Estate and Succession Tax Law, and the income of any state institution derived from permanent trust funds, and the funds allocated under the law to the state highway department and the various counties for the construction, reconstruction, and maintenance of public roads.

   This constitutional amendment shall not be construed to apply to fees and moneys received in connection with the licensing and organization of physicians and surgeons, pharmacists, dentists, osteopaths, optometrists, embalmers, barbers, lawyers, veterinarians, nurses, chiropractors, accountants, architects, hairdressers, chiropodists, and other similarly organized, licensed trades and professions; and this constitutional amendment shall not be construed to amend or repeal existing laws or Acts amendatory thereof concerning such fees and moneys.

2. No bills, claims, accounts, or demands against the state or any county or other political subdivision shall be audited, allowed, or paid until a full itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same, and then only upon warrant drawn upon the treasurer of such funds by the proper officer or officers.

3. This amendment shall become effective on July 1, 1939.

1997 Senate Bill No. 2003

SECTION 16. ALLOCATIONS - SALARIES AND WAGES - TECHNOLOGY FUNDING - LEGISLATIVE INTENT - DECLARATION OF PURPOSE - GUIDELINES.

1. It is the intent of the legislative assembly that the state board of higher education consider the following items in making annual budget allocations for salaries and wages and technology from the appropriations contained in subdivision 1 of section 1 of this Act:

   a. Base salary allocations are to be made for operations based on mission, historical funding, major enrollment changes, campus size, size of physical plant, instructional and research programs, program type, comparisons with peer institutions, special systemwide services, student service levels, and tuition revenues related to each entity.

   b. Salary increase allocations are to be made based on general salary increases, one-time increases, performance-based increases, market increases, and other increases, including workload changes, new responsibilities, and promotions.

   c. Targeted initiative allocations are to be made for campus reallocation efforts, consolidation of administrative functions across campuses, collaborative academic programs offered among campuses, and for distance education initiatives or innovations in instructional delivery.

   d. Technology funding allocations are to be made based on historic funding, the higher education computer network strategic plan, base funding for higher education computer network computer center operations, base funding for interactive video network and on-line Dakota information network operations, the system distance learning plan, training needs, classroom technology renovation, technology innovations, and technology-related matching grants. Technology fees paid by students shall remain at the respective institution.

2. The legislative assembly recognizes the constitutional authority of the state board of higher education and also recognizes the role of the legislative assembly in providing adequate funds for the board to carry out its functions and duties. The legislative assembly declares its intent that allocations are not to be used to close any institution of higher education. In addition, the board of higher education may not substantially reorganize the work of any institution except as authorized by the legislative assembly.

3. The state board of higher education shall follow the following guidelines in making the allocations for salaries and wages and technology as provided in this Act:

   a. Changes in allocations from historic patterns may be made if based upon documented enrollment changes.

b. The state board of higher education may provide incentives to institutions for effectuating savings in administrative costs.

c. The board may allocate funds to maximize benefits of matching programs and grants from outside sources.

d. Notwithstanding guidelines a, b, and c, an institution of higher education shall receive salaries and wages for the 1997-99 biennium that are at least ninety-five percent of the salaries and wages for the 1995-97 biennium.

4. The state board of higher education shall periodically report to the budget section of the legislative council on the allocations made pursuant to this section and shall make recommendations regarding the allocation process for the 1999-2001 biennium.

1999 House Bill No. 1003

SECTION 15. TECHNOLOGY POOL. The technology pool amount in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 through 15 of section 1 as determined by the board of higher education. Technology funding allocations are to be made based on historic funding, the higher education computer network strategic plan, base funding for higher education computer network computer center operations, and base funding for interactive video network and on-line Dakota information network operations.

SECTION 16. CRITICAL SALARY POOL. The critical salary pool amount in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 through 15 of section 1 as determined by the board of higher education. When making allocations from the critical salary pool in subdivision 1 of section 1, the state board of higher education shall allocate funds to address additional salary increases beyond legislative appropriations, for market and equity issues.

SECTION 17. EQUITY AND SPECIAL NEEDS POOL. The equity and special needs pool in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 3 through 13 of section 1 as determined by the board of higher education. When making allocations from the equity and special needs pool in subdivision 1 of section 1, the board of higher education shall allocate the funds to address equity funding issues and special academic program needs of the entities under its control.

54-16-04.1. May authorize acceptance and disbursement of federal funds.

The emergency commission with the advice and counsel of the executive office of the budget may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject. The emergency commission may authorize pass-through federal funds from one state agency to another state agency. The emergency commission, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize any state officer to expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

Source: S.L. 1983, ch. 557, § 1; 1985, ch. 563, § 1; 1995, ch. 507, § 6; 1995, ch. 508, § 3; 1999, ch. 37, § 31.

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54-16-03. Unlawful to expend more than appropriated - May secure approval from commission for use of other funds - Deficit void.

A state officer may not expend, or agree or contract to expend, any amount in excess of the sum appropriated for that expenditure, and may not expend an amount appropriated for any specific purpose or fund or for any other purpose without prior approval in the form of a transfer approval or expenditure authorization as provided in this chapter. The office of management and budget shall provide information to the emergency commission with respect to all emergency requests. Any debt or deficit created by a state officer in violation of this section is void. The emergency commission may not approve an expenditure of institutional income, other than gifts or grants, in excess of the institutional income appropriated to the institution by the legislative assembly.

Source: S.L. 1915, ch. 152, § 4; 1923, ch. 2, § 1; 1925 Supp., §§ 283c4, 640a1; R.C. 1943, § 54-1603; S.L. 1967, ch. 384, § 1; 1973, ch. 421, § 2; 1995, ch. 507, § 4.

Effective Date: The 1995 amendment of this section by section 4 of chapter 507, S.L. 1995 became effective August 1, 1995.

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54-44.1-09. All expenditures must be appropriated.

All expenditures of the state and of its budget units of moneys drawn from the state treasury must be made under authority of biennial appropriations acts, which must be based upon a budget as provided by law, and no money may be drawn from the treasury, except by appropriation made by law as required by section 12 of article X of the Constitution of North Dakota.

Source: S.L. 1965, ch. 358, § 9.

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