

**2017 HOUSE APPROPRIATIONS**

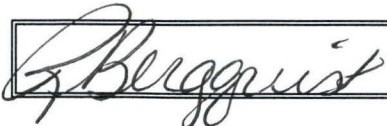
**HB 1024**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

HB1024  
1/17/2017  
27013

- Subcommittee  
 Conference Committee



## Explanation or reason for introduction of bill/resolution:

To provide an appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency.

## Minutes:

Attachments 1-8

Chairman Delzer: Called the meeting to order

2:10-7:00 **Sally Holewa** State Court Administrator (see attachment 1 testimony)

5:25 Chairman **Delzer**: How many are multiple arrests? Does each one have to have their own trial

**Ms. Holewa**: It depends; each case is a separate charge, if it's a different day it's different cases

Chairman **Delzer**: Could be the same person charged with the same crime two different days?

**Ms. Holewa**: Probably not, it's more likely that it would be 6 people charged with the same thing at the same time rather than trying to prove two different sets of facts to the same juror.

Chairman **Delzer**: The way the bill is written the money would come out of strategic investment and improvement fund

7:30-20:00 **Jean Delaney** Director of the ND Commission on Legal Counsel for Indigents (see attachment 2 testimony)

Chairman Delzer: We need to know what you are asking for and what it's for

**Ms. Delaney**: I am asking for money for the DAPL and for Marcy's Law.

Chairman **Delzer**: How many judges have ruled that they are supposed to pay for their own lawyers, just one?

**Ms. Delaney**: I don't know, when someone applies for an indigent defense attorney they fill out an application, if that information shows that they are indigent and they want an attorney, the commission provides council to them. Many at the protest site are indigent

13:50 Chairman **Delzer**: How much of this have you actually expended?

**Ms. Delaney:** Very little at this point, only two cases have gone to trial so far.

Chairman **Delzer:** Did we allocate some money to you at the last emergency commission?

**Ms. Delaney:** Yes, we received 700 thousand and an additional 200 thousand

Chairman **Delzer:** Is DES paying you from what they've received?

**Ms. Delaney:** No one is paying us from money received.

14: 30 **Sheila Peterson OMB:** They really don't fall under the disaster emergency

Representative **Martinson:** Do they asked if they are getting paid to be a protester or how they are paying for their hotels or by who?

**Ms. Delaney:** The application asked about employment

Chairman **Delzer:** Do you check on them?

Representative J. **Nelson:** Who does these spot checks

**Ms. Delaney:** The commission itself from the Valley City office, we haven't ever gone as far as checking into the hotel or who's paying for it.

20:35- 32:10 **Chris Wilson Chief of Staff NDSU (see attachment 3 testimony)**

23:50 Chairman **Delzer:** Everything is done; you're just asking to be reimbursed?

Representative **Streyle:** what do you have in reserves fund right now?

**Gary Wavers: Controller Position at the NDSU**

We don't have funds that set aside as reserve funds, we do our accounting with fund accounting, each department has its fund set up separately, for example the housing department has a reserve fund but it's set up for housing. In general June 30<sup>th</sup> 2016 would show as 80 to 100 million, those belong to all the departments of the university and there are many restrictions and restraint on those funds

Chairman **Delzer:** If we were to fund this, where would the money go?

**Mr. Wavers:** It would go the deficiency that shows on our books. It would go into the university's general bank account

Chairman **Delzer:** If we don't fund this you would carry it another two years

Representative **Meier:** You can use endowment funds to cover this?

**Mr. Waver:** No, they can't be spent, we can invest in endowment funds and we get earnings from those funds and then the earnings are generally restricted to student scholarships.

Representative **Sanford:** You get revenues from appropriations, you get revenues from tuition, fees for room and boards, revenues from contracts, so I think we are talking about the general fund balance that is from appropriation and tuition fund?

Chairman **Delzer:** If you would get that to us

33:00-41:00 **Dave Glatt Environmental Department of health  
(see attachment 4 testimony)**

36:10 Chairman **Delzer:** You spent 626 and you had 500, where did you get that other 126?

37:00 **Brenda Weisz:** Accountant of the department, it's no longer a special line item, it's included in the operating expenses.

Chairman **Delzer:** And this is subject to turn back, how would you keep it separate?

**Ms. Weisz:** It's tracked by a project number and turn back whatever we don't spend, we're expecting maybe 400 thousand  
**Chairman Delzer:** Salaries and operating

Representative J. **Nelson:** S02 Rule, do you have a time line on decision by EPA on that?  
**Mr. Glatt:** Originally it was 2013, that's actually what the law suit is about

Representative J. **Nelson:** What are you asking for in the litigation fund in your new budget?  
**Mr. Glatt:** 500 thousand

**Chairman Delzer:** If you have 200 thousand for turn back couldn't that cover this?  
**Ms. Weisz:** At the time we turned this in we didn't have some information and we still have some contracts out standing

**Chairman Delzer:** In your proposals did you guys use all of the turn back for this biennium?  
**Ms. Peterson: OMB** The turn back that is identified is specific for each agency

42:30-47:45 **Deb McDermick: Department of Human Services (see attachment 5)**

48:20-52:20 **General Al Dohrmann Adjutant General (see attachment 6 testimony)  
Section 1 Subdivision 6**

53:00-58:45 **David Skalsky Historical Society (see attachment 7)**

**Chairman Delzer:** Did we appropriate some money for this issue?  
54:30 **Ms. Peterson, OMB:** I think we did but we didn't have a set amount

**Chairman Delzer:** Are you paid up to date for the Double Ditch Project?  
**Skalsky:** You could do that?

Representative J. **Nelson:** What's the investment already spent to the engineer and what is the other options you have for this project?  
**Mr. Skalsky:** I can get that to you (see attachment 8)

Representative **Monson:** how much has been spent out of the 1.6 million

**Mr. Skalsky:** Between 500 and 600 thousand so far.


**Attachment 8 was sent after the hearing**

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1024  
1/18/2017  
27076

- Subcommittee  
 Conference Committee



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an Appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency

## Minutes:



Chairman **Delzer**: We need to starting thinking about any amendments we are going to want.

Representative **Kempnich**: If we're worried about borrowing money for this and we don't know what it's going to cost us. I think we need to all together so we see what this is truly costing us.

Chairman **Delzer**: Do we have a situation where we can direct an agency or something to borrow from the Bank of ND, question is, is there anything that fits that would do it and to streamline as to how it would happen?

**Brady Larson Legislative Council**: There have been several incidences where the legislature has directed the Bank of ND to provide a loan to an agency but as far as specifics, it's varied.

Chairman **Delzer**: I think Representative Kempnich was getting at was, do we want to roll this all into one, but I don't know that the department of emergency services could actually borrow the money and give the money to the judicial branch or the commission of legal counsel for indigents

**Mr. Larson**: Well have to check on that question

Representative **Brandenburg**: This is not what this fund was set up for and this will empty it out for people that really need it.

Representative **Kempnich**: There is the problem of due process and a constitutional problem of having to pay for their defense.

Chairman **Delzer**: With current law set up, if the courts say they are indigent then we give them representation

Representative **Brandenburg**: We have people that truly need this

Representative **J. Nelson**: I think the question is on borrowing the money? Didn't we borrow for the Bank of ND didn't we hope that the federal government was going to come in and help us. With the judicial branch and the council of indigents, is there any hope for help?

Chairman **Delzer**: Everything in this bill is funded in on SIIF (strategic investment and improvement fund) the way it is sitting before us. The issue we having Adjutant General paying it back, that should be with federal help. If we roll this all together is that going to make it harder to get help from the federal government?

Representative **J. Nelson** Would our chances strengthen or lessened if we complicated it with more than that expenditure?

Chairman **Delzer**: We could defiantly use the reasoning that they are doing this on purpose to expenditure the account, they are all asking for trial hearings.

Representative **Boe**: We don't even know where this is going to end.

Chairman **Delzer**: There is a bill tomorrow that extends the borrowing authority. The only way is to borrow and try to repay it, we'll be looking at this again in two years trying to repay it.

**8:25** Representative **Kempenich**: I don't know that it would hurt our case, it's the dereliction of duty of the federal government that we are in this situation. These decisions where not in the state's hands.

Chairman **Delzer**: These are projected costs through the biennium, the other option would be to forward this bill with parts we agree on to the senate until we now more.

Chairman **Delzer**: So we agree we want to eliminate the 17 million?

Chairman **Delzer**: What about Menard Hall (NDSU) we also agree to eliminated that.

Chairman **Delzer**: State Department of Health department, I know they said if they didn't use the money it would be turn back, I think we should fund at least a good part if not all of this, thoughts?

**12:00** Chairman **Delzer**: State historical society, I think we should try to stop the double ditch project and try to come up with some language for them to stop working on it.

Representative **Monson**: They have money invested with engineering. This 1.265 million is a credit line at the Bank of ND, they haven't used all that. They didn't tell us exactly what they spent, maybe 700 thousand. Maybe, at the most 500 thousand could be hanging out there.

Chairman **Delzer**: We do have the issue of 294 thousand we have to take care of the law suit with the punch list.

**Kempnich**: Was it more than that at one time?

Chairman **Delzer**: Law suit is bigger; this is just the cost of just the law suit.

Chairman **Delzer**: We'll sit on this for now and give it some more thought. Thanks everyone.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1024  
1/26/2017  
27510

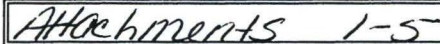
- Subcommittee  
 Conference Committee



## Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency

## Minutes:



## 20:00 OF Recording 27510 HB 1024

**Chairman Delzer:** This is the deficiency appropriation bill. It starts out funding everything out of the Strategic Investment Improvement Fund (SIIF) On the record I want to say that is not what we set up this fund for, but I also understand that we are looking, unless we transfer money, we are at a negative balance at the end of the biennium.

According to some new information from **Sally Halewa Judicial Branch (attachment 1)**

Basically, with the scheduling of cases, some being rescheduled for the next biennium, they would be able to 226 thousand, that's reduced from 1.5 million. Then we will have the issue to fund this for the next biennium. This is all related to the DAPL issues down south, so council draft some language, if would allow borrowing authority to the judicial branch. **(attachment 2)**

There's also sub section 2 of the proposed amendment talking about the indigents defense. I do not feel the Marcy's Law should be included in this. This needs to be separate so it is put in with the reimbursement request from federal or other sources.

**Representative Monson:** There's nothing mentioned in here as far as an interest rate.

**Chairman Delzer:** From the Adjutant general; they are asking for 79,500 thousand; principle as of this date is 77,523, the current interest is 23 hundred and some. Daily interest rates were about 4.8 dollars; current interest rate was 2.27. (see attachment 3)



That should be the same rate that these would fall under?

**Chairman Delzer:** How do we want to take these?

**Representative Brandenburg:** Have those two tie together and leave the other two separate.

**Allen Knudson Legislative Council:** You can vote on them one at a time.

**Chairman Delzer:** Vote on each one then we don't have to vote on the whole thing

**28:50 Representative Brandenburg makes a motion to amend HB 1024 sub 1 and sub 2 with 1.5 million and 859 thousand**

**Representative Sanford seconded the motion**

**Representative Boe:** So I am clear, this is borrowing authority for both amounts and this is from the Bank of North Dakota?

**Voice Vote; All in favor; Motion carries**

sub 1 and sub 2 are amended in the bill

**29:50 Sub 3 of attachment 2**

**Chairman Delzer:** I think we need to take that out.

**Representative Streyle makes a motion to take that out**

**Representative Schatz seconded**

**To remove 1,634,854 million, lines 19-21 of HB 1024**

**Voice Vote; All in favor; Motion carries**

**30:55 Sub 4 Health Department**

**Chairman Delzer:** I didn't get any new information but in other discussion, they said they were expecting maybe up to 400 thousand in turn back. These particular issues where for clean air and clean coal, we can give them the 250, if they don't use it it would be turned back.

**31:50 Representative Pollert:** I think we have to have the money for them if they need it.

**Chairman Delzer:** If we don't amend then then we need to make any action on that.

### **32:20 Next Human services**

**Chairman Delzer:** That was 9 million dollars. Mostly as excess costs for DD it is an estimate. If we give them this much money it is a general fund equivalent, it'll be out of the SIIF fund unless we change the bill. I don't know if there's any chance of turn back on this.

**Representative Kreidt move to amend and reduce that amount to 5 million**

**Representative Mieier seconded the motion**

**Further discussion**

**Voice Vote; All in favor; Motion carries**

### **34:45 Disaster cost for DAPL and Fire at University of Mary**

**Chairman Delzer:** I think we should leave the 17 million out until we have done everything possible to try to recoup those expenses, we can leave the 79,500 thousand in there for the fire.

**Representative Pollert makes a motion to amend**

**Representative Boehning** do we need to add to this for interest to make sure we have it covered as a whole?

**Chairman Delzer:** No that should cover it all

**Seconded by Representative Boehning**

**Voice vote; All in Favor; Motion carries**

### **37:00 Historical Society**

For the Heritage Center law suit; the state Historical Society has spent 23 thousand on legal fees as of January 25<sup>th</sup> 2017, the following schedule was provided (see attachment 5)

**Representative Monson:** We've been working this budget and ask how much they have spent 500 thousand on the Double Ditch project for engineering and they committed another couple hundred thousand to this engineering firm, and they're about done. I think it's money going to down a rat hole, the engineering plan that they got is not very usable. It's being challenged by Morton County, the water board; as far as legal fees, I think we should pursue that, it's money we could get back.

**Chairman Delzer:** Could they find money it in their budget for this time?

**Representative Boe:** What's the amount in the lawsuit with Comstock and can they use that?

**Chairman Delzer:** I would guess it could be done in the budgeting process of the biennium that we are in, it should be sitting there.

**Representative Monson made a motion to remove this amount**

**Chairman Delzer** motion to remove lines 12-15

**Seconded by Representative Boe**

They did come and ask for this during the emergency commission, they wanted the money out of the contingency fund

**Voice vote; All in favor; Motion Carries**

43:20 We have the amended bill before us, should we wait?

**Representative Pollert motion for Do Pass as Amended**

**Second by Brandenburg**

**Chairman Delzer:** Discussion? We now have borrowing authority for the judicial branch, we approved 859 thousand for indigents, we removed the Minard Hall from NDSU, we left the health department in at 250 and we reduced the department of Human Services to 5 million. We reduced 17 million out of the Adjutant General and removed the Historical Society. This that correct?

**A Roll Call vote was taken. Yea: 18      Nay: 0      Absent: 3**

**Motion carries**

**Representative Pollert will carry it on the floor**

Ending at 46:10

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "institutions" insert "; to provide for borrowing authority"

Page 1, line 8, replace "January 1, 2017" with "with the effective date of this Act"

Page 1, remove lines 11 through 22

Page 2, line 3, replace "5." with "2."

Page 2, replace lines 5 and 6 with:

"Grants - Medical assistance	<u>\$5,000,000</u>
Total special funds	\$5,000,000"

Page 2, line 7, replace "6." with "3."

Page 2, replace lines 9 and 10 with:

"Disaster costs	<u>\$79,500</u>
Total special funds	\$79,500"

Page 2, remove lines 11 through 15

Page 2, line 16, replace "BILL" with "SECTION 1"

Page 2, replace line 17 with:

"Grand total special funds	\$5,329,500
----------------------------	-------------

**SECTION 2. BORROWING AUTHORITY - APPROPRIATION - JUDICIAL BRANCH - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The judicial branch may borrow the sum of \$1,500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for court costs related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the judicial branch for the purpose of defraying expenses of the judicial branch related to unlawful activity associated with the construction of the Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other sources related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline.

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The commission on legal counsel for indigents may borrow the sum of \$859,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for legal costs related to unlawful activity associated

with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the commission on legal counsel for indigents for the purpose of defraying expenses of the commission on legal counsel for indigents related to unlawful activity associated with the construction of the Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other sources related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Removes a \$1.5 million appropriation to the judicial branch for trial costs associated with the Dakota Access Pipeline project protests;
- Removes a \$937,000 appropriation to the Commission on Legal Counsel for Indigents for cases filed against pipeline protestors (\$670,000) and estimated costs for the fiscal impact of the passage of Marsy's Law (\$267,000);
- Removes a \$1,634,854 appropriation to North Dakota State University for unreimbursed costs related to the collapse of a portion of Minard Hall;
- Reduces the appropriation to the Department of Human Services for Medicaid program costs from \$9 million to \$5 million;
- Removes a \$17 million appropriation to the Adjutant General to repay a Bank of North Dakota loan for costs associated with the pipeline protests; and
- Removes a \$1,560,125 appropriation to the State Historical Society for costs associated with litigation related to the Heritage Center expansion project (\$294,500) and to repay a Bank of North Dakota loan for Double Ditch Historic Site repairs (\$1,265,625).

The amendment also adds the following sections:

- A section to authorize the judicial branch to borrow up to \$1.5 million from the Bank of North Dakota for court costs associated with the Dakota Access Pipeline project protests. The section also appropriates the loan proceeds to the judicial branch.
- A section to authorize the Commission on Legal Counsel for Indigents to borrow up to \$859,000 from the Bank of North Dakota for costs associated with the Dakota Access Pipeline project protests. The section also appropriates the loan proceeds to the commission.

Date: 1/26/2017  
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: Sub 1 and Sub 2 with 1.5 million and 859 thousand

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Brandenburg Seconded By Representative Sanford

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Motion Carried*

Date: 1/26/2017  
 Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: To remove Sub 3

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Streyle    Seconded By Representative Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

*VOICE*  
*NO*  
*motion carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 1/26/2017  
 Roll Call Vote #: 3

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: Reduce to 5 million

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Kreidt Seconded By Representative Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Handwritten notes:*  
 A large 'X' is drawn over the 'No' column for Representatives Kreidt, Martinson, and Meier.  
 The word 'Motion' is written vertically in the 'Yes' column for Representative Meier.  
 The word 'Carried' is written vertically in the 'No' column for Representative Meier.



Date: 1/26/2017  
 Roll Call Vote #: 4

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: Remove 17 million out to try to recap funds

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Pollert    Seconded By Representative Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 1/26/2017  
 Roll Call Vote #: 5

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: Remove lines 12-15

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Monson    Seconded By Representative Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

*Motion Carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Representative Pollert Seconded By Representative Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X		Representative Streyle	X	
Representative: Boehning	X		Representative Vigesaa	X	
Representative: Brabandt	X				
Representative Brandenburg	X				
Representative Kading	X		Representative Boe	X	
Representative Kreidt	X		Representative Delmore		
Representative Martinson	X		Representative Holman	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe					
Representative J. Nelson					
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 18 No 0

Absent 3

Floor Assignment Representative Pollert

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1024: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (18 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1024 was placed on the Sixth order on the calendar.

Page 1, line 2, after "institutions" insert "; to provide for borrowing authority"

Page 1, line 8, replace "January 1, 2017" with "with the effective date of this Act"

Page 1, remove lines 11 through 22

Page 2, line 3, replace "5." with "2."

Page 2, replace lines 5 and 6 with:

"Grants - Medical assistance	<u>\$5,000,000</u>
Total special funds	\$5,000,000"

Page 2, line 7, replace "6." with "3."

Page 2, replace lines 9 and 10 with:

"Disaster costs	<u>\$79,500</u>
Total special funds	\$79,500"

Page 2, remove lines 11 through 15

Page 2, line 16, replace "BILL" with "SECTION 1"

Page 2, replace line 17 with:

"Grand total special funds	\$5,329,500
----------------------------	-------------

**SECTION 2. BORROWING AUTHORITY - APPROPRIATION - JUDICIAL BRANCH - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The judicial branch may borrow the sum of \$1,500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for court costs related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the judicial branch for the purpose of defraying expenses of the judicial branch related to unlawful activity associated with the construction of the Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other sources related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline.

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The commission on legal counsel for indigents may borrow the sum of \$859,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for legal costs related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds of the loan

authorized in this section are appropriated to the commission on legal counsel for indigents for the purpose of defraying expenses of the commission on legal counsel for indigents related to unlawful activity associated with the construction of the Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other sources related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Removes a \$1.5 million appropriation to the judicial branch for trial costs associated with the Dakota Access Pipeline project protests;
- Removes a \$937,000 appropriation to the Commission on Legal Counsel for Indigents for cases filed against pipeline protestors (\$670,000) and estimated costs for the fiscal impact of the passage of Marsy's Law (\$267,000);
- Removes a \$1,634,854 appropriation to North Dakota State University for unreimbursed costs related to the collapse of a portion of Minard Hall;
- Reduces the appropriation to the Department of Human Services for Medicaid program costs from \$9 million to \$5 million;
- Removes a \$17 million appropriation to the Adjutant General to repay a Bank of North Dakota loan for costs associated with the pipeline protests; and
- Removes a \$1,560,125 appropriation to the State Historical Society for costs associated with litigation related to the Heritage Center expansion project (\$294,500) and to repay a Bank of North Dakota loan for Double Ditch Historic Site repairs (\$1,265,625).

The amendment also adds the following sections:

- A section to authorize the judicial branch to borrow up to \$1.5 million from the Bank of North Dakota for court costs associated with the Dakota Access Pipeline project protests. The section also appropriates the loan proceeds to the judicial branch.
- A section to authorize the Commission on Legal Counsel for Indigents to borrow up to \$859,000 from the Bank of North Dakota for costs associated with the Dakota Access Pipeline project protests. The section also appropriates the loan proceeds to the commission.

**2017 SENATE APPROPRIATIONS**

**HB 1024**

# 2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

HB 1024  
3/1/2017  
JOB # 28553

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions; to provide for borrowing authority; and to declare an emergency.

## Minutes:

1. DHS Deficiency Appropriation by Deb McDermott
2. David Glatt Testimony
3. Adj. Gen. Alan S. Dorhmann Testimony
4. Proposed amendment (17.8101.02000 by Eric Hardmeyer
5. Sally Holewa Testimony
6. H. Jean Delaney Testimony with Attachment # A.
7. House Bill No. 1024 (Christmas Tree Version)
8. Dan Hull Testimony
9. Claudia J. Berg Testimony
10. David Skalsky Testimony
11. Office of Attorney General Testimony
12. Bruce Murry Testimony

**Chairman Holmberg:** called the Committee to order on HB 1024 at 2:00 pm. Roll call was taken. All committee members were present. Adam Mathiak, Legislative Council, Sheila Peterson, OMB and Becky Deichert, OMB were also present.

Chairman Holmberg: Today we start second half with the deficiency appropriation which had some changes made in the House.

**(0.01.06-0-04.56) Maggie Anderson, Co-Director, Department of Human Services (DHS)** requested that the \$4m that was taken out by the House be restored so we can pay providers, pay the individuals who have contracts with us to deliver and not have the items happen that I have shared. She shared what they would do and what would happen if the \$4m was not restored and we do run out of authority before the end of the biennium. She

stated they had started last week a very update to their cash-flow. This is based off our \$9m request. There have been shifts in Medicaid funding, some up and some down, so we want to have the number moving forward as accurate as possible.

**Senator Kilzer:** The \$9m is that all because of the regular Medicaid or does it include any part of the Medicaid Expansion, those 20,000 enrollees?

**Ms. Anderson:** a portion of it is Medicaid expansion, a big portion is within our Development Disabilities Grants and then just traditional Medicaid grants as well. Keeping in mind with expansion, most of the people on expansion which the truly-newley and the previously re-eligible, the truly-newly were 100% federal until December 31, 2016 but those previously eligible individuals are matched at 50/50 and it's a portion of that group but also the last 6 months for the truly-newley when the state started putting in the 5% share. Our premiums are greater than what we thought they would be when we built the 15-17 budget.

**(0.07.00-0.09.54) Deb McDermott, Fiscal Administrator for DHS:** Testimony attached # 1 – DHS Engrossed HB 1024 Deficiency Appropriation. It is an analysis of our deficiency appropriation. She then explained the testimony. In deficiency appropriation we are requesting the \$9m for Medicaid grants.

**Senator Robinson:** You referenced, you classified those positions downward. Did their responsibilities change? That's tough to do and often when you do you lose employees. They see it not only a demotion, not appreciated and you know the story.

**(0.10.15-0.11.54) Ms. McDermott:** Basically, we needed to be sure we had subscribers at the Human Service Centers. So what we did was, because it's so hard to fill some of those physician services, basically we reclassified those positions to insure that they could still prescribe and changed those practicing physicians to nurse practitioners. These positions were vacant. She continued her testimony.

Chairman Holmberg: Let's have the Department of Health. Now when you say you are providing support for HB 1024 anyone who is speaking who is happy with what is in the budget, make sure you make that clear. Otherwise, it could sound like you're asking for an additional. Go right ahead, Dave.

**(0.14.15-0.17.26) Dave Glatt, Director Environmental Health Section of the Department of Health (DOH)** I am happy with the budget. I am here today to provide testimony in support of HB1024. He presented Testimony attached # 2- which states that they are responsible for the implementation of the vast majority of environmental protection program in the state. The DOH is requesting a deficiency appropriation of \$250,000 to cover the cost of several current or pending legal actions with the U.S. Environmental Protection Agency.

**Chairman Holmberg:** Committee Members be aware that in the bill as originally introduced the House switched two of them to loans. And then the State Department in Health and you heard the Department of Human Services. There was also NDSU, was in the bill for \$1.6m, the adjutant general, which we will be hearing from was in for \$17m and that was reduced down to \$79,000, and State Historical Society was in the original bill and the BND has some issues with some language that is in the original bill.



**Adj. General Allen Dohrmann, Director of Emergency Services** here to support HB 1024, specifically Subsection 1, Subdivision 3 of the bill. Testimony attached # 3 – a request for the deficiency appropriation. He asked for the committee's support on this bill.

**Chairman Holmberg:** The original bill had the \$17m.

**Sheila Peterson, Fiscal Management Director, OMB** So far this biennium, prior to the legislative session starting the emergency commission had approved \$17m in borrowing from the BND for the office of the adjutant general relative to the Dakota Access Pipeline protest. It was removed in the House with the expectation that it would become part of our efforts to recover from the federal government or other potential payers. However, we ran into a glitch because it will end up, if not dealt with in a little bit different manner than just being removed, it would be a bad debt on the books at the BND come June 30<sup>th</sup>, 2017. I know the Bank has a proposed amendment which extends the deadline for repaying that to the bank. So we do have time to recover it from the federal government or other sources before the payment is due.

**(0.21.50) Senator Robinson:** You indicated that we are going to extend the deadline. Do we have any indication from the federal government regarding this issue? Regarding their intention or lack thereof to repay us for that loan.

**Adj. General Dohrmann:** There have been discussions with the administration, there have been discussions with the various cabinet officials at the federal level. At this point there have been indications from our attorney general that he plans to sue. We are making a good accounting of costs incurred along the line and who some of those responsible parties might be.

**Senator Robinson:** I know the clean-up is underway. We have a \$17m loan, we got another \$8m advance, and I've heard reports of \$30m some expenditures to date, do we have any definitive information where we are so far and what we project the final bill will be?

**(0.23.18-0.24.25) Adj. General Dohrmann:** To date, our obligations is just over \$34m. We've drawn just over \$17m from the BND on the loans we've been authorized to draw upon. As of today, the main camp was cleared last Thursday by Morton County and State Law Enforcement. This week there has been a lot of movement within the protests camp within Sioux County, tribal ground and on the Corp ground that is in Sioux County. Our estimates might be that there's only 50 protestors left down in Sioux County, so this morning we started to put together a very aggressive demobilization plan. We are sending some law enforcement home early that came in to help us out last week when we cleared the main camp. We are looking at demobilizing our assets that are at Fort Rice right now. The costs should be coming down but it is going to take a little while to demobilize all the resources we have.

**Senator Robinson:** Are there any indications when that cleanup will be completed?

**Adj. General Dohrmann:** We should have a better picture of that by Friday. It depends on if there remains a threat on the ground for trespass or actions against the pipeline, we have to make sure that we have the right law enforcement in place for that. To some extent it

depends on when the pipeline is completed. We're hearing right now it will probably be completed by the 2<sup>nd</sup> or 3<sup>rd</sup> week in April.

**Senator Grabinger:** I heard that the pipeline company has offered to pay the emergency costs that we've had. Is there any truth to that and any discussion on that?

**Adj. General Dohrmann:** I have heard there are some discussions. I don't know if the people that need to have that discussion have had it. As we go forward I think we ought to look at who is responsible for some of the costs. From the beginning, this has never been a Morton County issue, it hasn't been just the state of ND issue, it's really an energy policy issue and there's a lot of folks in my opinion that should have been in here helping us out from the get-go. Now we are at a point where we are finishing things up. Hopefully we'll be done in the next 2 to 4 weeks but taking a hard look at who's really responsible for some of the actions. I think there is a lot of folks maybe preparing for law suits.

**Senator Grabinger:** My other question goes back to your testimony on the \$79,500, It says the state reached an agreement to only charge Burleigh County 15%. Who in the state made that agreement with Burleigh County?

**Adj. General Dohrmann:** I would assume it was the Director of the Dept. of Emergency Services.

**Senator Dever:** the numbers that I've seen, costs for the state, I've also seen a separate number for Morton County and I'm wondering if that's included in this number.

**Adj. General Dohrmann:** That was not included in there. I think the last number I saw from Morton County was about \$3.1m. **Senator Dever** asked if that was a separate consideration. The Adj. General responded Yes, there is money from a loan from the BND for Morton County.

**(0.28.19-0.31.15) Eric Hardmeyer, Director of the Bank of North Dakota (BND) (0.28.22)** Testimony attached # 3 – proposed amendment #17.8101.02000 regarding Section 4 of HB 1024. we felt necessary to provide as HB 1024 played out. We saw that repayment of the BND debt has been removed from 1024 and so basically that left on our bank books a loan with no repayment. This is a problem for us. A loan is approved through the Industrial Commission, several loans, totally \$17m, the last one was in December, and so we immediately raised our hand this is a problem for BND. This one was approved with the probability we would get to be paid by a deficiency appropriation and we understand the politics of the nature of what was going on to get repaid from federal services. We fully get that but at the same time we thought it was necessary to put back into the bill language that would protect the bank and offer up a repayment source. As you look through the amendment what you will see that it allows for reimbursement that comes from federal sources or any other source. But to the extent that there isn't repayment coming from those sources we felt it necessary to put the language in that the Department of Emergency Services would come back to the legislature two years from now and ask for a deficiency appropriation. Of course, the real reason is when you take repayment source out, we have a loan on our books that has no repayment source it becomes more than likely a impaired loan which probably removed from our books. I don't think that was the intent. I don't think that was contemplated

when it was stripped out of 1024 but there are consequences to bad language for that removal and we are just seeking to put back language that would insure BND of a payment source.

**Chairman Holmberg:** Clearly in the discussions the actual appropriation was going to be removed because if we paid the bill, you lose a little leverage with those you want to get the money from. But in that process, what you're saying is there is some loose ends that need covering between now and whenever this is all resolved. That was confirmed.

**Senator Mathern:** in the 4<sup>th</sup> line of the amendment, I'm wondering if the word unlawful needs to be in there. I am a little bit concerned that there is activity that has expenditures. Some of which is called unlawful, which is not. Just a suggestion we can look at it.

**Mr. Hardmeyer:** Restrict the word unlawful activity.

**Senator Oehlke:** Is it a problem obligating the 66<sup>th</sup> legislative assembly? I am wondering about that date.

**Mr. Hardmeyer:** This is saying they will request a deficiency appropriation.

**Chairman Holmberg:** It is standard language that we use.

**Senator Oehlke:** Is that ok with the auditors?

**Mr. Hardmeyer:** The track record on loans that we've made to state entities with deficiency appropriations has been pretty well documented on the payment sources. I think we would have pretty good abilities to inform them it's likely to be paid back. I don't think it's an issue.

**Senator Kilzer:** Did the House consider this at all?

**Mr. Hardmeyer:** This came quickly, and we spotted it after the bill was already approved so we didn't get an opportunity nor did they consult with us when they put the bill together.

**Chairman Holmberg:** I think what happened the discussion was again like I said, we had to get the money off the books. Anything else on this aspect of the bill. so then we have borrowing authority from the Judicial Branch. Do we have anybody that wants to tell us about this loan of \$1.5m?

**(0.35.57-0.40.15) Sally Hollewa, Court Administrator, Judicial Branch:** I am tentatively for what is in the deficiency bill and presented written Testimony attached # 5 – Testimony Presented by Sally Holewa, requesting a deficiency appropriation of \$1.5m to cover unanticipated expenses related to the cases that were filed as related to the Dakota Access Pipeline protest.(DAPL) The House has left us in the bill but changed that instead of a deficiency appropriation to the Judicial Branch authorization to seek a loan or obtain a loan from the BND. She continued to explain her testimony to the committee.

**Chairman Holmberg:** Any questions of Sally? So we have a loan that you would be asked to get but you're not sure how to get it. He was told that is correct. He then stated we will need to explore that over the next few days.

**Ms. Hollewa:** the \$1.5m is what we are looking at.

**Chairman Holmberg:** Is that something that is unusual, Adam? That it says you go get a loan but they're not sure that there's enough direction in the language in the bill to allow them to do that.

**Adam Mathiak, Legislative Council:** Generally, the technicalities of getting a loan to work out the between the agency and the bank and the general authority is provided for in the bill if they don't specify the exact terms of the loan. We don't go through the detail of how they would sign the documents and things like that. It's just implied that that will be taken care of.

**Chairman Holmberg:** We will have a subcommittee that will be working on this bill and that's one of the areas that should be looked at. Another area of the bill, borrowing authority for Legal Counsel of Indigents.

**(0.42.57-0.49.16) Jean Delaney, Director, ND Commission on Legal Counsel for Indigents** testified in favor of HB 1024 regarding their portion of the bill and presented Testimony attached # 6 requesting deficiency appropriation regarding the DAPL costs and Marsy's Law costs. We too have concerns on how a loan would work but we will depend on OMB to help us through the process.

**Senator Dever:** I am curious if this kind of borrowing is compliant with constitutional requirements for balanced budget and if it is within limitations for borrowing spelled out in the constitution.

**Ms. Peterson:** I am not going to answer your question directly because I do think that is a legal question. I am going to answer it indirectly by just referencing that these costs were originally anticipated to be covered by the SIFF fund and the budget submitted by Governor Dalrymple and Governor Burgum. Allen Knutson went through the analysis of the special funds and there is enough money to put these back to cash from the SIFF fund rather than going through the borrowing process. Not being an attorney I cannot answer your question directly about it's being non-constitutional.

**Senator Dever:** Is it reflected as part of the budget. It's an appropriation and a loan.

**Ms. Peterson:** Yes, in the executive budgets it was an appropriation from SIFF to the respective agencies. To the Judiciary and Indigent Defense. A direct appropriation from SIFF.

**Chairman Holmberg:** Are you wondering how it would be reflected in budget status?

**Adam:** You won't really see it in budget status because these are being considered special funds but also primarily because you're dealing with deficiency appropriations. It's the current biennium so it has nothing to do with the 17-19 biennium. it won't show up in there.

**Chairman Holmberg:** Any other questions on this? We had passed out the copy of the original bill, the Christmas tree version. Testimony attached # 7. In the original bill NDSU was in the original bill for \$1,634,854.

**(0.53.16-1.00.50) Dan Hull, Attorney representing NDSU regarding Minard Hall Deficiency.** I am the special attorney general with regard to the Minard Hall collapse. I am the attorney responsible for litigating all of NDSU's recovery efforts in this matter and I am here today to provide background information for NDSU's deficiency request. See Testimony attached # 8 Minard Hall Deficiency NDSU Testimony dated March 1, 2017.

**Chairman Holmberg:** What was the discussion in the House about the removal of this from the bill?

**Chris Wilson, Chief of Staff for NDSU:** I did the presentation in the House because Dan was not available. Initially there was a question with regard to whether or not the project was complete, whether there were any outstanding bills or expenses that would come due and I answered that the project was completely closed out. There was some questions about whether or not NDSU had enough unrestricted reserves already on our balance sheets to pay this amount. Those questions were answered by our controller. I am not an accountant so I wasn't the person that answered those questions.

**Senator Oehlke:** You examined the insurance policies involved in this so I am guessing you saw a copy of the ND Fire and Tornado Fund policy? He asked if there was a collapse coverage on that policy.

**Mr. Hull:** Yes, I examined the policy thoroughly. Regarding the collapse coverage, No there is a specific provision that provides for additional collapse coverage and when we contacted the ND State Bank RIO fund they took the position that based upon the definition of collapse and their policy that there was not a collapse, because the definition among other things included a falling down of the building. They said Menard Hall didn't totally fall down, only some of the front part of it fell off and parts of the support structures sagged. So we litigated that and ultimately the trial court found that there was coverage into that particular perversion. There still remained other issues with regard to the total matter of whether there was coverage and how much under the property damage insurance policy. But as part of the mediation settlement, the state fire and tornado fund contributed to the settlement.

**(1.03.45) Senator Hogue:** By statute we tell the fund what the losses are that they have to cover. Could we as a legislature, can we say they need to cover this loss as well?

**Mr. Wilson:** I am not an expert on what the legislature can and cannot tell the state fire and tornado fund. My understanding is that the state fire and tornado fund acts as an insurer on behalf of state agencies and there's actually a written policy in place. I don't know if you could retroactive change that policy now for a loss that occurred back in 2009. I believe one forward looking solution might be to if you consider this to be a loss that should have been a slam dunk to get coverage on, is to reword or rewrite some of the exclusions or some of the coverages that are provided in that policy so that it wouldn't be so hard to obtain coverage. That was surprising that it was initially denied. Just based upon, you have a property damage policy, it has a specific additional provision for collapse and yet we were faced with having to start a law suit.

**(1.05.23) Senator Robinson:** What is the status of the descretionary reserve fund today.

**Mr. Hull:** Right now the Board of Higher Education has authorized NDSU to carry a deficient fund balance of \$1.6m. So, I have a fund with that negative balance as of today as a result of Minard Hall.

**Senator Robinson:** Aside from that fund and this negative balance the University's also required to carry a reserve. What is in the reserve fund for the University?

Mr. Hull: As of last June there was approximately \$15m.

Senator Robinson: and how does that compare with the requirement or the suggested requirement that the Board establishes, it is a percentage of your budget?

Mr. Hull: We're required to reserve 5 to 7%. That's our requirement.

**(1.07.53-1.11.36) Claudia Berg, Director of State Historical Society of ND:** We were part of the original bill, Section 7, and we were removed from the bill. She presented written Testimony attached # 9 – asking to be put back in the bill, addressing the Heritage Center Expansion Litigation and Double Ditch State Historic Site Stabilization.

**Senator Mathern:** Why has it taken so long to get to doing the rehab work?

**Ms. Berg:** We have been working almost two years with the Corp of Engineers for a permit. They have been very difficult with this. Now we are ready to move forward. The Corp of Engineers is out of the picture.

**V. Chairman Krebsbach:** I have to go back two years. We did appropriate some dollars for Double Ditch. But we did at that time so you could complete it authorize that you could go to the state bank to borrow and that was agreed upon by both Houses at that time. Can you address why they are renegeing on it now?

**Ms. Berg:** We were very surprised. This happened at the very last minute when the bill came out and we didn't know about it until we saw it. We are very concerned. The 3 affiliated tribes that we've been working with very closely, they've been very supportive, we're working together as partners in this project. There are a lot of other people following this, especially related to the burials that are continuously being exposed. People have been patient because the money was in place to take care of this project. And now if that doesn't happen there could be a lot of concern raised in the public about not taking care of these burials that are going to continue and there's potentially hundreds of them that could be coming out of this bank. There aren't special burial areas in a village like this that you don't know where the burials might occur. But this is such a long bank that there have been burials exposed along a good portion of the site. We are very concerned about being able to take out the loan from the bank and having to find our own money to repay it.

**(1.14.50) Senator Robinson:** Are we looking at moving these burials to another location further away from the bank or rebuilding and stabilizing the bank.

**Ms. Berg:** We are looking at stabilizing the bank.

**Senator Robinson:** The burials that have been exposed, what happens to those.

**Mrs. Berg:** All of those have been handled already. A Native American committee comes to the site and handles the remains.

**Senator Hogue:** Is the slumping that is happening going into the river? He was told yes. He asked why the engineers suggested another 400 feet.

**Mrs. Berg:** By the nature of all the soil testing that was done and how it's been rolling and slumping, they specialize in this kind of work along the river banks so it is their experience from previous projects along the Missouri River as to how this will continue to evolve.

**V. Chairman Krebsbach:** In regard that we have authorized the loan, would that have to be considered a continuing appropriation for this next biennium?

**Adam:** The loan wouldn't be a continuing appropriation. I believe the section of law that provided for the loan, there is a period during which they could access the loan and so then during that period could it be accessed and so it's not really continuing appropriation on that part of it.

**(1.18.44-1.20.59) David Skalsky, Assistant Director, State Historical Society** Testimony attached # 10 regarding deficiency appropriation to the State Historical Society of ND which addresses both the Heritage Center Expansion Litigation and Double Ditch State Historic Site Stabilization. We are concerned about any delays in the project. All the work will be done above the high-water mark so we don't need approval from the Corp of Engineers.

**Senator Erbele:** Have you talked to the federal government? Is there any resources there from them?

**Mr. Skalsky:** Yes, if there would be any funding from the federal government it would be several years down the road.

**Senator Gary Lee:** Did you get money out of the disaster relief fund to begin the work?

**Mr. Skalsky:** To date we have spent the \$250,000 general fund appropriation and any additional money spent we have had transferred from the disaster relief fund. The total we've spent to date is about \$700,000 and that's all the planning and design engineering for the site so that is where we are at.

**Senator Gary Lee:** Why didn't you begin the loan application or begin drawing off the loan at this time?

**Mr. Skalsky:** The project was delayed because of the Corp of Engineers. We have met with the BND and we know the process of drawing down the funds there. I guess we looked at the loan as our last option for this project.

**Senator Gary Lee:** You are expecting you will need the loan. You have authorization until June 30<sup>th</sup>.

**Mr. Skalsky:** Yes we do. Technically, I suppose we could draw down that funding and carry the funding over to complete the project but the new legislative intent they put in for section 16 would probably not allow that because basically we need to pay the loan back by raising the money and we don't think that would happen.

**Senator Gary Lee:** Is that language for 17-19 or in the current bill?

**(1.23.51) Mr. Skalsky:** Section 5 and 6 are in our current bill. So for the 2015 biennium we have authorization to borrow the money on the loan and move forward with the project. The sections down below are in our 2017-19 budget bill for next biennium and they changed the language that says if you are going to take out the loan you have to borrow it. You have to borrow it and you have to pay it back with raised money.

Senator Gary Lee: How were you going to pay it back before.

Mr. Skalsky: That's a good question. We don't anticipate that we have to raise funds for a project like this and the same thing with litigation fees, that's really something, there maybe could be some funds raised but it would not be to this level. And if we tried we'd be down the road maybe 3 or 4 years before that funding would be available.

**(1.24.55) Senator Oehlke:** Back to the Heritage Center, there was some panels that were installed, and they had to come in and redo it.

**Mr. Skalsky:** I think that is a large part of the law suit. **What** happened is Comstock Construction as the general contractor, they had their subs and they came in to hang on limestone, they got close to winter and they said we're going to come back in the spring. Comstock brought in other people and they said they were hung wrong. They were instructed to take them all down and hang them. My understanding is the hangers were ok, but they didn't put enough hangers on.

**Senator Oehlke:** Why are they arguing with you, why aren't they arguing with the original sub that hung them?

**Mr. Skalsky:** The state is taking the position that it is not the state's responsibility, it's the sub's responsibility.

**Senator Hogue:** Can we go back to the bank stabilization. Why did the Corps reject your original design?

**Mr. Skalsky:** I don't think it was ever rejected. It was just because how long it would take to get the project through.

**Senator Hogue:** is there indication from the Corps that the new design, has the Corps told you that?

**Mr. Skalsky:** I know they have notified the Corps that the engineers are going forward with this.



**Senator Robinson:** In the case of Comstock Construction. Do we in terms of state permits that this a company we will look at twice before we enter into another agreement? Or they are not recommended so we don't get into these situations again.

**Ms. Peterson:** I can't answer that question but I will check and let you know.

**Senator Erbele:** Last session we had some discussions about having the National Guard doing some of the work. Is that not workable.

**Mr. Skalsky:** That was part of the agreement before we took out a loan. We had to contact National Guard to see if we could get them to come in and do some work. We met a number of times with them. They had two concerns they had, one of them is we could not give them an exact time and what work they could do. They said they need a year's notice so they could work through the federal process to come in and work. They said they maybe could work for two weeks at the max, maybe a weekend. Part of the loan process we needed to get a letter from them that would say "we are not able to help you to the extent you need".

**Senator Wanzek:** I did have some constitutes, the statute is you must accept the responsible lowest bid. But the word "responsible" and given the situation that we've incurred here, I was told that you could have rejected that bid today knowing what you know now.

**Senator Robinson:** When we have a situation when we have a bad experience, I know state law says we must look at the lowest bid but we need to be sensitive with the quality of work. Sometimes I think we should pay a little more and get a lot more.

**Senator Wanzek:** The word responsible does provide some latitude.

**Senator Dever:** Would the bank of stabilization be permanent?

**Mr. Skalsky:** They are confident to say it's going to be permanent with another catastrophic flood, they could not answer that for sure. But they are confident in the solutions that are proposed will stabilize the bank, but you never know what is going to happen with nature.

**Ms. Peterson:** As you consider this bill, I think you should probably put into, in the possibility that with all these delays with the Corp of Engineers that this project may not be finished by June 30, 2017 and to allow carry-over should it to go into the 17-19 biennium to be completed. If you would also consider that as you consider the final version of this bill. **(1.32.52)**

**Kathy Roll, Financial Administrator, Attorney General's Office:** presented Testimony # 11, requesting a transfer of funds from 2015-17 biennium Contracted higher education legal services line item to the litigation fees line item.

**Chairman Holmberg:** Why wouldn't this be appropriate in your Bill # HB 1003? He was told by Ms. Roll that they thought the process would go faster through Bill # 1024. The hearing was then closed on HB 1024.

**Chairman Holmberg:** had received the email from **Bruce Murry (Testimony # 12)** and had the clerk run copies as it was requested by Mr. Murry that it be submitted to the full committee as written testimony in support of HB 1024 as he was not personally able to be at the hearing.

# 2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

HB 1024  
3/28/2017  
JOB # 29760

Subcommittee  
 Conference Committee

Committee Clerk Signature

*Pam Dever for Alcedo Dever*

## Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing on the Deficiency Bill.

## Minutes:

No testimony submitted

**Chairman Dever** called the Subcommittee to order on HB 1024. Let the record show that all subcommittee members were present: Chairman Dever, Senators Lee and Robinson. Adam Mathiak, Legislative Council and Sheila Peterson, OMB were also present. The interesting part of this bill is that it has what is in it and does not have what is not in it. Sheila offered to give us a recap.

**Sheila Peterson**, OMB, (.35) This is not in any particular order. I will go through all the changes from the House version. The first is that the BND offered an amendment. The amendment doesn't have any money in it. It is more of a clarification that doesn't leave the bank with a \$17M bad debt. The Emergency Commission, earlier this biennium, allows a total borrowing and approved by the commission. \$17M was borrowed with the approval of the emergency commission. Without the amendment from BND, that would leave a bad debt. There is no indication that the state will pay it. Their amendment, indicated what I believe your wishes are, and they will seek reimbursement from other sources. By the end of next biennium, if it is not repaid, it will come in a deficiency bill. It is not adding any money, just putting language back in there. So the bank has a funding source for repayment for that particular loan. (2.34)

**Chairman Dever:** Does that apply to the guard similarly to the judicial branch and indigent defense?

**Sheila Peterson:** No. The borrowing authority for the judicial branch and the indigent defense are being made directly to the two agencies. The loan is between the court and the bank. Where the other loans that already exist have been made to the Adj. General and to the dept. of emergency services. The loan money for the judicial and indigent defense are not flowing through the Adj. General. That is one item is the BND amendment. (3.55)

**Senator Gary Lee:** So you said the next biennium. You mean language for the 17-19 biennium? If they hadn't received those.

**Sheila Peterson:** It extends that \$17M borrowing to June 30, 2019. Just to the end of the one we are working on right now.

**Senator Dever:** It does affect general fund expenditures?

**Sheila Peterson:** No. Unless you want it to. The loan will be in effect for a three-year period. The rest of this biennium we are in now, and all of next biennium. The \$17M.

**Senator Dever:** If it is necessary to appropriate that \$17M, from general funds, that would be a deficiency appropriation in the next budget.

**Sheila Peterson:** That would be in the 2019-2021 biennium, because you are working on funding everything for 2017-2019 now. You would see that deficiency request in the 2019-2021- biennium.

**Senator Robinson:** How do you reconcile? We know that we have in addition to the \$17M, we borrowed an additional \$8M. We were told that we can expect that total expenditures to approach \$43M to \$44M. What happens to the balance? (6.25)

**Sheila Peterson:** In discussions with leadership, they will put that additional borrowing in OMB's bill. Right now, through Emergency Commission action there was \$17M borrowed and SB217, allowed them to borrow another \$8M. Right now they have \$25M. Our latest estimate is they will need about \$40M.

**Senator Robinson:** Will all that end up as deficiency, if there is no money coming from the feds or other sources?

**Sheila Peterson:** Correct. So just dealing with that bad debt situation, is that the BND suggested amendment to extend the loan. The 2<sup>nd</sup> topic is the judicial system. They have suggested several changes. First, the bill as currently written, says it is effective as the date of this act. Which is when it is filed with Sec. of the State. They would like it to go back to July 1, 2015. They have gone through expenses with trials and bring on additional judges. That amendment would also apply to indigent defense as well. Rather than it starting at the date of bill filing, that it be back dated to the beginning of the current biennium, July 1, 2015. The second item suggested by the courts, is the words 'unlawful activity' are in the current version. They suggest that be changed to 'criminal and infraction chargers'. Because all of these individuals may not be found guilty or unlawful. That wording change would also apply to indigent defense, also. They may not be found, at the end of the day, to unlawful but still incurred the expenses. The 3<sup>rd</sup> thing is the estimated costs for indigent defense for DAPL. That has been increased to \$1,027,000. That activity with the protestors continued, and now they number of cases that have come their direction. They have had to adjust upward. DAPL, alone, is \$1,027.00. That would get them through June 30, 2019, assuming all the cases are cleared up by them. Also had costs associated with Marsy's law. Their estimated costs for this biennium is \$189,000. It is not reference in the bill. It is not split out, but it probably should be. So totally together you get \$1,216,000. (11.57)

**Senator Robinson:** We have this bill before us. We have to repay the BND. On top of that \$1,027,000 for indigent defense is on top of the \$40M? Do we have some other costs coming?

**Sheila Peterson:** Both the indigent defense and the judicial \$1 1/2M would be on top of the \$40M. Those loans would be going directly to the agencies not through the Adj. General. If you chose to move those two agencies back to the SIFF fund as was proposed in the two governor's budgets, rather than borrowing.

**Senator Dever:** If the one and a half a million of the judicial branch is still a current number. That is correct (from Sheila). A lot of people charged are pleading out and not going to trial. Sally, so you have anything?

**Sally Holewa, State Court Administrator:** We know that more people are pleading out, but we don't have a good sense how many. At the time we put in our estimate, there were 500 cases out there. Now, it is 740 cases out there. If we don't need the money, we won't borrow it. The increase there was a lot more arrests. We know there are still two encampments. One in Sioux County and some across the border in SD. We have some activity when we have court in Sioux County with disruptions in court. We don't know what's going to happen.

**Sheila Peterson:** One entity that fell out of the bill, on the House side, was NDSU and Menard Hall. The collapse of that. They had requested and the governor has included \$1,7634,854 as a deficiency. This would cover and finish the cost of the collapse of the hall. The total cost of the collapse was \$4.7M. Through negotiations, they were able to recover just slightly over 3M. This represents the costs of the disaster of the Menard Hall which has not been covered by insurance or settlements.

**Senator Robinson:** This issue was in committee. I made the suggestion if we can't find the funding in the general fund, then you consider using their reserve. They may not want to do that. That would be another option. Since that time, they would rather not use their reserve. They would find a way internally, to offset that cost, if we don't find funding. I am just sharing that information with you. Senator Sorvaag: shared that with him.

**Senator Gary Lee:** The \$4.7M total cost, was that just NDSU got \$1.6M of that \$4.7? Because there was other people involved in the suit?

**Sheila Peterson:** The total cost of the collapse and repairing was \$4.7M. All of the parties, the contractors, the insurance, etc. all agreed to mediation. Through mediation they were collectively able to recover the \$3, 020,000. This \$1.6M is the difference.

**Senator Dever:** Have most of the repairs been completed?

**Sheila Peterson:** Yes, it's completed. They have paid their bills. And it is showing as a debt. Wherever they took the money from, they owe back to that reserve fund. (20.03)

**Senator Gary Lee:** NDSU settled for \$3.2M and the \$1.6M is what they want?

**Sheila Peterson:** That is correct. The attorney representing them told them. They recognized they could have gotten far less. They had to evaluate where would a judge or jury land on this. This would probably be as good as it would get at the \$3,020,000.

**Sheila Peterson:** The Historical Society is also missing from the bill. Two parts to that. 1<sup>st</sup> is Comstock contractor who was the contractor for Heritage Center. They are suing them. Our response is as soon as you finish what you said you would do; we will pay you. The legal fees for the Comstock law suit are \$294,500. The other piece is the Double Ditch issue. I understand you are dealing with that in the Historical Society budget. Not need to be dealt with here. Next is the DHS. The governor's budget included a \$9M deficiency for DHS. The House reduced that to \$5M. But they actually have a \$9m deficiency. Deb McDermitt did submit the information program by program where they are short, and how they are short the \$9m. Not part of the original bill, but the Attorney General office came, and asked not add money, but do a line item transfer of \$75,000 from their contracted higher ed. legal services line to their litigation fees line. The money is there, just in the wrong line item. I have attended several of the sub-committee meetings on the AG's office. It needs to be in one or the other. Need to get by to June 30<sup>th</sup>. I believe these are all the items you need to work through. (23.59)

**Senator Robinson:** Go back and visit the DAPL on more time. We have the \$40M, and we have the deficiency for indigent defense and Judicial. Are there other charges that might be forthcoming from Highway Patrol, Morton County, etc.? It seems we visited this in several bills. It would be nice to have a summary.

**Sheila Peterson:** The remaining \$15M borrowing authority for the Adj. General could get them to the \$40M, would be one piece of what would go into OMB's bill. But those 6 or 7 agencies made the authority increased. I've worked with all of those agencies who have participated. They have estimated their numbers. All they need is the authority to submit their bills to the Adj. General, and get reimbursed. I have provided those number to LC to put together the amendments. (25.58)

**Chairman Dever:** So in the bill, the Dept. of Health, the \$250,00 is ok. The department following that would like another \$4M of general money. Adj. General just needs the language regarding the borrowing. Section 2 And 3 we need to amend unlawful criminal.

**Sheila Peterson:** Yes, to all, and to change the amount of indigents.

**Chairman Dever:** Increase for Marsy's Law. I would imagine this bill was filed right after the original session and we were less than a month behind the Marsy's Law. That is why it was not included. Did the House consider that?

**Sheila Peterson:** Yes, in the initial bill, both dollars for DAPL and Marsy's Law. When the House changed it to this section, the two got blended together to one number. The reference to Marsy's law was completely lost.

**Chairman Dever:** We have the Menard Hall issue. We should consider the legal fees with the Comstock suit for Heritage Center. Then there is the \$75,000 for the AG. Anything else we would like to consider? Reschedule for another time or do you want to continue now?

(0.29.03) The next item in the bill is the Medicaid. The House reduced it from \$9M to \$5M.d it. If we are going to meet again we should maybe set that aside.

**Senator Gary Lee:** In regard to that special funds, where is that \$5M in special funds?

**Sheila Peterson:** The special funds are SIFF, is how both governors' funded the deficiency. It is state funds.

**Chairman Dever:** Are there federal funds that go along with those?

**Sheila Peterson:** Not in the bill. This is just the state's share that we are short.

**Chairman Dever:** So on this sheet the \$9m is net?

**Sheila Peterson:** The medical services program is actually \$20M short. The DDD program is about \$10M short, but there are other programs that have positive balances. The human service centers, have extra dollars there. They have extra dollars in the state hospital because of turnover, and extra dollars in long term care. The actual units were less than budgeted and have some roll ups dollars in child assistance program. (31.57)

**Chairman Dever:** Those numbers are reconciled in the budget.

**Sheila Peterson:** This would just get them through to June 30, 2017. What is in 2017-2019 is a whole different thing.

**Chairman Dever:** I am looking at Medicaid. That was part of the expansion. I thought all the providers took a major reduction.

**Sheila Peterson:** That is correct in that the reimbursement rates were lowered. They are not asking for that money back. This is just the increase cost of the premium for the Medicaid expansion population.

**Chairman Dever:** Those are two different things. Just coincidental.

**Sheila Peterson:** Yes.

**Chairman Dever:** Anymore thoughts? Are we ok with the amended language on the judicial and indigent defense. Ok. How about the money increase in indigent defense?

**Senator Robinson:** I would be supportive. I don't know if we have a choice. Their caseload is growing. They do good work. They can't control that. We have to go bite the bullet. They can't put up a sign and go away. It's a pill we have to swallow.

**Senator Gary Lee:** The \$1,027,000 and the \$189,000. Those are firm numbers. That they have already spent?

**Sheila Peterson:** They are based on the estimated number of cases they have been assigned, already, since the protests began. They haven't expended 100% of it. It is based on average hours what they have to pay those attorneys.

**Chairman Dever:** Are these the expenditures, then, projected through the end of this biennium?

**Sheila Peterson:** These related to DAPL. We have put those not to expire until 6-30-19. We know all the cases and costs completed by June 30, 17. The Marsy's law is just for this biennium, but the DAPL will go on.

**Senator Robinson:** On the BND language, we have to do that, so they are not in the situation of having to deal with a bad debt on their books. That is associated with the National Guard.

**Chairman Dever:** We are ok with the language in sections 2 and 3. We haven't decided on the money. Looks like a \$357,000 increase.

**Senator Gary Lee:** Looking at section 3 amendment, that is just to give them borrowing authority?

**Chairman Dever:** Yes. The reason for borrowing authority is to keep it out there to be able to collect from the federal government. Should we put the money in there?

**Senator Robinson:** We almost have to. Not excited about that.

**Adam Mathiak, Legislative Council:** Just to clarify, you want the \$859 just to go to the \$1,027,000 in section 3, so that the Marsy's Law is separate? Or do you want to roll that into that section?

**Chairman Dever:** I think they are separate issues. We are attempting to collect the DAPLE part of it. We don't expect to collect the Marsey's Law part of it. But it would still be under borrowing authority? Or should we appropriate that?

**Adam Mathiak:** That is up to you. Legislative Council would reinstate what was overstruck the previously. Whether we add a new section or just remove the overstrike. We just clarify it is for Marsy's Law. You want it to be an appropriation from the SIFF related to Marsey's Law, right? Not a different funding source?

**Chairman Dever:** Yes. Moving on to NDSU and Menard Hall. Any thoughts on that.

**Senator Gary Lee:** If they can cover it internally; that is good for us. (41.17)

**Senator Robinson:** Chairman Holmberg did voice his opinion. That he did not see we would have the money for \$1.6M at this time.

**Chairman Dever:** If we were to do anything, it might be appropriate to look at the difference between the settlement of \$3,200,000 and the \$3.8M they said they would recover, maybe. I am ok just striking that. Then the Historical society, the legal fees. That still is in litigation?



**Sheila Peterson:** Yes. The handout they gave us, indicated when various filings were going to be done. Definitely not done. (42.31)

**Senator Robinson:** We need to pay it. This is the same company we had issues with at the ND Veterans Home. We should make a notation and not go down that road again. We have had two bad experiences. No more state contracts with this entity. I think we will have to pay the legal fees.

**Chairman Dever:** Are there any funds left from the construction project?

**Sheila Peterson:** Just the ones that if they finish what is not don the Historical Society would pay them. Yes, that money is still sitting there. Not know the amount.

**Chairman Dever:** As it progresses, is there a possibility of recovering these monies' from that fund?

**Sheila Peterson:** That I do not know.

**Senator Gary Lee:** This \$294 is what they owe the attorneys. Isn't it typical you let the case play out and see what happens? And then pay the attorneys? Or do they get their money as they go? I am sure the loser is going to pay the attorney fees.

**Senator Robinson:** This debt is old.

**Sheila Peterson:** Yes, the agency has been incurring legal fees most of this biennium. (0.46.12) I don't think the case will be over in this biennium.

**Chairman Dever:** The only thing we have left is AG issue. Moving it from one line to another.

**Senator Robinson:** I am ok with that.

**Chairman Dever:** We have resolved everything except the legal fees on the construction project and Medicaid.

**Senator Robinson:** Did we address the \$1.5M on the supreme court?

**Chairman Dever:** Yes. So we just have two items for next time. I will try to reschedule for tomorrow. The subcommittee hearing was adjourned on HB 1024.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

HB 1024  
3/29/2017  
Job # 29807

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Mark Johnson for Rose Loring*

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions.

## Minutes:

Testimony Attached # 1

**Legislative Council: Adam Mathiak**  
**OMB: Sheila Peterson**

**Senator Dever:** Called the sub-committee to order on HB 1024. **Senator G. Lee** and **Senator Mathern**, who is substituting for **Senator Robinson**, were also present.

**Sheila Peterson:** handed out Engrossed HB 1024 Deficiency Appropriation, Expressed in Millions – Attachment # 1.

**Senator Dever:** Previously we worked through everything except for 2 points. The reduction that House made in Medical Assistance Grants for the Department of Human Services, and the legal fees associated with the Heritage Center. The reduction the House made in Medical Assistance grants was from \$9M to \$5M. You have a sheet, please see attachment #1. The legal fees were \$294,500. The issue on Double Ditch is being handled in the insurance budget.

The legal fees are against the general contractor, due some problems with the project and funds have been withheld from the project. Is that something that could be paid out of the building fund project? Then accounted for on the back end of the building project?

**Dave Skalsky, Assistant Director, State Historical Society:** The funds remaining for the project are \$387,000 that we owe Comstock and the money is actually with the Foundation. There has been talk with their board and they aren't inclined to provide money to pay for a state lawsuit. So it is donated money. It's sitting there, we have not requested it in case Comstock wins this lawsuit, we'd have that money available to pay them, there might be some concern with the state historical society board about giving that money to pay for a lawsuit.

**Senator Dever:** What happens to the money if not used for that?

**Dave Skalsky:** That money could be used in the Heritage Center. There's things we could still do. Replace the 30-year old seating in the auditorium. We would use those funds for projects in the Heritage Center.

**Senator Dever:** So in either case, these funds you are requesting for legal funds, are not intended to be used for anything else. If you are successful in the lawsuit, is it possible that the legal fees would be the liability of the contractor?

**Dave Skalsky:** In discussion with Peter Zuger, Serkland Law Firm, while you do counter sue for this, but not likely they'd pay the fees. If they did, we'd turn them back to the state.

**Senator Dever:** If we do not appropriate the money for this, then where are we?

**Dave Skalsky:** We would have to come up with \$290,000 to pay Serkland Law Firm, if it came out of our budget, we'd be looking at another 10% on top of the 13% we already have taken out of our budget in general fund operating money. It would be extremely difficult for us to find that.

**Senator Dever:** These funds will go thru the next biennium.

**Dave Skalsky:** We don't assume it would be done by June 30. I anticipate this extending over a long period of time.

**Senator Mathern:** Are legal fees on this case based on contingency or hourly rate?

**Dave Skalsky:** They have an hourly rate that we're billed for, plus copies, etc. The AG's office, they're hired as a special Assistant Attorney General through the AG's office.

**Senator Dever:** Is the \$294,000 billed to date or is that expected.

**Dave Skalsky:** That's total expected. To date we've paid out \$23,000, if their estimate is right that could be reduced by \$23,000.

**Senator G. Lee:** You indicated you have \$300,000 remaining; was that intended to be for this project, and it's just carry over? You said you might use it for seating. Was that part of the project?

**Dave Skalsky:** The \$387,000 is basically for punch list items. For every dollar of unfinished items, the state of North Dakota can withhold \$3. So technically there's about \$160,000 worth of work they did not do, we could use this money to finish those things. If they would've finished the \$160,000, we would have paid out. They are also suing the state of North Dakota for the hanging of the limestone. They hung the limestone wrong, and they had to take it back down and reinstall it. That was determined when they switched subs. They're trying to hold the state of North Dakota liable for some of that work.

**Senator Dever:** Is that a multiple prime bid? Was the sub under the general bid.

**Dave Skalsky:** Correct, I think that's why the state says we should not be liable.

**Senator G. Lee:** They said they have spent \$23,000 already, have you been billed additionally for services they provided? Why would you have paid that already if we're caught up?

**Dave Skalsky:** We anticipate a lot of this work to be done, we went to the emergency commission to ask for \$70,000 to get through this biennium, it passed the emergency commission and went to budget section; it was voted down by one vote. The \$23,000 is for work that has been completed. A lot of the work is going to be now thru November.

**Senator Dever:** This bill was filed last December. Is that number still current now?

**Dave Skalsky:** Their estimate? Yes. Initially when they looked at it they said if it went to a jury trial, these numbers should be correct.

**Senator G. Lee:** In moving to next biennium, does this mean we give them spending authority? Or does the money need to be set aside?

**Sheila Peterson:** It would be an appropriation that could be spent now thru June 30, 2019. We've done those sort of appropriations when we don't know when expenses will fall into which biennium. These are not general fund, they are SIIF, the governor's recommendation that all these onetime type expenses be from the SIIF fund so it's not general fund.

**Senator Mathern:** If we do authorize this, would it be done in such a way that it could only be spent for this?

**Sheila Peterson:** Absolutely. It would be solely for legal fees.

**Senator Mathern:** I would recommend we do it with that understanding, we wouldn't want it used for something else.

**Senator Dever:** So would it be another section of the bill rather than a line item?

**Adam Mathiak:** That's correct. Since the deficiency appropriation is normally for items that would just be for the remainder of the current biennium, any of these amounts that are extended through June 30 2019, including loans, will be reflected in budget status as 17-19 appropriations to these agencies. This would be reflected as a \$294,500 appropriation to the State Historical Society for the 17-19 biennium for budgeting status reporting purposes. It would be an appropriation to them.

**Senator Dever:** That takes care of the Historical Society. Human Services requested \$9M for Medicaid. The House reduced that to \$5M. What happens if we don't provide that?

**Maggie Anderson, Director, DHS:** Since the projected shortfall is specifically within our Medicaid grants area, both traditional Medicaid and DD service area, we may not be able to do a check write. If we post expenses, we're going to be overdrawn on our expenditures for the biennium. We either don't run some of the last check writes or we make payments that we don't have the funding for. When it hits PeopleSoft, then it comes back as insufficient

funds. We are revising our cash flow, there's nothing in there that indicates we won't need that same amount of funding.

**Senator Dever:** The \$9M is what you need.

**Maggie Anderson:** Correct, that's what we're estimating. Medicaid grants, they change on a daily basis. This is based on our historical costs and projected trend.

**Senator Mathern:** These are just the general fund dollars. If we didn't make these payments, we'd ratchet back some federal dollars.

**Maggie Anderson:** We have federal authority in HB 1012 to match the \$9M in general fund authority. HB 1012 comes with emergency clause that did carry in the House.

**Senator G. Lee:** These are SIIF funds too?

**Sheila Peterson:** Yes.

**Maggie Anderson:** If we chose not to do a check write at the end of the biennium to pay providers, it's not that we wouldn't eventually get the federal dollars, it's just that providers would have to wait longer for their checks.

**Senator Mathern:** Are there any of these, to your estimation, have any change yet based on use of services or number of persons served. Since you've put this together to now, is there anything else in terms of trends that would change any of these?

**Maggie Anderson:** About the time that HB 1024 crossed over to the Senate, we began a refresh to our cash flow and to what we thought our deficiency might be. Some of the numbers may have changed, we're still projecting \$9M general fund need before June 30<sup>th</sup>.

**Senator G. Lee:** One of the mentioned items was IT services. Do we need a deficiency for that? Shouldn't that be an internal transfer? Why would we have a deficiency for them?

**Maggie Anderson:** That is for the operation of our two large IT systems that we implemented this biennium. Some of those expenditures were budgeted as expecting that ITD would operate some of those system pieces; we're having a third party vendor operate them, and it is more expensive than anticipated. We estimated originally when we built the 2015-17 budget we knew we would go live with MMIS sometime. We believed we had a shot at having that system certified, certification allows us to go back and capture 75% operating money for the operations; but we will not be certified in this biennium. This is for 3<sup>rd</sup> party vendors operating MMIS and Spaces.

**Senator Dever:** These dollars aren't one time spending?

**Maggie Anderson:** No, they're for ongoing grant costs. For context, we built our budget based on expected costs and caseload, but we underfunded our grants; both traditional medical services grant and the long term care grants. We did that prior to our budget being submitted to OMB. We are projecting a deficiency in some of those areas.

**Senator G. Lee:** When do you expect to be short – at the end of the month, or when?

**Maggie Anderson:** We apply back the first three weeks of July payments to the previous biennium, because those claims are for June services. Our first check write of the month is quite large: \$30-40M. Half of that is federal dollars. We would have to evaluate what portion of what pieces we wouldn't be able to process in order to roll up \$9M. We'd be doing cash flow along with this to see if the \$9M is truly what we need. Projecting Medicaid expenditures is difficult. Based on our current projections, we do not believe we will have enough to finish this biennium out. Essentially it would come in during the month of July, where we're supposed to pay those expenditures and apply the expenditures back to the previous biennium. There are accounting and audit things related to that. We need to pay those expenditures correctly.

**Senator G. Lee:** If you got enough payment in July to cover this \$9M, you couldn't use it?

**Maggie Anderson:** These expenditures are from 15-17 and can't use 17-19 money.

**Sheila Peterson:** That's correct. When they're incurred is when they're supposed to be posted. Maggie would get an audit finding if she paid 15-17 expenses with 17-19 money. The state's Comprehensive Annual Financial Reports (CAFR) would reflect that error. The rating agencies wouldn't be impressed if we paid out of last biennium.

**Senator Mathern:** I think that the Department handles a lot of money, they've always done it well. Many of these things are basically obligations of law and contracts. I don't know how such a large agency could operate if we didn't pay these things. If it gets out to the private sector that they can't pay their bills, we'd have even more trouble. I suggest we approve these dollars.

**Senator G. Lee:** I'd agree with **Senator Mathern**.

**Senator Dever:** After we get amendments, we'll review.

Closed the hearing on HB 1012.

# 2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

HB 1024  
4/4/2017  
Job # 29932

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Emmery Krothberg for Rose Loring*

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions.

## Minutes:

Testimony Attached # 1 – 3.

**Legislative Council:** Adam Mathiak  
**OMB:** Sheila Peterson

**Senator Dever** called the sub-committee to order on HB 1024. **Senator G. Lee and Senator Robinson** were present. **Senator Wardner** and **Senator Holmberg** are also in attendance.

**Senator Dever:** said there have been additional requests and wanted to ensure all amendments were as they had intended.

17.8101.02001 – Testimony Attached # 1.

17.8101.02002 – Testimony Attached # 2.

17.8101.02002 – Testimony Attached # 3. (marked up or Christmas tree version)

**Adam Mathiak:** Explained the amendment using the marked up version.

Section 1 – Added back in the funding for the commission on the legal counsel for indigents

Section 2 & 3 – New section corresponding to discussions related to the OMB bill

**Senator Robinson:** This morning we had OMB – we aren't duplicating, are we? (No)

**Senator Dever:** All the numbers are the same? (Yes)

**Senator Holmberg:** In the borrowing authority, you use the term "unlawful activity" and in other portions of the bill, "unlawful activity" was changed to "criminal infraction charges." Is that a problem or just where this language is?

**Adam Mathiak:** It wouldn't have to say unlawful activity. We specifically changed the other ones at the request of those agencies because they did not feel it would give them sufficient appropriation authority, that it would be too restrictive by the wording. In their cases, they felt they may not be able to spend it if the activity wasn't deemed criminal. Previously, this

language was used in SB 2174 with adjutant general and the adjutant general didn't have a problem with that language. The ones that had issue, we updated the language.

Section 4 – Updates in language for the judicial branch and the commission on legal counsel for indigents

Section 6 – Appropriation for the strategic investment and improvements fund for state historical society for the completion of the heritage center

Section 7 – Contingent appropriation from SIIF for the state treasurer (\$15.2M—including interest) related to the payments from tax collections (contingent because it wouldn't be paid out until ordered by the court)

Section 8 – Transfer to balance the budget

Section 9 – Two requests from the Attorney General's office

Section 10 – Bank of North Dakota – legislative intent for loan repayments

Section 11 – Emergency clause

**Senator Dever:** So the \$15M in Section 3 and \$17M in Section 10 are different?

**Adam Mathiak:** That is correct. Originally, the intent section there may have been a little bit of confusion when the Bank talked with our office about what they were looking for so when the deficiency bill was originally presented, it included \$17M for the adjutant general to repay \$17M of loans that were authorized by the emergency commission during the interim and the bank felt when that appropriation was removed, that it was essentially saying there was not going to be a repayment of those loans so they were concerned about having a bad debt on their books. They had talked to our office in OMB and various legislators about wanting to identify repayment source. In our office, we did clarify that the House was not rejecting the payment but that they wanted to present a stronger case for reimbursements from the federal government or other nonstate sources but the bank still felt more comfortable having intent language in here. It could have been that they came back in the next legislative assembly to request it, but the bank wanted to have that verification included in here. You are correct; \$17M is separate from the \$15M. The \$17M is the emergency commission portion in Section 10 and then you also have the \$11M in SB 2174 which was \$8M for the adjutant general and then \$3M that went to the adjutant general to reimburse Morton County. Sections 3, 4, 5 of this bill which included loans (section 3 being the \$15M, section 4 being the \$1.5M and section 5 is the \$1,027,000).

All language was updated and they could come back and request a deficiency.

**Senator G. Lee:** Would it be appropriate to add those numbers to get the total dollars created for the pipeline incident?

**Adam Mathiak:** That would be correct. The only reason the \$17M is specifically identified is because the Bank requested that it specifically be identified.

**Senator Dever:** We'll use this version going forward. There was an amendment offered in the human service budget this morning for an additional \$200,000 to be spent in this biennium. Should it be included?

**Senator Holmberg:** I don't think you want to weigh down this bill because this bill does need 2/3 vote. I told Representative Carlson that once you had gone through this, you would share



a copy of the Christmas tree version of the bill. There is some consternation over the addition of the \$4M under medical assistance, but it is my understanding that it is something that has to be paid.

**Senator Dever:** That's our feeling; it's not a matter of choice.

**Adam Mathiak:** I will send a copy to Representative Carlson.

**Senator Robinson:** Moved to adopt the proposed amendment 17.8101.02002.

**Senator G. Lee:** Seconded the motion.

**A Roll Call Vote was taken: 3 yeas, 0 nays, 0 absent.**

**Senator Dever: Yes**

**Senator G. Lee: Yes**

**Senator Robinson: Yes**

**Motion carries.**

**Senator Dever:** Delay further action – on agenda for Thursday morning.

# 2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

HB 1024  
4/6/2017  
JOB # 29957

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Jane Bellamy for Alice Dever*

## Explanation or reason for introduction of bill/resolution:

A DO PASS AS AMENDED on the Deficiency Bill

## Minutes:

**Chairman Holmberg:** called the Committee to order on HB 1024 at 8:30 am. Roll call was taken. All committee members were present. Sheila Peterson, OMB and Adam Mathiak, Legislative Council were both present.

**Chairman Holmberg:** We have 1024 this morning and we should consider passing it out. You never know what happens. This has been shared with House leadership over the past few days and they felt there was no problem, it includes the addition of funds for the DHS. Senator Dever, Senator G. Lee and Senator Robinson were on the subcommittee for this bill.

**Senator Dever: moved the amendment #17.8181.02002** (See attachment #2 and #3 on HB 1024 on 4/4/17, Job # 29932)  
**2<sup>nd</sup> by Senator Robinson.**

**(0:04:22-0:09:38) Senator Dever:** Explained the amendments.

**Senator Mathern:** You note money was added for the adjutant general, what is that and how much is now in this bill, related to that item? What is the total amount?

**(0:10:01) Sheila Peterson, OMB:** The total amount is \$45,527,000 and that does include \$3M for Morton County, as well as the state level costs and includes the indigent defense and judiciary expenses.

**Senator Mathern:** This money is going to many state agencies. I wonder in terms of the total amount, is there an actual allocation for individual expenditure could someone find out how much an individual received. Or are the allocations all general to the agencies?

**(0:12:33) Senator Dever:** It is my understanding the money is paid to the agencies and the agency pays the individuals. My son-in-law works for the Morton County Sheriff; he did 300

hours' overtime. He very much deserves to be paid for that time, they are expenses unanticipated by the agencies.

**Senator Mathern:** The individual expenditures would be determined by the different agencies.

**Senator Dever:** In my understanding, many of the guardsmen standing next to law enforcement were unarmed because we didn't want to make it a military operation.

**(0:13:34) Senator Mathern:** The second question I have is in regards to the amendment that relates to the request of the money coming from the federal government. Does this preclude requesting of the reimbursement to the company that did the pipeline.

**Senator Dever:** I don't see anything regarding any compensation to a private organization.

**Senator Mathern:** Does it preclude that? I was of the impression there were negotiations going on that the company would pay. Does this amendment limit that?

**Senator Dever:** The company paying us? That is not in the bill.

**Chairman Holmberg:** Would that be the language of section 10?

**Senator Mathern:** Legislative council is saying that still permits that. I would hope it would.

**Chairman Holmberg:** When Adam shakes his head, that means yes.

**(0:15:07) Senator Sorvaag:** Was there any discussion at all, since we're helping out with the lawsuits, helping NDSU with the Menard Hall settlement, because they did apply for the deficiency.

**Senator Dever:** The amount of the damages was \$4.1M, and they thought they could have won in settlement \$3,220,000. It was the feeling of the subcommittee that's too convenient to be able to come to us and be made whole. Secondly, they do have reserve funds that they could access.

**Senator Sorvaag:** They worked for many years on this, and one day said let's pay \$1.6M. It was multiple years of negotiation to get to that point, yes they can go to reserve funds. Everyone can go into other funds, but the funds are coming from something else. I wish the committee would have considered this more. They tried to make a good decision and shouldn't be punished for it.

**Chairman Holmberg:** They didn't want for us to mandate how they had to use their reserves, it was left open. That was part of their concern.

**Senator Sorvaag:** That's what was relayed to me and I did discuss with a committee members and I did appreciate the committee doing that.

**Senator Robinson:** I recall their testimony; I had suggested that as an option they consider the reserves, only trying to find resolution to the issue and Senator Sorvaag had further discussions with officials at NDSU and they didn't want to go down that road.

**(0:18:18)** Chairman Holmberg: call the roll on the amendment. 17.8101.02002 on HB 1024.

**A Roll Call vote was taken. Yea: 12; Nay: 2; Absent: 0.**

**Senator Dever: Moved a Do Pass as Amended. 2<sup>nd</sup> by Senator Gary Lee.**

**Chairman Holmberg:** Would you call the roll on a Do Pass as Amended on HB 1024?

**A Roll Call vote was taken. Yea: 13; Nay: 1; Absent: 0.**

**Chairman Holmberg:** The motion carried. **Senator Dever will carry the bill.**

The hearing was closed on HB 1024. **(0.20.06)**

There is further discussion on this job concerning other bills that will be addressed in the near future and also bills that may or may not be held in conference committee hearings.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 1, line 2, after the first semicolon insert "to provide a contingent appropriation;"

Page 1, line 2, after the second semicolon insert "to provide for transfers; to provide a statement of legislative intent;"

Page 1, line 4, after "APPROPRIATION" insert "- STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - 2015-17 BIENNIUM"

Page 1, after line 10, insert:

"COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	\$189,000

Subdivision 2."

Page 1, line 14, replace "2." with "3."

Page 1, replace lines 16 and 17 with:

"Grants - medical assistance	<u>\$9,000,000</u>
Total special funds	\$9,000,000"

Page 1, line 18, replace "3." with "4."

Page 1, replace line 23 with:

"Grand total special funds	\$9,518,500
----------------------------	-------------

**SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be necessary, to the agencies listed below for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019.

Subdivision 1.

ATTORNEY GENERAL

Salaries and wages	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 2.

STATE DEPARTMENT OF HEALTH

UN  
4/4/17  
2 of 12

Operating expenses \$1,420,000  
Total special funds \$1,420,000

Subdivision 3.

HIGHWAY PATROL

Field operations \$3,234,000  
Total special funds \$3,234,000

Subdivision 4.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Adult services \$500,000  
Total special funds \$500,000

Subdivision 5.

GAME AND FISH DEPARTMENT

Salaries and wages \$221,795  
Operating expenses 201,929  
Total special funds \$423,724

Subdivision 6.

PARKS AND RECREATION DEPARTMENT

Natural resources \$200,000  
Total special funds \$200,000

Subdivision 7.

DEPARTMENT OF TRANSPORTATION

Salaries and wages \$287,000  
Operating expenses 422,000  
Total special funds \$709,000

SECTION 2 TOTAL

Grand total special funds \$6,686,724

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019 - ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The office of the adjutant general may borrow the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period

beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other nonstate sources related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline."

CH  
4/6/17  
3 of 12

Page 2, line 1, after "**APPROPRIATION**" insert "- **THROUGH JUNE 30, 2019**"

Page 2, line 4, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 4, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 7, after the second "branch" insert "which were incurred after June 30, 2015,"

Page 2, line 7, remove "unlawful"

Page 2, line 8, replace "activity" with "criminal and infraction charges"

Page 2, line 8, after "pipeline" insert a comma

Page 2, line 11, after "other" insert "nonstate"

Page 2, line 13, after "**APPROPRIATION**" insert "- **THROUGH JUNE 30, 2019**"

Page 2, line 15, replace "\$859,000" with "\$1,027,000"

Page 2, line 16, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 17, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 21, after "indigents" insert "which were incurred after June 30, 2015,"

Page 2, line 21, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 22, after "pipeline" insert a comma

Page 2, line 24, after "other" insert "nonstate"

Page 2, after line 25, insert:

**SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE HISTORICAL SOCIETY - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$294,500, or so much of the sum as may be necessary, to the state historical society for the purpose of defraying litigation expenses, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 7. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE TREASURER - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,200,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing any court-ordered payments to a bankruptcy estate, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota*. The funding provided in this section is

UN  
4/6/17  
4 of 12

considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 8. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 9. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 10. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government or other nonstate sources for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. If the department of emergency services determines reimbursements from federal or other nonstate sources are not forthcoming, the department of emergency services and other state agencies that obtain a loan shall request a deficiency appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the amounts borrowed plus interest."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Summary of Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
State Treasurer				
Total all funds	\$0	\$0	\$15,200,000	\$15,200,000
Less estimated income	0	0	15,200,000	15,200,000
General fund	\$0	\$0	\$0	\$0
Attorney General				
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000



CM  
4/6/17  
5 of 12

General fund	\$0	\$0	\$0	\$0
Judicial Branch				
Total all funds	\$0	\$1,500,000	\$0	\$1,500,000
Less estimated income	0	1,500,000	0	1,500,000
General fund	\$0	\$0	\$0	\$0
Commission on Legal Counsel for Indigent				
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000
Less estimated income	0	859,000	168,000	1,027,000
General fund	\$0	\$0	\$0	\$0
State Department of Health				
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000
Less estimated income	0	0	1,420,000	1,420,000
General fund	\$0	\$0	\$0	\$0
Highway Patrol				
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000
Less estimated income	0	0	3,234,000	3,234,000
General fund	\$0	\$0	\$0	\$0
Department of Corrections and Rehab.				
Total all funds	\$0	\$0	\$500,000	\$500,000
Less estimated income	0	0	500,000	500,000
General fund	\$0	\$0	\$0	\$0
Adjutant General				
Total all funds	\$0	\$0	\$15,000,000	\$15,000,000
Less estimated income	0	0	15,000,000	15,000,000
General fund	\$0	\$0	\$0	\$0
State Historical Society				
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
Game and Fish Department				
Total all funds	\$0	\$0	\$423,724	\$423,724
Less estimated income	0	0	423,724	423,724
General fund	\$0	\$0	\$0	\$0
Parks and Recreation Department				
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
Department of Transportation				
Total all funds	\$0	\$0	\$709,000	\$709,000
Less estimated income	0	0	709,000	709,000
General fund	\$0	\$0	\$0	\$0
Bill total				
Total all funds	\$0	\$2,359,000	\$37,349,224	\$39,708,224
Less estimated income	0	2,359,000	37,349,224	39,708,224
General fund	\$0	\$0	\$0	\$0

**House Bill No. 1024 - State Treasurer - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Settlement payment			\$15,200,000	\$15,200,000
Total all funds	\$0	\$0	\$15,200,000	\$15,200,000
Less estimated income	0	0	15,200,000	15,200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

UN  
4/6/17  
6 of 12

**Department No. 120 - State Treasurer - Detail of Senate Changes**

	Provides Contingent Funding for Settlement Payments <sup>1</sup>	Total Senate Changes
Settlement payment	\$15,200,000	\$15,200,000
Total all funds	\$15,200,000	\$15,200,000
Less estimated income	15,200,000	15,200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Contingent funding of \$15.2 million from the strategic investment and improvements fund is added for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota.

**House Bill No. 1024 - Attorney General - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$200,000	\$200,000
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 125 - Attorney General - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Commission on Legal Counsel for Indigent - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Pipeline protest trials		\$859,000	\$168,000	\$1,027,000
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000
Less estimated income	0	859,000	168,000	1,027,000
General fund	\$0	\$0	\$0	\$0

FTE 0.00 0.00 0.00 0.00

CA  
4/6/17  
7 of 12

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Trials <sup>1</sup>	Total Senate Changes
Pipeline protest trials	\$168,000	\$168,000
Total all funds	\$168,000	\$168,000
Less estimated income	168,000	168,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Borrowing authority and the related appropriation authority are increased by \$168,000, from \$859,000 to \$1,027,000, for additional costs related to pipeline protest trials.

**House Bill No. 1024 - State Department of Health - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Operating expenses			\$1,420,000	\$1,420,000
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000
Less estimated income	0	0	1,420,000	1,420,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 301 - State Department of Health - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Operating expenses	\$1,420,000	\$1,420,000
Total all funds	\$1,420,000	\$1,420,000
Less estimated income	1,420,000	1,420,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$1,420,000 is added from special funds received for the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Highway Patrol - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Field operations			\$3,234,000	\$3,234,000
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000
Less estimated income	0	0	3,234,000	3,234,000
General fund	\$0	\$0	\$0	\$0

Ch  
4/6/17  
8 of 12

FTE 0.00 0.00 0.00 0.00

**Department No. 504 - Highway Patrol - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Field operations	\$3,234,000	\$3,234,000
Total all funds	\$3,234,000	\$3,234,000
Less estimated income	3,234,000	3,234,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$3,234,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Department of Corrections and Rehab. - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Adult services			\$500,000	\$500,000
Total all funds	\$0	\$0	\$500,000	\$500,000
Less estimated income	0	0	500,000	500,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 530 - Department of Corrections and Rehab. - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Adult services	\$500,000	\$500,000
Total all funds	\$500,000	\$500,000
Less estimated income	500,000	500,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$500,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Adjutant General - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Total all funds	\$0	\$0	\$0	\$0
Less estimated income	0	0	15,000,000	15,000,000
General fund	\$0	\$0	\$0	\$0

FTE 0.00 0.00 0.00 0.00

CA  
4/11/17  
9 of 12

**Department No. 540 - Adjutant General - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Total all funds	\$15,000,000	\$15,000,000
Less estimated income	15,000,000	15,000,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$15,000,000 is added from the proceeds of a loan for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - State Historical Society - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Operating expenses			\$294,500	\$294,500
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 701 - State Historical Society - Detail of Senate Changes**

	Adds Funding for Litigation Expenses <sup>1</sup>	Total Senate Changes
Operating expenses	\$294,500	\$294,500
Total all funds	\$294,500	\$294,500
Less estimated income	294,500	294,500
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$294,500 is added from the strategic investment and improvements fund for litigation expenses.

**House Bill No. 1024 - Game and Fish Department - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$221,795	\$221,795
Operating expenses			201,929	201,929
Total all funds	\$0	\$0	\$423,724	\$423,724
Less estimated income	0	0	423,724	423,724
General fund	\$0	\$0	\$0	\$0

FTE 0.00 0.00 0.00 0.00

CH  
4/6/17  
10 of 12

**Department No. 720 - Game and Fish Department - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$221,795	\$221,795
Operating expenses	201,929	201,929
<b>Total all funds</b>	<b>\$423,724</b>	<b>\$423,724</b>
Less estimated income	423,724	423,724
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$423,724 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Parks and Recreation Department - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Natural resources			\$200,000	\$200,000
<b>Total all funds</b>	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 750 - Parks and Recreation Department - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Natural resources	\$200,000	\$200,000
<b>Total all funds</b>	<b>\$200,000</b>	<b>\$200,000</b>
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Department of Transportation - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$287,000	\$287,000
Operating expenses			422,000	422,000

OK  
4/6/17  
11 of 12

Total all funds	\$0	\$0	\$709,000	\$709,000
Less estimated income	0	0	709,000	709,000
	\$0	\$0	\$0	\$0
General fund				
FTE	0.00	0.00	0.00	0.00

**Department No. 801 - Department of Transportation - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$287,000	\$287,000
Operating expenses	422,000	422,000
Total all funds	\$709,000	\$709,000
Less estimated income	709,000	709,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$709,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Other Changes - Senate Action**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Adds a \$189,000 appropriation to the Commission on Legal Counsel for Indigents related to costs associated with Section 25 of Article I of the Constitution of North Dakota relating to victims' rights (Marsy's Law).
- Increases the appropriation to the Department of Human Services for Medicaid grants by \$4 million, from \$5 million to \$9 million.

This amendment also:

- Adds a section to provide appropriations to various state agencies from special funds the agency received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.
- Adds a section to provide \$15 million of borrowing authority and the related appropriation authority through June 30, 2019, to the Adjutant General for expenses related to unlawful activity associated with the construction of the Dakota Access Pipeline.
- Increases the borrowing authority for the Commission on Legal Counsel for Indigents by \$168,000, from \$859,000 to \$1,027,000.
- Clarifies the purpose of the borrowing authority and appropriations to the judicial branch and the Commission on Legal Counsel for Indigents.
- Adds a section to provide one-time funding of \$294,500 from the strategic investment and improvements fund to the State Historical Society through June 30, 2019 related to litigation expenses.
- Adds a section to provide contingent funding of \$15.2 million from the strategic investment and improvements fund for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota.
- Provides for a transfer of \$155 million from the strategic investment and improvements fund to the general fund prior to the end of the 2015-17 biennium, resulting in an increase in the July 1, 2017, estimated beginning balance of the general fund.

OK  
4/6/17  
12 of 12

- Adds a section authorizing the Attorney General to transfer funds between certain line items during the 2015-17 biennium.
- Adds a section to provide legislative intent related to repayment sources for loans obtained to provide the necessary funding to respond to the unlawful activity associated with the construction of the Dakota Access Pipeline.



**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1024**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.8101.02002

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Robinson Seconded By Senator G. Lee

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Mathern		
Vice Chair Krebsbach			Senator Grabinger		
Vice Chair Bowman			Senator Robinson	Y	
Senator Erbele					
Senator Wanzek					
Senator Kilzer					
Senator G. Lee	Y				
Senator Dever	Y				
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) 3 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 4-6-17

Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1024

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.8101.02002

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Dever Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern	✓	✓
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek	✓				
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓	✓			
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 4-6-17

Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1024**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Dever Seconded By Lee

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern		✓
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek	✓				
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Dever

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1024, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1024 was placed on the Sixth order on the calendar.

Page 1, line 2, after the first semicolon insert "to provide a contingent appropriation;"

Page 1, line 2, after the second semicolon insert "to provide for transfers; to provide a statement of legislative intent;"

Page 1, line 4, after "**APPROPRIATION**" insert "**- STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - 2015-17 BIENNIUM**"

Page 1, after line 10, insert:

**"COMMISSION ON LEGAL COUNSEL FOR INDIGENTS**

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	\$189,000

Subdivision 2."

Page 1, line 14, replace "2." with "3."

Page 1, replace lines 16 and 17 with:

"Grants - medical assistance	<u>\$9,000,000</u>
Total special funds	\$9,000,000"

Page 1, line 18, replace "3." with "4."

Page 1, replace line 23 with:

"Grand total special funds	\$9,518,500
----------------------------	-------------

**SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be necessary, to the agencies listed below for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019.

Subdivision 1.

**ATTORNEY GENERAL**

Salaries and wages	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 2.

**STATE DEPARTMENT OF HEALTH**

Operating expenses	<u>\$1,420,000</u>
Total special funds	\$1,420,000

Subdivision 3.

HIGHWAY PATROL

Field operations	<u>\$3,234,000</u>
Total special funds	\$3,234,000

Subdivision 4.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Adult services	<u>\$500,000</u>
Total special funds	\$500,000

Subdivision 5.

GAME AND FISH DEPARTMENT

Salaries and wages	\$221,795
Operating expenses	<u>201,929</u>
Total special funds	\$423,724

Subdivision 6.

PARKS AND RECREATION DEPARTMENT

Natural resources	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 7.

DEPARTMENT OF TRANSPORTATION

Salaries and wages	\$287,000
Operating expenses	<u>422,000</u>
Total special funds	\$709,000

SECTION 2 TOTAL

Grand total special funds	\$6,686,724
---------------------------	-------------

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019 - ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The office of the adjutant general may borrow the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other nonstate sources related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline."

Page 2, line 1, after "APPROPRIATION" insert "- THROUGH JUNE 30, 2019"

Page 2, line 4, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 4, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 7, after the second "branch" insert "which were incurred after June 30, 2015,"

Page 2, line 7, remove "unlawful"

Page 2, line 8, replace "activity" with "criminal and infraction charges"

Page 2, line 8, after "pipeline" insert a comma

Page 2, line 11, after "other" insert "nonstate"

Page 2, line 13, after "**APPROPRIATION**" insert "**- THROUGH JUNE 30, 2019**"

Page 2, line 15, replace "\$859,000" with "\$1,027,000"

Page 2, line 16, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 17, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 21, after "indigents" insert "which were incurred after June 30, 2015,"

Page 2, line 21, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 22, after "pipeline" insert a comma

Page 2, line 24, after "other" insert "nonstate"

Page 2, after line 25, insert:

**"SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE HISTORICAL SOCIETY - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$294,500, or so much of the sum as may be necessary, to the state historical society for the purpose of defraying litigation expenses, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 7. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE TREASURER - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,200,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing any court-ordered payments to a bankruptcy estate, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota*. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 8. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 9. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in

section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 10. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government or other nonstate sources for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. If the department of emergency services determines reimbursements from federal or other nonstate sources are not forthcoming, the department of emergency services and other state agencies that obtain a loan shall request a deficiency appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the amounts borrowed plus interest."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Summary of Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
State Treasurer				
Total all funds	\$0	\$0	\$15,200,000	\$15,200,000
Less estimated income	0	0	15,200,000	15,200,000
General fund	\$0	\$0	\$0	\$0
Attorney General				
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
Judicial Branch				
Total all funds	\$0	\$1,500,000	\$0	\$1,500,000
Less estimated income	0	1,500,000	0	1,500,000
General fund	\$0	\$0	\$0	\$0
Commission on Legal Counsel for Indigent				
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000
Less estimated income	0	859,000	168,000	1,027,000
General fund	\$0	\$0	\$0	\$0
State Department of Health				
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000
Less estimated income	0	0	1,420,000	1,420,000
General fund	\$0	\$0	\$0	\$0
Highway Patrol				
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000
Less estimated income	0	0	3,234,000	3,234,000
General fund	\$0	\$0	\$0	\$0
Department of Corrections and				

Rehab.				
Total all funds	\$0	\$0	\$500,000	\$500,000
Less estimated income	0	0	500,000	500,000
General fund	\$0	\$0	\$0	\$0
Adjutant General				
Total all funds	\$0	\$0	\$15,000,000	\$15,000,000
Less estimated income	0	0	15,000,000	15,000,000
General fund	\$0	\$0	\$0	\$0
State Historical Society				
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
Game and Fish Department				
Total all funds	\$0	\$0	\$423,724	\$423,724
Less estimated income	0	0	423,724	423,724
General fund	\$0	\$0	\$0	\$0
Parks and Recreation Department				
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
Department of Transportation				
Total all funds	\$0	\$0	\$709,000	\$709,000
Less estimated income	0	0	709,000	709,000
General fund	\$0	\$0	\$0	\$0
Bill total				
Total all funds	\$0	\$2,359,000	\$37,349,224	\$39,708,224
Less estimated income	0	2,359,000	37,349,224	39,708,224
General fund	\$0	\$0	\$0	\$0

**House Bill No. 1024 - State Treasurer - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Settlement payment			\$15,200,000	\$15,200,000
Total all funds	\$0	\$0	\$15,200,000	\$15,200,000
Less estimated income	0	0	15,200,000	15,200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 120 - State Treasurer - Detail of Senate Changes**

	Provides Contingent Funding for Settlement Payments <sup>1</sup>	Total Senate Changes
Settlement payment	\$15,200,000	\$15,200,000
Total all funds	\$15,200,000	\$15,200,000
Less estimated income	15,200,000	15,200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Contingent funding of \$15.2 million from the strategic investment and improvements fund is added for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota.



**House Bill No. 1024 - Attorney General - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$200,000	\$200,000
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 125 - Attorney General - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Commission on Legal Counsel for Indigent - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Pipeline protest trials		\$859,000	\$168,000	\$1,027,000
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000
Less estimated income	0	859,000	168,000	1,027,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Trials <sup>1</sup>	Total Senate Changes
Pipeline protest trials	\$168,000	\$168,000
Total all funds	\$168,000	\$168,000
Less estimated income	168,000	168,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Borrowing authority and the related appropriation authority are increased by \$168,000, from \$859,000 to \$1,027,000, for additional costs related to pipeline protest trials.

**House Bill No. 1024 - State Department of Health - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Operating expenses			\$1,420,000	\$1,420,000
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000
Less estimated income	0	0	1,420,000	1,420,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 301 - State Department of Health - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Operating expenses	\$1,420,000	\$1,420,000
Total all funds	\$1,420,000	\$1,420,000
Less estimated income	1,420,000	1,420,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$1,420,000 is added from special funds received for the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Highway Patrol - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Field operations			\$3,234,000	\$3,234,000
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000
Less estimated income	0	0	3,234,000	3,234,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 504 - Highway Patrol - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Field operations	\$3,234,000	\$3,234,000
Total all funds	\$3,234,000	\$3,234,000
Less estimated income	3,234,000	3,234,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$3,234,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Department of Corrections and Rehab. - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Adult services			\$500,000	\$500,000
Total all funds	\$0	\$0	\$500,000	\$500,000
Less estimated income	0	0	500,000	500,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 530 - Department of Corrections and Rehab. - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Adult services	\$500,000	\$500,000
Total all funds	\$500,000	\$500,000
Less estimated income	500,000	500,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$500,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Adjutant General - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Total all funds	\$0	\$0	\$0	\$0
Less estimated income	0	0	15,000,000	15,000,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 540 - Adjutant General - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Total all funds	\$15,000,000	\$15,000,000
Less estimated income	15,000,000	15,000,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$15,000,000 is added from the proceeds of a loan for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - State Historical Society - Senate Action**

Base	House	Senate	Senate
------	-------	--------	--------

	Budget	Version	Changes	Version
Operating expenses			\$294,500	\$294,500
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 701 - State Historical Society - Detail of Senate Changes**

	Adds Funding for Litigation Expenses <sup>1</sup>	Total Senate Changes
Operating expenses	\$294,500	\$294,500
Total all funds	\$294,500	\$294,500
Less estimated income	294,500	294,500
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$294,500 is added from the strategic investment and improvements fund for litigation expenses.

**House Bill No. 1024 - Game and Fish Department - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$221,795	\$221,795
Operating expenses			201,929	201,929
Total all funds	\$0	\$0	\$423,724	\$423,724
Less estimated income	0	0	423,724	423,724
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 720 - Game and Fish Department - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$221,795	\$221,795
Operating expenses	201,929	201,929
Total all funds	\$423,724	\$423,724
Less estimated income	423,724	423,724
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$423,724 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Parks and Recreation Department - Senate Action**

Base	House	Senate	Senate
------	-------	--------	--------

	Budget	Version	Changes	Version
Natural resources			\$200,000	\$200,000
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 750 - Parks and Recreation Department - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Natural resources	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Department of Transportation - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$287,000	\$287,000
Operating expenses			422,000	422,000
Total all funds	\$0	\$0	\$709,000	\$709,000
Less estimated income	0	0	709,000	709,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 801 - Department of Transportation - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$287,000	\$287,000
Operating expenses	422,000	422,000
Total all funds	\$709,000	\$709,000
Less estimated income	709,000	709,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$709,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Other Changes - Senate Action**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Adds a \$189,000 appropriation to the Commission on Legal Counsel for Indigents related to costs associated with Section 25 of Article I of the Constitution of North Dakota relating to victims' rights (Marsy's Law).
- Increases the appropriation to the Department of Human Services for Medicaid grants by \$4 million, from \$5 million to \$9 million.

This amendment also:

- Adds a section to provide appropriations to various state agencies from special funds the agency received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.
- Adds a section to provide \$15 million of borrowing authority and the related appropriation authority through June 30, 2019, to the Adjutant General for expenses related to unlawful activity associated with the construction of the Dakota Access Pipeline.
- Increases the borrowing authority for the Commission on Legal Counsel for Indigents by \$168,000, from \$859,000 to \$1,027,000.
- Clarifies the purpose of the borrowing authority and appropriations to the judicial branch and the Commission on Legal Counsel for Indigents.
- Adds a section to provide one-time funding of \$294,500 from the strategic investment and improvements fund to the State Historical Society through June 30, 2019 related to litigation expenses.
- Adds a section to provide contingent funding of \$15.2 million from the strategic investment and improvements fund for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota*.
- Provides for a transfer of \$155 million from the strategic investment and improvements fund to the general fund prior to the end of the 2015-17 biennium, resulting in an increase in the July 1, 2017, estimated beginning balance of the general fund.
- Adds a section authorizing the Attorney General to transfer funds between certain line items during the 2015-17 biennium.
- Adds a section to provide legislative intent related to repayment sources for loans obtained to provide the necessary funding to respond to the unlawful activity associated with the construction of the Dakota Access Pipeline.

**2017 CONFERENCE COMMITTEE**

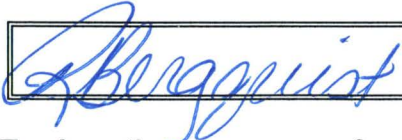
**HB 1024**

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1024  
4/18/2017  
30190

Subcommittee  
 Conference Committee



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions; to provide a contingent appropriation; to provide for borrowing authority; to provide for transfers; to provide a statement of legislative intent; and to declare an emergency.

## Minutes:

Attachment 1

**Chairman Delzer:** We'll call this meeting to order, Senator Dever if you would like to walk us through the changes in the bill.

**Chairman Senator Dever:** We will be working from the .02002 Christmas tree version. (see attachment 1) Subdivision 1 of section 1; commission on legal counsel for indigents, and that 189 thousand is from Marcy's Law. The 250 for the department of health was not changed. The house had under grants for Medicaid 5 million dollars, we restored that to the 9 million and the 9 million of federal funds that are matching that are in the DHS budget. Adjutant general money is the same as it came from the house. Section 2 those various agencies; that's the mater of giving the authority to the adjutant general to distribute those funds to the various agencies that supported in the protest.

**Chairman Delzer:** That's not the same money that we sent over I don't believe.

**Chairman Senator Dever:** This was an amendment to the bill made in the senate and those monies were for that purpose.

**Chairman Delzer:** That's out of the 15 that you were given.

**Chairman Senator Dever:** Section 3 is 15 million dollars of borrowing authority, section 4 and 5 jut changes to clarify that the protest started at some date and anything after the current biennium though the next biennium. There was some question about unlawful activities so we changed it to criminal and infraction charges. I think, in legal terms there's just a different connotation.



Section 6 involves the legal fees involved with the lawsuit over the heritage center, 294 thousand. Section 7 is the lawsuit and that is estimated at 15.2 million. Section 8 is the transfer for the SIIF fund, 155 million dollars. Section 9 is the authority for the attorney general to transfer some legal services money from the higher ed to other legal services. Section 10 it the legislative intent that we are trying to recover the expenses from the federal government and I think it says somewhere or other sources.

**Chairman Delzer:** And why is that?

**Chairman Senator Dever:** I think there was an offer at one point from the pipeline company to pay those and if that becomes how they want to approach it we would prefer to not stand in the way. We weren't working for the pipelines we were working for law and order.

**Chairman Delzer:** They did everything legal, I don't think we should be any part of that. I think we are short about 8.1 million for treasury to finish out the 12% property tax relief from the allotment and we probably have to put that in here as well. We don't think there would be too much trouble holding the emergency clause

**7:00** The legal fees from the historical society shouldn't be coming out of SIIF. They've got the money sitting there from the building project because that's why they are being sued. After the judge is done, if they lose and can't recoup they can come back two years from now and ask for something to cover that up.

**Chairman Senator Dever:** We did ask about that and they said they had 389 thousand left in the building fund, that will be necessary to complete some item still on the punch list, and those funds are private donation.

**Chairman Delzer:** But that's what they are fighting about in the lawsuit, they must have money set aside for the lawsuit.

**Chairman Senator Dever:** It was out understanding that the 389 was what is left.

**Chairman Delzer:** Further discussion? Another thing, the one that in here for the repayment of the lawsuit. There's some language in here, they may want to change the language about when they can pay that. It may need to go back to the attorney general's budget so that it could be paid out of there.

**Chairman Senator Dever:** We're not ready to act on that now?

**Representative Kreidt:** Did the historical society have a contingency fund when they started this?

**Chairman Delzer:** That's what we understood when we dealt with it.

**Chairman Senator Dever:** I think we would have to ask for that clarification.

**Chairman Delzer:** The 9 million for human services, we are doing some checking on that.

**Chairman Senator Dever:** How can we not do what we can't not do?

**Chairman Delzer:** Anybody have any thoughts on the 8.1 for the treasury for the tax relief?

**Chairman Senator Dever:** I think we have to do that somewhere; I was under the understanding that they were going to do the in OMB but if it's done here then it's got the emergency clause.

**Senator Lee:** How did we come up with the number? (8.1)

**Chairman Delzer:** Treasury's office has been looking at that, first it was 10 something; judging it by what they are getting in. DO they have pretty solid numbers?

**Adam Mathiak, Legislative council:** They are double checking them but they feel pretty confident on those.


**Chairman Delzer:** We'll probably set this up for tomorrow afternoon then. Further discussion? We'll close this conference committee until tomorrow.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

HB 1024  
4/20/2017  
30252

Subcommittee  
 Conference Committee



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions; to provide a contingent appropriation; to provide for borrowing authority; to provide for transfers; to provide a statement of legislative intent; and to declare an emergency.

## Minutes:



**Chairman Delzer:** Attendance was taken and all are present. We will review the amendment 17.8101.02006. What these would do is leave the 189 in for the counsel for indigents. The 9 million for DHS, state treasury there's a line out of there for 8.1 million and that is to cover the property tax in this current biennium. Section 2 add appropriation special funds for adjutant general loan proceeds; I believe that is what came out of the senate. Section 3 adds another 15 million to the borrowing authority to the adjutant general for the unlawful activity associated with the construction of the Dakota access pipeline. The rest of that is the change of language. Section 6, page 4, would be the continuing appropriation out of the SIIF fund, attorney general. For the sum of 15.2 million for the purpose of providing any court-ordered payments to the bankruptcy estate or payments to be made pursuant to the terms of the settlement agreement approved by the order of the court, pending the outcome of *PW Enterprises, Inc. v. state of ND* or pursuant to the terms of a settlement agreement. I think we had to switch it over to the attorney general and change the language so that they could do a settlement as well as court ordered.

**3:40 Senator Dever:** I was thinking in this section we need to increase the dollar amount.

**Chairman Delzer:** There was some talk about it but I think the budget for the attorney general is also going to have an increased amount in it when it comes out of conference committee. I thought the understanding was we would do the 15.2 out here and if something has to be changed we could consider it in the attorney general or OMB if it has to be.

**Senator Lee:** On page 11 where is has the narrative of the changes, third bullet from the bottom, Attorney general to transfer funds from between certain line items during the

2017/19 biennium. Does that mean they could transfer money to cover that addition if they wanted to?

**Chairman Delzer:** Brady, that would be section 8 of page 4 which is strictly listed for the transfer that is going to happen this biennium of 75 thousand from the contracted higher ed legal services, and 5 thousand from continuation of contracted higher ed legal services. And that is for the return of fugitives and the 75 thousand is for the litigation fees.

**6:00** Section 7; is what the senate has put in to balance the budget for the 2015/17 biennium, 155 million from the SIIF fund. Section 9 deals with the intent of the 65<sup>th</sup> legislative assembly to seek reimbursement from the federal government.

**7:40** Section 10 is what we did during the special session, the special session in order to get to zero ending fund balance at the end of 2015/17, we said we would take up to 100 million dollars out of the Bank of ND or so much as needed. The 155, would leave us with about 10 million dollars ending balance but that wouldn't happen unless we put section 10 in. That's pretty much what the amendment does.

**8:45 Senator Dever:** The deletion of legal fees for the historical society, I think we need to get some sense from them of how they would deal with that if we don't leave them some money. If you would allow that, one of my conversations with Dave, the money that is there now, the 387 thousand dollars that we have talked about, is actually money in the foundation. We don't have the ability to appropriate that from there.

**Chairman Delzer:** They kind of co-mingled that money, they do have populating money between now and the end of the biennium. I don't know if they have any turn back expected or not. They will have money at the start of the next biennium. When this is settled they can come back in with the exact number.

**Senator Dever:** I just feel more comfortable if they had the chance to speak on that.

**Chairman Delzer:** This is not a hearing.

**Senator Dever:** The 15.2, I would feel more comfortable if I knew it was going to be somewhere else. I think we need to confirm that before we meet again.

**Chairman Delzer:** I don't know that we are going to know what's necessary there at all.

**Senator Dever:** And I think one of the considerations is that this bill has an emergency clause on it.

**Chairman Delzer:** I don't know how comfortable we would be putting any more money in there when we look overall and where we are at.

**Senator Dever:** All of the money in this bill is SIIF money.

**Chairman Delzer:** We are going to have to empty the SIIF fund out at the end of this biennium and we are going to have to take some of next times ongoing SIIF money as it

comes in to balance the books next time, there just isn't any money out there. Anything further?

**Sheila Peterson, OMB:** There was a sentence in section 9 of the bill about repaying the loans of Bank of ND, the bank had asked the senate group to put in. It says if the department of emergency services determines with the reimbursement from federal or other non-state sources, are not forth coming the department of emergency services and other state agency can request a deficiency appropriation from the next legislative session. The reason that was important for the Bank of ND was so that these loans wouldn't show as bad debts on their balance sheet. I am just wondering if legislative council had a conversation with the bank about their thoughts of leaving that last sentence off about the backup plan.

**Chairman Delzer:** Council didn't have any part of this they just did what we asked them to do. The fact is if you do this they can say well you got it covered why should we ever worry about it. There is language everywhere else that says they can come and ask for deficiency appropriation for loans from emergency services. I don't see why it would need to be here at all. I really weaken the effort of trying to get the feds to recognize that a good share of the reason for the cost was partly caused by the federal government. Further discussion?

# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

HB 1024  
4/25/2017  
30287

- Subcommittee  
 Conference Committee

*Bruggust*

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions; to provide a contingent appropriation; to provide for borrowing authority; to provide for transfers; to provide a statement of legislative intent; and to declare an emergency.

## Minutes:

*Att. 1-4*

### Bad recoding for the first 5 minutes, cord wasn't entirely plugged in.

**Chairman Delzer:** All committee members are present. I handed out some new language, on page 4 of amendment .02007 (see attachment 1) This is talking about the legislative intent for reimbursement for loan repayment from the federal government; including loans of 17 million previously authorized, loans in the Senate bill 2174 as already approved, and loans authorized in section 3, 4 and 5. We want to make sure that we were granted part as part of the emergency services we are better covered for the rest.

**3:10 Representative Delmore:** If someone decided to give us some of part of the money does the budget section have the authority to accept it?

**Chairman Delzer:** We do have another amendment .02008 (see attachment 2) to cover that situation. If it was cash it could be used against the loan, if it's other things the legislative assembly would convey the land or noncash assets and use proceeds for repayments on any remaining loans.

**Senator Dever:** The 17 million that is in there is that for the adjutant general?

**Chairman Delzer:** That is the money that was previously approved by the emergency commission. SB 2174 does the 8 million plus 3 million for Morton county, the section 3 is for amount we may still have to approve.

And then number 3 on the amendment says the next legislature would deal with anything that wasn't cash. Allen is that a proper description?

**Allen Knudson, Legislative Council:** It is.

**Senator Lee:** If I could ask Allen a question, section 8 of the 3000 version of the bill, is that what we visited about in terms of the bank and that satisfying the need in terms of what they are being covered for?

**Mr. Knudson, LC:** I did check and the bank was ok with that language.

**Chairman Delzer:** Looking at the 3000 of the bill (see attachment 3), we had some discussion on how much conference committee should do for the commission of illegal indigents. I think 3000 versions also has something in here for historical society?

**Adam Mathiak, Legislative Council:** The commission on council of illegal indigents is in section 1, Senate had approved 189 thousand dollars, there's also that loan authorization.

**Senator Dever:** Section 6 bottom of page 4 (see attachment 3)

**Chairman Delzer:** So there's 294 thousand in there and that covers through the next biennium but I have problems putting next time's budget authority in a deficiency appropriation bill.

**Senator Lee:** I am not sure that we want to put that money in there for the next biennium but paying them for what they have done so far, I think we have already paid about 23 thousand of the 75 thousand they owed. Covering the remainder of that would be reasonable thing to do.

**Chairman Delzer:** What about the council of illegal indigents? Could we take that out of there and do like 130 and 50?

**Senator Dever:** I understand historical society is part this time, part next, I thought the 189 for Marcy's law is a little closer to their actual expenditures.

**Chairman Delzer:** When they did it on the house side, Marcy's law and some of the DAPL stuff was 189 thousand.

**Senator Dever:** I would like to review a letter again I had gotten again and check on that.

**Chairman Delzer:** Let's not fight over 50 thousand, just put it in there. I can live with the 189 and 50 thousand.

**Senator Dever:** I think those historical society expenses are real they just haven't been acquired yet.

**Chairman Delzer:** That's entirely up to the emergency commission and budget section.

And then we do have an issues of how much borrowing authority we want to give them. I passed a letter out dealing with what it has cost to date. (see attachment 4) Then we asked what is driving that extra expectations. If you look at that you'll see that the cost to date is

26,151,000 and if you look up on top the 3 million to Morton county hasn't been spent yet. If you take that off the difference between the 38 million and the 26 million, you're sitting at about 9 million. The judicial branch is at 43 thousand and they are expecting 105 thousand. The commission on legal council is at 75 hundred so far and they are asking for 1,027,000, that's worst case scenario. We can give them borrowing authority and they will only use what they need. If they come back in June, then we can take another look at where we are at.

**Senator Lee:** How much does the emergency commission have in their budget?

**Chairman Delzer:** They have 350 thousand contingency monies, but this isn't contingency money. This is borrowing from the Bank of ND as an essence it'll come back as a deficiency appropriation the next year.

**Senator Dever:** Historical is different than that?

**Chairman Delzer:** Yes, you guys had it as three different borrowing authorities. I think we should just do one to DHS and then they can bill them. Is there a problem crossing branches to do that?

**Mr. Knudson, LC:** That would work.

**Chairman Delzer:** The other issues are having the 8.1 for the treasure for the 12% and we have to have the language making it a solid draw of 100 million from the Bank of ND for 2015/17 in order to give us an ending fund balance for 2015/17.

**Senator Dever:** I think I could do the 50 for historical, 189 for Marcy's law, the 15.872 on the lawsuit, and knowing they won't get anything more then what they can use and not for anything else. As long as the bank is satisfied with the language and we have the language for a non-state source (see attachment 2).

**Chairman Delzer:** We are sitting with 25 there already, now they've spent 26, they would have used part of the 3 in order to do that.

**Mr. Knudson, LC:** That's what been claimed but it wasn't all paid out.

**Chairman Delzer:** I would almost think that they would have been billed already. I would think maybe that 10 million would be comfortable. If the emergency commission could give them more in June. That borrowing authority could carry over to the next biennium, couldn't it Allen?

**Mr. Knudson, LC:** Yes

**Chairman Delzer:** Don't know if they need a full million, we can leave that there but I don't think they would need all that. Whatever the committee is comfortable with; the 189, the 50 for the historical and then whatever we decide on for section 3.

**Senator Dever:** I think we have to allow the amounts that have been acquired.



**Chairman Delzer:** This was yesterday when they asked. I would think 10 would give them quite a bit.

**Senator Lee:** So if we cover the difference here, is that what you are suggesting?

**Chairman Delzer:** These are suggestions, if we didn't give them quite enough they would have to come back to get more and then we would have a better idea of it. If we add that 10 we would be at 35 for DAPL, and 3 for Morton county.

**Senator Dever:** They are asking for another 43 on top of that?

**Senator Robinson:** In June they come back, you don't have a cap on what they can borrow?

**Chairman Delzer:** That's a determination of the emergency commission and I don't think that goes through the budget section at all.

**Senator Dever:** We'll put that together with 10 and then we will take another look at that.

**Senator Robinson:** We can still meet this evening if the amendment is done.

**Chairman Delzer:** We will adjourn until the call of the chair.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1024  
4/25/2017  
30295

- Subcommittee  
 Conference Committee

*Request*

## **Explanation or reason for introduction of bill/resolution:**

A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions; to provide a contingent appropriation; to provide for borrowing authority; to provide for transfers; to provide a statement of legislative intent; and to declare an emergency.

## **Minutes:**

*Att. 1*

**Chairman Delzer:** All members of the committee are present. Adam if you'd go through the amendment 17.8101.02009, we'll use the marked up version.

**Adam Mathiak, Legislative Council:** Reviewing the newest amendment, using the marked up version (see attachment 1)

**Chairman Delzer** Those numbers all came from the Senate but earlier this afternoon the judicial branch was considerably less than that and the indigent defense was for worst case scenario. So do we want to leave those numbers? That adds up to 9 million and the adjutant general is going to use a good share of this.

**Senator Dever:** Did they offer a different number?

**Chairman Delzer:** Well the number that they give, the judicial branch was like 75 thousand.

**Representative Delmore:** A lot of that are things that they found afterwards, I would just leave the numbers as they are and hope they don't need all that. They have to prove that they spent this money before they can get any of it.

**Senator Dever:** They can't borrow more than they need.

**Chairman Delzer:** No and if they do need more they would have to come to the emergency commission and ask for it.

**4:30 Adam Mathiak, Legislative Council:** Continuing on with page 5 of the marked up version.

**6:45 Chairman Delzer:** Allen I think the last number we are looking at was 10 million?

**Allen Knudson, Legislative Council:** For the end of the 2015/17 biennium just right around 10 million.

**Chairman Delzer:** And without this section we would be left with 1 dollar.

**Senator Dever:** Just to refresh section 3, that replaced what number?

**Chairman Delzer:** That replaced the 15, 1 ½ and the 1 million 27 thousand.

**Senator Dever: Make a motion for the senate to recede and amend with .02009**

**Representative Kreidt: Second**

**A Roll Call vote was taken. Yea: 6      Nay: 0      Absent: 0**

**Motion Carries**

**Meeting was adjourned**

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

That the Senate recede from its amendments as printed on pages 1581-1591 of the House Journal and pages 1296-1306 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 1, replace "an appropriation" with "appropriations"

Page 1, line 2, after the first semicolon insert "to provide a contingent appropriation; to amend and reenact section 4 of chapter 552 of the 2015 Session Laws, relating to Bank of North Dakota transfers to the state general fund;"

Page 1, line 2, after the second semicolon insert "to provide for transfers; to provide statements of legislative intent;"

Page 1, line 4, after "APPROPRIATION" insert "- STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - 2015-17 BIENNIUM"

Page 1, after line 10, insert:

"STATE TREASURER

Property tax relief credits	<u>\$8,100,000</u>
Total special funds	\$8,100,000

Subdivision 2.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	\$189,000

Subdivision 3."

Page 1, line 14, replace "2." with "4."

Page 1, replace lines 16 and 17 with:

"Grants - Medical assistance	<u>\$9,000,000</u>
Total special funds	\$9,000,000"

Page 1, line 18, replace "3." with "5."

Page 1, after line 21 insert:

"Subdivision 6.

STATE HISTORICAL SOCIETY

Litigation expenses	<u>\$50,000</u>
Total special funds	\$50,000"

Page 1, replace line 23 with:

4/25/17 UP  
2 of 12

"Grand total special funds

\$17,668,500"

Page 2, replace lines 1 through 25 with:

**"SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be necessary, to the agencies listed below for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019.

Subdivision 1.

ATTORNEY GENERAL

Salaries and wages	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 2.

JUDICIAL BRANCH

Pipeline protest trials	<u>\$1,500,000</u>
Total special funds	\$1,500,000

Subdivision 3.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Pipeline protest trials	<u>\$1,027,000</u>
Total special funds	\$1,027,000

Subdivision 4.

STATE DEPARTMENT OF HEALTH

Operating expenses	<u>\$1,420,000</u>
Total special funds	\$1,420,000

Subdivision 5.

HIGHWAY PATROL

Field operations	<u>\$3,234,000</u>
Total special funds	\$3,234,000

Subdivision 6.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Adult services	<u>\$500,000</u>
Total special funds	\$500,000

Subdivision 7.

4/25/17 DM  
308 RZ

GAME AND FISH DEPARTMENT

Salaries and wages	\$221,795
Operating expenses	<u>201,929</u>
Total special funds	\$423,724

Subdivision 8.

PARKS AND RECREATION DEPARTMENT

Natural resources	\$200,000
Total special funds	\$200,000

Subdivision 9.

DEPARTMENT OF TRANSPORTATION

Salaries and wages	\$287,000
Operating expenses	<u>422,000</u>
Total special funds	\$709,000

SECTION 2 TOTAL

Grand total special funds	\$9,213,724
---------------------------	-------------

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019 - ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The office of the adjutant general may borrow the sum of \$10,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from the federal government related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline.

**SECTION 4. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ATTORNEY GENERAL - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,872,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing any court-ordered payments to a bankruptcy estate or payments to be made pursuant to the terms of a settlement agreement approved by order of the court, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota or pursuant to the terms of a settlement agreement approved by order of the court. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

4/25/17 DV  
9 of 12

**SECTION 5. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 6. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 7. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in section 3 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the legislative assembly that provisions of section 54-16-13 apply to the loans, except that emergency commission approval does not apply.

**SECTION 8. LEGISLATIVE INTENT - COST REIMBURSEMENT - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that:

1. The department of emergency services and the governor accept reimbursement in the form of land, cash, or other assets from nonstate sources for state costs incurred relating to unlawful activity associated with the construction of the Dakota access pipeline.
2. Any reimbursements received be used to repay the Bank of North Dakota loans authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in section 3 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline.
3. If the department of emergency services or the governor receive land or other noncash assets as reimbursement, the department of emergency services or the governor request authorization from the sixty-sixth

7057110  
5/8/12

legislative assembly to convey the land or noncash assets and use any proceeds for repayment of any remaining outstanding loans.

**SECTION 9. AMENDMENT.** Section 4 of chapter 552 of the 2015 Session Laws is amended and reenacted as follows:

**SECTION 4. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND.** ~~If, during~~ During the period beginning with the effective date of this Act and ending June 30, 2017, the director of the office of management and budget determines the state general fund will not have a projected positive June 30, 2017, balance, the industrial commission shall transfer \$100,000,000, ~~or so much of the sum as may be necessary,~~ from the earnings and accumulated and undivided profits of the Bank of North Dakota to the state general fund. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. ~~The sum of the amounts transferred may not exceed the lesser of \$100,000,000 or the amount necessary to provide for a positive June 30, 2017, general fund balance."~~

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Summary of Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
<b>State Treasurer</b>						
Total all funds	\$0	\$0	\$0	\$0	\$15,200,000	(\$15,200,000)
Less estimated income	0	0	0	0	15,200,000	(15,200,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Attorney General</b>						
Total all funds	\$0	\$0	\$16,072,000	\$16,072,000	\$200,000	\$15,872,000
Less estimated income	0	0	16,072,000	16,072,000	200,000	15,872,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Judicial Branch</b>						
Total all funds	\$0	\$1,500,000	\$0	\$1,500,000	\$1,500,000	\$0
Less estimated income	0	1,500,000	0	1,500,000	1,500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Commission on Legal Counsel for Indigent</b>						
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000	\$1,027,000	\$0
Less estimated income	0	859,000	168,000	1,027,000	1,027,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Department of Health</b>						
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000	\$1,420,000	\$0
Less estimated income	0	0	1,420,000	1,420,000	1,420,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Highway Patrol</b>						
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000	\$3,234,000	\$0
Less estimated income	0	0	3,234,000	3,234,000	3,234,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Department of Corrections and Rehab.</b>						
Total all funds	\$0	\$0	\$500,000	\$500,000	\$500,000	\$0
Less estimated income	0	0	500,000	500,000	500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Adjutant General</b>						



4/25/17 D  
6/28/17

Total all funds	\$0	\$0	\$10,000,000	\$10,000,000	\$15,000,000	(\$5,000,000)
Less estimated income	0	0	10,000,000	10,000,000	15,000,000	(5,000,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
State Historical Society						
Total all funds	\$0	\$0	\$0	\$0	\$294,500	(\$294,500)
Less estimated income	0	0	0	0	294,500	(294,500)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Game and Fish Department						
Total all funds	\$0	\$0	\$423,724	\$423,724	\$423,724	\$0
Less estimated income	0	0	423,724	423,724	423,724	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Parks and Recreation Department						
Total all funds	\$0	\$0	\$200,000	\$200,000	\$200,000	\$0
Less estimated income	0	0	200,000	200,000	200,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Department of Transportation						
Total all funds	\$0	\$0	\$709,000	\$709,000	\$709,000	\$0
Less estimated income	0	0	709,000	709,000	709,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Bill total						
Total all funds	\$0	\$2,359,000	\$32,726,724	\$35,085,724	\$39,708,224	(\$4,622,500)
Less estimated income	0	2,359,000	32,726,724	35,085,724	39,708,224	(4,622,500)
General fund	\$0	\$0	\$0	\$0	\$0	\$0

**House Bill No. 1024 - Attorney General - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$200,000	\$200,000	\$200,000	
Settlement Payment			15,872,000	15,872,000		15,872,000
Total all funds	\$0	\$0	\$16,072,000	\$16,072,000	\$200,000	\$15,872,000
Less estimated income	0	0	16,072,000	16,072,000	200,000	15,872,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 125 - Attorney General - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Provides Contingent Funding for Settlement Payment <sup>2</sup>	Total Conference Committee Changes
Salaries and wages	\$200,000		\$200,000
Settlement Payment		15,872,000	15,872,000
Total all funds	\$200,000	\$15,872,000	\$16,072,000
Less estimated income	200,000	15,872,000	16,072,000
General fund	\$0	\$0	\$0
FTE	0.00	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

<sup>2</sup> Contingent funding of \$15,872,000 from the strategic investment and improvements fund is added for

4/25/17 DP  
7 of 12

any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota. The Senate appropriated \$15.2 million to the State Treasurer.

**House Bill No. 1024 - Commission on Legal Counsel for Indigent - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Pipeline protest trials		\$859,000	\$168,000	\$1,027,000	\$1,027,000	
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000	\$1,027,000	\$0
Less estimated income	0	859,000	168,000	1,027,000	1,027,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Trials <sup>1</sup>	Total Conference Committee Changes
Pipeline protest trials	\$168,000	\$168,000
Total all funds	\$168,000	\$168,000
Less estimated income	168,000	168,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding is increased by \$168,000, from \$859,000 to \$1,027,000, for additional costs related to pipeline protest trials, the same as the Senate, except that the commission will access the loan proceeds through the Adjutant General rather than directly from a Bank of North Dakota loan.

**House Bill No. 1024 - State Department of Health - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Operating expenses			\$1,420,000	\$1,420,000	\$1,420,000	
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000	\$1,420,000	\$0
Less estimated income	0	0	1,420,000	1,420,000	1,420,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 301 - State Department of Health - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Operating expenses	\$1,420,000	\$1,420,000
Total all funds	\$1,420,000	\$1,420,000
Less estimated income	1,420,000	1,420,000
	\$0	\$0

9/25/17 DP  
8 of 12

General fund		
FTE	0.00	0.00

<sup>1</sup> Funding of \$1,420,000 is added from special funds received for the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Highway Patrol - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Field operations			\$3,234,000	\$3,234,000	\$3,234,000	
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000	\$3,234,000	\$0
Less estimated income	0	0	3,234,000	3,234,000	3,234,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 504 - Highway Patrol - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Field operations	\$3,234,000	\$3,234,000
Total all funds	\$3,234,000	\$3,234,000
Less estimated income	3,234,000	3,234,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$3,234,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Department of Corrections and Rehab. - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Adult services			\$500,000	\$500,000	\$500,000	
Total all funds	\$0	\$0	\$500,000	\$500,000	\$500,000	\$0
Less estimated income	0	0	500,000	500,000	500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 530 - Department of Corrections and Rehab. - Detail of Conference Committee Changes**

Adds Funding for Pipeline Protest Law	Total Conference Committee

4/25/12 DP  
9/24/12

	Enforcement Support <sup>1</sup>	Changes
Adult services	\$500,000	\$500,000
Total all funds	\$500,000	\$500,000
Less estimated income	500,000	500,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$500,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Adjutant General - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Pipeline protest costs			\$10,000,000	\$10,000,000		\$10,000,000
Total all funds	\$0	\$0	\$10,000,000	\$10,000,000	\$0	\$10,000,000
Less estimated income	0	0	10,000,000	10,000,000	15,000,000	(5,000,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 540 - Adjutant General - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Pipeline protest costs	\$10,000,000	\$10,000,000
Total all funds	\$10,000,000	\$10,000,000
Less estimated income	10,000,000	10,000,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$10 million is added from the proceeds of a loan for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate provided \$15 million.

**House Bill No. 1024 - Game and Fish Department - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$221,795	\$221,795	\$221,795	
Operating expenses			201,929	201,929	201,929	
Total all funds	\$0	\$0	\$423,724	\$423,724	\$423,724	\$0
Less estimated income	0	0	423,724	423,724	423,724	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

4/25/17 DA  
100812

**Department No. 720 - Game and Fish Department - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Salaries and wages	\$221,795	\$221,795
Operating expenses	201,929	201,929
<b>Total all funds</b>	<b>\$423,724</b>	<b>\$423,724</b>
Less estimated income	423,724	423,724
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$423,724 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Parks and Recreation Department - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Natural resources			\$200,000	\$200,000	\$200,000	
Total all funds	\$0	\$0	\$200,000	\$200,000	\$200,000	\$0
Less estimated income	0	0	200,000	200,000	200,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 750 - Parks and Recreation Department - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Natural resources	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Department of Transportation - Conference Committee Action**

Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
-------------	---------------	------------------------------	------------------------------	----------------	----------------------

4/25/17 DP  
11 of 12

Salaries and wages			\$287,000	\$287,000	\$287,000	
Operating expenses			422,000	422,000	422,000	
Total all funds	\$0	\$0	\$709,000	\$709,000	\$709,000	\$0
Less estimated income	0	0	709,000	709,000	709,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 801 - Department of Transportation - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Salaries and wages	\$287,000	\$287,000
Operating expenses	422,000	422,000
Total all funds	\$709,000	\$709,000
Less estimated income	709,000	709,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$709,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Other Changes - Conference Committee Action**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Appropriates \$8.1 million to the State Treasurer for property tax relief credit payments. Neither the House nor the Senate included this funding.
- Appropriates \$189,000 to the Commission on Legal Counsel for Indigents related to costs associated with Section 25 of Article I of the Constitution of North Dakota relating to victims' rights (Marsy's Law), the same as the Senate.
- Increases the appropriation to the Department of Human Services for Medicaid grants by \$4 million, from \$5 million to \$9 million. The Senate also provided this funding increase.
- Appropriates \$50,000 to the State Historical Society for litigation expenses. The Senate provided \$294,500 to be available through June 30, 2019.

This amendment also:

- Removes two sections added by the Senate to provide borrowing authority to the judicial branch (\$1,500,000) and the Commission on Legal Counsel for Indigents (\$1,027,000). These agencies may access loan proceeds for these costs through the Adjutant General's loan authorization.
- Adds a section to provide appropriations to various state agencies from special funds the agency received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate added a similar section.
- Adds a section to provide \$10 million of borrowing authority and the related appropriation authority through June 30, 2019, to the Adjutant General for expenses related to unlawful activity associated with the construction of the Dakota Access Pipeline, including for costs incurred by the judicial branch and Commission on Legal Counsel for Indigents. The Senate added this section to provide \$15 million of borrowing authority.
- Adds a section to provide contingent funding of \$15,872,000 from the strategic investment and improvements fund for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State

9/25/17 DF  
12/08/17

of North Dakota. The Senate appropriated \$15.2 million to the State Treasurer.

- Provides for a transfer of \$155 million from the strategic investment and improvements fund to the general fund prior to the end of the 2015-17 biennium, resulting in an increase in the July 1, 2017, estimated beginning balance of the general fund. The Senate also added this section.
- Adds a section authorizing the Attorney General to transfer funds between certain line items during the 2015-17 biennium. The Senate also added this section.
- Adds a section to provide legislative intent related to repayment sources for loans obtained to provide the necessary funding to respond to the unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate added a section with similar language.
- Adds a section to provide legislative intent that the Department of Emergency Services and the Governor accept reimbursement from nonstate sources for state costs relating to the Dakota Access Pipeline protests.
- Amends Section 4 of Chapter 552 of the 2016 Special Session Session Laws relating to 2015-17 biennium transfers from the profits of the Bank of North Dakota to the general fund. Neither the House nor the Senate made this change.

**2017 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1024 as (re) engrossed

**House Appropriations 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: \_\_\_\_\_ Seconded by: \_\_\_\_\_

Representatives	4/18	4/20	4/25	Yes	No		Senators	4/18	4/20	4/25	Yes	No
Chairman Delzer	X	X	X				Senator Dever	X	X	X		
Representative Kreidt	X	X	X				Senator Lee	X	X	X		
Representative Delmore	X	X	X				Senator Robinson	X	X	X		
Total Rep. Vote							Total Senate Vote					

Vote Count      Yes: \_\_\_\_\_      No: \_\_\_\_\_      Absent: \_\_\_\_\_

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment



**2017 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1024 as (re) engrossed

**House Appropriations 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 Dever      Seconded by: Representative Kreidt

Representatives	4/25			Yes	No	Senators	4/25			Yes	No
Chairman Delzer	X			X		Senator Dever	X			X	
Representative Kreidt	X			X		Senator Lee	X			X	
Representative Delmore	X			X		Senator Robinson	X			X	
Total Rep. Vote				3		Total Senate Vote				3	

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number 17.8101.02009 . \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ . 04000 \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Motion Carried.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1024, as engrossed:** Your conference committee (Sens. Dever, G. Lee, Robinson and Reps. Delzer, Kreidt, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1581-1591, adopt amendments as follows, and place HB 1024 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1581-1591 of the House Journal and pages 1296-1306 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 1, replace "an appropriation" with "appropriations"

Page 1, line 2, after the first semicolon insert "to provide a contingent appropriation; to amend and reenact section 4 of chapter 552 of the 2015 Session Laws, relating to Bank of North Dakota transfers to the state general fund;"

Page 1, line 2, after the second semicolon insert "to provide for transfers; to provide statements of legislative intent;"

Page 1, line 4, after "APPROPRIATION" insert "- STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - 2015-17 BIENNIUM"

Page 1, after line 10, insert:

"STATE TREASURER

Property tax relief credits	<u>\$8,100,000</u>
Total special funds	\$8,100,000

Subdivision 2.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	\$189,000

Subdivision 3."

Page 1, line 14, replace "2." with "4."

Page 1, replace lines 16 and 17 with:

"Grants - Medical assistance	<u>\$9,000,000</u>
Total special funds	\$9,000,000"

Page 1, line 18, replace "3." with "5."

Page 1, after line 21 insert:

"Subdivision 6.

STATE HISTORICAL SOCIETY

Litigation expenses	<u>\$50,000</u>
Total special funds	\$50,000"

Page 1, replace line 23 with:

"Grand total special funds	\$17,668,500"
----------------------------	---------------

Page 2, replace lines 1 through 25 with:

**"SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be necessary, to the agencies listed below for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019.

Subdivision 1.

ATTORNEY GENERAL

Salaries and wages	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 2.

JUDICIAL BRANCH

Pipeline protest trials	<u>\$1,500,000</u>
Total special funds	\$1,500,000

Subdivision 3.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Pipeline protest trials	<u>\$1,027,000</u>
Total special funds	\$1,027,000

Subdivision 4.

STATE DEPARTMENT OF HEALTH

Operating expenses	<u>\$1,420,000</u>
Total special funds	\$1,420,000

Subdivision 5.

HIGHWAY PATROL

Field operations	<u>\$3,234,000</u>
Total special funds	\$3,234,000

Subdivision 6.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Adult services	<u>\$500,000</u>
Total special funds	\$500,000

Subdivision 7.

GAME AND FISH DEPARTMENT

Insert LC: 17.8101.02009  
House Carrier: Delzer  
Senate Carrier: Dever

Salaries and wages	\$221,795
Operating expenses	<u>201,929</u>
Total special funds	\$423,724

Subdivision 8.

PARKS AND RECREATION DEPARTMENT

Natural resources	\$200,000
Total special funds	<u>\$200,000</u>

Subdivision 9.

DEPARTMENT OF TRANSPORTATION

Salaries and wages	\$287,000
Operating expenses	<u>422,000</u>
Total special funds	\$709,000

SECTION 2 TOTAL

Grand total special funds	\$9,213,724
---------------------------	-------------

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019 - ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.**

The office of the adjutant general may borrow the sum of \$10,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from the federal government related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline.

**SECTION 4. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ATTORNEY GENERAL - THROUGH JUNE 30, 2019.**

There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,872,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing any court-ordered payments to a bankruptcy estate or payments to be made pursuant to the terms of a settlement agreement approved by order of the court, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota* or pursuant to the terms of a settlement agreement approved by order of the court. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 5. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.**

The office of management and budget shall transfer the sum of \$155,000,000 from the strategic

investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 6. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 7. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in section 3 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the legislative assembly that provisions of section 54-16-13 apply to the loans, except that emergency commission approval does not apply.

**SECTION 8. LEGISLATIVE INTENT - COST REIMBURSEMENT - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that:

1. The department of emergency services and the governor accept reimbursement in the form of land, cash, or other assets from nonstate sources for state costs incurred relating to unlawful activity associated with the construction of the Dakota access pipeline.
2. Any reimbursements received be used to repay the Bank of North Dakota loans authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in section 3 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline.
3. If the department of emergency services or the governor receive land or other noncash assets as reimbursement, the department of emergency services or the governor request authorization from the sixty-sixth legislative assembly to convey the land or noncash assets and use any proceeds for repayment of any remaining outstanding loans.

**SECTION 9. AMENDMENT.** Section 4 of chapter 552 of the 2015 Session Laws is amended and reenacted as follows:

Insert LC: 17.8101.02009  
 House Carrier: Delzer  
 Senate Carrier: Dever

**SECTION 4. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND.** If, during the period beginning with the effective date of this Act and ending June 30, 2017, the director of the office of management and budget determines the state general fund will not have a projected positive June 30, 2017, balance, the industrial commission shall transfer \$100,000,000, or so much of the sum as may be necessary, from the earnings and accumulated and undivided profits of the Bank of North Dakota to the state general fund. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. The sum of the amounts transferred may not exceed the lesser of \$100,000,000 or the amount necessary to provide for a positive June 30, 2017, general fund balance."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Summary of Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
<b>State Treasurer</b>						
Total all funds	\$0	\$0	\$0	\$0	\$15,200,000	(\$15,200,000)
Less estimated income	0	0	0	0	15,200,000	(15,200,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Attorney General</b>						
Total all funds	\$0	\$0	\$16,072,000	\$16,072,000	\$200,000	\$15,872,000
Less estimated income	0	0	16,072,000	16,072,000	200,000	15,872,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Judicial Branch</b>						
Total all funds	\$0	\$1,500,000	\$0	\$1,500,000	\$1,500,000	\$0
Less estimated income	0	1,500,000	0	1,500,000	1,500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Commission on Legal Counsel for Indigent</b>						
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000	\$1,027,000	\$0
Less estimated income	0	859,000	168,000	1,027,000	1,027,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Department of Health</b>						
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000	\$1,420,000	\$0
Less estimated income	0	0	1,420,000	1,420,000	1,420,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Highway Patrol</b>						
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000	\$3,234,000	\$0
Less estimated income	0	0	3,234,000	3,234,000	3,234,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Department of Corrections and Rehab.</b>						
Total all funds	\$0	\$0	\$500,000	\$500,000	\$500,000	\$0
Less estimated income	0	0	500,000	500,000	500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Adjutant General</b>						
Total all funds	\$0	\$0	\$10,000,000	\$10,000,000	\$15,000,000	(\$5,000,000)
Less estimated income	0	0	10,000,000	10,000,000	15,000,000	(5,000,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Historical Society</b>						
Total all funds	\$0	\$0	\$0	\$0	\$294,500	(\$294,500)
Less estimated income	0	0	0	0	294,500	(294,500)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Game and Fish Department</b>						
Total all funds	\$0	\$0	\$423,724	\$423,724	\$423,724	\$0

Insert LC: 17.8101.02009  
 House Carrier: Delzer  
 Senate Carrier: Dever

Less estimated income	0	0	423,724	423,724	423,724	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Parks and Recreation Department						
Total all funds	\$0	\$0	\$200,000	\$200,000	\$200,000	\$0
Less estimated income	0	0	200,000	200,000	200,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Department of Transportation						
Total all funds	\$0	\$0	\$709,000	\$709,000	\$709,000	\$0
Less estimated income	0	0	709,000	709,000	709,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Bill total						
Total all funds	\$0	\$2,359,000	\$32,726,724	\$35,085,724	\$39,708,224	(\$4,622,500)
Less estimated income	0	2,359,000	32,726,724	35,085,724	39,708,224	(4,622,500)
General fund	\$0	\$0	\$0	\$0	\$0	\$0

**House Bill No. 1024 - Attorney General - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$200,000	\$200,000	\$200,000	
Settlement Payment			15,872,000	15,872,000		15,872,000
Total all funds	\$0	\$0	\$16,072,000	\$16,072,000	\$200,000	\$15,872,000
Less estimated income	0	0	16,072,000	16,072,000	200,000	15,872,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 125 - Attorney General - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Provides Contingent Funding for Settlement Payment <sup>2</sup>	Total Conference Committee Changes
Salaries and wages	\$200,000		\$200,000
Settlement Payment		15,872,000	15,872,000
Total all funds	\$200,000	\$15,872,000	\$16,072,000
Less estimated income	200,000	15,872,000	16,072,000
General fund	\$0	\$0	\$0
FTE	0.00	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

<sup>2</sup> Contingent funding of \$15,872,000 from the strategic investment and improvements fund is added for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota. The Senate appropriated \$15.2 million to the State Treasurer.

**House Bill No. 1024 - Commission on Legal Counsel for Indigent - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Pipeline protest trials		\$859,000	\$168,000	\$1,027,000	\$1,027,000	

Insert LC: 17.8101.02009  
 House Carrier: Delzer  
 Senate Carrier: Dever

Total all funds	\$0	\$859,000	\$168,000	\$1,027,000	\$1,027,000	\$0
Less estimated income	0	859,000	168,000	1,027,000	1,027,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Trials <sup>1</sup>	Total Conference Committee Changes
Pipeline protest trials	\$168,000	\$168,000
Total all funds	\$168,000	\$168,000
Less estimated income	168,000	168,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding is increased by \$168,000, from \$859,000 to \$1,027,000, for additional costs related to pipeline protest trials, the same as the Senate, except that the commission will access the loan proceeds through the Adjutant General rather than directly from a Bank of North Dakota loan.

**House Bill No. 1024 - State Department of Health - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Operating expenses			\$1,420,000	\$1,420,000	\$1,420,000	
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000	\$1,420,000	\$0
Less estimated income	0	0	1,420,000	1,420,000	1,420,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 301 - State Department of Health - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Operating expenses	\$1,420,000	\$1,420,000
Total all funds	\$1,420,000	\$1,420,000
Less estimated income	1,420,000	1,420,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$1,420,000 is added from special funds received for the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.



**House Bill No. 1024 - Highway Patrol - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Field operations			\$3,234,000	\$3,234,000	\$3,234,000	
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000	\$3,234,000	\$0
Less estimated income	0	0	3,234,000	3,234,000	3,234,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 504 - Highway Patrol - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Field operations	\$3,234,000	\$3,234,000
Total all funds	\$3,234,000	\$3,234,000
Less estimated income	3,234,000	3,234,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$3,234,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Department of Corrections and Rehab. - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Adult services			\$500,000	\$500,000	\$500,000	
Total all funds	\$0	\$0	\$500,000	\$500,000	\$500,000	\$0
Less estimated income	0	0	500,000	500,000	500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 530 - Department of Corrections and Rehab. - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Adult services	\$500,000	\$500,000
Total all funds	\$500,000	\$500,000
Less estimated income	500,000	500,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$500,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Adjutant General - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Pipeline protest costs			\$10,000,000	\$10,000,000		\$10,000,000
Total all funds	\$0	\$0	\$10,000,000	\$10,000,000	\$0	\$10,000,000
Less estimated income	0	0	10,000,000	10,000,000	15,000,000	(5,000,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 540 - Adjutant General - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Pipeline protest costs	\$10,000,000	\$10,000,000
Total all funds	\$10,000,000	\$10,000,000
Less estimated income	10,000,000	10,000,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$10 million is added from the proceeds of a loan for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate provided \$15 million.

**House Bill No. 1024 - Game and Fish Department - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$221,795	\$221,795	\$221,795	
Operating expenses			201,929	201,929	201,929	
Total all funds	\$0	\$0	\$423,724	\$423,724	\$423,724	\$0
Less estimated income	0	0	423,724	423,724	423,724	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 720 - Game and Fish Department - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Salaries and wages	\$221,795	\$221,795
Operating expenses	201,929	201,929

Total all funds	\$423,724	\$423,724
Less estimated income	423,724	423,724
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$423,724 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Parks and Recreation Department - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Natural resources			\$200,000	\$200,000	\$200,000	
Total all funds	\$0	\$0	\$200,000	\$200,000	\$200,000	\$0
Less estimated income	0	0	200,000	200,000	200,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 750 - Parks and Recreation Department - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Natural resources	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Department of Transportation - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$287,000	\$287,000	\$287,000	
Operating expenses			422,000	422,000	422,000	
Total all funds	\$0	\$0	\$709,000	\$709,000	\$709,000	\$0
Less estimated income	0	0	709,000	709,000	709,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 801 - Department of Transportation - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Salaries and wages	\$287,000	\$287,000
Operating expenses	422,000	422,000
Total all funds	\$709,000	\$709,000
Less estimated income	709,000	709,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$709,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Other Changes - Conference Committee Action**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Appropriates \$8.1 million to the State Treasurer for property tax relief credit payments. Neither the House nor the Senate included this funding.
- Appropriates \$189,000 to the Commission on Legal Counsel for Indigents related to costs associated with Section 25 of Article I of the Constitution of North Dakota relating to victims' rights (Marsy's Law), the same as the Senate.
- Increases the appropriation to the Department of Human Services for Medicaid grants by \$4 million, from \$5 million to \$9 million. The Senate also provided this funding increase.
- Appropriates \$50,000 to the State Historical Society for litigation expenses. The Senate provided \$294,500 to be available through June 30, 2019.

This amendment also:

- Removes two sections added by the Senate to provide borrowing authority to the judicial branch (\$1,500,000) and the Commission on Legal Counsel for Indigents (\$1,027,000). These agencies may access loan proceeds for these costs through the Adjutant General's loan authorization.
- Adds a section to provide appropriations to various state agencies from special funds the agency received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate added a similar section.
- Adds a section to provide \$10 million of borrowing authority and the related appropriation authority through June 30, 2019, to the Adjutant General for expenses related to unlawful activity associated with the construction of the Dakota Access Pipeline, including for costs incurred by the judicial branch and Commission on Legal Counsel for Indigents. The Senate added this section to provide \$15 million of borrowing authority.
- Adds a section to provide contingent funding of \$15,872,000 from the strategic investment and improvements fund for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota. The Senate appropriated \$15.2 million to the State Treasurer.

Insert LC: 17.8101.02009  
House Carrier: Delzer  
Senate Carrier: Dever

- Provides for a transfer of \$155 million from the strategic investment and improvements fund to the general fund prior to the end of the 2015-17 biennium, resulting in an increase in the July 1, 2017, estimated beginning balance of the general fund. The Senate also added this section.
- Adds a section authorizing the Attorney General to transfer funds between certain line items during the 2015-17 biennium. The Senate also added this section.
- Adds a section to provide legislative intent related to repayment sources for loans obtained to provide the necessary funding to respond to the unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate added a section with similar language.
- Adds a section to provide legislative intent that the Department of Emergency Services and the Governor accept reimbursement from nonstate sources for state costs relating to the Dakota Access Pipeline protests.
- Amends Section 4 of Chapter 552 of the 2016 Special Session Session Laws relating to 2015-17 biennium transfers from the profits of the Bank of North Dakota to the general fund. Neither the House nor the Senate made this change.

Engrossed HB 1024 was placed on the Seventh order of business on the calendar.

**2017 TESTIMONY**

**HB 1024**

**House Bill 1024  
House Appropriations Committee**

**Testimony Presented by Sally Holewa  
State Court Administrator  
January 17, 2017**

Good afternoon Chairman Delzer and members of the Committee. For the record, my name is Sally Holewa. I am the State Court Administrator. I am appearing today in support of the deficiency appropriation for the Judicial Branch.

We are requesting a deficiency appropriation of \$1.5 million to cover unanticipated expenses related to the Dakota Access Pipeline protest. As of January 8, 2017 there are 608 protest-related cases pending in the South Central Judicial District.

We are estimating that 400 of those cases will go to jury trial and will require 500 trial days. To give you a sense of how out of the ordinary that number is, let me give you some numbers. The South Central Judicial District is our busiest district with an average of 34,000 new cases filed every year. That is thousands more cases per year than are filed in the next two busiest districts – the East Central (based out of Fargo with an average of 27,000 case) and the Northwest (based out of Williston with an average of 24,000). On average, the South Central holds a hundred trials per year. This is twice as many jury trials than the Northwest Judicial District and nearly three times as many jury trials as any other district.

Each jury trial requires a judge, court reporter, bailiffs and jurors.

We anticipate using surrogate judges, freelance court reporters and temporary staff to clerk these cases because we do not have the resources to transfer judges and staff to cover that many extra court days. Statewide, we have a shortage of 10

judges, including a 2 judge shortage in the South Central Judicial District. We have a shortage of 21 clerks statewide, including a shortage of 8 clerks in the South Central Judicial District.

Forty-one percent of the funds being requested are for jury costs. Jurors are paid \$25 for the first half-day and \$50 for the first full day and each subsequent day. Mileage is at the same rate as state employees. Meals are provided when a jury is in deliberation or if a judge sequesters the jury to protect them from outside influence. The estimated cost of juror fees, mileage and meals for these trials is \$613,280. This is a conservative estimate based on our current juror utilization standard of calling in 26 jurors per case. Those numbers are likely to go up if we find difficulty in being able to seat an impartial jury.

It is important that these cases are scheduled in a timely and efficient manner. Witness memories deteriorate over time so the more a case is delayed the less reliable the testimony becomes. Holding the trials in groups mitigates the cost of bringing out-of-state witnesses back to North Dakota. This is particularly true when they are law enforcement officials who will need to have shift coverage for their regular jobs. Finally, and most importantly, we do not want to displace the other non-protest related cases that are waiting for hearing dates or which have already been on the court's schedule for months already.

I have attached a spreadsheet showing the estimated cost for each component of the trials.



**DEFICIENCY APPROPRIATION - CHARGES FILED AGAINST PROTESTERS**

Nov. 22, 2016

	<u>Cases</u>	<u>Hours per case</u>	<u>Total Hours</u>	<u>Total Days</u>
Total arrests	540			
Total jury trials	400			
Total felonies (3 day trial)	50	24	1,200.00	150.00
Total misdemeanors (1 day trial)	350	8	2,800.00	350.00
<b>Total Days</b>				<b>500.00</b>

<u>Surrogate Judge:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Pay per day	\$ 599.45		
Fringe (social security)	\$ 45.86		
<b>Total per day</b>	<b>\$ 645.31</b>	500	<b>\$ 322,653.96</b>

<u>Clerk of Court:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Dakota Staffing per hour	\$ 38.50		
<b>Total per day</b>	<b>\$ 308.00</b>	500	<b>\$ 154,000.00</b>

<u>Court Reporter/recorder:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Contract rate per hour	\$ 70.00		
<b>Total per day</b>	<b>\$ 560.00</b>	500	<b>\$ 280,000.00</b>

<u>Bailiffs:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Salary per hour	\$ 13.25		
Fringe (social security)	\$ 1.01		
Total per hour	\$ 14.26		
<b>Total per day</b>	<b>\$ 114.11</b>		
Bailiffs per trial	2.0		
<b>Total per day</b>	<b>\$ 228.22</b>	500	<b>\$ 114,109.00</b>

**Jury fees:**

<u>Misdemeanor cases (1 day):</u>	<u>Rate</u>	<u>Jurors</u>	<u>Cost for 1 day trial</u>	<u>No. of 1 day trials</u>	<u>Total Cost</u>
People called for jury duty		26			
Juror pay - sent home	\$ 25.00	14	\$ 350.00		
Juror pay - full day	\$ 50.00	12	\$ 600.00		
<b>Total 1 day trial</b>			<b>\$ 950.00</b>	350	<b>\$ 332,500.00</b>

<u>Felony cases (3 day):</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Cost for 3 day trial</u>	<u>No. of 3 day trials</u>	<u>Total Cost</u>
People called for jury duty		26				
Juror pay - sent home	\$ 25.00	14	1	\$ 350.00		
Juror pay - full day	\$ 50.00	12	3	\$ 1,800.00		
<b>Total 3 day trial</b>				<b>\$ 2,150.00</b>	50	<b>\$ 107,500.00</b>

<b>Total Jury fees</b>						<b>\$ 440,000.00</b>
------------------------	--	--	--	--	--	----------------------

<u>Juror amenities:</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Trials</u>	<u>Total Cost</u>
Per day (1 day trial)	\$ 8.00	12	1	350	\$ 33,600.00
Per day (3 day trial)	\$ 8.00	12	3	50	\$ 14,400.00
<b>Total cost</b>					<b>\$ 48,000.00</b>

**Total juror amenities**

<u>Juror mileage:</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Trials</u>	<u>Total Cost</u>
Rate per mile	\$ 0.54				
Average mileage per juror	<u>20</u>				
Total daily cost per juror	\$ 10.80				
<b>1 day trial</b>					
Juror pay - sent home	\$ 10.80	14	1	350	\$ 52,920.00
Juror pay - full day	\$ 10.80	12	1	350	\$ 45,360.00
<b>3 day trial</b>					
Juror pay - sent home	\$ 10.80	14	1	50	\$ 7,560.00
Juror pay - full day	\$ 10.80	12	3	50	\$ 19,440.00
<b>Total mileage</b>					<b>\$ 125,280.00</b>

**2015-17 Biennium Deficiency appropriation**

<u>Summary - Fiscal impact:</u>	<u>Total</u>
Surrogate judges	\$ 322,653.96
Clerk of court	\$ 154,000.00
Court reporter/recorder	\$ 280,000.00
Bailiffs	\$ 114,109.00
Jury fees	\$ 440,000.00
Jury amenities	\$ 48,000.00
Juror mile	\$ 125,280.00
<b>Total cost</b>	<b>\$ 1,484,042.96</b>

1/17/17 AH 2  
HB 1024

HB 1024  
House Appropriations Committee  
January 17, 2017  
Testimony of H. Jean Delaney, Executive Director

Good afternoon. My name is Jean Delaney and I am the Director of the ND Commission on Legal Counsel for Indigents. The Commission is governed by North Dakota Century Code Chapter 54-61. Section 54-61-01 provides that the Commission was "established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to standards and policies of the commission governing eligibility for such services."

The Commission has established Guidelines to Determine Eligibility for Indigent Defense Services. In order for a person to have counsel provided by the Commission, the person must apply for services, be found to be "indigent," and it must be a type of case in which one has a right to counsel at public expense.

Application for services is made on the Commission's standard forms. However, the Commission does not make the determination of whether a specific applicant is eligible for services. Pursuant to the statute, the court makes the determination of eligibility for services.

Indigent defense services are provided through state employees in the Commission's eight public defender offices across the state, and through its monthly contractors, of which there are approximately 70, and its conflict contractors, of which there are over 90. The Commission's monthly contractors each take some specified portion of cases in some specified geographic region. The conflict contractors take cases on a case assignment by case assignment basis. The conflict contractors are paid at the rate of \$75.00 per hour, and the monthly contractors' payments are calculated to correspond to that same rate based on yearly average number of case assignments and average hours worked per assignment. This is far less than federal panel attorneys are paid (they are paid \$129/hour) and significantly less than attorneys in private practice are paid. While attorneys do not provide indigent defense services to get rich,

rather because they have a calling to do so, they still must be able to cover their overhead. It is unlikely that we could find many, if any, attorneys willing to provide services for less. As it is, many times attorneys who would like to provide services are unable to do so at this rate.

Traditionally, the Commission has been funded from two sources: the general fund, and “fund 282” (our continuing appropriation - the indigent defense administration fund). The indigent defense administration fund is funded through fees paid by defendants: There is a \$35 application fee and a \$100 court administration fee (the indigent defense/facility improvement fee) that is split pursuant to statute between the indigent defense administration fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two. Unless waived by the court, these fees are imposed in misdemeanor and felony cases. The Court may order a defendant to repay attorney fees; however, this money does not go into the indigent defense administration fund; it goes into the general fund.

Ever since this agency was established in 2005, the Legislature has been extremely fair in providing appropriate funding. The Commission is very grateful that in the last session, the Legislature recognized the great impact the increases in case assignment numbers were having on the Commission’s costs and expenses in providing required services, and the expected increases in costs and expenses for 2015-17, and increased appropriations for the agency. For the original 2015-17 budget, the Commission was appropriated \$18,304,103 from the general fund, which included a one-time appropriation of \$122,275 for transitioning to desktop support from ITD; and \$2,106,914 from other funds, which consisted of authority to spend \$1,906,914 from fund 282, and one time funding of \$200,000 from the strategic investment and improvements fund for contract fees for legal services relating to increased caseloads.

After the 4.05 and 2.5 allotments, this agency’s special fund appropriations remained the same, but the general fund appropriation was reduced by \$1,198,919 to \$17,105,184. In order to meet the reduced appropriation, the Commission carefully assessed its spending. However, there are not many areas in which this agency can cut, and still provide constitutionally mandated services. Case assignment numbers continue to increase, state-wide, and services must be provided in them. In FY2016, we provided services in over 14,800 case assignments – this is more than in any previous year. Serious felonies continue to increase. These cases with their

more significant penalties generally take more attorney time, and require more extraordinary expenses, such as private investigator fees, and other expert fees necessary to provide constitutionally competent defense.

When a contract was terminated, before advertising to fill it, we thoroughly reviewed whether the contract was still needed, whether it was needed in the same size or perhaps a smaller size, or in a different geographical area. Several contracts were not renewed, were modified in size, and/or were moved from one district to another as needs changed in various judicial districts. A temporary attorney was hired in Minot to help reduce reliance on hourly contractors in that district. The Commission cut one part-time temporary secretary position in the Dickinson office. Most out of state training was cut, and this is an area in which we would normally get a big "bang for our buck" in that attorneys would go to national training, and bring back the training to present to our employees and contract attorneys at one of our agency trainings here in North Dakota. Copy machines were not replaced as they would have been pursuant to the replacement schedule, but they will need to be replaced at some point.

With these and more spending cuts, as late as September 2016, we did not anticipate needing a deficiency appropriation in 2015-17. This changed with the significant increases in the number of Dakota Access Pipeline cases that started in October and with the passage of Marsy's Law in November.

As of January 8, 2017, there have been 566 DAPL cases filed in Morton County in which one could have a right to counsel provided by the Commission (there are also city transfer cases, but the Commission does not provide counsel in those). As of January 8, the Commission has provided counsel in 322 case assignments. We do not have any good way to determine how many more cases will be filed, but we will likely provide counsel in at least 50% of them. For purposes of the calculations for the deficiency request, we anticipated providing counsel in 490 case assignments.

A good percentage of these cases are expected to go to jury trial, which will take more attorney time and cost more than cases disposed of by other reasons. A criminal case assignment that goes to jury trial averages 31.07 hours of attorney time; criminal case assignments closed for other reasons (bench trial, plea agreement, dismissal, etc.) average 5.5 hours. Assuming one-half of the case assignments are disposed of due to jury trial, and the other half by other reason, it would cost almost \$672,000. But many of these cases will be more expensive than the average.

Many of them involve charges from arrests under circumstances which required the assigning of separate counsel to each defendant. One of these events has required over 80 separate attorneys. There aren't eighty indigent defense attorneys in the South Central Judicial District, so we've had to use attorneys from across the state and even northwestern Minnesota. Over 50 of these are hourly contractors for which there will be increased attorney travel time and mileage. Assuming just one trip to and from Mandan by each of these attorneys for each of their case assignments will require over \$48,000 for attorney travel time and mileage. There will be other expenses also, such as lodging expenses for the attorneys, witness fees, and costs for appeals from convictions.

It is impossible at this time, to accurately predict how much this will cost, as only two case assignments have gone to jury trial so far; others are scheduled over the next several months. We have estimated we will need an additional \$670,000 to cover the costs associated with the DAPL cases during the remainder of the biennium. Additional costs will be incurred on these cases during the 2017-19 biennium, for those set later on for jury trials and any appeals.

I do want to take this opportunity to commend the criminal defense bar in North Dakota, and the attorneys' willingness to help in these extraordinary circumstances. The great majority of the DAPL assignments were made to attorneys who already had monthly or conflict/hourly contracts with the Commission. When these attorneys were called and asked if the attorney would be willing to take one or more of these assignments, the majority of our contractors from other districts said yes. Former contractors and other attorneys who were known to specialize in criminal law were called and asked to sign a conflict contract and provide representation in one or more DAPL cases. Many said yes. Many of the attorneys who were unable to say yes to taking DAPL assignments indicated their willingness to take other regular criminal assignments in the SCJD if needed, either as a conflict contractor or a monthly contractor.

Marsy's Law went into effect in December 2016, and there will be many costs incurred by this agency due to it. As with the DAPL cases, it is difficult to accurately predict at this time how much in additional costs will be incurred.

Approximately 43% of our criminal case assignments involve victims, and thus, are subject to Marsy's Law.

There will be more contested preliminary hearings, more jury trials, more probation revocations and more orders to show cause hearings in these cases. We estimated that the

number of additional contested preliminary hearings will be one-quarter of the felony case assignments that involve a victim, requiring one additional hour of attorney time per assignment for a total of \$106,600/biennium (6616 felony assignments/12 month period x .43 with victims x .25 x 2 years x \$75); we estimated jury trial numbers would at a minimum increase by 18 for a total of \$69,000/biennium (31.07 hours for jury trial versus 5.5 hour for other reason, at \$75/hour = \$1917.75 more for a jury trial x 18 jury trials x 2); we assumed probation revocations would increase by 10% for an additional \$85,800/biennium (1679/12 month period x .1 =168 x 3.41 average hours on a probation revocation x \$75 x 2); and assumed Orders to Show Cause hearings would increase by 10% for an additional \$7,800 per biennium (229 OTSC /12 month period x .1 = 23 x 2.31 average hours in OTSC x \$75/hour x 2). These total \$269,000 per biennium, which would be \$78,450 for the remainder of this fiscal year.

An additional concern with Marsy's Law is that it has changed the priority of the payment of fees collected from defendants. Before the passage of Marsy's Law, the indigent defense application fee was paid first in priority from funds collected from a defendant, and the indigent defense/facility improvement fee was second in priority for payment. The victim/witness fee was third, and restitution was forth. After Marsy's Law, restitution is now paid first, and collection of money for other fines and fees will be delayed, and/or remain uncollected. Thus, fund 282 will see less collected, now and in the future. Fund 282 has collected an average of \$1,885,000 per biennium during the past four biennia, and looks to collect a similar amount this biennium if nothing were to have changed. Calculating that the fund will receive 20% less, this would be \$377,000 in a biennium; this would be \$109,960 for the remainder of this fiscal year.

Thus, we calculate needing additional funding in the amount of \$188,410 due to Marsy's Law.

A 2015-17 biennium deficiency appropriation of \$858,410 is requested.

I am happy to answer any questions you may have.

Submitted this 17<sup>th</sup> day of January, 2017

  
\_\_\_\_\_  
H. Jean Delaney, Director  
ND Commission on Legal Counsel for Indigents  
701-845-8632 [jedelaney@nd.gov](mailto:jedelaney@nd.gov)

**HB1024 (Minard Hall Deficiency) North Dakota State University Testimony  
House Appropriations Committee: January 17, 2017**

My name is Chris Wilson. I am the Chief of Staff of North Dakota State University, but during much of the time relating to the accrual of the Minard Hall deficiency, I was the General Counsel for North Dakota State University. I am here today to provide background information on this deficiency request.

Minard Hall is a large academic building located on NDSU's campus. In 2009, Minard Hall was undergoing extensive renovations, as well as the construction of several additions. A large hole was dug for the planned basement of one of the additions. The hole was adjacent to the existing north end of Minard Hall. Unfortunately, on December 27, 2009, part of existing Minard Hall collapsed into the hole.

NDSU's property insurer was the North Dakota State Fire and Tornado Fund. The Fund denied coverage for the collapse. The involved architect, engineers and contractors also denied any liability for the collapse.

Two lawsuits were commenced by NDSU. One lawsuit was against the State Fire and Tornado Fund. The other lawsuit was against five of the entities involved in the construction: the architect, the structural engineer, the geotechnical engineer, the general contractor and the excavating contractor. The Fund and the other five defendants vigorously denied any liability and strongly contested the lawsuits.

The Minard Hall project, including all repairs necessitated by the collapse, was substantially completed in 2013. As of the fall 2013 academic term, Minard Hall was in full operation.

However, the lawsuits continued forward. After years of document production, depositions and motions, trial dates were finally set by the court in 2015. At that point, because litigation involves both costs and risks, NDSU received authority from the State Board of Higher Education to explore whether a mediated settlement was possible. All the litigating parties agreed to retain a nationally-respected mediator who directly negotiated with each of the parties. Those mediated negotiations ultimately resulted in a favorable settlement of NDSU's claims for the sum of \$3,020,000. Only the mediator has a breakdown of the amount paid by each defendant. Payment of the settlement amount was received by NDSU on July 13, 2015.

NDSU expended a total of \$4,654,853.52 as a result of the collapse. NDSU and the State Board of Higher Education were advised by outside legal counsel that up to approximately \$3,800,000 of those costs might have been recoverable at trial if NDSU had won all parts of both cases. On the other hand, if NDSU had lost parts or all of those cases, NDSU might have recovered only a fraction or none of that amount.

Based on collapse expenditures of \$4,654,853.52 and a settlement of \$3,020,000, NDSU has unreimbursed collapse related costs of \$1,634,853.52. The legislature previously increased the authorization for the Minard Hall project to pay for the costs associated with the collapse, but it did not appropriate any funds. As a result, on December 10<sup>th</sup>, NDSU received approval from the State Board of Higher Education to seek a deficiency appropriation for the amount of those unreimbursed costs.

That concludes my prepared statements. We would be happy to answer any questions that you may have. Thank you.





**NDSU** NORTH DAKOTA STATE UNIVERSITY

# MINARD HALL UPDATE



# PROJECT STATUS UPDATE – MINARD HALL

## APPROVAL PROCESS FOR DEFICIENCY APPROPRIATION REQUEST OF \$1,634,853.52

Timeline:

- **On December 16, 2015**, provided a status update to the Budget Section of the North Dakota Interim Assembly pursuant to the requirement of Section 27 of 2015 House Bill No. 1003. The update included testimony on the settlement and the deficiency appropriation request as authorized by the SBHE. See appendix for Dan Hull testimony.
- **On December 10, 2015**, received approval from the SBHE to submit a deficiency request to the Office of Management and Budget, as per the motion approved by the SBHE Budget and Finance Committee.
- **On December 2, 2015**, requested the SBHE Budget and Finance Committee recommend approval of the following motion to the SBHE:

**In accordance with the following previously-approved motions of the SBHE relating to the Minard Hall collapse:**

- (1) September 24, 2013 authorizing NDSU to carry a deficit fund balance until a state general fund deficiency appropriation is authorized; and
- (2) May 14, 2015 authorizing NDSU to settle the outstanding litigations;

**NDSU is hereby authorized to seek a deficiency appropriation from the North Dakota Legislature in the amount of \$1,634,853.52.**

- **On November 23, 2015**, NDSU officials provided a status update to Chancellor Hagerott, and he authorized NDSU to move forward with seeking the deficiency appropriation.

### FINANCIAL STATUS REPORT FINAL:

	Legislative Authorization	Project Expenditures
Construction: Phase I, II, III	\$ 18,000,000.00	\$ 18,000,000.00
Collapse related costs*	\$ 5,474,300.00	\$ 4,654,853.52*
<b>Total</b>	<b>\$ 23,474,300.00</b>	<b>\$ 22,654,853.52</b>

*Collapse Related Costs	\$ 4,654,853.52
Less: Settlement Received	\$ (3,020,000.00)
<b>Unreimbursed Collapse Related Costs</b>	<b>\$ 1,634,853.52</b>

*Per approval of the SBHE, unreimbursed costs are handled as a deficit fund balance.*

All three litigations relating to the Minard Hall project were settled by NDSU pursuant to authority granted by

the SBHE on May 14, 2015. As a result of the settlements, NDSU paid one contractor the sum of \$220,000, and NDSU received \$3,020,000 from various other entities. All settlement payments have been made, and the litigations have been dismissed.

The settlement proceeds to NDSU are less than its total expenditures on the project, and NDSU is seeking direction from the ND University System Chancellor/SBHE for options to pay the difference including a possible request for a deficiency appropriation.

#### Background

SBHE approved motions September 24, 2013:

1). Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300<sup>^</sup> to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a future deficiency appropriation.

2). Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2015 or later legislative session.

*<sup>^</sup>increase in authorization of \$600,000 to \$23,474,300 approved by SBHE (9-3-14) and 64<sup>th</sup> Legislative Assembly*

**FEBRUARY 28, 2015: UPDATE PRESENTED TO 64<sup>TH</sup> LEGISLATIVE ASSEMBLY**

---

**REQUEST INCREASED AUTHORIZATION:**

Current Authorization: \$22,874,300  
 Increased Authorization: \$23,474,300 – increase of \$600,000  
 Source of Funds: Insurance proceeds, legal settlements, deficiency appropriations and other available funds

**Approved: HB 1003 (64<sup>th</sup> Legislative Assembly)**

**Narrative:** As noted in a letter dated August 29, 2014 from the ND University System legal counsel, the increased authorization is needed because of a contractor on the Minard Hall project has made a claim for additional compensation. After receiving the contractor claim, contractually mandated mediation was held however the contractors claim was not settled during the mediation. A lawsuit has been commenced against the State of ND, the ND Board of Higher Education and NDSU by the contractor. NDSU requests an additional authorization of \$600,000 in order to cover a potential award in favor of the contractor and to pay for legal fees, expert fees and other costs associated with the ongoing litigation. This request was approved by the State Board of Higher Education on September 3, 2014.

The litigations related to this incident are on-going with the discovery process being scheduled to be complete as of June 30, 2014. Thereafter, expert disclosures and expert depositions will be started. The trial is scheduled for July 2015. Litigation costs have been higher than anticipated due to the fact that additional parties were required to be included in the litigation because of information revealed during the discovery process.

If legal settlements are less than the estimated costs, NDSU would seek direction from the SBHE for options to pay for the costs incurred, including the possible request for a deficiency appropriation from the Legislative Assembly. Updates on the project progress are provided regularly to the ND University System Chancellor and State Board of Higher Education. See memorandum dated 8-29-14 from Christopher Wilson and Dan Hull

**FINANCIAL STATUS REPORT AS OF FEBRUARY 28, 2015:**

	<u>Current Authorization</u>	<u>Project Expenditures</u>	<u>Remaining Authorization</u>
Phase I, II, III	\$ 18,000,000	\$ 17,879,134	\$ 120,866
Collapse	\$ 4,874,300	\$ 4,404,965	\$ 469,335
<b>Total</b>	<u>\$ 22,874,300</u>	<u>\$ 22,284,099</u>	<u>\$ 590,201</u>

SEPTEMBER 3, 2014: UPDATE PRESENTED TO STATE BOARD OF HIGHER EDUCATION

---

**REQUEST INCREASED AUTHORIZATION:**

Current Authorization: \$22,874,300  
Increased Authorization: \$23,474,300 – increase of \$600,000  
Source of Funds: Insurance proceeds, legal settlements, deficiency appropriations and other available funds

**Approved: SBHE September 3, 2014.**

Narrative: See memorandum dated 8-29-14 from Christopher Wilson and Dan Hull

**FINANCIAL STATUS REPORT AS OF AUGUST 31, 2014:**

	<u>Current Authorization</u>	<u>Project Expenditures</u>	<u>Remaining Authorization</u>
Phase I, II, III	\$ 18,000,000.00	\$ 17,879,134.24	\$ 120,865.76
Collapse	\$ 4,874,300.00	\$ 4,290,460.74	\$ 583,839.26
Total	<u>\$ 22,874,300.00</u>	<u>\$ 22,169,594.98</u>	<u>\$ 704,705.02</u>



Office of General Counsel • Fargo  
North Dakota State University  
202 Old Main  
PO Box 6052  
Fargo, ND 58108-6052  
701.231.8741  
Fax 701.231.6309  
[www.ndsu.edu/general\\_counsel](http://www.ndsu.edu/general_counsel)

MEMORANDUM

To: Bruce Bollinger  
From: Christopher W. Json  
Dan Hull  
Re: Request for Increase to Minard Hall Project Authorization  
Date: August 29, 2014

NDSU will likely need to increase its current state appropriated authorization on the Minard Hall project from \$22,874,300 to \$23,474,300. The increased authorization is needed because a contractor on the Minard Hall Project, Grant's Mechanical, Inc. ("GMI"), has made a claim for additional compensation.

After receiving GMI's claim, an initial determination was made by the project architect that GMI was entitled to an additional sum of \$137,000. GMI rejected this sum and proceeded with contractually mandated mediation. During the mediation, the contractor demanded an additional sum of \$450,000. The contractor's claim was not settled during mediation. A lawsuit has now been commenced against the State of North Dakota, the North Dakota Board of Higher Education and NDSU by the contractor. GMI did not specify its damages in the litigation, so NDSU utilized GMI's mediation demand as the basis for potential damages.

NDSU requests an additional authorization of \$600,000 in order to cover a potential award in favor of the contractor and to pay for legal fees, expert fees and other costs associated with the ongoing litigation.

DECEMBER 11, 2013: UPDATE PRESENTED TO BUDGET SECTION

**COST RECOVERY/LITIGATION STATUS AS OF DECEMBER 11, 2013:**

- Two additional defendants have been added to the lawsuit against JLG Architects, Heyer Engineering and Northern Technologies, Inc. The new parties are Meinecke-Johnson (the project's general contractor) and Earth Developers (the project's excavating contractor). The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and took longer than anticipated, especially with the addition of two new defendants. Five depositions were taken in November, 2013 and additional depositions will be conducted. The trial in the lawsuit against the JLG and others is scheduled to commence on March 3, 2015. The Court has not yet set a trial date in the lawsuit against the State Fire and Tornado Fund.
- General Counsel Budget Section testimony next page

**PROJECT STATUS AS OF DECEMBER 11, 2013:**

- The Minard Hall project is substantially complete and as of the fall 2013 academic term is in full operation. Remaining punch list items are being reviewed and finalized. We continue to work with contractors on project closeout documents and remaining/outstanding payment requests; continued document review before final pay applications are approved.
- Collapse related costs continue to be incurred as a result of three items:
  1. Ongoing Legal fees;
  2. Contractors have requested additional costs be covered due to project delays;
  3. Replacement of furniture lost due to the collapse.

**FINANCIAL STATUS REPORT AS OF OCTOBER 31, 2013:**

	<u>Authorization</u>	<u>Project Expenditures</u>	<u>Commitments</u>		<u>Project Total with Commitments</u>	<u>Remaining Authorization</u>
			<u>Construction Change Orders Approved/Potential</u>	<u>Other-Including Contingencies</u>		
Phase I,II,III	\$ 18,000,000	\$16,989,678	\$ 106,026	\$ 904,296	\$ 18,000,000	\$ -
Collapse	4,874,300	4,030,516	221,666	622,118	4,874,300	-
<b>Total</b>	<u>\$ 22,874,300</u>	<u>\$21,020,194</u>	<u>\$ 327,692</u>	<u>\$ 1,526,414</u>	<u>\$ 22,874,300</u>	<u>\$ -</u>

**General Counsel Testimony: Budget Section December 11, 2013**

---

My name is Christopher Wilson, and I am the General Counsel of North Dakota State University. I am here today to update the Budget Committee on the University's on-going efforts to recover its damages, expenses and costs resulting from the collapse of Minard Hall.

As I have previously reported, attorney Daniel Hull with the law firm of Anderson, Bottrell, Sanden & Thompson in Fargo represent NDSU in its recovery efforts. Through Mr. Hull's efforts, NDSU has commenced two different lawsuits pertaining to the Minard collapse. Both lawsuits are venued in the State District Court in Fargo (East Central Judicial District).

In the first litigation, NDSU brought suit against the North Dakota State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse, the Fund denied that there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the Fund. NDSU is requesting a judgment that the Fund's insurance policy covers damages sustained by NDSU as a result of the collapse.

In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and the North Dakota State Board of Higher Education. The initial defendants were JLG Architects, Heyer Engineering and Northern Technologies, Inc., which were the project's architectural firm, the structural engineering firm and the geotechnical engineering firm. The lawsuit alleged, among other things, that the defendants:

- (1) Failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall;
- (2) Provided a defective design for the excavation adjacent to the north end of Minard Hall; and
- (3) Failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.

Earlier this year, two additional defendants were added to the second lawsuit. They are Meinecke-Johnson, the project's general contractor, and Earth Developers, the project's excavating contractor. The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.

In both lawsuits, written discovery and depositions are ongoing, including five depositions which were taken in November of 2013. The trial in the lawsuit against the JLG and others is scheduled to commence on March 3, 2015. The Court has not yet set a trial date in the lawsuit against the State Fire and Tornado Fund.

That concludes our prepared statements, and we would be happy to answer any questions that you may have. Thank you.



**SEPTEMBER 24, 2013: UPDATE PRESENTED SBHE MEETING**

- The Minard Hall project is substantially complete and is in full operation for the Fall 2013 academic term with remaining punch list items being reviewed and completed.
- The collapsed related costs continue to be realized as a result of three items:
  4. Legal fees continue to be incurred.
  5. Contractors have asked for delay related expenses that are being reviewed.
  6. Replacement of furniture lost due to the collapse.

**FINANCIAL STATUS REPORT AS OF AUGUST 31, 2013:**

	Authorization	Project Expenditures	COMMITMENTS		Remaining Authorization
			Construction Change Orders Approved/Potential	Other – Including Contingencies	
Phase I, II, III	\$18,000,000	\$16,939,294	\$131,361	\$929,345	\$18,000,000
Collapse	4,874,300	4,006,485	244,020	623,795	4,874,300
Total	\$22,874,300	\$20,945,779	\$375,381	\$1,553,140	\$22,874,300

**COST RECOVERY/LITIGATION STATUS AS OF SEPTEMBER 24, 2013:**

- Two additional defendants have been added to the second lawsuit. They are Meinecke-Johnson, the project's general contractor, and Earth Developers, the project's excavating contractor. The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and has taken longer than anticipated, especially with the addition of two new defendants, but it is estimated that it will soon be complete and depositions will then begin. It is unknown when the trials will occur, but they would be at least one year away.

**NDSU IS REQUESTING THAT THE SBHE CONSIDER AND PASS THE FOLLOWING MOTIONS AS OF SEPTEMBER 24, 2013:**

**First Motion:** To amend the following underlined part of a motion previously approved by the SBHE on November 17, 2011, which currently reads:

Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a 2011-13 deficiency appropriation.

with the following underlined language:

Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a future deficiency appropriation.

**Second Motion:** To amend the following underlined part of a motion previously approved by the SBHE on November 17, 2011, which currently reads:

Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.

with the following underlined language:

Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2015 or later legislative session.

**MOTIONS PASSED AT SEPTEMBER 24, 2013 SBHE MEETING**

---

**MINARD HALL COLLAPSE COST RECOVERY/LITIGATION STATUS AS OF DECEMBER 31, 2012:**

- NDSU retained the services of attorney Daniel Hull with the law firm of Anderson, Bottrell, Sanden & Thompson in Fargo to represent the University in its recovery efforts.
- Through Mr. Hull's efforts, NDSU has commenced two different lawsuits pertaining to the Minard collapse. Both lawsuits are venued in the State District Court in Fargo (East Central Judicial District).
- In the first litigation, NDSU brought suit against the North Dakota State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse, the Fund denied that there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the Fund. NDSU is requesting a judgment that the Fund's insurance policy covers damages sustained by NDSU as a result of the collapse.
- In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and the North Dakota State Board of Higher Education. The defendants are JLG, Heyer Engineering and NTI, which are the architectural firm, the structural engineering firm and the geotechnical engineering firm involved in the Minard Hall project. The lawsuit alleges, among other things, that the defendants:
  - (1) failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall;
  - (2) provided a defective design for the excavation adjacent to the north end of Minard Hall; and
  - (3) failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.
- In accordance with the construction contract, claims also have been initiated against the project's general contractor, Meinecke-Johnson. The claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and has taken longer than anticipated, but it is estimated that it will soon be complete and depositions will then begin. It is unknown when the trials will occur, but they would be at least one year away.

**FINANCIAL STATUS REPORT AS OF DECEMBER 31, 2012:**

COMMITMENTS	Project		Construction	Other –	Total	Remaining Authorization
	Authorization	Expenditures	Change Orders Approved/Potential	Including Contingencies		
Phase I, II, III	\$18,000,000	\$14,899,879	\$2,462,018	\$638,103	\$18,000,000	-
Collapse	4,874,300	2,880,503	588,124	1,405,673	4,874,300	-
Total	\$22,874,300	\$17,780,382	\$3,050,142	2,043,776	\$22,874,300	-

### **AUGUST 31, 2012: 1901 (SOUTH) BUILDING SECTION RENOVATION:**

*Estimated completion date: Mid-to-late spring 2013*

- Asbestos abatement process (referenced in this summary) began the first of September and was completed the first week of November 2011
- Project scope was complex with demolishing much of the interior, building new structural framing system to support attic office space and new roof, creating more efficient space
- Structural voids and lack of structural integrity discovered once framing of bearing walls was exposed; resulted in additional design time, pricing time, material costs, wall reframing, and project completion time
- Poor masonry bearing wall conditions were uncovered:
  - > Masonry wall at NW portion of 4th floor found to be in poor condition; required complete removal down to third floor level; testing currently under way to verify compressive strength and physical characteristics of remaining masonry to ensure ability to support new roof loads; could delay completion of 1901 section, but impact won't be known until final test results are received
  - > Poor 4th floor bearing wall between 1901 and 1918 sections (masonry intermixed with wood) required removal and rebuilding/infilling of the wall
  - > Openings cut through bearing masonry walls had no or very inadequate lintels requiring new masonry infill or installation of new lintels to carry load above opening
- Issues required numerous job site trips by structural engineer and architect to re-engineer/redesign modifications to existing structural system
- Renovation work on section estimated to be completed mid-to-late spring 2013, depending on testing results stated previously



1901 (south) building section: mortar issues in the brick masonry

### **1918 (CENTER) BUILDING SECTION RENOVATION:**

*Estimated completion date: December 2012*

- Work progressing on schedule for December 2012 completion date; however, some systems and components are tied to 1901 section, so full utilization may not be realized until 1901 area is completed



**NORTH ADDITION:**

*Estimated Completion Date: December 2012*

- Footings and foundation walls were completed in October 2011
- Steel frame installations also began at that time
- Sheet rocking is progressing, windows are installed, brick exterior is approximately 30% completed, and most infrastructure items are installed
- Substantial completion of the project is expected in December 2012



North Addition  
Rebuilt Collapsed Area  
1929 Section

**1929 (NORTH) BUILDING AND COLLAPSED AREA RENOVATION:**

*Estimated completion date: December 2012*

- Portion of the 1929 section was completed in 2011 and occupied for fall 2011; remaining portion and also collapsed area following north addition schedule, being completed at same time



1929 (north) building section: classroom currently in use; renovated in 2011

**FINANCIAL STATUS REPORT AS OF AUGUST 31, 2012:**

	COMMITMENTS					
	Authorization	Project Expenditures	Construction Change Orders Approved/Potential	Other – Including Contingencies	Total	Remaining Authorization
Phase I, II, III	\$18,000,000	\$13,266,150	\$1,674,331	\$3,059,519	\$18,000,000	-
Collapse	4,874,300	2,629,280	1,150,461	1,094,559	4,874,300	-
<b>Total</b>	<b>\$22,874,300</b>	<b>\$15,895,430</b>	<b>\$3,050,142</b>	<b>\$4,154,078</b>	<b>\$22,874,300</b>	<b>-</b>

**COST RECOVERY / LITIGATION STATUS AS OF AUGUST 31, 2012:**

NDSU is actively seeking to recover its damages, expenses and costs resulting from the collapse of Minard Hall. Two civil lawsuits have been commenced. Both lawsuits are venued in the State District Court in Fargo (East Central Judicial District). A forensic study has occurred involving all of the parties. Discovery, including the production of voluminous documents, is ongoing.

In the first litigation, NDSU brought suit against the ND State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse of Minard Hall, the fund denied there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the fund. NDSU is requesting a judgment that the fund's insurance policy covers damages sustained by NDSU as a result of the collapse.

In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and SBHE. The defendants are JLG, Heyer Engineering and 3

NTI, which are the architectural firm, the structural engineering firm, and the geotechnical engineering firm involved in the Minard Hall project. In this lawsuit, the State of North Dakota is seeking to recover damages sustained as a result of the collapse of Minard Hall and as a result of the redesign of the north addition to Minard Hall. The lawsuit alleges, among other things, that the defendants: (1) failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall, (2) provided a defective design for the excavation adjacent to the north end of Minard Hall, and (3) failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.

It is estimated that written discovery will be completed within approximately two months. Depositions will then begin. At this point, it is unknown when the trials will occur, but they would be at least one year away.

---

**DECEMBER 13, 2011:**

NDSU presented a request to the Budget Section for approval to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25, and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. The following motion carried on a roll call vote:

- To approve the NDSU request to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25, and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds.

---

**NOVEMBER 17, 2011:** (*motions passed at the November 17, 2011, SBHE meeting*)

NDSU presented a brief update on the Minard Hall construction to the SBHE. The following motions were approved by the SBHE:

1. To proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 future 2011-13 deficiency appropriation.
2. To seek Budget Section approval for increased spending authorization for Minard Hall from \$18,000,000 to \$22,874,300, an increase of \$4,874,300, with the intent that up to this amount (less any recovered from insurance or legal action) be ultimately funded by a state general fund deficiency appropriation per NDCC 48-01.2-25.
3. To carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.
4. To take any necessary action, including litigation, to seek recovery of damages, expenses, and costs resulting from the collapse of Minard Hall, with any recovery being used to offset the ongoing costs of the Minard Hall project or, if the project is complete at the time of any recovery, to reimburse the State of North Dakota for the costs of the project to the extent that recovery dollars are available, following consultation with the chancellor.

---

**NOVEMBER 9, 2011:**

The Budget, Audit and Finance Committee held an executive session regarding Minard Hall and was satisfied with the progress of litigation.

---

**SEPTEMBER 30, 2011: UPDATE & STATUS SUMMARY PRESENTED TO SBHE**

---

Minard Hall is the largest academic facility located in the historical district on NDSU's campus.

The following departments have classrooms and offices in Minard Hall: Psychology, mathematics, communication, English, modern languages, history, philosophy, religion, sociology, anthropology, emergency management, English as a second language.

Minard Hall was built in three sections: 1901-south, 1918-center, 1929-north. Academic departments located in the 1929-north section were relocated to other areas across campus due to the collapse. However, academic departments located in the 1901-south section have remained during the renovation/construction process.

The \$18,000,000 Minard Hall authorized renovation and addition project scope consists of roof and window replacements, utility and infrastructure (steam, water, and sewer) work and relocation, asbestos abatement, interior redesign/remodeling, new space allocation, new west and north additions, and architect/engineering fees. Additionally, the project includes replacement of the HVAC system, general construction, and electrical work to complete the project. As of December 27, 2009, the project scope also includes the collapsed north wall repair.

Authorized funding for the project is \$18,000,000: \$17,500,000 general funds and \$500,000 special/local funds.

Project scope includes the following square footage:

- Renovation of existing sections - 72,141
- Additions west and north - 30,755
- Collapse - 6,965 of existing section north wall

Consultants and contractors on the project:

- Consultants
  - > JLG (architect - lead of project)
  - > NTI (geotechnical)
  - > Martin Mech (mechanical)
  - > Heyer (structural)
  - > Land elements (landscape)
  - > MBN (electrical)
- Contractors
  - > Grants Mechanical (mech)
  - > Meinecke-Johnson (gen)
  - > Bergstrom Elec (elec)
  - > Veit (shoring)
  - > Earth developers (sub)

Minard Hall experienced an unprecedented partial collapse of the north wall in the early morning hours of December 27, 2009. The building had been partially occupied during construction activities for the renovation; however, the building was unoccupied at the time of the collapse due to the Christmas holiday break. All construction was halted so that project activities could focus on preventing any further collapse, settling or additional failure to the building. Utility connections, temporary heat, air handling and electricity was re-established; a security company was hired to prevent unauthorized access to unsafe areas and to prevent theft; and a moving company was hired to help relocate faculty, offices and classrooms from Minard to other areas on campus because NDSU was not staffed to handle this activity.

During the same time period, the



decision was made not to salvage the collapsed area building materials because of safety concerns. Demolition of this area could not take place unless shoring systems were designed and installed to prevent any further collapse. Access to faculty offices and classroom space in the collapsed area also needed to be addressed while the remainder of the building was evaluated for safety concerns. The challenge continued as the north end of the building became contaminated with asbestos material requiring specialized cleaning and removal.

Further testing and evaluations, demolition of the collapsed area, stabilization of the building, and shoring of the roofs and flooring were continued during the next four to five months. Construction activities continued on the main project, and the west addition progressed slowly because many of the resources were being focused on the collapsed area. While this work was occurring, plans were being developed to determine the cause of the collapse. All parties (contractors and sub-contractors) were given the opportunity to participate in the proposed forensic study. This allowed all parties an opportunity to review the same data and make field observations. All parties participating in the proposed forensic study hired experts to determine the testing needed to determine the footing failure. In order for the review to occur, the collapsed portion of the building, excluding the footings and foundation, needed to be removed. During this removal, asbestos contaminated soils were discovered below the original building area that was collapsed. This area needed to be properly contained and removed before the last floor

section could be removed. Initial forensic testing was completed during July 12-15, 2010. Once completed, the second and final portion of the testing was to excavate the footing area and remove the failed material. All parties agreed an action plan should be developed to ensure soil conditions could handle excavating down to the footing level to expose the soils. Parties did not agree upon a plan until October 2010, and November 8 was set for the start of the deep excavation. No work could continue on the north addition or the collapsed area until this forensic testing was completed.

The original renovation project continued during this time. Temporary air conditioning was installed in classrooms during the summer of 2010 as the building was occupied while the renovation work was under way. Some soil data became available in October 2010, and concerns surfaced about a footing system for the collapsed area, along with concerns regarding the soil conditions at the north addition site. The project architect presented multiple recommendations for proceeding with the north addition and replacement of the collapsed area. Concerns surfaced at this time about continuing with a basement plan for the addition, so budget pricing was solicited on available options for proceeding. At this point, NDSU had a recommendation regarding how to move forward with the project, but needed guidance and approval from the SBHE.

At the December 16, 2010, SBHE meeting, NDSU was given approval for the following five items:

1. To expand the original scope of the project and timeline to include a

redesign of the collapsed portion of building

2. To redesign the Minard Hall north addition to relocate the mechanical space, which will need to be relocated from a planned basement space, which is no longer feasible due to soil conditions
3. To allow collapse-related expenses to be funded from general funds currently available for the project
4. To administratively combine the three building phases into one project for management purposes
5. To authorize NDSU to seek appropriate legislative authorization and funding to complete the project in the most appropriate manner.

After obtaining the SBHE approval, the architects and consultants were directed to proceed with redesigning the north addition, removing the basement mechanical room and relocating that equipment to a 5th floor or penthouse. A revised design was completed for the north addition in mid-February 2011. The plan was approved and proposal requests were sent out to the contractors for pricing. At the same time, proposals were modified slightly for the collapsed area in order to tie in all connections and utilities to the revised plan. Proper documentation and supporting information for the pricing were received and approved change orders were created in April and May of 2011. Priorities at this time were to remove the loose sand fill in the basement area and to fill it in with a compacted engineered fill. Once this was

completed, the collapsed structure and north addition footings could be started.

Locations logistics for the building occupants have been an ongoing consideration and concern. (To date, permanent locations are not available.) Therefore, the impetus was to complete the west addition and part of the 1918 and the 1929 construction zones so space would be available for the fall 2011 academic semester. Temporary life/safety systems, air conditioning and heating would need to be installed due to the 5th floor mechanical equipment not being installed until sometime in 2012. Due to a tight project timeline and because of space limitations, a moving company was hired to relocate the departments and to store any materials that were not necessary during the next 12 months. This task was completed in August 2011.

With the 1901 building and the remaining 1918 building now vacated, the next milestone was to remove the remaining known asbestos in these areas. This process began the first of September and will not be completed until the first week of November 2011. The work is being done by floor so that the other contractors can follow behind and complete the needed demolition. The north addition footings and foundation walls were completed in October 2011 and steel frame installations are currently under way. Substantial completion of the project is expected December 2012.

**FINANCIAL STATUS REPORT AS OF SEPTEMBER 30, 2011:**

	Biennium	Local Match	State General Funds	
<b>Legislative/appropriation authorization</b>				
Phase I and II	2007-09	\$500,000	\$4,500,000	\$5,000,000
Phase III	2009-11		\$13,000,000	\$13,000,000
			<b>Total legislative authorization</b>	<b>\$18,000,000</b>
<b>Expenditures as of 9/30/2011</b>				<b>(\$12,507,864)</b>
<b>Remaining legislative authorization</b>				<b>\$5,492,136</b>
<b>Outstanding construction commitments and contingencies as of 9/30/2011</b>				
Construction Commitments				\$8,753,819
Contingencies:				
Construction				\$1,112,617
Legal				\$500,000
Total outstanding commitments and contingencies				<b>\$10,366,436</b>
<b>Increased amount of Legislative spending authorization requested by NDSU due to collapse</b>				<b>\$4,874,300</b>

	Construction	Collapse	Total
<b>Expenditures</b>	\$10,609,197	\$1,898,667	\$12,507,864
<b>Commitments</b>	\$7,048,186	\$1,705,633	\$8,753,819
<b>Contingencies:</b>			
Construction	\$342,617	\$770,000	\$1,112,617
Legal	-	\$500,000	\$500,000
	<b>\$18,000,000</b>	<b>\$4,874,300</b>	<b>\$22,874,300</b>

**2011-13 HB1003, SECTION 8.**

**NORTH DAKOTA STATE UNIVERSITY – MINARD HALL – BUDGET SECTION:**

*North Dakota State University may use unspent funding from the \$5,000,000 appropriation received during the biennium beginning July 1, 2007, and ending June 30, 2009, and unspent funding from the \$13,000,000 appropriation, received during the biennium beginning July 1, 2009, and ending June 30, 2011, for the Minard hall project, for the biennium beginning July 1, 2011, and ending June 30, 2013. North Dakota State University shall report to the budget section regarding the status of the Minard Hall project and may request increased spending authorization from the budget section for the project.*

**NDSU IS REQUESTING THAT THE SBHE PASS THE FOLLOWING MOTIONS:**

*(Motions passed at the November 17, 2011, SBHE meeting)*

1. Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 future 2011-13 deficiency appropriation.
2. Grant NDSU authority to seek Budget Section approval for increased spending authorization for Minard Hall from \$18,000,000 to \$22,874,300, an increase of \$4,874,300, with the intent that up to this amount (less any recovered from

insurance or legal action) be ultimately funded by a state general fund deficiency appropriation per NDCC 48-01.2-25.

3. Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.
4. Authorize NDSU to take any necessary action, including litigation, to seek recovery of damages, expenses, and costs resulting from the collapse of Minard Hall, with any recovery being used to offset the ongoing costs of the Minard Hall project or, if the project is complete at the time of any recovery, to reimburse the State of North Dakota for the costs of the project to the extent that recovery dollars are available, following consultation with the chancellor.

# APPENDIX – MINARD HALL

## BUDGET SECTION MINUTES AND TESTIMONY

15.5050.03000

Budget Section

### UNIVERSITY SYSTEM CAPITAL PROJECTS CONTINGENCY POOL

Mr. Rick Tonder, Director of Facilities Planning, North Dakota University System, presented information ([Appendix K](#)) regarding funds distributed from the capital projects contingency pool pursuant to Section 24 of 2013 Senate Bill No. 2003. He said the 2013 Legislative Assembly provided \$5,483,413 for the capital projects contingency pool. He said the University System allocated \$658,984 for a campus drive project at Williston State College (\$90,000), a Stevens Hall renovation project at Williston State College (\$517,551), and an Erlandson remodel and expansion project at Lake Region State College (\$251,433). He said there is \$4,624,429 remaining in the capital projects contingency pool for future allocations.

### NORTH DAKOTA STATE UNIVERSITY MINARD HALL PROJECT

Mr. Michael Ellingson, Director of Facilities Management, North Dakota State University, presented information ([Appendix L](#)) regarding the status of the Minard Hall project at North Dakota State University (NDSU) pursuant to Section 22 of 2013 Senate Bill No. 2003. He said construction of Minard Hall is substantially complete, and the building was fully occupied for the fall 2013 semester.

Mr. Christopher Wilson, General Counsel, North Dakota University System, presented information ([Appendix M](#)) regarding the legal proceedings related to the Minard Hall project. He said the law firm Anderson, Bottrell, Sanden, and Thompson is representing NDSU in two separate litigation proceedings. He said NDSU brought suit against the state fire and tornado fund, which provides property insurance for NDSU. He said NDSU has also brought suit against selected project contractors. He said written discovery and depositions are ongoing for both lawsuits. He said a trial date has not yet been set for the lawsuit against the state fire and tornado fund. He said the trial date for the lawsuit against the project contractors will be in March 2015.

In response to a question from Representative Brandenburg, Mr. Ellingson said approximately \$4.8 million of the \$22.9 million total project cost is associated with the collapse of Minard Hall.

### UNIVERSITY SYSTEM - CHANGES TO CAPITAL PROJECTS

#### North Dakota State University

#### Sanford Health Athletic Complex Project

Mr. Ellingson presented information ([Appendix N](#)) regarding a request for Budget Section approval to increase spending authority related to the Sanford Health Athletic Complex project. He said the request is the result of actual bids exceeding the project estimates. He said the scope of the project has not changed.

In response to a question from Representative Streyle regarding leaseback agreements, Mr. Bruce Bollinger, Vice President of Finance and Administration, North Dakota State University, said the Sanford Health Athletic Complex does not include any leaseback agreements. Mr. Bollinger said he would provide information regarding the terms of a leaseback agreement between NDSU and the NDSU Development Foundation related to Richard H. Barry Hall.

In response to a question from Representative Delzer, Mr. Bollinger said maintenance of the Sanford Athletic Health Complex will be paid from local funds at NDSU and not state funds.

**It was moved by Senator Grindberg, seconded by Senator Klein, and carried on a roll call vote that the Budget Section approve the North Dakota State University request pursuant to Section 15-10-12.1 to increase spending authority from private donations by \$5,595,644, from \$35,404,356 to \$41,000,000, related to the Sanford Athletic Health Complex project.** Representatives Pollert, Boe, Brandenburg, Delzer, Devlin, Dosch, Guggisberg, Holman, Kempenich, Kreidt, Martinson, Mock, Nelson, Onstad, Sanford, Streyle, Thoreson, Vigesaa, Wieland, and Williams and Senators Bowman, Carlisle, Erbele, Grindberg, Heckaman, Holmberg, Kilzer, Klein, Krebsbach, Lee, Mathern, Robinson, Schneider, Wanzek, and Wardner voted "aye." No negative votes were cast.

#### Center for Computationally Assisted Science and Technology Project

Dr. Philip Boudjouk, Professor of Chemistry, North Dakota State University, presented information ([Appendix O](#)) regarding a request for Budget Section approval to increase spending authority and to increase the scope of the Center for Computationally Assisted Science and Technology project.

In response to a question from Representative Delzer, Dr. Boudjouk said the increase includes the purchase of computer hardware, cooling systems, and electrical transformers. He said the equipment is needed to comply with the requirements of an additional federal grant.

Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Drovdal, Kelsh, Kempenich, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Vigesaa, Wieland, and Williams voted "aye." Representatives Bellew, Brandenburg, Delzer, and Klein voted "nay."

**North Dakota State University -  
Batcheller Building - Center for  
Biopharmaceutical Research and Production  
Centers of Excellence Program**

Mr. Bruce Bollinger, Vice President for Finance and Administration, North Dakota State University, Fargo, presented a request for Budget Section approval under Section 15-10-12.1 of project authorization of \$1.75 million from the Center for Biopharmaceutical Research and Production centers of excellence program required cash match for the Batcheller Building first floor construction project in the Research and Technology Park. Dr. Satish Chandran, Director, Center for Biopharmaceutical Research and Production, North Dakota State University, Fargo, was also present.

In response to a question from Representative Carlson, Mr. Bollinger said a \$2 million grant from the Greater Fargo Moorhead Economic Development Corporation is contingent upon Budget Section approval of the request.

It was moved by Representative Carlson, seconded by Senator Schneider, and carried on a roll call vote that the Budget Section approve under Section 15-10-12.1 project authorization of \$1.75 million from the Center for Biopharmaceutical Research and Production centers of excellence program required cash match for the Batcheller Building first floor construction project in the Research and Technology Park. Senators Grindberg, Bowman, Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Kelsh, Kreidt, Kroeber, Martinson, Metcalf, Nelson, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Representatives Bellew, Brandenburg, Delzer, Drovdal, Kempenich, Monson, and Pollert voted "nay."

**North Dakota State University -  
Minard Hall**

Mr. Bollinger presented a request for Budget Section approval to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25 and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. Mr. Michael Ellingson, Facilities Management Director, North Dakota State University, Fargo, and Mr. Dan Hull,

attorney, Anderson, Bottrell, Sanden & Thompson Law Firm representing North Dakota State University (NDSU) in legal action regarding Minard Hall were also present. Mr. Bollinger said NDSU has pursued a lawsuit against its insurance carrier seeking payment for insured damages estimated at \$4.8 million. He said any settlement amount will be used for the additional costs relating to the project.

In response to a question from Representative Carlson, Mr. Hull said the scope of the project is not increasing. He said the increased project authorization is for the additional costs resulting from damages incurred due to the Minard Hall collapse.

In response to a question from Representative Delzer, Mr. Ellingson said \$4.8 million is the estimate of the additional costs. He said all expenditures related to the Minard Hall collapse are being separately recorded and verified by legal counsel.

In response to a question from Senator Bowman, Mr. Bollinger said if legal settlement proceeds are less than the estimated \$4.8 million of additional costs, NDSU would seek direction from the State Board of Higher Education for options to pay for the costs incurred, including the possible request for a deficiency appropriation from the Legislative Assembly in 2013.

Senator Christmann asked whether NDSU is also seeking cost recovery from the contractor responsible for causing the damages. Mr. Hull said cost recoveries are being sought from all parties involved but is unable to provide details since the case is currently in progress.

It was moved by Senator Krebsbach, seconded by Senator Taylor, and carried on a roll call vote that the Budget Section approve the NDSU request to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25 and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. Senators Grindberg, Erbele, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Drovdal, Kelsh, Kempenich, Klein, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Senators Bowman, Christmann, Kilzer, and Wanzek and Representatives Bellew, Brandenburg, Delzer, and Kreidt voted "nay."

**Mayville State University -  
Science-Library Complex**

Mr. Steven Bensen, Vice President for Business Affairs, Mayville State University, Mayville, presented a request for Budget Section approval under Section 48-01.2-25 to increase the science-library complex project authorization by \$95,000 from \$5,138,328 to \$5,233,328 for additional project improvements that are either complete or partially complete and under Section 15-10-12.3 to use institutional collection reserves (\$50,000), library local funds (\$25,000), and

**NORTH DAKOTA STATE UNIVERSITY MINARD HALL  
PROJECT**

Mr. Dan Hull, Special Assistant Attorney General, North Dakota State University, presented information ([Appendix N](#)) regarding the status of the Minard Hall project at North Dakota State University (NDSU) pursuant to Section 27 of 2015 House Bill No. 1003. He said NDSU has expended \$4,654,854 as a result of the building collapse and NDSU agreed to a settlement of \$3,020,000 resulting in \$1,634,853.52 of unreimbursed costs. He said on December 10, 2015, the State Board of Higher Education approved NDSU's request to seek a deficiency appropriation from the 2017 Legislative Assembly for the unreimbursed costs.

In response to a question from Representative Kempenich, Mr. Hull said of the \$4.7 million in costs incurred due to the collapse, \$3.8 million is related to costs for repairs and \$900,000 is related to costs of forensic studies, expert witnesses, and legal assistance.

1, 2014, and June 30, 2015, and reduced (.45) FTE positions since June 30, 2015, for a total of 264.87 FTE positions as of November 30, 2015.

**Minard Hall Special Assistant Attorney General Testimony**  
**Budget Section: December 16, 2015**

---

My name is Dan Hull. I am a partner in the Fargo law firm of Anderson, Bottrell, Sanden & Thompson and a Special Assistant Attorney General with regard to the Minard Hall collapse. I am here today to provide an update on the status of Minard Hall project as required by Section 27 of 2015 House Bill No. 1003.

Minard Hall is a large academic building located on NDSU's campus. In 2009, Minard Hall was undergoing extensive renovations, as well as the construction of several additions. A large hole was dug for the planned basement of one of the additions. The hole was adjacent to the existing north end of Minard Hall. Unfortunately, on December 27, 2009, part of existing Minard Hall collapsed into the hole.

NDSU's property insurer was the North Dakota State Fire and Tornado Fund. The Fund denied coverage for the collapse. The involved architect, engineers and contractors also denied any liability for the collapse.

Two lawsuits were commenced by NDSU. One lawsuit was against the State Fire and Tornado Fund. The other lawsuit was against five of the entities involved in the construction: the architect, the structural engineer, the geotechnical engineer, the general contractor and the excavating contractor. The Fund and the other five defendants vigorously denied any liability and strongly contested the lawsuits.

The Minard Hall project, including all repairs necessitated by the collapse, was substantially completed in 2013. As of the fall 2013 academic term, Minard Hall was in full operation.

The lawsuits marched on. After years of document production, depositions and motions, trial dates were finally set by the court. At that point, because litigation involves both costs and risks, NDSU received authority from the State Board of Higher Education to explore whether a mediated settlement was possible. The parties retained a nationally-respected mediator who directly negotiated with each of the parties. Those mediated negotiations ultimately resulted in a favorable settlement of NDSU's claims for the sum of \$3,020,000. Only the mediator has a breakdown of the amount paid by each defendant. Payment of the settlement amount was received by NDSU on July 13, 2015.

NDSU expended a total of \$4,654,853.52 as a result of the collapse. Up to approximately \$3,800,000 of those costs might have been recoverable at trial if NDSU had won all parts of both cases. On the other hand, if NDSU had lost parts or all of those cases, NDSU might have recovered only a fraction or none of that amount.

Based on collapse expenditures of \$4,654,853.52 and a settlement of \$3,020,000, NDSU has unreimbursed collapse related costs of \$1,634,853.52. The legislature previously increased the authorization for the Minard Hall project, but it did not appropriate any funds. As a result, on December 10<sup>th</sup>, NDSU received approval from the State Board of Higher Education to seek a deficiency appropriation for the amount of those unreimbursed costs.

That concludes my prepared statements. We would be happy to answer any questions that you may have. Thank you.



1/17/17 AH-4 HB 1024

## Testimony

### House Bill 1024 House Appropriations Committee January 17, 2017; 2:30 p.m. North Dakota Department of Health

Good afternoon Chairman Delzer and members of the House Appropriations Committee. My name is David Glatt, Co Director and Environmental Health Section Chief for the North Dakota Department of Health. We are responsible for the implementation of the vast majority of environmental protection programs in the state, including programs delegated to the state through agreements with the U.S. Environmental Protection Agency. I am here today to provide testimony in support of House Bill 1024.

The Department of Health is requesting a deficiency appropriation of \$250,000 to cover the cost of several current or pending legal actions with the U.S. Environmental Protection Agency. The FY 2015-2017 appropriation for special legal activities is \$500,000. At present the Department has spent approximately \$626,312.00. Although it is difficult to predict the timing of anticipated court decisions or roll out of final federal agency rules, the Department expects to continue to either take a lead role or partner with other states in at least three major actions in the coming months. They include challenges to federal actions in the following areas:

- Federal 1-Hour SO<sub>2</sub> Rule: The state is asking the court to compel the U.S. EPA to make a final determination on the compliance status of the state of North Dakota as defined in the rule. EPA had up to two years to make the determination but is now asking to delay the action for several years while they evaluate the new rules or procedures to determine the state's status. The delay in the determination can harm the state as we move to permit new sources.
- Clean Power Plan (CPP): The U.S. EPA has proposed rules that would regulate how CO<sub>2</sub> emissions are regulated or how energy is produced in each state. There is concern that the final rules will exceed the authority of the federal government by directing energy policy in each state, thereby usurping state authority. We anticipate that because each state will be assigned a specific compliance goal, each state who opposes the final determination will need to initiate a

lawsuit against the EPA. The intent of the lawsuit will be to protect state authority to make decisions on how to implement federal laws and rules. Due to the challenge by North Dakota and other like minded states the US Supreme Court has stayed implementation of the CPP while the lower courts hear challenges to the rule and make a final decision. It is anticipated that the determination by the lower courts will be appealed to the US Supreme Court. North Dakota is an active participant in challenges 111(d) and 111(b) portion of the rule which would govern new and retrofit construction activities associated with new coal fired power generation facilities.

This concludes my testimony. I am happy to answer any questions you may have.

**Department of Human Services**  
**HB 1024 Deficiency Appropriation**  
**2017 - 2019 Biennium**  
*Expressed in Millions*

1/17/17  
 AHS  
 HB 1024

	2015 - 2017									Variance
	Adjusted Appropriation *			Projected Expenditures			Difference			
	Total	General	Other	Total	General	Other	Total	General	Other	
Administration - Support	24.8	14.5	10.3	24.1	14.3	9.8	0.7	0.2	0.5	
Information Technology Services	245.5	70.5	175.0	257.0	73.3	183.7	(11.5)	(2.8)	(8.7)	\$11.5M to implement and support IT systems, the majority of which is needed for post production support for release 1 of the SPACES project.
Economic Assistance	286.6	17.6	269.0	246.1	13.7	232.4	40.5	3.9	36.6	Decrease in Child Care Assistance Program grants general fund savings of \$3.3M. Decrease in SNAP, LIHEAP, and TANF Grants \$34.7M other funds
Child Support	29.2	8.4	20.8	28.4	8.1	20.3	0.8	0.3	0.5	
Medical Services	1,250.6	293.8	956.8	1,294.5	313.9	980.6	(43.9)	(20.1)	(23.8)	\$48.5M increase costs for Medicaid Expansion as average monthly premium is \$210 more than budgeted, offset by 746 less individuals eligible per month.
Long Term Care	634.6	327.0	307.6	616.6	320.1	296.5	18.0	6.9	11.1	Actual monthly average units being less than budgeted.
DD Council	0.9		0.9	0.9		0.9	0.0	0.0	0.0	
Aging Services	21.9	8.7	13.2	22.3	8.6	13.7	(0.4)	0.1	(0.5)	
Children and Family Services	175.7	69.0	106.7	174.2	69.3	104.9	1.5	(0.3)	1.8	
Behavioral Health	18.1	7.2	10.9	20.8	7.7	13.1	(2.7)	(0.5)	(2.2)	Authority needed to spend \$2.2M of additional federal Behavioral Health funds for prevention activities.
Vocational Rehabilitation	25.9	5.7	20.2	24.8	5.6	19.2	1.1	0.1	1.0	
Developmental Disability	564.7	275.8	288.9	583.1	286.5	296.6	(18.4)	(10.7)	(7.7)	The monthly average cost and units are higher than budgeted
Human Service Centers	199.3	117.9	81.4	188.8	108.2	80.7	10.5	9.8	0.8	Turnover of staff (850.9 FTE in this area), hard to fill positions, downward reclassification of staff, contract changes and \$2.8M Inpatient Hospital contracts
State Hospital	82.5	61.0	21.5	79.2	57.4	21.8	3.3	3.6	(0.3)	Turnover of staff (828.5 FTE in this area), hard to fill positions, the new Tompkins Rehabilitation program didn't start until December 1, 2015 and closing of a SOTEP unit on December 1, 2016.
Life Skills and Transition Center	59.3	29.4	29.9	59.5	28.9	30.6	(0.2)	0.5	(0.7)	
	<b>3,619.6</b>	<b>1,306.5</b>	<b>2,313.1</b>	<b>3,620.3</b>	<b>1,315.6</b>	<b>2,304.8</b>	<b>(0.7)</b>	<b>(9.0)</b>	<b>8.3</b>	

\* Includes 2015 SB2012, all other bills, oil impact, equity funds, allotment savings, internship stipends, and temporary health insurance.

A#6 1/17/17 HB 1024

TESTIMONY OF  
MAJOR GENERAL ALAN S. DOHRMANN  
THE ADJUTANT GENERAL  
NORTH DAKOTA NATIONAL GUARD  
BEFORE THE  
HOUSE APPROPRIATIONS COMMITTEE  
17 JANUARY 2017  
HOUSE BILL 1024

Good afternoon Mr. Chairman, I am Al Dohrmann, Director of the Department of Emergency Services for the State of North Dakota. I am here today to testify in support of House Bill 1024 and answer any questions you may have regarding Section 1. Subdivision 6.

Section 1. Subdivision 6 would provide \$17,079,500 in special funds to pay off Bank of North Dakota loans used to finance two emergencies.

It would provide \$17,000,000 for the expenses of law enforcement, ND National Guard (NDNG), and other state agencies in responding to the Dakota Access Pipeline protests. We would also need money appropriated to cover the interest on this loan; however, we are aware that there is discussion of amending this Bill to remove the \$17,000,000 so that we can seek reimbursement of our costs from other entities.

The remaining amount of \$79,500 is for NDNG response costs for the 2015 Burleigh County fires. During this event, we deployed 3 Blackhawk helicopters and crews to bring the fire near the University of Mary under control. The total costs were \$90,237.15. At the time of this event, the state and county agreed to a 15% Burleigh County cost share, which resulted in the county paying \$12,713.77 and the state being responsible for \$77,523.38. The approximate \$2,000 difference between this amount and the request of this bill is to cover interest due to the Bank of North Dakota.

I ask for your support for HB 1024 and will stand for any questions you may have.

**OFFICE OF ADJUTANT GENERAL**  
**HB 1024 - Section 1. Subdivision 6**

CURRENT APPROPRIATION	\$	79,500.00
BND LOAN PRINCIPAL BALANCE	\$	77,523.38
ACCRUED INTEREST AS OF 1/2/201:	\$	2,314.44
DAILY INTEREST RATE	\$	4.8248
CURRENT INTEREST RATE		2.272%

A# 7 1/17/17 NB 1024

House Bill 1024  
House Appropriations Committee  
January 17, 2017

Testimony by David Skalsky, Assistant Director  
State Historical Society of North Dakota

Chairman Delzer and members of the committee, my name is David Skalsky and I am the Assistant Director of the State Historical Society of North Dakota. I am here today to present testimony regarding deficiency appropriations to the State Historical Society of North Dakota.

**Heritage Center Expansion Litigation**

House Bill 1024 provides a deficiency appropriation of \$294,500 for legal fees associated with litigation related to the Heritage Center Expansion Project. The general contractor, Comstock Construction, is suing the state for their contract retainage and other expenses.

**Double Ditch State Historic Site Stabilization**

House Bill 1024 provides a deficiency appropriation of \$1,265,625 for repayment of a Bank of North Dakota loan for the Double Ditch Historic Site repairs authorized by the 2015 Legislative Assembly in Section 6 of 2015 Senate Bill 2018. Atwell Engineering was hired and submitted the permit application to the Corps of Engineers. The permit was submitted on May 12, 2016. Atwell Engineering is working on an alternative to stabilize the site that would not require a permit from the Corps of Engineers.



**STATE  
HISTORICAL  
SOCIETY**  
OF NORTH DAKOTA

AAO 1/17/17 HB1024

Doug Burgum  
*Governor of North Dakota*

## Memorandum

North Dakota  
State Historical Board

Date: January 17, 2017

Margaret Puetz  
*Bismarck - President*

To: Representative Delzer, Chairman, House Appropriations Committee

Gereld Gerntholz  
*Valley City - Vice President*

From: David Skalsky, <sup>JA</sup>State Historical Society of North Dakota

Albert I. Berger  
*Grand Forks - Secretary*

Subject: HB 1024, \$294,500 Operating Expense Deficiency Appropriation

Calvin Grinnell  
*New Town*

As requested, I am providing a litigation budget for the Comstock Construction lawsuit against the State of North Dakota over the Heritage Center expansion project. The schedule was prepared by the Serkland Law Firm who was appointed as special assistant to the Attorney General to represent the State of ND in this case.

Diane K. Larson  
*Bismarck*

Terrance Rockstad  
*Bismarck*

H. Patrick Weir  
*Medora*

Please contact me at (701) 328-3562 or [dcskalsky@nd.gov](mailto:dcskalsky@nd.gov) if you need additional information.

Sara Otte Coleman  
*Director  
Tourism Division*

Kelly Schmidt  
*State Treasurer*

Alvin A. Jaeger  
*Secretary of State*

Jesse Hanson  
*Acting Director  
Parks and Recreation  
Department*

Grant Levi  
*Director  
Department of Transportation*

Claudia J. Berg  
*Director*

*Accredited by the  
American Alliance  
of Museums since 1986*

LITIGATION BUDGET FOR COMSTOCK CONSTRUCTION V. THE STATE  
HISTORICAL SOCIETY

	FEES	EXPENSES
Claim File Review/Analysis/Development	\$25,000	
Pleadings	\$5,000	
Communications with Client	\$10,000	
Written Discovery and Reviewing Comstock's document production	\$20,000	
Motions	\$15,000	
Depositions of Fact Witnesses	\$20,000	
Depositions of Experts	\$7,500	
Expert's Fees	\$15,000	
Records Acquisition	\$2,000	
Court Appearances	\$2,000	
Mediation (includes attorney's fees and mediator's fees)	\$5,000	
Research	\$2,000	
Litigation Costs (filing fees, deposition transcripts, postage, photocopy fees, westlaw research)	\$10,000	
<b>PRE-TRIAL TOTAL:</b>	<b>\$138,500</b>	
Pre-Trial Motions	\$5,000	
Subpoenas	\$1,000	
Jury Instructions	\$2,500	
Trial Preparation	\$30,000	
Trial Exhibits	\$5,000	
Trial for <u>10</u> Days:	\$70,000	
Other	\$2,500	
<b>TRIAL TOTAL:</b>	<b>\$116,000</b>	
Appeal Briefing	\$25,000	
Preparation for Appeal Argument	\$7,500	
Appeal Costs (trial transcript, filing fees, westlaw research, photocopy fees, postage)	\$7,500	
<b>APPEAL TOTAL</b>	<b>\$40,000</b>	
<b>GRAND TOTAL:</b>	<b>\$294,500</b>	





SALLY HOLEWA  
STATE COURT ADMINISTRATOR

January 25, 2017

State of North Dakota  
OFFICE OF STATE COURT ADMINISTRATOR

AH 1  
1/26/17  
HB 1024

SUPREME COURT  
Judicial Wing, 1st Floor  
600 E Boulevard Ave Dept 180  
Bismarck, ND 58505-0530  
701: (701) 328-4216  
Fax: (701) 328-2092

Representative Jeff Delzer  
Chair, House Appropriations Committee

RE: HB 1024 – Deficiency Appropriation

Dear Rep. Delzer:

Attached is the Judicial Branch's revised deficiency appropriation request. It has been reduced from \$1.5 million to \$225,672.67 due to the number of cases that have been rescheduled from this biennium to the next biennium.

Based on the cases as scheduled in November 2016, we had estimated for 400 trials (equal to 500 trial days) and budgeted accordingly. With the re-scheduling that has occurred, we are estimating 60 trials (equal to 100 trial days) will be held between now and June 30, 2017.

Other reductions to the estimate include:

- (1) Reduced contract staff costs from \$38.50/hour to \$30/hour by employing a less experienced individual and providing on-the-job training
- (2) Reduced court reporter/recorder costs from \$70/hour to \$30/hour after checking with local freelance reporters and learning that they were unable to accommodate 100 trial days between now and June 30, 2017. We anticipate hiring temporary staff and providing on-the-job training
- (3) Reduced juror amenities from \$8/day to \$7/day
- (4) Reduced juror mileage from .54¢/mile to .535¢/mile to reflect the January 1, 2017 reduction in state employee mileage reimbursement (by statute jurors are paid at the same rate as state employees)

Increases in the estimate include:

- (1) Increased number of jurors for misdemeanor trials from 26 to 34 per trial based on recent experience seating a jury for two of the DAPL-related cases
- (2) Increased expected length of misdemeanor trials from 1 day/trial to 2 days/trial based on number of witnesses needed for consolidated trials

Please let me know if you have any questions regarding these changes.

I also want to bring your attention to the 323 cases that have been postponed to the 2017-2019 biennium. The expenses for these cases were not included in our proposed 2017-2019 budget since we had anticipated they would be completed prior to June 30, 2016. Since that is not going to be the case, we will be asking the legislature to increase our regular appropriation (SB 2002/2062) to cover these unexpected costs.

Sincerely,



Sally A. Holewa  
State Court Administrator

**DEFICIENCY APPROPRIATION - CHARGES FILED AGAINST PROTESTERS**

Jan 25, 2017

	<u>Total Cases</u>	<u>2015-17 Cases Scheduled</u>	<u>2017-19 Cases Scheduled</u>
Total Cases	658		
Estimated cases to go to jury trial	600	277	323
Estimated felonies	50	16	34
Estimated misdemeanors	550	261	289

<u>Surrogate Judge:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Pay per day	\$ 599.45		
Fringe (social security)	\$ 45.86		
<b>Total surrogate judge pay</b>	<b>\$ 645.31</b>	100	<b>\$ 64,530.79</b>

*22 weeks until end of biennium adjusted for holidays and other off days (3 trial days / 2 days review days per week)*

<u>Judge travel:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Miles per day in court	\$ 200.00		
Mileage rate	\$ 0.535		
<b>Total judge travel</b>	<b>107.00</b>	60	<b>\$ 6,420.00</b>

*Travel from Dickinson 3 days per week*

<u>Judge Meals:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Daily meal rate/ total meals	\$ 35.00	60	<b>\$ 2,100.00</b>

*Meals while away from Dickinson*

<u>Deputy clerk of court:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Dakota Staffing per hour	\$ 30.00		
<b>Total deputy clerk</b>	<b>\$ 240.00</b>	100	<b>\$ 24,000.00</b>

<u>Court recorder:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Contract rate per hour	\$ 30.00		
<b>Total court recorder</b>	<b>\$ 240.00</b>	100	<b>\$ 24,000.00</b>

<u>Bailiffs:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Salary per hour	\$ 13.25		
Fringe (social security)	\$ 1.01		
Total per hour	\$ 14.26		
<b>Total per day</b>	<b>\$ 114.11</b>		
Bailiffs per trial	2.0		
<b>Total bailiffs</b>	<b>\$ 228.22</b>	60	<b>\$ 13,693.08</b>

*Based on 3 trial days per week*

**Jury fees:**

<u>Misdemeanor cases (1 day estimate):</u>	<u>Rate</u>	<u>Jurors</u>	<u>Cost for day 1 of trial</u>	<u>Total trials</u>	<u>Total Cost</u>
People called for jury duty		26			
Juror pay - sent home	\$ 25.00	14	\$ 350.00		
Juror pay - full day	\$ 50.00	12	\$ 600.00		
<b>Total 1 day trial</b>			<b>\$ 950.00</b>	<b>53</b>	<b>\$ 50,350.00</b>

<u>Felony cases (3 day estimate):</u>	<u>Rate</u>	<u>Jurors</u>	<u>Cost for day 1 of trial</u>	<u>Cost for 2nd and 3rd day</u>	<u>Total trials</u>	<u>Total Cost</u>
People called for jury duty		34				
Juror pay - sent home	\$ 25.00	22	\$ 550.00	\$ -		
Juror pay - full day	\$ 50.00	12	\$ 600.00	\$ 1,200.00		
<b>Total 3 day trial</b>			<b>\$ 1,150.00</b>	<b>\$ 1,200.00</b>	<b>7</b>	<b>\$ 16,450.00</b>

**Total Jury fees** **\$ 66,800.00**

<u>Juror amenities:</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Trial days</u>	<u>Total Cost</u>
Meals/snacks per day	\$ 7.00	12	1	60	\$ 5,040.00
Total cost					<u>\$ 5,040.00</u>
<b>Total juror amenities</b>					

<u>Juror mileage:</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Trials</u>	<u>Total Cost</u>
Rate per mile	\$ 0.535				
Average mileage per juror		<u>20</u>			
Total daily cost per juror	\$ 10.70				

<b>Misdemeanor cases</b>					
Juror pay - sent home	\$ 10.70	14	1	53	\$ 7,939.40
Juror pay - full day	\$ 10.70	12	1	53	\$ 6,805.20

<b>Felony cases</b>					
Juror pay - sent home	\$ 10.70	22	1	7	\$ 1,647.80
Juror pay - full day	\$ 10.70	12	3	7	\$ 2,696.40
Total mileage					<u>\$ 19,088.80</u>

**2015-17 Biennium Deficiency appropriation**

<u>Summary - Fiscal impact:</u>	<u>Total</u>	
Surrogate judges	\$ 64,530.79	
Surrogate judge travel	\$ 6,420.00	
Surrogate judge meals	\$ 2,100.00	
Contract clerk	\$ 24,000.00	
Contract recorder	\$ 24,000.00	
Bailiffs	\$ 13,693.08	
Jury fees	\$ 66,800.00	
Jury amenities	\$ 5,040.00	
Juror mile	\$ 19,088.80	
<b>Total cost</b>	<b>\$ 225,672.67</b>	<b>Total estimated fiscal impact for 2015-17 biennium</b>

**HOUSE BILL NO. 1024 - DEFICIENCY APPROPRIATIONS  
LISTING OF PROPOSED CHANGES**

Description	FTE	General Fund	Special Funds	Total
1 Section 1 - Judicial Branch (Provide borrowing authority in a new section of the bill)			(\$1,500,000)	(\$1,500,000)
2 Section 1 - Commission on Legal Counsel for Indigents (Provide borrowing authority in a new section of the bill)			(\$937,000)	(\$937,000)
3 Section 1 - North Dakota State University (Remove)			(\$1,634,854)	(\$1,634,854)
4 Section 1 - State Department of Health (Cover expenses from estimated unspent 2015-17 biennium appropriation authority)			(\$250,000)	(\$250,000)
5 Section 1 - Department of Human Services (Discuss)				\$0
6 Section 1 - Adjutant General (Remove \$17 million related to loan repayments; Keep \$79,500 for loan repayment plus interest related to a fire disaster south of Bismarck)			(\$17,000,000)	(\$17,000,000)
7 Section 1 - State Historical Society (Remove \$1,265,625 related the Double Ditch Historic Site project cancelation; Discuss \$294,500 related to legal expenses)			(\$1,265,625)	(\$1,265,625)
Total proposed funding changes		\$0	(\$22,587,479)	(\$22,587,479)

*1/26/17  
HB 1024  
JH 2*

**Other proposed changes:**

- Add a new section to provide \$1,500,000 of borrowing and appropriation authority to the Judicial Branch similar to Senate Bill No. 2174 - proposed section:  
**SECTION 2. BORROWING AUTHORITY - APPROPRIATION - JUDICIAL BRANCH - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The judicial branch may borrow the sum of \$1,500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for court costs related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the judicial branch for the purpose of defraying expenses of the judicial branch related to unlawful activity associated with the construction of the Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other sources related to the state's expenses which were incurred due to unlawful activity associated with the construction of the Dakota access pipeline.
- Add a new section to provide \$859,000 of borrowing and appropriation authority to the Commission on Legal Counsel for Indigents similar to Senate Bill No. 2174 (Testimony indicated that the \$937,000 exceeded the actual funding request needed) - proposed section:  
**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The commission on legal counsel for indigents may borrow the sum of \$859,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for legal costs related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the commission on legal counsel for indigents for the purpose of defraying expenses of the commission on legal counsel for indigents related to unlawful activity associated with the construction of the Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other sources related to the state's expenses which were incurred due to unlawful activity associated with the construction of the Dakota access pipeline.
- Add a new section to repeal Sections 6 and 7 of Chapter 52 of the 2015 Session Laws related to Double Ditch historic site repairs (Discuss)

Att 3  
HB 1024  
1/26/17

**OFFICE OF ADJUTANT GENERAL**  
**HB 1024 - Section 1. Subdivision 6**

CURRENT APPROPRIATION	\$	79,500.00
BND LOAN PRINCIPAL BALANCE	\$	77,523.38
ACCRUED INTEREST AS OF 1/2/2017	\$	2,314.44
DAILY INTEREST RATE	\$	4.8248
CURRENT INTEREST RATE		2.272%



**STATE  
HISTORICAL  
SOCIETY**  
OF NORTH DAKOTA

Att 4  
HB 1024  
1/26/17

Doug Burgum  
*Governor of North Dakota*

## Memorandum

Date: January 17, 2017

To: Representative Delzer, Chairman, House Appropriations Committee

From: David Skalsky, <sup>JJS</sup> State Historical Society of North Dakota

Subject: HB 1024, \$294,500 Operating Expense Deficiency Appropriation

As requested, I am providing a litigation budget for the Comstock Construction lawsuit against the State of North Dakota over the Heritage Center expansion project. The schedule was prepared by the Serkland Law Firm who was appointed as special assistant to the Attorney General to represent the State of ND in this case.

Please contact me at (701) 328-3562 or [dcskalsky@nd.gov](mailto:dcskalsky@nd.gov) if you need additional information.

North Dakota  
State Historical Board

Margaret Puetz  
*Bismarck - President*

Gereld Gerntholz  
*Valley City - Vice President*

Albert I. Berger  
*Grand Forks - Secretary*

Calvin Grinnell  
*New Town*

Diane K. Larson  
*Bismarck*

Terrance Rockstad  
*Bismarck*

H. Patrick Weir  
*Medora*

Sara Otte Coleman  
*Director  
Tourism Division*

Kelly Schmidt  
*State Treasurer*

Alvin A. Jaeger  
*Secretary of State*

Jesse Hanson  
*Acting Director  
Parks and Recreation  
Department*

Grant Levi  
*Director  
Department of Transportation*

Claudia J. Berg  
*Director*

*Accredited by the  
American Alliance  
of Museums since 1986*

LITIGATION BUDGET FOR COMSTOCK CONSTRUCTION V. THE STATE  
HISTORICAL SOCIETY

	FEES	EXPENSES
Claim File Review/Analysis/Development	\$25,000	
Pleadings	\$5,000	
Communications with Client	\$10,000	
Written Discovery and Reviewing Comstock's document production	\$20,000	
Motions	\$15,000	
Depositions of Fact Witnesses	\$20,000	
Depositions of Experts	\$7,500	
Expert's Fees	\$15,000	
Records Acquisition	\$2,000	
Court Appearances	\$2,000	
Mediation (includes attorney's fees and mediator's fees)	\$5,000	
Research	\$2,000	
Litigation Costs (filing fees, deposition transcripts, postage, photocopy fees, westlaw research)	\$10,000	
<b>PRE-TRIAL TOTAL:</b>	<b>\$138,500</b>	
Pre-Trial Motions	\$5,000	
Subpoenas	\$1,000	
Jury Instructions	\$2,500	
Trial Preparation	\$30,000	
Trial Exhibits	\$5,000	
Trial for <u>10</u> Days:	\$70,000	
Other	\$2,500	
<b>TRIAL TOTAL:</b>	<b>\$116,000</b>	
Appeal Briefing	\$25,000	
Preparation for Appeal Argument	\$7,500	
Appeal Costs (trial transcript, filing fees, westlaw research, photocopy fees, postage)	\$7,500	
<b>APPEAL TOTAL</b>	<b>\$40,000</b>	
<b>GRAND TOTAL:</b>	<b>\$294,500</b>	



**Delzer, Jeff W.**

AH 5 HB1024 1/24/17

**From:** Kadrmas, Chris J.  
**Sent:** Wednesday, January 25, 2017 6:24 PM  
**To:** Delzer, Jeff W.; Knudson, Allen H.  
**Subject:** Heritage Center construction project lawsuit

Representative Delzer,

This email is in response to your request for information regarding the status of the Heritage Center construction project lawsuit.

The State Historical Society has spent \$23,000 on legal fees as of January 25, 2017. The following schedule was provided by a representative of the State Historical Society regarding the expected timeline for the Heritage Center construction project lawsuit.

- July 1, 2017 - Comstock will disclose its expert witness.
- August 1, 2017 - the state will disclose its expert witness.
- August 31, 2017 - discovery questions are completed.
- September 1, 2017 - depositions by both sides have been completed.
- November 6-9 and 13-15, 2017 - trial dates in South Central Judicial District court.

A representative of the State Historical Society expects to spend \$62,989 for legal fees associated to the Heritage Center project lawsuit before June 30, 2017, and would require a deficiency appropriation for that amount. The remaining estimated cost for legal fees of \$231,511 is expected to be incurred during the 2017-19 biennium.

Please let me know if you have any additional questions.

Thank you.

**Chris Kadrmas, CPA**  
Fiscal Analyst  
ND Legislative Council  
(701) 328-3568  
[cjkadrmas@nd.gov](mailto:cjkadrmas@nd.gov)

**Department of Human Services**  
**Engrossed HB 1024 Deficiency Appropriation**  
**2017 - 2019 Biennium**  
*Expressed in Millions*

3-1-17 AB 1024  
 # 1  
 P 1  
 by Deb McDermott

Subdivision	2015 - 2017 Biennium General Fund			Variance
	Adjusted Appropriation *	Projected Expenditures	Excess (Shortfall)	
Administration - Support	14.5	14.3	0.2	
Information Technology Services	70.5	73.3	(2.8)	Implementation and post-production support of IT systems. SPACES Release 1 went live in February 2016, and MMIS went live October 2015.
Economic Assistance	17.6	13.7	3.9	Due to decrease in Child Care Assistance Program, general fund savings of \$3.3 M.
Child Support	8.4	8.1	0.3	
Medical Services	293.8	313.9	(20.1)	\$13.3 million shortfall for Medicaid Expansion as average monthly premium is \$210 more than budgeted. Some other areas with larger shortfalls include hospitals \$1.7 M, Psychiatric Residential Treatment Facilities \$2.0 M and Psychological Services \$4.1 M.
Long Term Care	327.0	320.1	6.9	Actual monthly average units are less than budgeted.
DD Council	0.0	0.0	0.0	
Aging Services	8.7	8.6	0.1	
Children and Family Services	69.0	69.3	(0.3)	
Behavioral Health	7.2	7.7	(0.5)	
Vocational Rehabilitation	5.7	5.6	0.1	
Developmental Disability	275.8	286.5	(10.7)	The monthly average cost and units are higher than budgeted.
Human Service Centers	117.9	108.1	9.8	Turnover of staff (850.9 FTE in this area), hard to fill positions, downward reclassification of staff, contract changes and \$2.8 M roll-up in Inpatient Hospital contracts
State Hospital	61.0	57.4	3.6	Turnover of staff (828.5 FTE in this area), hard to fill positions, expansion of the Tompkins Rehabilitation program didn't start until December 1, 2015 and a SOTEP unit was closed on December 1, 2016.
Life Skills and Transition Center	29.4	28.9	0.5	
	<b>1,306.5</b>	<b>1,315.5</b>	<b>(9.0)</b>	

\* Includes 2015 SB 2012, all other bills, oil impact, equity funds, internship stipends, and temporary health insurance.

HB 1024  
3-1-17

# 2  
P 1

**Testimony**

**House Bill 1024**  
**Senate Appropriations Committee**  
**March 1, 2017; 2:00 p.m.**  
**North Dakota Department of Health**

Good afternoon Chairman Holmberg and members of the Senate Appropriations Committee. My name is David Glatt, Environmental Health Section Chief for the North Dakota Department of Health. We are responsible for the implementation of the vast majority of environmental protection programs in the state, including programs delegated to the state through agreements with the U.S. Environmental Protection Agency. I am here today to provide testimony in support of House Bill 1024.

The Department of Health is requesting a deficiency appropriation of \$250,000 to cover the cost of several current or pending legal actions with the U.S. Environmental Protection Agency. The FY 2015-2017 appropriation for special legal activities is \$500,000. At present the Department has spent approximately \$645,000. Although it is difficult to predict the timing of anticipated court decisions or roll out of final federal agency rules, the Department expects to continue to either take a lead role or partner with other states in at least three major actions in the coming months. They include challenges to federal actions in the following areas:

- **Federal 1-Hour SO<sub>2</sub> Rule:** The state is asking the court to compel the U.S. EPA to make a final determination on the compliance status of the state of North Dakota as defined in the rule. EPA had up to two years to make the determination but is now asking to delay the action for several years while they evaluate the new rules or procedures to determine the state's status. The delay in the determination can harm the state as we move to permit new sources.
- **Clean Power Plan (CPP):** The U.S. EPA has proposed rules that would regulate how CO<sub>2</sub> emissions are regulated or how energy is produced in each state. There is concern that the final rules will exceed the authority of the federal government by directing energy policy in each state, thereby usurping state authority. We anticipate that because each state will be assigned a specific compliance goal, each state who opposes the final determination will need to initiate a

lawsuit against the EPA. The intent of the lawsuit will be to protect state authority to make decisions on how to implement federal laws and rules. Due to the challenge by North Dakota and other like minded states the US Supreme Court has stayed implementation of the CPP while the lower courts hear challenges to the rule and make a final decision. It is anticipated that the determination by the lower courts will be appealed to the US Supreme Court. North Dakota is an active participant in challenges 111(d) and 111(b) portion of the rule which would govern new and retrofit construction activities associated with new coal fired power generation facilities.

# 2  
p 2

This concludes my testimony. I am happy to answer any questions you may have.

TESTIMONY OF  
MAJOR GENERAL ALAN S. DOHRMANN  
THE ADJUTANT GENERAL  
NORTH DAKOTA NATIONAL GUARD  
BEFORE THE  
SENATE APPROPRIATIONS COMMITTEE  
1 MARCH 2017  
HOUSE BILL 1024

# 3  
P 1

Good afternoon Mr. Chairman, I am Al Dohrmann, Director of the Department of Emergency Services for the State of North Dakota. I am here today to testify in support of House Bill 1024 and answer any questions you may have regarding Section 1. Subdivision 3.

Section 1. Subdivision 3 would provide \$79,500 in special funds to pay off Bank of North Dakota for NDNG response costs for the 2015 Burleigh County fires. During this event, we deployed 3 Blackhawk helicopters and crews to bring the fire near the University of Mary under control. The total costs were \$90,237.15. At the time of this event, the state and county agreed to a 15% Burleigh County cost share, which resulted in the county paying \$12,713.77 and the state being responsible for \$77,523.38. The approximate \$2,000 difference between this amount and the request of this bill is to pay interest due to the Bank of North Dakota.

I ask for your support for HB 1024 and will stand for any questions you may have.

HB1024  
3-1-17  
Eric Hardemeyer

This proposed amendment to Engrossed HB1024 prioritizes non-state sources for repayment and identifies a deficiency appropriation request if non-state sources do not become available.

#2

P1

Proposed amendment to Engrossed House Bill No. 1024 (17.8101.02000):

Page 2, after line 25, insert:

"SECTION 4. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS. It is the intent of sixty fifth legislative assembly that the department of emergency services seek reimbursement from the federal government or other non-state sources for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty fifth legislative assembly that these reimbursements be used to repay any and all of the Bank of North Dakota loans authorized by the emergency commission including the \$17,000,000 in loans previously authorized, and in Senate Bill No. 2174, as approved by the sixty fifth legislative assembly, and in sections 2 and 3 of this Act, which were obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. If the department of emergency services determines reimbursements from federal or non-state sources are not forthcoming, the department of emergency services and other agencies that obtain a loan shall request a deficiency appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the amount borrowed plus interest."

Renumber accordingly

HB 1024  
3-1-17 #5  
p-1

**House Bill 1024**  
**Senate Appropriations Committee**

**Testimony Presented by Sally Holewa**  
**State Court Administrator**  
**March 1, 2017**

Good afternoon Chairman Holmberg and members of the Committee. For the record, my name is Sally Holewa. I am the State Court Administrator. I am appearing today in support of the deficiency appropriation for the Judicial Branch.

We are requesting a deficiency appropriation of \$1.5 million to cover unanticipated expenses related to the Dakota Access Pipeline protest. As of February 28, 2017, there have been 766 protest-related cases filed in the South Central Judicial District.

We are estimating that 400 of those cases will go to jury trial and will require 500 trial days. To give you a sense of how out of the ordinary that number is, let me give you some numbers. The South Central Judicial District is our busiest district with an average of 34,000 new cases filed every year. That is thousands more cases per year than are filed in the next two busiest districts – the East Central (based out of Fargo with an average of 27,000 case) and the Northwest (based out of Williston with an average of 24,000). On average, the South Central holds one hundred jury trials per year. For context, this is twice as many jury trials than the Northwest Judicial District typically holds and nearly three times as many jury trials as any other district.

Each jury trial requires a judge, court reporter, bailiffs and jurors. We anticipate using surrogate judges, freelance court reporters and temporary staff to clerk these cases because we do not have the resources to transfer judges and staff to cover

#5  
p2

that many extra court days. Anecdotally, we are told that many of these cases involve more than normal motion practice and briefs requiring more judge and court staff time than the typical case. Statewide, we have a shortage of 10 judges, including a 3 judge shortage in the South Central Judicial District. We have a shortage of 21 clerks statewide, including a shortage of 8 clerks in the South Central Judicial District.

Forty-one percent of the funds being requested are for jury costs. Jurors are paid \$25 for the first half-day and \$50 for the first full day and each subsequent day. Mileage is at the same rate as state employees. Meals are provided when a jury is in deliberation or if a judge sequesters the jury to protect them from outside influence. The estimated cost of juror fees, mileage and meals for these trials is \$613,280. This is a conservative estimate based on our current juror utilization standard of calling in 26 jurors per case. Those numbers are likely to go up if we find difficulty in being able to seat an impartial jury. I have attached a spreadsheet showing the estimated cost for each component of the trials.

It is important that these cases are scheduled in a timely and efficient manner. Witness memories deteriorate over time so the more a case is delayed the less reliable the testimony becomes. Holding the trials in groups mitigates the cost of bringing out-of-state witnesses back to North Dakota. This is particularly true when they are law enforcement officials who will need to have shift coverage for their regular jobs. Finally, and most importantly, we do not want to displace the other non-protest related cases that are waiting for hearing dates or which have already been on the court's schedule for months already.

In regard to HB 1024, I have two concerns about the language on page 2, lines 7-9, which states, "for the purpose of defraying expenses of the judicial branch related to unlawful activity associated with the construction of the Dakota access



#5  
PB

pipeline for the period beginning with the effective date of this Act and ending June 30, 2019.” This language can be read to exclude any costs associated with charges that occurred prior to the enactment of the bill. If so, this would exclude all of the cases that are currently pending as well as the costs incurred for those cases that have already been disposed of. Additionally, the use of the words “unlawful activity” can be read to exclude expenses incurred for any case where the defendant is found not guilty or the charges are dismissed.

If this is indeed the intent of the bill, then I am requesting that the bill be amended to provide for a deficiency appropriation of \$225,672.67 to cover the cost of the estimated 60 jury trials (equal to 100 trial days) that we anticipate holding between now and June 30, 2017. Additionally, we will need to have our 2017-2019 appropriation increased by \$1.274 million to cover the costs of processing the remaining cases related to the pipeline protests.

If that is not the intent of the bill, then I suggested amending the language in that section to read: “for the purpose of defraying expenses of the judicial branch related to ~~unlawful activity~~ criminal and infraction charges associated with the construction of the Dakota access pipeline for the period beginning ~~with the effective date of this Act~~ July 1, 2015 and ending June 30, 2019.”

Finally, we have some questions about how the actual process would work and whether we would be directly responsible for borrowing the funds from the bank. If so, we are concerned that we don't have enough collateral to qualify for the loan. Seriously, though, at some point we are going to need someone to explain the practical details of how the money would move from the bank to the courts.

Thank you for your time. I would be happy to answer any questions you may have.

**DEFICIENCY APPROPRIATION - CHARGES FILED AGAINST PROTESTERS**

Feb 28, 2017

	<u>Cases</u>	<u>Hours per case</u>	<u>Total Hours</u>	<u>Total Days</u>
Total arrests	766			
Total jury trials	400			
Total felonies (3 day trial)	50	24	1,200.00	150.00
Total misdemeanors (1 day trial)	350	8	2,800.00	350.00
<b>Total Days</b>				<b>500.00</b>

#5  
PH

<u>Surrogate Judge:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Pay per day	\$ 599.45		
Fringe (social security)	\$ 45.86		
<b>Total per day</b>	<b>\$ 645.31</b>	500	<b>\$ 322,653.96</b>

<u>Clerk of Court:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Dakota Staffing per hour	\$ 38.50		
<b>Total per day</b>	<b>\$ 308.00</b>	500	<b>\$ 154,000.00</b>

<u>Court Reporter/recorder:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Contract rate per hour	\$ 70.00		
<b>Total per day</b>	<b>\$ 560.00</b>	500	<b>\$ 280,000.00</b>

<u>Bailiffs:</u>	<u>Rate</u>	<u>Total Days</u>	<u>Total Cost</u>
Salary per hour	\$ 13.25		
Fringe (social security)	\$ 1.01		
Total per hour	\$ 14.26		
<b>Total per day</b>	<b>\$ 114.11</b>		
Bailiffs per trial	2.0		
<b>Total per day</b>	<b>\$ 228.22</b>	500	<b>\$ 114,109.00</b>

<u>Jury fees:</u>	<u>Rate</u>	<u>Jurors</u>	<u>Cost for 1 day trial</u>	<u>No. of 1 day trials</u>	<u>Total Cost</u>
<b>Misdemeanor cases (1 day):</b>					
People called for jury duty		26			
Juror pay - sent home	\$ 25.00	14	\$ 350.00		
Juror pay - full day	\$ 50.00	12	\$ 600.00		
<b>Total 1 day trial</b>			<b>\$ 950.00</b>	350	<b>\$ 332,500.00</b>

<u>Felony cases (3 day):</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Cost for 3 day trial</u>	<u>No. of 3 day trials</u>	<u>Total Cost</u>
People called for jury duty		26				
Juror pay - sent home	\$ 25.00	14	1	\$ 350.00		
Juror pay - full day	\$ 50.00	12	3	\$ 1,800.00		
<b>Total 3 day trial</b>				<b>\$ 2,150.00</b>	50	<b>\$ 107,500.00</b>

**Total Jury fees** **\$ 440,000.00**

<u>Juror amenities:</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Trials</u>	<u>Total Cost</u>
Meals per day (1 day trial)	\$ 8.00	12	1	350	\$ 33,600.00
Meals per day (3 day trial)	\$ 8.00	12	3	50	\$ 14,400.00
<b>Total cost</b>					<b>\$ 48,000.00</b>
<b>Total juror amenities</b>					<b>\$ 48,000.00</b>

<u>Juror mileage:</u>	<u>Rate</u>	<u>Jurors</u>	<u>Days</u>	<u>Trials</u>	<u>Total Cost</u>
Rate per mile	\$ 0.535				
Average mileage per juror	<u>20</u>				
Total daily cost per juror	\$ 10.70				
<b>1 day trial</b>					
Juror pay - sent home	\$ 10.70	14	1	350	\$ 52,430.00
Juror pay - full day	\$ 10.70	12	1	350	\$ 44,940.00
<b>3 day trial</b>					
Juror pay - sent home	\$ 10.70	14	1	50	\$ 7,490.00
Juror pay - full day	\$ 10.70	12	3	50	\$ 19,260.00
<b>Total mileage</b>					<b>\$ 124,120.00</b>

#5  
p5

**2015-17 Biennium Deficiency appropriation**

<u>Summary - Fiscal impact:</u>	<u>Total</u>
Surrogate judges	\$ 322,653.96
Clerk of court	\$ 154,000.00
Court reporter/recorder	\$ 280,000.00
Bailiffs	\$ 114,109.00
Jury fees	\$ 440,000.00
Jury amenities	\$ 48,000.00
Juror mile	\$ 124,120.00
<b>Total cost</b>	<b>\$ 1,482,882.96</b>

HB 1024  
3-1-17  
#6  
p1

HB 1024  
Senate Appropriations Committee  
March 1, 2017  
Testimony of H. Jean Delaney, Executive Director, NDCLCI

Good afternoon. My name is Jean Delaney and I am the Director of the ND Commission on Legal Counsel for Indigents. The Commission is governed by North Dakota Century Code Chapter 54-61. Section 54-61-01 provides that the Commission was "established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to standards and policies of the commission governing eligibility for such services."

The Commission has established Guidelines to Determine Eligibility for Indigent Defense Services. In order for a person to have counsel provided by the Commission, the person must apply for services, be found to be "indigent," and it must be a type of case in which one has a right to counsel at public expense.

Application for services is made on the Commission's standard forms. However, the Commission does not make the determination of whether a specific applicant is eligible for services. Pursuant to the statute, the court makes the determination of eligibility for services.

Indigent defense services are provided through state employees in the Commission's eight public defender offices across the state, and through its monthly contractors, of which there are approximately 70, and its conflict contractors, of which there are over 90. The Commission's monthly contractors each take some specified portion of cases in some specified geographic region. The conflict contractors take cases on a case assignment by case assignment basis. The conflict contractors are paid at the rate of \$75.00 per hour, and the monthly contractors' payments are calculated to correspond to that same rate based on yearly average number of case assignments and average hours worked per assignment. This is far less than federal panel attorneys are paid (they are paid \$129/hour) and significantly less than attorneys in private practice are paid. While attorneys do not provide indigent defense services to get rich,

rather because they have a calling to do so, they still must be able to cover their overhead. It is unlikely that we could find many, if any, attorneys willing to provide services for less. As it is, many times attorneys who would like to provide services are unable to do so at this rate.

Traditionally, the Commission has been funded from two sources: the general fund, and "fund 282" (our continuing appropriation - the indigent defense administration fund). The indigent defense administration fund is funded through fees paid by defendants: There is a \$35 application fee and a \$100 court administration fee (the indigent defense/facility improvement fee) that is split pursuant to statute between the indigent defense administration fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two. Unless waived by the court, these fees are imposed in misdemeanor and felony cases. The Court may order a defendant to repay attorney fees; however, this money does not go into the indigent defense administration fund; it goes into the general fund.

Ever since this agency was established in 2005, the Legislature has been extremely fair in providing appropriate funding. The Commission is very grateful that in the last session, the Legislature recognized the great impact the increases in case assignment numbers were having on the Commission's costs and expenses in providing required services, and the expected increases in costs and expenses for 2015-17, and increased appropriations for the agency. For the original 2015-17 budget, the Commission was appropriated \$18,304,103 from the general fund, which included a one-time appropriation of \$122,275 for transitioning to desktop support from ITD; and \$2,106,914 from other funds, which consisted of authority to spend \$1,906,914 from fund 282, and one time funding of \$200,000 from the strategic investment and improvements fund for contract fees for legal services relating to increased caseloads.

After the 4.05 and 2.5 allotments, this agency's special fund appropriations remained the same, but the general fund appropriation was reduced by \$1,198,919 to \$17,105,184. In order to meet the reduced appropriation, the Commission carefully assessed its spending. However, there are not many areas in which this agency can cut, and still provide constitutionally mandated services. Most of the Commission's budget goes directly to providing indigent defense services through our public defender offices and contract attorneys. Case assignment numbers continue to increase, state-wide, and services must be provided in them. In FY2016, we provided

# 6  
P 3

services in over 14,800 case assignments – this is more than in any previous year. Serious felonies continue to increase. These cases with their more significant penalties generally take more attorney time, and require more extraordinary expenses, such as private investigator fees, and other expert fees necessary to provide constitutionally competent defense.

When a contract was terminated, before advertising to fill it, we thoroughly reviewed whether the contract was still needed, whether it was needed in the same size or perhaps a smaller size, or in a different geographical area. Several contracts were not renewed, were modified in size, and/or were moved from one district to another as needs changed in various judicial districts. A temporary attorney was hired in Minot to help reduce reliance on hourly contractors in that district. The Commission cut one part-time temporary secretary position in the Dickinson office. Most out of state training was cut, and this is an area in which we would normally get a big “bang for our buck” in that attorneys would go to national training, and bring back the training to present to our employees and contract attorneys at one of our agency trainings here in North Dakota. Copy machines were not replaced as they would have been pursuant to the replacement schedule, but they will need to be replaced at some point.

With these and more spending cuts, as late as September 2016, we did not anticipate needing a deficiency appropriation in 2015-17. This changed with the significant increases in the number of Dakota Access Pipeline cases beginning in October, and with the passage of Marsy’s Law in November.

At the hearing on HB 1024 before the House Appropriations Committee, I testified that we estimated the Commission would need a deficiency appropriation of \$858,410. In response to Representative Delzer’s direction, we again carefully reviewed the expected costs, and submitted a letter explaining our calculations. That letter is attached as Attachment A. We estimated a need for a deficiency appropriation for the 2015-17 biennium in the amount of \$857,458.75 of which \$669,048.75 would be due to DAPL cases, and \$188,410 would be due to Marsy’s Law.

House Bill No. 1024 has been modified to remove the language providing for an appropriation to the Commission out of moneys in the strategic investment and improvements fund, and adds a section providing for borrowing authority for the Commission from the Bank of North Dakota and appropriation of such loan to the Commission for the purpose of defraying expenses of the Commission “related to ‘unlawful activity’ associated with construction of the

Dakota access pipeline for the period beginning with the effective date of this Act and ending June 30, 1019.”

#6  
pdf

The Commission supports this bill, but has a few concerns.

The bill provides for an appropriation for the Commission for expenses “related to ‘unlawful activity.’” It may be that a person is charged with an activity alleged to be unlawful, but is not proven to be unlawful, such as for several of the claims of trespass in which the court has recently dismissed the charges. I would request that the language in the bill be amended to provide for expenses “related to activity alleged to be unlawful.”

The bill permits the Commission to borrow a sum “from the Bank of North Dakota, for legal costs related to ... *activity associated with the construction of the ... pipeline, for the period beginning with the effective date of the Act and ending June 30, 2019.*” The bill also provides that “[t]he proceeds of the loan authorized in this section are appropriated... for the purpose of *defraying expenses of the commission ... related to ... activity associated with the construction of the ... pipeline for the period beginning with the effective date of the Act and ending June 30, 2019.* This could suggest that the Commission can only borrow for legal costs related to “activity” which occurs on or after the effective date of the Act, and for expenses incurred on or after the effective date of the Act. Much of the pipeline protester “activity” this bill addresses has already occurred, and many expenses have already been incurred. The Commission has provided attorneys in DAPL cases since September – the Commission has provided attorneys in 394 case assignments as of February 24. Most of these cases have not been concluded, but the Commission has incurred significant expense on many of them in that attorneys have already done significant work on them, for which they will be billing the Commission. I would request that “beginning with the effective date of the Act” be changed to “beginning August 1, 2016.”

The bill authorizes the Commission to borrow up to \$859,000 for DAPL costs from the effective date of the Act, ending June 30, 2019. We estimated that the Commission will need \$669,048.75 this biennium for the DAPL case assignments, and \$356,519.50 during the 2017-19 biennium. Calculations for this biennium are on Attachment A. Attachment B has the calculations for 2017-19. These calculations are based on providing attorneys in 490 case assignments. As of February 24, 2017, there have been 750 DAPL cases filed in Morton County in which one could have a right to counsel provided by the Commission (there are also city transfer cases, but the Commission does not provide counsel in those). As of February 24,

#6  
P5

the Commission has provided counsel in 394 case assignments. There will likely be quite a bit more – many of the 130 most recently charged defendants have not yet applied for counsel, or had applications for counsel reviewed and eligibility determined. Based on the calculations presented, it is estimated that the DAPL case assignments will require \$1,025,568. I would request that the Commission be authorized to borrow the sum of \$1,025,568, or so much of the sum as may be necessary, for DAPL costs.

Part of the Commission’s request for a deficiency appropriation was due to increased costs and reduced revenues due to the passage of Marsy’s Law. Marsy’s Law only went into effect in December 2016, and it is difficult to quantify its effect at this early time. However, it is reported by attorneys that cases are taking longer, in that they may have a client who is willing to plead guilty at an appearance, but the State asks for another hearing to be set so that the State can communicate with the victim. Prior to Marsy’s Law, the indigent defense application fee and the \$100 indigent defense/facility improvement fee was given priority for collection; restitution is now first priority. Collection of the ID/Facility improvement fee does appear to be less, but it is too early to attribute it solely to Marsy’s Law, as the numbers do fluctuate. In November, \$56,004.03 was deposited into the Commission’s special fund for the ID/Facility Improvement fee; in December, it was \$54,854.77; in January, it was only \$42,414.11. We had estimated a need for additional funding for this biennium in the amount of \$188,410 due to Marsy’s Law. Our calculations are in Attachment A. I respectfully request a deficiency appropriation in that amount, or so much of that amount as may be necessary.

I am happy to answer any questions you may have.

Submitted this 1st day of March, 2017



---

H. Jean Delaney, Director  
ND Commission on Legal Counsel for Indigents  
701-845-8632  
[jedelaney@nd.gov](mailto:jedelaney@nd.gov)





**NDCLCI**

***North Dakota Commission on Legal Counsel for Indigents***

2517 West Main  
P.O. Box 149  
Valley City, ND 58072  
701-845-8632  
[www.nd.gov/indigents](http://www.nd.gov/indigents)

H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

January 25, 2017

Representative Jeff Delzer  
Chair, House Appropriations Committee

Dear Representative Delzer:

As requested, we have carefully reviewed what we think we'll need as a deficiency appropriation for the 2015-17 biennium due to the DAPL cases and the passage of Marsy's Law. Based on that review, we request a deficiency appropriation of \$857,458.75.

The reason why that figure has not changed significantly even though cases are being consolidated and trial dates are being delayed is because (1) Counsel works on a case from assignment through disposition and any appeal. Most of that work is done outside of court hearings. Delays in trial dates actually increase our costs as will the Marsy's Law provision that allows a victim to refuse an interview or discovery request from the defense; (2) Each defendant is provided with his or her own attorney so consolidating cases for trial does not result in any savings in our agency's costs; (3) The number of case assignments vastly exceeds our ordinary capacity to meet demands. This has resulted in significantly higher costs to contract with attorneys on an hourly or monthly basis. Additionally the need to bring in both our regular employees and contract attorneys from across the state and northwestern Minnesota results in travel expenses that far exceed ordinary expenses; and (4) Anticipated declines in revenue due to the impact of the Marsy's Law requirement that restitution be collected before the indigent defense fees.

As of January 23, 2017, there have been 614 DAPL cases filed in the South Central Judicial District, in which there would be a right to counsel provided by the Commission, if the defendant is indigent and applies for counsel (there are also 39 city transfer cases; however, the city, not the Commission would provide counsel in those). As of January 23, the Commission has provided counsel in 341 case assignments. This would be approximately fifty percent of the filed cases. For our earlier calculations, we had assumed we will likely provide counsel in 490 assignments this biennium. This is a conservative number, as it is only 149 assignments more than our current number, and would be only 30 new assignments per month for the remainder of the biennium.

Attachment A

# 6

p 6

Due to the large number of cases, and large number of persons arrested in single incidents, we've had to use attorneys from around the state, not just from the South Central Judicial District. The cases with out of district attorneys are more expensive, with costs for attorney travel time, mileage, and lodging.

#6  
p 1

In the Commission's original request, it appeared that most, if not all of the DAPL defendants are seeking jury trials. This still appears to be the case. A jury trial case assignment averages 31.07 hours of attorney time; case assignments closed for other reasons (bench trial, plea agreements, dismissal, etc.) average 5.5 hours. Attorney time is calculated at \$75/hour, which is the rate paid to our contractors. If half of these 490 assignments went to jury trial this biennium, and the other half were disposed of for some other reason during this current biennium, it would require approximately \$671,973.75 ( $490 / 2 = 245 \times 31.07 \times \$75/\text{hour} = \$570,911.25 + 490 / 2 = 245 \times 5.5 \times \$75 = \$101,062.50$ ;  $\$570,911.25 + \$101,062.5 = \$671,973.75$ ). There would also be additional costs, such as attorney travel time, mileage, and lodging; witness fees; other extraordinary expenses; and appellate costs that are not included in these calculations.

Approximately one hundred and one of the DAPL case assignments in which the Commission has provided an attorney are scheduled for jury trial before the end of the biennium. This would require approximately \$235,355 for attorney time ( $101 \times 31.07 \text{ hours} \times \$75.00/\text{hour}$ ). Twenty-four of the attorneys assigned to these cases are from other judicial districts. Therefore, there would also be additional cost for attorney travel time, mileage, and lodging for out of district attorneys in these matters. Assuming two trips for each out of district attorney to and from Mandan (one trip to meet with the client, the other for the jury trial) would add an additional \$30,000.

Approximately one hundred sixty-eight assignments had been set for jury trial, and are now awaiting new trial date pursuant to the Court's scheduling plan. We anticipate 75 of these will be tried before the end of the biennium, with the remainder next biennium. We anticipate an expense of \$174,768.75 for these 75 jury trials to be held this biennium ( $75 \times 31.07 \times \$75 = 174,768.75$ ). We also anticipate approximately \$20,000 for two trips to and from Mandan for the out of district attorneys.

For those 93 matters which are currently assigned, but which will be tried next biennium, even if the trial is scheduled after June 30, much of an attorney's work is done before the trial. The attorney must meet with and counsel the client, seek and review discovery, investigate the case, make appropriate motions, and prepare for trial. Therefore, even if a trial in one of these assigned cases were to be scheduled to be held after June 30, and thus, during the 2017-19 biennium, a great portion of the work/expense will likely be done in this biennium. Assuming 15 hours of work before trial, done during this biennium, will cost \$104,625 ( $93 \times 15 \times \$75 = \$104,625$ ). One trip to and from Mandan for the out of district attorneys would add approximately \$10,000.

This leaves 72 currently assigned case assignments to be disposed of by other reason. If completed during this biennium, this would require \$29,700 ( $72 \times 5.5 \times \$75 = \$29,700$ ), plus approximately \$6,700 for travel for out of district attorneys.

There will also be new assignments, made after January 23, 2017. Assuming 149 new assignments, and just two hours of attorney time during this biennium, will require \$22,350 ( $490$

anticipated assignments – 341 currently assigned =  $149 \times 2 \times \$75 = \$22,350$ .

There will also be appellate costs. An appeal averages 27.5 hours of attorney time. Assuming an appeal in one out of every fifteen case assignments that went to jury trial this biennium, there will be approximately 12 appeals ( $176 \times .066 = 11.7$ ), which will require \$24,750 for attorney time ( $12 \times 27.5 \times \$75$ ) and \$10,800 for transcripts, assuming one-day jury trials (it would cost approximately \$900 for transcripts from a one day jury trial).

Based on the foregoing, the DAPL assignments will require \$669,048.75 this biennium.

Marsy's Law went into effect in December 2016, and there will be many costs incurred by this agency due to it. As with the DAPL cases, it is difficult at this early date to accurately predict how much in additional costs will be incurred.

Approximately 43% of our criminal case assignments involve victims, and thus, are subject to Marsy's Law.

There will be more contested preliminary hearings, more jury trials, more probation revocations and more orders to show cause hearings in these cases. We estimated that the number of additional contested preliminary hearings will be one-quarter of the felony case assignments that involve a victim, requiring one additional hour of attorney time per assignment for a total of \$106,600/biennium ( $6616$  felony assignments per year  $\times .43$  with victims  $\times .25 \times 2$  years  $\times \$75$ ); we estimated jury trial numbers would at a minimum increase by 18 for a total of \$69,000/biennium ( $31.07$  hours for jury trial versus  $5.5$  hour for other reason, at  $\$75/\text{hour} = \$1917.75$  more for a jury trial  $\times 18$  jury trials  $\times 2$ ); we assumed probation revocations would increase by 10% for an additional \$85,800/biennium ( $1679$  per year  $\times .1 = 168 \times 3.41$  average hours on a probation revocation  $\times \$75 \times 2$ ); and assumed Orders to Show Cause hearings would increase by 10% for approximately an additional \$7,800 per biennium ( $229$  OTSC per year  $\times .1 = 23 \times 2.31$  average hours in OTSC  $\times \$75/\text{hour} \times 2$ ). These total \$269,000 per biennium, which would be \$78,450 for the remainder of this fiscal year.

An additional concern with Marsy's Law is that it has changed the priority of the payment of fees collected from defendants. Due to this, we anticipate delayed and reduced collections in our special fund. Calculating that the fund will receive 20% less, this would be \$377,000 in a biennium; this would be \$109,960 for the remainder of this fiscal year.

Thus, we calculate needing additional funding in the amount of \$188,410 due to Marsy's Law.

Sincerely,

  
H. Jean Delaney

#6  
p 8



#6.  
p 9

**North Dakota Commission on Legal Counsel for Indigents**

2517 West Main  
P.O. Box 149  
Valley City, ND 58072  
701-845-8632  
www.nd.gov/indigents

H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

**Expenses for DAPL and Marsy's Law in 2017-19, estimated to be \$1,002,519.50**

Assuming 490 DAPL case assignments in 2015-17 (as of 1/23/17 there are 341).

101 are assigned and scheduled for jury trial before the end of the biennium.  
168 are assigned and had been set for jury trial, and are now awaiting new trial dates pursuant to the Court's scheduling plan. Anticipate 75 of these will be tried by jury before the end of the 2015-17 biennium, with the remainder next biennium.

For the 93 currently assigned, but tried by jury next biennium (168 - 75 = 93):

Average jury trial requires 31.07 hours, had assumed 15 hours worked on each in 2015-17 which would leave 16.07 hours for 2017-19.  $93 \times 16.07 \text{ hours} \times \$75 = \$112,088$ , plus \$10,000 for attorney travel time, mileage, lodging for out of district attorneys.

For the 149 new assignments, made after January 23, 2017, in which attorneys worked 2 hours on each during 2015-17:

Assume one-half are tried by jury:  $75 \times 29.07 \text{ hours remaining} \times \$75 = \$163,519$   
Assuming one-half are disposed of in other ways (average of 5.5 hours for assignments with other dispositions):  $74 \times 3.5 \text{ hours remaining} \times \$75 = \$19,425$   
Travel time, mileage and lodging for out of district attorneys: \$20,000

Appellate costs: Assuming 1/15 jury trial case assignment is appealed:

$93 + 75 = 168 \times .066 = 11 \text{ appeals} \times 27.5 \text{ hours (average hours on appeal)} \times \$75 =$   
 $\$22,687.50 + \$8,800 \text{ for transcripts (one day jury trial approximate cost)} = \$31,487.50$

**2017-19 DAPL estimate: \$356,519.50**

Approximately 43% of our criminal case assignments involve victims, and thus, are subject to Marsy's Law. There will be more contested preliminary hearings, more jury trials, more probation revocations and more orders to show cause hearings in these cases. At this time we estimate \$269,000 per biennium for these costs, plus reduced collection of fees for our special fund of \$377,000 in a biennium.

**2017-19 Marsy's Law estimate: \$646,000**

Attachment B

17.8101.01004

Sixty-fifth  
Legislative Assembly  
of North Dakota

HOUSE BILL NO. 1024

HB 1024  
3-1-17 #7  
P1

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of various state  
2 departments and institutions; to provide for borrowing authority; and to declare an emergency.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the strategic  
5 investment and improvements fund, the sums as hereinafter provided or so much of the sums  
6 as may be necessary. These sums increase the special fund authority enacted by the sixty-  
7 fourth legislative assembly to the stated departments and institutions of the state of North  
8 Dakota for the purpose of defraying their expenses, for the period beginning ~~January 1,~~  
9 2017 with the effective date of this Act, and ending June 30, 2017, as follows:

10 Subdivision 1.

JUDICIAL BRANCH

12	Operating expenses	\$1,500,000
13	Total special funds	\$1,500,000

14 ~~Subdivision 2.~~

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

16	Commission on legal counsel for indigents	\$937,000
17	Total special funds	\$937,000

18 ~~Subdivision 3.~~

NORTH DAKOTA STATE UNIVERSITY

20	Capital assets	\$1,634,854
21	Total special funds	\$1,634,854

22 ~~Subdivision 4.~~

STATE DEPARTMENT OF HEALTH

23



#7  
p3

1 services shall include any amounts borrowed under this section in the request for  
2 reimbursement from federal or other sources related to the state's expenses incurred due to  
3 unlawful activity associated with the construction of the Dakota access pipeline.

4 **SECTION 3. BORROWING AUTHORITY - APPROPRIATION - COMMISSION ON LEGAL**  
5 **COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY SERVICES FUNDING**

6 **REQUEST.** The commission on legal counsel for indigents may borrow the sum of \$859,000, or  
7 so much of the sum as may be necessary, from the Bank of North Dakota, for legal costs  
8 related to unlawful activity associated with the construction of the Dakota access pipeline, for  
9 the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds  
10 of the loan authorized in this section are appropriated to the commission on legal counsel for  
11 indigents for the purpose of defraying expenses of the commission on legal counsel for  
12 indigents related to unlawful activity associated with the construction of the Dakota access  
13 pipeline for the period beginning with the effective date of this Act and ending June 30, 2019.  
14 The department of emergency services shall include any amounts borrowed under this section  
15 in the request for reimbursement from federal or other sources related to the state's expenses  
16 incurred due to unlawful activity associated with the construction of the Dakota access pipeline.

17 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

HB1024  
3-1-17

#8  
P1

My name is Dan Hull. I am a partner in the Fargo law firm of Anderson, Bottrell, Sanden and Thompson and a Special Assistant Attorney General with regard to the Minard Hall collapse. I was responsible for and litigated NDSU's recovery efforts in this matter. I am here today to provide background information for NDSU's deficiency request.

Minard Hall is a large academic building located on NDSU's campus. In 2009, Minard Hall was undergoing extensive renovations, as well as the construction of several additions. A large hole was dug for the planned basement of one of the additions. The hole was adjacent to the existing north end of Minard Hall. Unfortunately, on December 27, 2009, part of existing Minard Hall collapsed into the hole.

NDSU's property insurer was the North Dakota State Fire and Tornado Fund. The Fund denied coverage for the collapse. The involved architect, engineers and contractors also denied any liability for the collapse.

Two lawsuits were commenced by NDSU. One lawsuit was against the State Fire and Tornado Fund. The other lawsuit was against five of the entities involved in the construction: the architect, the structural engineer, the geotechnical engineer, the general contractor and the excavating contractor. The Fund and the other five defendants vigorously denied any liability and strongly contested the lawsuits.

The Minard Hall project, including all repairs necessitated by the collapse, was substantially completed in 2013. As of the fall 2013 academic term, Minard Hall was in full operation.

However, the lawsuits continued forward. After years of document production, depositions and motions, trial dates were finally set by the court in 2015. At that point, because litigation involves both costs and risks, NDSU received authority from the State Board of Higher Education to explore whether a mediated settlement was possible. All the litigating parties agreed to retain a nationally-respected mediator who directly negotiated with each of the parties. Those mediated negotiations ultimately resulted in a favorable settlement of NDSU's claims for the sum of \$3,020,000. Only the mediator has a breakdown of the amount paid by each defendant. Payment of the settlement amount was received by NDSU on July 13, 2015.

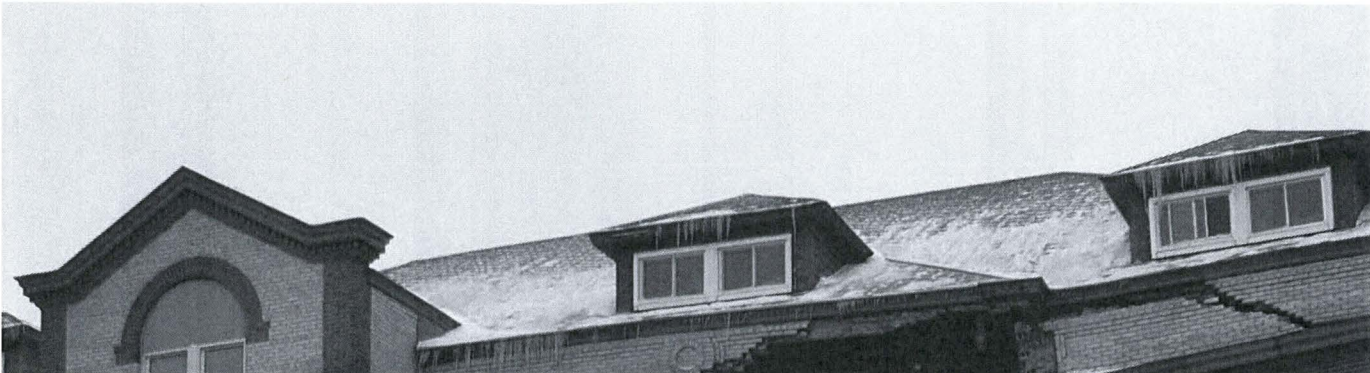
NDSU expended a total of \$4,654,853.52 as a result of the collapse. NDSU and the State Board of Higher Education were advised by me that up to approximately \$3,800,000 of those costs might have been recoverable at trial if NDSU had won all parts of both cases. On the other hand, if NDSU had lost parts or all of those cases, NDSU might have recovered only a fraction or none of that amount.

Based on collapse expenditures of \$4,654,853.52 and a settlement of \$3,020,000, NDSU has unreimbursed collapse related costs of \$1,634,853.52. The legislature previously increased the authorization for the Minard Hall project to pay for the costs associated with the collapse, but it did not appropriate any funds. As a result, on December 10, 2015, NDSU received approval from the State Board of Higher Education to seek a deficiency appropriation for the amount of those unreimbursed costs.

That concludes my prepared statements. We would be happy to answer any questions that you may have. Thank you.



#8  
p2



**NDSU** NORTH DAKOTA  
STATE UNIVERSITY

# MINARD HALL UPDATE



# PROJECT STATUS UPDATE – MINARD HALL

#8  
f3

## APPROVAL PROCESS FOR DEFICIENCY APPROPRIATION REQUEST OF \$1,634,853.52

Timeline:

- **On December 16, 2015**, provided a status update to the Budget Section of the North Dakota Interim Assembly pursuant to the requirement of Section 27 of 2015 House Bill No. 1003. The update included testimony on the settlement and the deficiency appropriation request as authorized by the SBHE. See appendix for Dan Hull testimony.
- **On December 10, 2015**, received approval from the SBHE to submit a deficiency request to the Office of Management and Budget, as per the motion approved by the SBHE Budget and Finance Committee.
- **On December 2, 2015**, requested the SBHE Budget and Finance Committee recommend approval of the following motion to the SBHE:

**In accordance with the following previously-approved motions of the SBHE relating to the Minard Hall collapse:**

- (1) September 24, 2013 authorizing NDSU to carry a deficit fund balance until a state general fund deficiency appropriation is authorized; and
- (2) May 14, 2015 authorizing NDSU to settle the outstanding litigations;

**NDSU is hereby authorized to seek a deficiency appropriation from the North Dakota Legislature in the amount of \$1,634,853.52.**

- **On November 23, 2015**, NDSU officials provided a status update to Chancellor Hagerott, and he authorized NDSU to move forward with seeking the deficiency appropriation.

### FINANCIAL STATUS REPORT FINAL:

	<u>Legislative Authorization</u>	<u>Project Expenditures</u>
Construction: Phase I, II, III	\$ 18,000,000.00	\$ 18,000,000.00
Collapse related costs*	\$ 5,474,300.00	\$ 4,654,853.52*
<b>Total</b>	<b>\$ 23,474,300.00</b>	<b>\$ 22,654,853.52</b>

*Collapse Related Costs	\$ 4,654,853.52
Less: Settlement Received	<u>\$ (3,020,000.00)</u>
<b>Unreimbursed Collapse Related Costs</b>	<b><u>\$ 1,634,853.52</u></b>

*Per approval of the SBHE, unreimbursed costs are handled as a deficit fund balance.*

All three litigations relating to the Minard Hall project were settled by NDSU pursuant to authority granted by

the SBHE on May 14, 2015. As a result of the settlements, NDSU paid one contractor the sum of \$220,000, and NDSU received \$3,020,000 from various other entities. All settlement payments have been made, and the litigations have been dismissed.

The settlement proceeds to NDSU are less than its total expenditures on the project, and NDSU is seeking direction from the ND University System Chancellor/SBHE for options to pay the difference including a possible request for a deficiency appropriation.

#### Background

SBHE approved motions September 24, 2013:

- 1). Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300<sup>^</sup> to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a future deficiency appropriation.
  
- 2). Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2015 or later legislative session.

*<sup>^</sup>increase in authorization of \$600,000 to \$23,474,300 approved by SBHE (9-3-14) and 64<sup>th</sup> Legislative Assembly*

#8  
p of

# 8  
p 5

**REQUEST INCREASED AUTHORIZATION:**

Current Authorization: \$22,874,300  
 Increased Authorization: \$23,474,300 – increase of \$600,000  
 Source of Funds: Insurance proceeds, legal settlements, deficiency appropriations and other available funds

**Approved: HB 1003 (64<sup>th</sup> Legislative Assembly)**

**Narrative:** As noted in a letter dated August 29, 2014 from the ND University System legal counsel, the increased authorization is needed because of a contractor on the Minard Hall project has made a claim for additional compensation. After receiving the contractor claim, contractually mandated mediation was held however the contractors claim was not settled during the mediation. A lawsuit has been commenced against the State of ND, the ND Board of Higher Education and NDSU by the contractor. NDSU requests an additional authorization of \$600,000 in order to cover a potential award in favor of the contractor and to pay for legal fees, expert fees and other costs associated with the ongoing litigation. This request was approved by the State Board of Higher Education on September 3, 2014.

The litigations related to this incident are on-going with the discovery process being scheduled to be complete as of June 30, 2014. Thereafter, expert disclosures and expert depositions will be started. The trial is scheduled for July 2015. Litigation costs have been higher than anticipated due to the fact that additional parties were required to be included in the litigation because of information revealed during the discovery process.

If legal settlements are less than the estimated costs, NDSU would seek direction from the SBHE for options to pay for the costs incurred, including the possible request for a deficiency appropriation from the Legislative Assembly. Updates on the project progress are provided regularly to the ND University System Chancellor and State Board of Higher Education. See memorandum dated 8-29-14 from Christopher Wilson and Dan Hull

**FINANCIAL STATUS REPORT AS OF FEBRUARY 28, 2015:**

	<u>Current Authorization</u>	<u>Project Expenditures</u>	<u>Remaining Authorization</u>
Phase I, II, III	\$ 18,000,000	\$ 17,879,134	\$ 120,866
Collapse	\$ 4,874,300	\$ 4,404,965	\$ 469,335
<b>Total</b>	<u>\$ 22,874,300</u>	<u>\$ 22,284,099</u>	<u>\$ 590,201</u>

SEPTEMBER 3, 2014: UPDATE PRESENTED TO STATE BOARD OF HIGHER EDUCATION

---

#8  
p6

**REQUEST INCREASED AUTHORIZATION:**

Current Authorization: \$22,874,300  
Increased Authorization: \$23,474,300 – increase of \$600,000  
Source of Funds: Insurance proceeds, legal settlements, deficiency appropriations and other available funds

**Approved: SBHE September 3, 2014.**

Narrative: See memorandum dated 8-29-14 from Christopher Wilson and Dan Hull

**FINANCIAL STATUS REPORT AS OF AUGUST 31, 2014:**

	<u>Current Authorization</u>	<u>Project Expenditures</u>	<u>Remaining Authorization</u>
Phase I, II, III	\$ 18,000,000.00	\$ 17,879,134.24	\$ 120,865.76
Collapse	\$ 4,874,300.00	\$ 4,290,460.74	\$ 583,839.26
<b>Total</b>	<u>\$ 22,874,300.00</u>	<u>\$ 22,169,594.98</u>	<u>\$ 704,705.02</u>



Office of General Counsel - Fargo  
North Dakota State University  
202 Old Main  
PO Box 6050  
Fargo, ND 58108-6050  
701.231.8741  
Fax 701.231.8359  
www.ndsu.edu/general\_counsel

# 8  
p 7

MEMORANDUM

To: Bruce Bollinger  
From: Christopher Wilson  
Dan Hull  
Re: Request for Increase to Minard Hall Project Authorization  
Date: August 29, 2014

NDSU will likely need to increase its current state appropriated authorization on the Minard Hall project from \$22,874,300 to \$23,474,300. The increased authorization is needed because a contractor on the Minard Hall Project, Grant's Mechanical, Inc. ("GMI"), has made a claim for additional compensation.

After receiving GMI's claim, an initial determination was made by the project architect that GMI was entitled to an additional sum of \$137,000. GMI rejected this sum and proceeded with contractually mandated mediation. During the mediation, the contractor demanded an additional sum of \$450,000. The contractor's claim was not settled during mediation. A lawsuit has now been commenced against the State of North Dakota, the North Dakota Board of Higher Education and NDSU by the contractor. GMI did not specify its damages in the litigation, so NDSU utilized GMI's mediation demand as the basis for potential damages.

NDSU requests an additional authorization of \$600,000 in order to cover a potential award in favor of the contractor and to pay for legal fees, expert fees and other costs associated with the ongoing litigation.

The North Dakota University System is governed by the State Board of Higher Education and includes:  
Bismarck State College • Dakota College of Art and Science • Dickinson State University • Lake Region State College • Mayville State University • North Dakota State University • North Dakota State College of Science • North Dakota State University • University of North Dakota • Valley City State University • Williston State College

DECEMBER 11, 2013: UPDATE PRESENTED TO BUDGET SECTION

# 8  
PS

**COST RECOVERY/LITIGATION STATUS AS OF DECEMBER 11, 2013:**

- Two additional defendants have been added to the lawsuit against JLG Architects, Heyer Engineering and Northern Technologies, Inc. The new parties are Meinecke-Johnson (the project's general contractor) and Earth Developers (the project's excavating contractor). The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and took longer than anticipated, especially with the addition of two new defendants. Five depositions were taken in November, 2013 and additional depositions will be conducted. The trial in the lawsuit against the JLG and others is scheduled to commence on March 3, 2015. The Court has not yet set a trial date in the lawsuit against the State Fire and Tornado Fund.
- General Counsel Budget Section testimony next page

**PROJECT STATUS AS OF DECEMBER 11, 2013:**

- The Minard Hall project is substantially complete and as of the fall 2013 academic term is in full operation. Remaining punch list items are being reviewed and finalized. We continue to work with contractors on project closeout documents and remaining/outstanding payment requests; continued document review before final pay applications are approved.
- Collapse related costs continue to be incurred as a result of three items:
  1. Ongoing Legal fees;
  2. Contractors have requested additional costs be covered due to project delays;
  3. Replacement of furniture lost due to the collapse.

**FINANCIAL STATUS REPORT AS OF OCTOBER 31, 2013:**

	Authorization	Project Expenditures	Commitments		Project Total with Commitments	Remaining Authorization
			Construction Orders Approved/Potential	Change Orders Including Contingencies		
Phase I,II,III	\$ 18,000,000	\$16,989,678	\$ 106,026	\$ 904,296	\$ 18,000,000	\$ -
Collapse	4,874,300	4,030,516	221,666	622,118	4,874,300	-
<b>Total</b>	<b>\$ 22,874,300</b>	<b>\$21,020,194</b>	<b>\$ 327,692</b>	<b>\$ 1,526,414</b>	<b>\$ 22,874,300</b>	<b>\$ -</b>

**General Counsel Testimony: Budget Section December 11, 2013**

---

# 8  
p 9

My name is Christopher Wilson, and I am the General Counsel of North Dakota State University. I am here today to update the Budget Committee on the University's on-going efforts to recover its damages, expenses and costs resulting from the collapse of Minard Hall.

As I have previously reported, attorney Daniel Hull with the law firm of Anderson, Bottrell, Sanden & Thompson in Fargo represent NDSU in its recovery efforts. Through Mr. Hull's efforts, NDSU has commenced two different lawsuits pertaining to the Minard collapse. Both lawsuits are venued in the State District Court in Fargo (East Central Judicial District).

In the first litigation, NDSU brought suit against the North Dakota State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse, the Fund denied that there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the Fund. NDSU is requesting a judgment that the Fund's insurance policy covers damages sustained by NDSU as a result of the collapse.

In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and the North Dakota State Board of Higher Education. The initial defendants were JLG Architects, Heyer Engineering and Northern Technologies, Inc., which were the project's architectural firm, the structural engineering firm and the geotechnical engineering firm. The lawsuit alleged, among other things, that the defendants:

- (1) Failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall;
- (2) Provided a defective design for the excavation adjacent to the north end of Minard Hall; and
- (3) Failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.

Earlier this year, two additional defendants were added to the second lawsuit. They are Meinecke-Johnson, the project's general contractor, and Earth Developers, the project's excavating contractor. The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.

In both lawsuits, written discovery and depositions are ongoing, including five depositions which were taken in November of 2013. The trial in the lawsuit against the JLG and others is scheduled to commence on March 3, 2015. The Court has not yet set a trial date in the lawsuit against the State Fire and Tornado Fund.

That concludes our prepared statements, and we would be happy to answer any questions that you may have. Thank you.



#8  
P10

**SEPTEMBER 24, 2013: UPDATE PRESENTED SBHE MEETING**

- The Minard Hall project is substantially complete and is in full operation for the Fall 2013 academic term with remaining punch list items being reviewed and completed.
- The collapsed related costs continue to be realized as a result of three items:
  4. Legal fees continue to be incurred.
  5. Contractors have asked for delay related expenses that are being reviewed.
  6. Replacement of furniture lost due to the collapse.

**FINANCIAL STATUS REPORT AS OF AUGUST 31, 2013:**

	Authorization	Project Expenditures	COMMITMENTS			Remaining Authorization
			Construction Change Orders Approved/Potential	Other – Including Contingencies		
Phase I, II, III	\$18,000,000	\$16,939,294	\$131,361	\$929,345	\$18,000,000	-
Collapse	4,874,300	4,006,485	244,020	623,795	4,874,300	-
<b>Total</b>	<b>\$22,874,300</b>	<b>\$20,945,779</b>	<b>\$375,381</b>	<b>\$1,553,140</b>	<b>\$22,874,300</b>	<b>-</b>

**COST RECOVERY/LITIGATION STATUS AS OF SEPTEMBER 24, 2013:**

- Two additional defendants have been added to the second lawsuit. They are Meinecke-Johnson, the project's general contractor, and Earth Developers, the project's excavating contractor. The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and has taken longer than anticipated, especially with the addition of two new defendants, but it is estimated that it will soon be complete and depositions will then begin. It is unknown when the trials will occur, but they would be at least one year away.

# 8  
p 11

**NDSU IS REQUESTING THAT THE SBHE CONSIDER AND PASS THE FOLLOWING MOTIONS AS OF SEPTEMBER 24, 2013:**

**First Motion:** To amend the following underlined part of a motion previously approved by the SBHE on November 17, 2011, which currently reads:

Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a 2011-13 deficiency appropriation.

with the following underlined language:

Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a future deficiency appropriation.

**Second Motion:** To amend the following underlined part of a motion previously approved by the SBHE on November 17, 2011, which currently reads:

Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.

with the following underlined language:

Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2015 or later legislative session.

**MOTIONS PASSED AT SEPTEMBER 24, 2013 SBHE MEETING**

---

#8  
p12

**MINARD HALL COLLAPSE COST RECOVERY/LITIGATION STATUS AS OF DECEMBER 31, 2012:**

- NDSU retained the services of attorney Daniel Hull with the law firm of Anderson, Bottrell, Sanden & Thompson in Fargo to represent the University in its recovery efforts.
- Through Mr. Hull's efforts, NDSU has commenced two different lawsuits pertaining to the Minard collapse. Both lawsuits are venued in the State District Court in Fargo (East Central Judicial District).
- In the first litigation, NDSU brought suit against the North Dakota State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse, the Fund denied that there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the Fund. NDSU is requesting a judgment that the Fund's insurance policy covers damages sustained by NDSU as a result of the collapse.
- In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and the North Dakota State Board of Higher Education. The defendants are JLG, Heyer Engineering and NTI, which are the architectural firm, the structural engineering firm and the geotechnical engineering firm involved in the Minard Hall project. The lawsuit alleges, among other things, that the defendants:
  - (1) failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall;
  - (2) provided a defective design for the excavation adjacent to the north end of Minard Hall; and
  - (3) failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.
- In accordance with the construction contract, claims also have been initiated against the project's general contractor, Meinecke-Johnson. The claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and has taken longer than anticipated, but it is estimated that it will soon be complete and depositions will then begin. It is unknown when the trials will occur, but they would be at least one year away.

**FINANCIAL STATUS REPORT AS OF DECEMBER 31, 2012:**

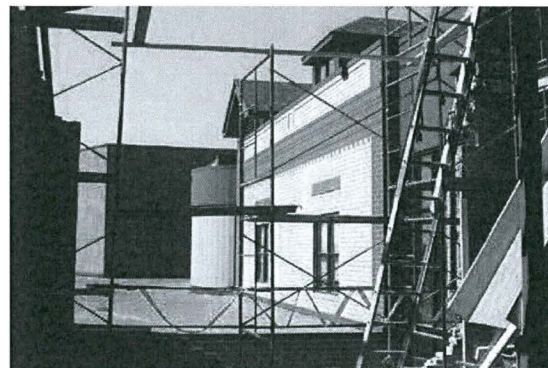
COMMITMENTS	Project		Construction	Other –	Total	Remaining Authorization
	Authorization	Expenditures	Change Orders Approved/Potential	Including Contingencies		
Phase I, II, III	\$18,000,000	\$14,899,879	\$2,462,018	\$638,103	\$18,000,000	-
Collapse	4,874,300	2,880,503	588,124	1,405,673	4,874,300	-
Total	\$22,874,300	\$17,780,382	\$3,050,142	2,043,776	\$22,874,300	-

#8  
P13

**AUGUST 31, 2012: 1901 (SOUTH) BUILDING SECTION RENOVATION:**

*Estimated completion date: Mid-to-late spring 2013*

- Asbestos abatement process (referenced in this summary) began the first of September and was completed the first week of November 2011
- Project scope was complex with demolishing much of the interior, building new structural framing system to support attic office space and new roof, creating more efficient space
- Structural voids and lack of structural integrity discovered once framing of bearing walls was exposed; resulted in additional design time, pricing time, material costs, wall reframing, and project completion time
- Poor masonry bearing wall conditions were uncovered:
  - > Masonry wall at NW portion of 4th floor found to be in poor condition; required complete removal down to third floor level; testing currently under way to verify compressive strength and physical characteristics of remaining masonry to ensure ability to support new roof loads; could delay completion of 1901 section, but impact won't be known until final test results are received
  - > Poor 4th floor bearing wall between 1901 and 1918 sections (masonry intermixed with wood) required removal and rebuilding/infilling of the wall
  - > Openings cut through bearing masonry walls had no or very inadequate lintels requiring new masonry infill or installation of new lintels to carry load above opening
- Issues required numerous job site trips by structural engineer and architect to re-engineer/redesign modifications to existing structural system
- Renovation work on section estimated to be completed mid-to-late spring 2013, depending on testing results stated previously



1901 (south) building section: mortar issues in the brick masonry

**1918 (CENTER) BUILDING SECTION RENOVATION:**

*Estimated completion date: December 2012*

- Work progressing on schedule for December 2012 completion date; however, some systems and components are tied to 1901 section, so full utilization may not be realized until 1901 area is completed



#8  
P14

**NORTH ADDITION:**

*Estimated Completion Date: December 2012*

- Footings and foundation walls were completed in October 2011
- Steel frame installations also began at that time
- Sheet rocking is progressing, windows are installed, brick exterior is approximately 30% completed, and most infrastructure items are installed
- Substantial completion of the project is expected in December 2012



North Addition  
Rebuilt Collapsed Area  
1929 Section

**1929 (NORTH) BUILDING AND COLLAPSED AREA RENOVATION:**

*Estimated completion date: December 2012*

- Portion of the 1929 section was completed in 2011 and occupied for fall 2011; remaining portion and also collapsed area following north addition schedule, being completed at same time



1929 (north) building section: classroom currently in use; renovated in 2011

**FINANCIAL STATUS REPORT AS OF AUGUST 31, 2012:**

	COMMITMENTS					Remaining Authorization
	Authorization	Project Expenditures	Construction Change Orders Approved/Potential	Other – Including Contingencies	Total	
Phase I, II, III	\$18,000,000	\$13,266,150	\$1,674,331	\$3,059,519	\$18,000,000	-
Collapse	4,874,300	2,629,280	1,150,461	1,094,559	4,874,300	-
<b>Total</b>	<b>\$22,874,300</b>	<b>\$15,895,430</b>	<b>\$3,050,142</b>	<b>\$4,154,078</b>	<b>\$22,874,300</b>	<b>-</b>

**COST RECOVERY / LITIGATION STATUS AS OF AUGUST 31, 2012:**

#8  
P 13

NDSU is actively seeking to recover its damages, expenses and costs resulting from the collapse of Minard Hall. Two civil lawsuits have been commenced. Both lawsuits are venued in the State District Court in Fargo (East Central Judicial District). A forensic study has occurred involving all of the parties. Discovery, including the production of voluminous documents, is ongoing.

In the first litigation, NDSU brought suit against the ND State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse of Minard Hall, the fund denied there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the fund. NDSU is requesting a judgment that the fund's insurance policy covers damages sustained by NDSU as a result of the collapse.

In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and SBHE. The defendants are JLG, Heyer Engineering and 3

NTI, which are the architectural firm, the structural engineering firm, and the geotechnical engineering firm involved in the Minard Hall project. In this lawsuit, the State of North Dakota is seeking to recover damages sustained as a result of the collapse of Minard Hall and as a result of the redesign of the north addition to Minard Hall. The lawsuit alleges, among other things, that the defendants: (1) failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall, (2) provided a defective design for the excavation adjacent to the north end of Minard Hall, and (3) failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.

It is estimated that written discovery will be completed within approximately two months. Depositions will then begin. At this point, it is unknown when the trials will occur, but they would be at least one year away.

---

**DECEMBER 13, 2011:**

NDSU presented a request to the Budget Section for approval to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25, and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. The following motion carried on a roll call vote:

- To approve the NDSU request to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25, and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds.

---

**NOVEMBER 17, 2011:** *(motions passed at the November 17, 2011, SBHE meeting)*

NDSU presented a brief update on the Minard Hall construction to the SBHE. The following motions were approved by the SBHE:

#8  
P16

1. To proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 future 2011-13 deficiency appropriation.
2. To seek Budget Section approval for increased spending authorization for Minard Hall from \$18,000,000 to \$22,874,300, an increase of \$4,874,300, with the intent that up to this amount (less any recovered from insurance or legal action) be ultimately funded by a state general fund deficiency appropriation per NDCC 48-01.2-25.
3. To carry a deficit fund balance on the Minard Hall project as a

temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.

4. To take any necessary action, including litigation, to seek recovery of damages, expenses, and costs resulting from the collapse of Minard Hall, with any recovery being used to offset the ongoing costs of the Minard Hall project or, if the project is complete at the time of any recovery, to reimburse the State of North Dakota for the costs of the project to the extent that recovery dollars are available, following consultation with the chancellor.

---

**NOVEMBER 9, 2011:**

The Budget, Audit and Finance Committee held an executive session regarding Minard Hall and was satisfied with the progress of litigation.

---

#8  
P17

**SEPTEMBER 30, 2011: UPDATE & STATUS SUMMARY PRESENTED TO SBHE**

Minard Hall is the largest academic facility located in the historical district on NDSU's campus.

The following departments have classrooms and offices in Minard Hall: Psychology, mathematics, communication, English, modern languages, history, philosophy, religion, sociology, anthropology, emergency management, English as a second language.

Minard Hall was built in three sections: 1901-south, 1918-center, 1929-north. Academic departments located in the 1929-north section were relocated to other areas across campus due to the collapse. However, academic departments located in the 1901-south section have remained during the renovation/construction process.

The \$18,000,000 Minard Hall authorized renovation and addition project scope consists of roof and window replacements, utility and infrastructure (steam, water, and sewer) work and relocation, asbestos abatement, interior redesign/remodeling, new space allocation, new west and north additions, and architect/engineering fees. Additionally, the project includes replacement of the HVAC system, general construction, and electrical work to complete the project. As of December 27, 2009, the project scope also includes the collapsed north wall repair.

Authorized funding for the project is \$18,000,000: \$17,500,000 general funds and \$500,000 special/local funds.

Project scope includes the following square footage:

- Renovation of existing sections - 72,141
- Additions west and north - 30,755
- Collapse - 6,965 of existing section north wall

Consultants and contractors on the project:

- Consultants
  - > JLG (architect - lead of project)
  - > NTI (geotechnical)
  - > Martin Mech (mechanical)
  - > Heyer (structural)
  - > Land elements (landscape)
  - > MBN (electrical)
- Contractors
  - > Grants Mechanical (mech)
  - > Meinecke-Johnson (gen)
  - > Bergstrom Elec (elec)
  - > Veit (shoring)
  - > Earth developers (sub)

Minard Hall experienced an unprecedented partial collapse of the north wall in the early morning hours of December 27, 2009. The building had been partially occupied during construction activities for the renovation; however, the building was unoccupied at the time of the collapse due to the Christmas holiday break. All construction was halted so that project activities could focus on preventing any further collapse, settling or additional failure to the building. Utility connections, temporary heat, air handling and electricity was re-established; a security company was hired to prevent unauthorized access to unsafe areas and to prevent theft; and a moving company was hired to help relocate faculty, offices and classrooms from Minard to other areas on campus because NDSU was not staffed to handle this activity.

During the same time period, the



decision was made not to salvage the collapsed area building materials because of safety concerns. Demolition of this area could not take place unless shoring systems were designed and installed to prevent any further collapse. Access to faculty offices and classroom space in the collapsed area also needed to be addressed while the remainder of the building was evaluated for safety concerns. The challenge continued as the north end of the building became contaminated with asbestos material requiring specialized cleaning and removal.

Further testing and evaluations, demolition of the collapsed area, stabilization of the building, and shoring of the roofs and flooring were continued during the next four to five months. Construction activities continued on the main project, and the west addition progressed slowly because many of the resources were being focused on the collapsed area. While this work was occurring, plans were being developed to determine the cause of the collapse. All parties (contractors and sub-contractors) were given the opportunity to participate in the proposed forensic study. This allowed all parties an opportunity to review the same data and make field observations. All parties participating in the proposed forensic study hired experts to determine the testing needed to determine the footing failure. In order for the review to occur, the collapsed portion of the building, excluding the footings and foundation, needed to be removed. During this removal, asbestos contaminated soils were discovered below the original building area that was collapsed. This area needed to be properly contained and removed before the last floor

section could be removed. Initial forensic testing was completed during July 12-15, 2010. Once completed, the second and final portion of the testing was to excavate the footing area and remove the failed material. All parties agreed an action plan should be developed to ensure soil conditions could handle excavating down to the footing level to expose the soils. Parties did not agree upon a plan until October 2010, and November 8 was set for the start of the deep excavation. No work could continue on the north addition or the collapsed area until this forensic testing was completed.

The original renovation project continued during this time. Temporary air conditioning was installed in classrooms during the summer of 2010 as the building was occupied while the renovation work was under way. Some soil data became available in October 2010, and concerns surfaced about a footing system for the collapsed area, along with concerns regarding the soil conditions at the north addition site. The project architect presented multiple recommendations for proceeding with the north addition and replacement of the collapsed area. Concerns surfaced at this time about continuing with a basement plan for the addition, so budget pricing was solicited on available options for proceeding. At this point, NDSU had a recommendation regarding how to move forward with the project, but needed guidance and approval from the SBHE.

At the December 16, 2010, SBHE meeting, NDSU was given approval for the following five items:

1. To expand the original scope of the project and timeline to include a

#8  
P18

#8  
p 19

- redesign of the collapsed portion of building
2. To redesign the Minard Hall north addition to relocate the mechanical space, which will need to be relocated from a planned basement space, which is no longer feasible due to soil conditions
  3. To allow collapse-related expenses to be funded from general funds currently available for the project
  4. To administratively combine the three building phases into one project for management purposes
  5. To authorize NDSU to seek appropriate legislative authorization and funding to complete the project in the most appropriate manner.

After obtaining the SBHE approval, the architects and consultants were directed to proceed with redesigning the north addition, removing the basement mechanical room and relocating that equipment to a 5th floor or penthouse. A revised design was completed for the north addition in mid-February 2011. The plan was approved and proposal requests were sent out to the contractors for pricing. At the same time, proposals were modified slightly for the collapsed area in order to tie in all connections and utilities to the revised plan. Proper documentation and supporting information for the pricing were received and approved change orders were created in April and May of 2011. Priorities at this time were to remove the loose sand fill in the basement area and to fill it in with a compacted engineered fill. Once this was

completed, the collapsed structure and north addition footings could be started.

Locations logistics for the building occupants have been an ongoing consideration and concern. (To date, permanent locations are not available.) Therefore, the impetus was to complete the west addition and part of the 1918 and the 1929 construction zones so space would be available for the fall 2011 academic semester. Temporary life/safety systems, air conditioning and heating would need to be installed due to the 5th floor mechanical equipment not being installed until sometime in 2012. Due to a tight project timeline and because of space limitations, a moving company was hired to relocate the departments and to store any materials that were not necessary during the next 12 months. This task was completed in August 2011.

With the 1901 building and the remaining 1918 building now vacated, the next milestone was to remove the remaining known asbestos in these areas. This process began the first of September and will not be completed until the first week of November 2011. The work is being done by floor so that the other contractors can follow behind and complete the needed demolition. The north addition footings and foundation walls were completed in October 2011 and steel frame installations are currently under way. Substantial completion of the project is expected December 2012.

#8  
p20

**FINANCIAL STATUS REPORT AS OF SEPTEMBER 30, 2011:**

	Biennium	Local Match	General Funds	State
<b>Legislative/appropriation authorization</b>				
Phase I and II	2007-09	\$500,000	\$4,500,000	\$5,000,000
Phase III	2009-11		\$13,000,000	\$13,000,000
			<b>Total legislative authorization</b>	<b>\$18,000,000</b>
<b>Expenditures as of 9/30/2011</b>				<b>(\$12,507,864)</b>
			<b>Remaining legislative authorization</b>	<b>\$5,492,136</b>
<b>Outstanding construction commitments and contingencies as of 9/30/2011</b>				
Construction Commitments				\$8,753,819
Contingencies:				
Construction				\$1,112,617
Legal				\$500,000
Total outstanding commitments and contingencies				\$10,366,436
<b>Increased amount of Legislative spending authorization requested by NDSU due to collapse</b>				<b>\$4,874,300</b>

	Construction	Collapse	Total
<b>Expenditures</b>	\$10,609,197	\$1,898,667	\$12,507,864
<b>Commitments</b>	\$7,048,186	\$1,705,633	\$8,753,819
<b>Contingencies:</b>			
Construction	\$342,617	\$770,000	\$1,112,617
Legal	-	\$500,000	\$500,000
	<b>\$18,000,000</b>	<b>\$4,874,300</b>	<b>\$22,874,300</b>

**2011-13 HB1003, SECTION 8.**

**NORTH DAKOTA STATE UNIVERSITY – MINARD HALL – BUDGET SECTION:**

*North Dakota State University may use unspent funding from the \$5,000,000 appropriation received during the biennium beginning July 1, 2007, and ending June 30, 2009, and unspent funding from the \$13,000,000 appropriation, received during the biennium beginning July 1, 2009, and ending June 30, 2011, for the Minard hall project, for the biennium beginning July 1, 2011, and ending June 30, 2013. North Dakota State University shall report to the budget section regarding the status of the Minard Hall project and may request increased spending authorization from the budget section for the project.*

**NDSU IS REQUESTING THAT THE SBHE PASS THE FOLLOWING MOTIONS:**

*(Motions passed at the November 17, 2011, SBHE meeting)*

1. Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 future 2011-13 deficiency appropriation.
2. Grant NDSU authority to seek Budget Section approval for increased spending authorization for Minard Hall from \$18,000,000 to \$22,874,300, an increase of \$4,874,300, with the intent that up to this amount (less any recovered from

#8  
p21

insurance or legal action) be ultimately funded by a state general fund deficiency appropriation per NDCC 48-01.2-25.

3. Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.
4. Authorize NDSU to take any necessary action, including litigation, to seek recovery of damages, expenses, and costs resulting from the collapse of Minard Hall, with any recovery being used to offset the ongoing costs of the Minard Hall project or, if the project is complete at the time of any recovery, to reimburse the State of North Dakota for the costs of the project to the extent that recovery dollars are available, following consultation with the chancellor.

# APPENDIX – MINARD HALL

#8  
P22

## BUDGET SECTION MINUTES AND TESTIMONY

15.5050.03000

Budget Section

### UNIVERSITY SYSTEM CAPITAL PROJECTS CONTINGENCY POOL

Mr. Rick Tonder, Director of Facilities Planning, North Dakota University System, presented information (Appendix K) regarding funds distributed from the capital projects contingency pool pursuant to Section 24 of 2013 Senate Bill No. 2003. He said the 2013 Legislative Assembly provided \$5,483,413 for the capital projects contingency pool. He said the University System allocated \$858,984 for a campus drive project at Williston State College (\$90,000), a Stevens Hall renovation project at Williston State College (\$517,551), and an Erlandson remodel and expansion project at Lake Region State College (\$251,433). He said there is \$4,624,429 remaining in the capital projects contingency pool for future allocations.

### NORTH DAKOTA STATE UNIVERSITY MINARD HALL PROJECT

Mr. Michael Ellingson, Director of Facilities Management, North Dakota State University, presented information (Appendix L) regarding the status of the Minard Hall project at North Dakota State University (NDSU) pursuant to Section 22 of 2013 Senate Bill No. 2003. He said construction of Minard Hall is substantially complete, and the building was fully occupied for the fall 2013 semester.

Mr. Christopher Wilson, General Counsel, North Dakota University System, presented information (Appendix M) regarding the legal proceedings related to the Minard Hall project. He said the law firm Anderson, Bottrell, Sanden, and Thompson is representing NDSU in two separate litigation proceedings. He said NDSU brought suit against the state fire and tornado fund, which provides property insurance for NDSU. He said NDSU has also brought suit against selected project contractors. He said written discovery and depositions are ongoing for both lawsuits. He said a trial date has not yet been set for the lawsuit against the state fire and tornado fund. He said the trial date for the lawsuit against the project contractors will be in March 2015.

In response to a question from Representative Brandenburg, Mr. Ellingson said approximately \$4.8 million of the \$22.9 million total project cost is associated with the collapse of Minard Hall.

### UNIVERSITY SYSTEM - CHANGES TO CAPITAL PROJECTS North Dakota State University

#### Sanford Health Athletic Complex Project

Mr. Ellingson presented information (Appendix N) regarding a request for Budget Section approval to increase spending authority related to the Sanford Health Athletic Complex project. He said the request is the result of actual bids exceeding the project estimates. He said the scope of the project has not changed.

In response to a question from Representative Streyle regarding leaseback agreements, Mr. Bruce Bollinger, Vice President of Finance and Administration, North Dakota State University, said the Sanford Health Athletic Complex does not include any leaseback agreements. Mr. Bollinger said he would provide information regarding the terms of a leaseback agreement between NDSU and the NDSU Development Foundation related to Richard H. Barry Hall.

In response to a question from Representative Delzer, Mr. Bollinger said maintenance of the Sanford Athletic Health Complex will be paid from local funds at NDSU and not state funds.

**It was moved by Senator Grindberg, seconded by Senator Klein, and carried on a roll call vote that the Budget Section approve the North Dakota State University request pursuant to Section 15-10-12.1 to increase spending authority from private donations by \$5,595,644, from \$35,404,356 to \$41,000,000, related to the Sanford Athletic Health Complex project.** Representatives Pollert, Boe, Brandenburg, Delzer, Devlin, Dosch, Guggisberg, Holman, Kempenich, Kreidt, Martinson, Mock, Nelson, Onstad, Sanford, Streyle, Thoreson, Vigesaa, Wieland, and Williams and Senators Bowman, Carlisle, Erbele, Grindberg, Heckaman, Holmberg, Kilzer, Klein, Krebsbach, Lee, Mathem, Robinson, Schneider, Wanzek, and Wardner voted "aye." No negative votes were cast.

#### Center for Computationally Assisted Science and Technology Project

Dr. Philip Boudjouk, Professor of Chemistry, North Dakota State University, presented information (Appendix Q) regarding a request for Budget Section approval to increase spending authority and to increase the scope of the Center for Computationally Assisted Science and Technology project.

In response to a question from Representative Delzer, Dr. Boudjouk said the increase includes the purchase of computer hardware, cooling systems, and electrical transformers. He said the equipment is needed to comply with the requirements of an additional federal grant.

#8  
p 23

Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Drovdal, Kelsh, Kempenich, Kreidt, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Vigesaa, Wieland, and Williams voted "aye." Representatives Bellew, Brandenburg, Delzer, and Klein voted "nay."

**North Dakota State University -  
Batcheller Building - Center for  
Biopharmaceutical Research and Production  
Centers of Excellence Program**

Mr. Bruce Bollinger, Vice President for Finance and Administration, North Dakota State University, Fargo, presented a request for Budget Section approval under Section 15-10-12.1 of project authorization of \$1.75 million from the Center for Biopharmaceutical Research and Production centers of excellence program required cash match for the Batcheller Building first floor construction project in the Research and Technology Park. Dr. Satish Chandran, Director, Center for Biopharmaceutical Research and Production, North Dakota State University, Fargo, was also present.

In response to a question from Representative Carlson, Mr. Bollinger said a \$2 million grant from the Greater Fargo Moorhead Economic Development Corporation is contingent upon Budget Section approval of the request.

It was moved by Representative Carlson, seconded by Senator Schneider, and carried on a roll call vote that the Budget Section approve under Section 15-10-12.1 project authorization of \$1.75 million from the Center for Biopharmaceutical Research and Production centers of excellence program required cash match for the Batcheller Building first floor construction project in the Research and Technology Park. Senators Grindberg, Bowman, Christmann, Erbele, Holmberg, Kilzer, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wanzek, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Kelsh, Kreidt, Kroeber, Martinson, Metcalf, Nelson, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Representatives Bellew, Brandenburg, Delzer, Drovdal, Kempenich, Monson, and Pollert voted "nay."

**North Dakota State University -  
Minard Hall**

Mr. Bollinger presented a request for Budget Section approval to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25 and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. Mr. Michael Ellingson, Facilities Management Director, North Dakota State University, Fargo, and Mr. Dan Hull,

attorney, Anderson, Bottrell, Sanden & Thompson Law Firm representing North Dakota State University (NDSU) in legal action regarding Minard Hall were also present. Mr. Bollinger said NDSU has pursued a lawsuit against its insurance carrier seeking payment for insured damages estimated at \$4.8 million. He said any settlement amount will be used for the additional costs relating to the project.

In response to a question from Representative Carlson, Mr. Hull said the scope of the project is not increasing. He said the increased project authorization is for the additional costs resulting from damages incurred due to the Minard Hall collapse.

In response to a question from Representative Delzer, Mr. Ellingson said \$4.8 million is the estimate of the additional costs. He said all expenditures related to the Minard Hall collapse are being separately recorded and verified by legal counsel.

In response to a question from Senator Bowman, Mr. Bollinger said if legal settlement proceeds are less than the estimated \$4.8 million of additional costs, NDSU would seek direction from the State Board of Higher Education for options to pay for the costs incurred, including the possible request for a deficiency appropriation from the Legislative Assembly in 2013.

Senator Christmann asked whether NDSU is also seeking cost recovery from the contractor responsible for causing the damages. Mr. Hull said cost recoveries are being sought from all parties involved but is unable to provide details since the case is currently in progress.

It was moved by Senator Krebsbach, seconded by Senator Taylor, and carried on a roll call vote that the Budget Section approve the NDSU request to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25 and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. Senators Grindberg, Erbele, Holmberg, Krebsbach, O'Connell, Robinson, Schneider, Taylor, Wardner, and Warner and Representatives Carlson, Dahl, Dosch, Drovdal, Kelsh, Kempenich, Klein, Kroeber, Martinson, Metcalf, Monson, Nelson, Pollert, Thoreson, Vigesaa, Wieland, and Williams voted "aye." Senators Bowman, Christmann, Kilzer, and Wanzek and Representatives Bellew, Brandenburg, Delzer, and Kreidt voted "nay."

**Mayville State University -  
Science-Library Complex**

Mr. Steven Bensen, Vice President for Business Affairs, Mayville State University, Mayville, presented a request for Budget Section approval under Section 48-01.2-25 to increase the science-library complex project authorization by \$95,000 from \$5,138,328 to \$5,233,328 for additional project improvements that are either complete or partially complete and under Section 15-10-12.3 to use institutional collection reserves (\$50,000), library local funds (\$25,000), and

17.5065.03000  
Budget Section

#8  
p 24

**NORTH DAKOTA STATE UNIVERSITY MINARD HALL  
PROJECT**

Mr. Dan Hull, Special Assistant Attorney General, North Dakota State University, presented information (Appendix N) regarding the status of the Minard Hall project at North Dakota State University (NDSU) pursuant to Section 27 of 2015 House Bill No. 1003. He said NDSU has expended \$4,654,854 as a result of the building collapse and NDSU agreed to a settlement of \$3,020,000 resulting in \$1,634,853.52 of unreimbursed costs. He said on December 10, 2015, the State Board of Higher Education approved NDSU's request to seek a deficiency appropriation from the 2017 Legislative Assembly for the unreimbursed costs.

In response to a question from Representative Kempenich, Mr. Hull said of the \$4.7 million in costs incurred due to the collapse, \$3.8 million is related to costs for repairs and \$900,000 is related to costs of forensic studies, expert witnesses, and legal assistance.

1, 2014, and June 30, 2015, and reduced (.45) FTE positions since June 30, 2015, for a total of 264.87 FTE positions as of November 30, 2015.

North Dakota Legislative Council  
December 16, 2015

6

# 8  
p 25

**Minard Hall Special Assistant Attorney General Testimony**  
**Budget Section: December 16, 2015**

---

My name is Dan Hull. I am a partner in the Fargo law firm of Anderson, Bottrell, Sanden & Thompson and a Special Assistant Attorney General with regard to the Minard Hall collapse. I am here today to provide an update on the status of Minard Hall project as required by Section 27 of 2015 House Bill No. 1003.

Minard Hall is a large academic building located on NDSU's campus. In 2009, Minard Hall was undergoing extensive renovations, as well as the construction of several additions. A large hole was dug for the planned basement of one of the additions. The hole was adjacent to the existing north end of Minard Hall. Unfortunately, on December 27, 2009, part of existing Minard Hall collapsed into the hole.

NDSU's property insurer was the North Dakota State Fire and Tornado Fund. The Fund denied coverage for the collapse. The involved architect, engineers and contractors also denied any liability for the collapse.

Two lawsuits were commenced by NDSU. One lawsuit was against the State Fire and Tornado Fund. The other lawsuit was against five of the entities involved in the construction: the architect, the structural engineer, the geotechnical engineer, the general contractor and the excavating contractor. The Fund and the other five defendants vigorously denied any liability and strongly contested the lawsuits.

The Minard Hall project, including all repairs necessitated by the collapse, was substantially completed in 2013. As of the fall 2013 academic term, Minard Hall was in full operation.

The lawsuits marched on. After years of document production, depositions and motions, trial dates were finally set by the court. At that point, because litigation involves both costs and risks, NDSU received authority from the State Board of Higher Education to explore whether a mediated settlement was possible. The parties retained a nationally-respected mediator who directly negotiated with each of the parties. Those mediated negotiations ultimately resulted in a favorable settlement of NDSU's claims for the sum of \$3,020,000. Only the mediator has a breakdown of the amount paid by each defendant. Payment of the settlement amount was received by NDSU on July 13, 2015.

NDSU expended a total of \$4,654,853.52 as a result of the collapse. Up to approximately \$3,800,000 of those costs might have been recoverable at trial if NDSU had won all parts of both cases. On the other hand, if NDSU had lost parts or all of those cases, NDSU might have recovered only a fraction or none of that amount.

Based on collapse expenditures of \$4,654,853.52 and a settlement of \$3,020,000, NDSU has unreimbursed collapse related costs of \$1,634,853.52. The legislature previously increased the authorization for the Minard Hall project, but it did not appropriate any funds. As a result, on December 10<sup>th</sup>, NDSU received approval from the State Board of Higher Education to seek a deficiency appropriation for the amount of those unreimbursed costs.

That concludes my prepared statements. We would be happy to answer any questions that you may have. Thank you.





**STATE  
HISTORICAL  
SOCIETY**  
OF NORTH DAKOTA

HB1024  
3-1-17  
Senate Appropriations on HB 1024  
Claudia J. Berg, Director  
March 1, 2017

#9  
P1

*To identify, preserve, interpret, and promote the heritage of North Dakota and its people.*

Although the State Historical Society was pulled out of HB 1024, the need to support these two projects remains critical.

#### **Heritage Center Expansion Litigation**

- Should the State Historical Society have to pay the legal fees related to the Comstock lawsuit, the impact to the agency's operating budget would be severe. Assistant Director Dave Skalsky will elaborate in his testimony.

#### **Time frame Comstock lawsuit:**

- July 1, 2017 Comstock will disclose their expert witness.
- August 1, 2017 we disclose our expert witness.
- August 31, 2017 discovery questions are completed.
- September 1, 2017, depositions by both sides have been completed.
- November 6-9 and 13-15, 2017, trial dates in South Central Judicial District court.
- To date we have spent \$23,000 on legal fees; funds have come from our operating budget.
- The estimated cost to the agency for the lawsuit has remained at \$294,500.

#### **Double Ditch State Historic Site Stabilization**

- The attached sheet provides more information.

## Quick Facts about Double Ditch Indian Village State Historic Site

Provided by the State Historical Society of North Dakota

#9  
p2

Site Background: Double Ditch Indian Village was a major city and trading center from the late 1400s to the late 1700s. This village was thriving for almost 100 years prior to Christopher Columbus landing in the New World. Thousands of people lived and were buried at this site for more than 300 years—spanning 10 generations of Mandan Indians. The Mandans, who live today throughout much of North Dakota and the northern Great Plains, were North Dakota's first agriculturalists, cultivating hundreds of acres of gardens near the 24-acre village. This village, first established with a population of about 2000, was larger than 93 percent of ND communities today. Today the only village sites that remain are within 60 miles around Bismarck-Mandan; all other village sites were inundated by water from Garrison and Oahe dams. The Double Ditch Indian Village State Historic Site is listed on the National Register of Historic Places.

- The 2015 North Dakota Legislative Assembly appropriated one-time funding of \$3.5 million to stabilize 2,000+ linear feet of the Double Ditch Indian Village State Historic Site riverbank, which is rapidly slumping into the Missouri River, exposing human burials, and eroding a significant Mandan village known nationally and internationally. Extensive erosion of the bank began in 2011 due to massive flooding of the Missouri River. The funding solution included General Fund dollars, State Disaster Relief Fund, and a loan from the Bank of North Dakota.
- The funding appropriation will need to be carried over into the 2017-19 biennium to complete this crucial project.
- Progress Update: The State Historical Society immediately began coordinating this project, based on the urgent need to stabilize the site, and has been continuously attempting to finalize all components among state, federal, and private entities involved. The engineering design for the stabilization will not impact the river and will be ready to bid in spring 2017. Following the bidding process and awarding a contract, work at the site will take approximately five months to complete.
- Since 2015, this site has developed an additional crack that will slump another 75 feet back into the site covering 27,962 square feet. Engineers have determined slumping will not stop until it works through 400 feet from the existing crack. That will mean a loss of 14 acres—over half of the site. Hundreds, or more likely thousands, of burials would be exposed in this area.
- The State Historical Society of North Dakota is aware that this site includes sacred burial grounds. To date, remains of 18 people have been exposed because of the slumping. Representatives from the Three Affiliated Tribes and the State Historical Society are working together on this project.
- Double Ditch State Historic Site will remain dangerously unstable, and human remains will continue to become exposed without funding to continue this important project. It is critical to keep this funding to help with the agency's responsibility to preserve thousands of human graves and a major historic site—a true gem on state land.

March 1, 2017

House Bill 1024  
Senate Appropriations Committee  
March 1, 2017

HB 1024  
3-1-17

#10

P1

Testimony by David Skalsky, Assistant Director  
State Historical Society of North Dakota

Chairman Holmberg and members of the committee, my name is David Skalsky and I am the Assistant Director of the State Historical Society of North Dakota. I am here today to present testimony regarding deficiency appropriations to the State Historical Society of North Dakota.

**Heritage Center Expansion Litigation**

The House removed \$294,500 that was to be used to pay unexpected legal fees. Comstock Construction was the general contractor for the Heritage Center Expansion Project and is suing the State of North Dakota. While the amount Comstock Construction is suing for is unclear, Peter Zuger with the Serkland Law Firm has stated that Comstock Construction could be suing for as much as \$2 million. The Serkland Law Firm has been appointed as a special assistant to the attorney general because of their construction litigation experience and is handling the case. We believe the majority of Comstock's lawsuit is related to costs they incurred because they had to take down and rehang exterior limestone that had been installed incorrectly. If this funding is not restored, it will significantly impact agency operations as we would need to cut our general fund operating by 23.5% to pay for these legal fees and to cover other operating cuts. We have paid approximately \$23,000 in legal fees to date.

**Double Ditch State Historic Site Stabilization**

The House also removed the \$1,250,000 deficiency appropriation from HB 1024 that was to be used to repay the Bank of North Dakota loan authorized as part of \$3.5 million in funding needed to stabilize the Double Ditch State Historic Site.

#10  
P2

In addition, they have added section 7 to our current 2017-19 budget bill, HB 1018, providing legislative intent that if we do take out the loan we now need to raise the money to pay it back.

Atwell Engineering was hired and submitted the permit application materials to the Corps of Engineers on May 12, 2016. Because of the lack of progress with the Corps of Engineers and the sensitivity relating to the exposure of human remains, Atwell Engineering developed a new design to stabilize the site. This new design calls for all work to be completed above the high water mark and therefore does not require a permit from the Corps of Engineers. The engineering work has been completed and we anticipate that bids will be solicited, contracts awarded, and construction starting as early as April 2017.

We have committed \$696,297 for the engineering and design but have not spent any of the remaining funds or taken out the loan at this stage of the project. Atwell Engineering still believes that we can get the project completed for the \$3.5 million as appropriated for the 2015-17 biennium. We are concerned that if additional slumping occurs because this project is delayed, money spent on the initial engineering and design will have been wasted as the project will need to be redesigned. In addition, further slumping would now occur in the site proper and likely exposing significantly more burials than the 18 burials that have been exposed to date.

We are asking the Senate to restore both deficiency appropriations amounts so that we can pay for the legal fees and finish the stabilization project at the Double Ditch State Historic Site.

This concludes my testimony. I will answer any questions you may have.

#10  
P 3

The following is provided for reference purposes.

**Sections 5 & 6 of the 2015-17, SB 2018, which authorized funding for the Double Ditch Sate Historic Site stabilization project.**

**SECTION 5. APPROPRIATION - STATE DISASTER RELIEF FUND - DOUBLE DITCH HISTORIC SITE REPAIRS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, and from the state disaster relief fund in the state treasury, the sum of \$2,000,000, or so much of the sum as may be necessary, to the state historical society for double ditch historic site repairs, for the biennium beginning July 1, 2015, and ending June 30, 2017.

**SECTION 6. CONTINGENT LOAN AUTHORIZATION - APPROPRIATION - DOUBLE DITCH HISTORIC SITE REPAIRS.** The state historical society may obtain a loan from the Bank of North Dakota in an amount not to exceed \$1,250,000, the sum of which is appropriated to the state historical society for the purpose of defraying the expenses of repairs to the Double Ditch historic site, for the biennium beginning July 1, 2015, and ending June 30, 2017. The loan authorization and appropriation in this section is contingent on the state historical society being unable to obtain assistance to contract with the adjutant general for the double ditch historic site repairs.

**Proposed sections 6 & 7 of the 2017-19, HB 1018, which provides new legislative intent that the loan plus interest be repaid with funds raised by the Historical Society.**

**SECTION 6. EXEMPTION - DOUBLE DITCH HISTORIC SITE REPAIRS.** The amounts appropriated to the state historical society from the general fund, the state disaster relief fund, and Bank of North Dakota loan proceeds for double ditch historic site repairs, as contained in sections 5 and 6 of chapter 52 of the 2015 Session Laws, are not subject to the provisions of section 54-44.1-11. Any unexpended funds from these appropriations are available for defraying the expenses of the double ditch historic site repairs during the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 7. LEGISLATIVE INTENT - LOAN FOR DOUBLE DITCH HISTORIC SITE REPAIRS.** It is the intent of the sixty-fifth legislative assembly that the state historical society not obtain a loan from the Bank of North Dakota for defraying the expenses of double ditch historic site repairs as authorized as a contingency in section 6 of chapter 52 of the 2015 Session Laws. It is further the intent of the sixty-fifth legislative assembly that if the state historical society chooses to obtain the loan that funding needed for repayment of the loan plus interest be raised by the historical society from nonstate sources.

HB 1024  
3-1-17

# 11  
P 1

**SENATE APPROPRIATIONS COMMITTEE**

**ENGROSSED HOUSE BILL NO. 1024**

**OFFICE OF ATTORNEY GENERAL**

**MARCH 1, 2017**

Currently the Office of Attorney General has expended 99% of its \$142,581 litigation fees budget, the majority of which was spent for the same sex marriage lawsuit. Based on expenditures through January 31, 2017, an additional \$75,000 will be needed for the remainder of the biennium. The Office of Attorney General requests a transfer of \$75,000 from the 2015-17 biennium Contracted higher education legal services line item to the litigation fees line item. Assuming the \$75,000 is approved the Contracted higher education legal services balance will be \$403,356.

Below are the litigation fees amounts spent in prior biennia:

2011-13 biennium	\$211,715
2013-15 biennium	\$123,243
2015-17 biennium	
through 1/31/17	\$141,469

SENATE APPROPRIATIONS COMMITTEE  
SENATOR RAY HOLMBERG, CHAIRMAN  
HB 1024 – DEFICIENCY APPROPRIATIONS  
NDACP TESTIMONY MARCH 1, 2017

HB 1024  
3-1-17 #12  
P 1

Chairman Holmberg, and members of the Senate Appropriations Committee, I am Bruce Murry, Executive Director of the North Dakota Association of Community Providers (NDACP). NDACP is a membership organization of 31 organizations providing community services to people with disabilities throughout the state

NDACP strongly believes that underfunding the deficiency appropriation for the Department of Human Services is counterproductive.

The spending involved is largely for entitlements. Failures to meet entitlement program commitments lead to increased litigation, legal fees, and interference from Centers for Medicare and Medicaid Services. Cuts to services also require thousands of dollars in team-based reevaluation and planning for each person served, a cost largely borne by the providers.

Cuts to ongoing programs -- even in their administration -- transfer substantial burdens to private providers. This underfunding will place the Department's in crisis mode, consuming its time and resources on internal tasks. Providers will need to expend time and money advocating for the Department to perform its duties in a timely way. Even if we succeed in getting payments, critical decisions, etc. for our clients and customers in a timely way, it will likely come at the expense of providers in another field or part of the state. This administrative and financial delays and burdens on providers inevitably come at the expense of the people we serve.

While we have found each proposed cut to the 2017-19 budget of the Department of Human Services painful, we suggest that proactive planning for the next biennium at least allows strategic planning for the delivery of services. Please don't use retrospective budget cuts that will further disrupt the delivery of essential services.

Thank you for your time and consideration, and I would be happy to answer any questions in writing at [brucemurry@ndacp.org](mailto:brucemurry@ndacp.org) or PO Box 7037, Bismarck, ND 58507-7037.

**Department of Human Services**  
**Engrossed HB 1024 Deficiency Appropriation**  
**2017 - 2019 Biennium**  
*Expressed in Millions*

HB 1024 sub  
 3-29-17  
 #1

Subdivision	2015 - 2017 Biennium General Fund			Variance
	Adjusted Appropriation *	Projected Expenditures	Excess (Shortfall)	
Administration - Support	14.5	14.3	0.2	
Information Technology Services	70.5	73.3	(2.8)	Implementation and post-production support of IT systems. SPACES Release 1 went live in February 2016, and MMIS went live October 2015.
Economic Assistance	17.6	13.7	3.9	Due to decrease in Child Care Assistance Program, general fund savings of \$3.3 M.
Child Support	8.4	8.1	0.3	
Medical Services	293.8	313.9	(20.1)	\$13.3 million shortfall for Medicaid Expansion as average monthly premium is \$210 more than budgeted. Some other areas with larger shortfalls include hospitals \$1.7 M, Psychiatric Residential Treatment Facilities \$2.0 M and Psychological Services \$4.1 M.
Long Term Care	327.0	320.1	6.9	Actual monthly average units are less than budgeted.
DD Council	0.0	0.0	0.0	
Aging Services	8.7	8.6	0.1	
Children and Family Services	69.0	69.3	(0.3)	
Behavioral Health	7.2	7.7	(0.5)	
Vocational Rehabilitation	5.7	5.6	0.1	
Developmental Disability	275.8	286.5	(10.7)	The monthly average cost and units are higher than budgeted.
Human Service Centers	117.9	108.1	9.8	Turnover of staff (850.9 FTE in this area), hard to fill positions, downward reclassification of staff, contract changes and \$2.8 M roll-up in Inpatient Hospital contracts
State Hospital	61.0	57.4	3.6	Turnover of staff (828.5 FTE in this area), hard to fill positions, expansion of the Tompkins Rehabilitation program didn't start until December 1, 2015 and a SOTEP unit was closed on December 1, 2016.
Life Skills and Transition Center	29.4	28.9	0.5	
	<b>1,306.5</b>	<b>1,315.5</b>	<b>(9.0)</b>	

\* Includes 2015 SB 2012, all other bills, oil impact, equity funds, internship stipends, and temporary health insurance.

Pg 1



17.8101.02001  
Title.  
Fiscal No. 1

Prepared by the Legislative Council staff for  
Senator Dever  
March 30, 2017

# 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 1, line 2, after the second semicolon insert "to provide for a transfer;"

Page 1, after line 10, insert:

"COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	<u>\$189,000</u>

Subdivision 2."

Page 1, line 14, replace "2." with "3."

Page 1, replace lines 16 and 17 with:

"Grants - Medical assistance	<u>\$9,000,000</u>
Total special funds	<u>\$9,000,000"</u>

Page 1, line 18, replace "3." with "4."

Page 1, replace line 23 with:

"Grand total special funds	<u>\$9,518,500"</u>
----------------------------	---------------------

Page 2, line 1, after "**APPROPRIATION**" insert "- 2017-19 BIENNIUM"

Page 2, line 4, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 4, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 7, after the second "branch" insert "which were incurred after June 30, 2015,"

Page 2, line 7, remove "unlawful"

Page 2, line 8, replace "activity" with "criminal and infraction charges"

Page 2, line 11, after "other" insert "nonstate"

Page 2, line 13, after "**APPROPRIATION**" insert "- 2017-19 BIENNIUM"

Page 2, line 15, replace "\$859,000" with "\$1,027,000"

Page 2, line 16, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 17, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 21, after "indigents" insert "which were incurred after June 30, 2015,"

Page 2, line 21, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 24, after "other" insert "nonstate"

Page 2, after line 25, insert:

**"SECTION 4. APPROPRIATION - STATE HISTORICAL SOCIETY - 2017-19 BIENNIUM.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$294,500, or so much of the sum as may be necessary, to the state historical society for the purpose of defraying litigation expenses, for the period beginning with the effective date of this Act and ending June 30, 2019. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 5. LINE ITEM TRANSFER - ATTORNEY GENERAL - 2015-17 BIENNIUM.** The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws for the period beginning with the effective date of this Act and ending June 30, 2017.

**SECTION 6. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government or other nonstate sources for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in sections 2 and 3 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. If the department of emergency services determines reimbursements from federal or other nonstate sources are not forthcoming, the department of emergency services and other state agencies that obtain a loan shall request a deficiency appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the amounts borrowed plus interest."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Summary of Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Judicial Branch				
Total all funds	\$0	\$1,500,000	\$0	\$1,500,000
Less estimated income	0	1,500,000	0	1,500,000
General fund	\$0	\$0	\$0	\$0
Commission on Legal Counsel for Indigent				
Total all funds	\$0	\$859,000	\$0	\$859,000
Less estimated income	0	859,000	0	859,000
General fund	\$0	\$0	\$0	\$0
State Historical Society				
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
Bill total				
Total all funds	\$0	\$2,359,000	\$294,500	\$2,653,500
Less estimated income	0	2,359,000	294,500	2,653,500
General fund	\$0	\$0	\$0	\$0

**House Bill No. 1024 - State Historical Society - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Operating expenses			\$294,500	\$294,500
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 701 - State Historical Society - Detail of Senate Changes**

	Adds Funding for Litigation Expenses <sup>1</sup>	Total Senate Changes
Operating expenses	\$294,500	\$294,500
Total all funds	\$294,500	\$294,500
Less estimated income	294,500	294,500
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$294,500 is added from the strategic investment and improvements fund for litigation expenses.

**House Bill No. 1024 - Other Changes - Senate Action**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Adds a \$189,000 appropriation to the Commission on Legal Counsel for Indigents related to costs associated with Section 25 of Article I of the Constitution of North Dakota relating to victims' rights (Marsy's Law).
- Increases the appropriation to the Department of Human Services for Medicaid grants by \$4 million, from \$5 million to \$9 million.
- Clarifies the purpose of the borrowing authority and appropriations to the judicial branch and the Commission on Legal Counsel for Indigents.
- Increases the borrowing authority for the Commission on Legal Counsel for Indigents by \$168,000, from \$859,000 to \$1,027,000.

This amendment also:

- Adds a section to provide one-time funding of \$294,500 from the strategic investment and improvements fund to the State Historical Society through June 30, 2019 related to litigation expenses.
- Adds a section authorizing the Attorney General to transfer \$75,000 between certain line items during the 2015-17 biennium.
- Adds a section to provide legislative intent related to repayment sources for loans obtained to provide the necessary funding to respond to the unlawful activity associated with the construction of the Dakota access pipeline.

17.8101.02002  
Title.  
Fiscal No. 2

Prepared by the Legislative Council staff for  
Senator Dever

April 1, 2017

#2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 1, line 2, after the first semicolon insert "to provide a contingent appropriation;"

Page 1, line 2, after the second semicolon insert "to provide for transfers; to provide a statement of legislative intent;"

Page 1, line 4, after "APPROPRIATION" insert "- STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - 2015-17 BIENNIUM"

Page 1, after line 10, insert:

"COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	<u>\$189,000</u>

Subdivision 2."

Page 1, line 14, replace "2." with "3."

Page 1, replace lines 16 and 17 with:

"Grants - medical assistance	<u>\$9,000,000</u>
Total special funds	<u>\$9,000,000"</u>

Page 1, line 18, replace "3." with "4."

Page 1, replace line 23 with:

"Grand total special funds	<u>\$9,518,500</u>
----------------------------	--------------------

**SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be necessary, to the agencies listed below for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019.

Subdivision 1.

ATTORNEY GENERAL

Salaries and wages	<u>\$200,000</u>
Total special funds	<u>\$200,000</u>

Subdivision 2.

STATE DEPARTMENT OF HEALTH

Operating expenses	<u>\$1,420,000</u>
Total special funds	\$1,420,000

Subdivision 3.

#### HIGHWAY PATROL

Field operations	<u>\$3,234,000</u>
Total special funds	\$3,234,000

Subdivision 4.

#### DEPARTMENT OF CORRECTIONS AND REHABILITATION

Adult services	<u>\$500,000</u>
Total special funds	\$500,000

Subdivision 5.

#### GAME AND FISH DEPARTMENT

Salaries and wages	\$221,795
Operating expenses	<u>201,929</u>
Total special funds	\$423,724

Subdivision 6.

#### PARKS AND RECREATION DEPARTMENT

Natural resources	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 7.

#### DEPARTMENT OF TRANSPORTATION

Salaries and wages	\$287,000
Operating expenses	<u>422,000</u>
Total special funds	\$709,000

#### SECTION 2 TOTAL

Grand total special funds	\$6,686,724
---------------------------	-------------

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019 - ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.** The office of the adjutant general may borrow the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period

beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from federal or other nonstate sources related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline."

Page 2, line 1, after "**APPROPRIATION**" insert "- **THROUGH JUNE 30, 2019**"

Page 2, line 4, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 4, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 7, after the second "branch" insert "which were incurred after June 30, 2015,"

Page 2, line 7, remove "unlawful"

Page 2, line 8, replace "activity" with "criminal and infraction charges"

Page 2, line 8, after "pipeline" insert a comma

Page 2, line 11, after "other" insert "nonstate"

Page 2, line 13, after "**APPROPRIATION**" insert "- **THROUGH JUNE 30, 2019**"

Page 2, line 15, replace "\$859,000" with "\$1,027,000"

Page 2, line 16, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 17, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 21, after "indigents" insert "which were incurred after June 30, 2015,"

Page 2, line 21, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 22, after "pipeline" insert a comma

Page 2, line 24, after "other" insert "nonstate"

Page 2, after line 25, insert:

**"SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE HISTORICAL SOCIETY - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$294,500, or so much of the sum as may be necessary, to the state historical society for the purpose of defraying litigation expenses, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 7. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE TREASURER - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,200,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing any court-ordered payments to a bankruptcy estate, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota*. The funding provided in this section is

considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 8. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 9. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 10. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government or other nonstate sources for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. If the department of emergency services determines reimbursements from federal or other nonstate sources are not forthcoming, the department of emergency services and other state agencies that obtain a loan shall request a deficiency appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the amounts borrowed plus interest."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Summary of Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
State Treasurer				
Total all funds	\$0	\$0	\$15,200,000	\$15,200,000
Less estimated income	0	0	15,200,000	15,200,000
General fund	\$0	\$0	\$0	\$0
Attorney General				
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000

General fund	\$0	\$0	\$0	\$0
Judicial Branch				
Total all funds	\$0	\$1,500,000	\$0	\$1,500,000
Less estimated income	0	1,500,000	0	1,500,000
General fund	\$0	\$0	\$0	\$0
Commission on Legal Counsel for Indigent				
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000
Less estimated income	0	859,000	168,000	1,027,000
General fund	\$0	\$0	\$0	\$0
State Department of Health				
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000
Less estimated income	0	0	1,420,000	1,420,000
General fund	\$0	\$0	\$0	\$0
Highway Patrol				
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000
Less estimated income	0	0	3,234,000	3,234,000
General fund	\$0	\$0	\$0	\$0
Department of Corrections and Rehab.				
Total all funds	\$0	\$0	\$500,000	\$500,000
Less estimated income	0	0	500,000	500,000
General fund	\$0	\$0	\$0	\$0
Adjutant General				
Total all funds	\$0	\$0	\$15,000,000	\$15,000,000
Less estimated income	0	0	15,000,000	15,000,000
General fund	\$0	\$0	\$0	\$0
State Historical Society				
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
Game and Fish Department				
Total all funds	\$0	\$0	\$423,724	\$423,724
Less estimated income	0	0	423,724	423,724
General fund	\$0	\$0	\$0	\$0
Parks and Recreation Department				
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
Department of Transportation				
Total all funds	\$0	\$0	\$709,000	\$709,000
Less estimated income	0	0	709,000	709,000
General fund	\$0	\$0	\$0	\$0
Bill total				
Total all funds	\$0	\$2,359,000	\$37,349,224	\$39,708,224
Less estimated income	0	2,359,000	37,349,224	39,708,224
General fund	\$0	\$0	\$0	\$0

### House Bill No. 1024 - State Treasurer - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Settlement payment			\$15,200,000	\$15,200,000
Total all funds	\$0	\$0	\$15,200,000	\$15,200,000
Less estimated income	0	0	15,200,000	15,200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00



**Department No. 120 - State Treasurer - Detail of Senate Changes**

	Provides Contingent Funding for Settlement Payments <sup>1</sup>	Total Senate Changes
Settlement payment	\$15,200,000	\$15,200,000
Total all funds	\$15,200,000	\$15,200,000
Less estimated income	15,200,000	15,200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Contingent funding of \$15.2 million from the strategic investment and improvements fund is added for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota.

**House Bill No. 1024 - Attorney General - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$0	\$0	\$200,000	\$200,000
Total all funds	0	0	200,000	200,000
Less estimated income	\$0	\$0	\$0	\$0
General fund	0.00	0.00	0.00	0.00
FTE				

**Department No. 125 - Attorney General - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Commission on Legal Counsel for Indigent - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Pipeline protest trials		\$859,000	\$168,000	\$1,027,000
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000
Less estimated income	0	859,000	168,000	1,027,000
General fund	\$0	\$0	\$0	\$0

FTE

0.00

0.00

0.00

0.00

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Trials <sup>1</sup>	Total Senate Changes
Pipeline protest trials	\$168,000	\$168,000
Total all funds	\$168,000	\$168,000
Less estimated income	168,000	168,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Borrowing authority and the related appropriation authority are increased by \$168,000, from \$859,000 to \$1,027,000, for additional costs related to pipeline protest trials.

**House Bill No. 1024 - State Department of Health - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Operating expenses	\$0	\$0	\$1,420,000	\$1,420,000
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000
Less estimated income	0	0	1,420,000	1,420,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 301 - State Department of Health - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Operating expenses	\$1,420,000	\$1,420,000
Total all funds	\$1,420,000	\$1,420,000
Less estimated income	1,420,000	1,420,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$1,420,000 is added from special funds received for the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Highway Patrol - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Field operations	\$0	\$0	\$3,234,000	\$3,234,000
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000
Less estimated income	0	0	3,234,000	3,234,000
General fund	\$0	\$0	\$0	\$0

FTE 0.00 0.00 0.00 0.00

**Department No. 504 - Highway Patrol - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Field operations	\$3,234,000	\$3,234,000
Total all funds	\$3,234,000	\$3,234,000
Less estimated income	3,234,000	3,234,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$3,234,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Department of Corrections and Rehab. - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Adult services			\$500,000	\$500,000
Total all funds	\$0	\$0	\$500,000	\$500,000
Less estimated income	0	0	500,000	500,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 530 - Department of Corrections and Rehab. - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Adult services	\$500,000	\$500,000
Total all funds	\$500,000	\$500,000
Less estimated income	500,000	500,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$500,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Adjutant General - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Total all funds	\$0	\$0	\$0	\$0
Less estimated income	0	0	15,000,000	15,000,000
General fund	\$0	\$0	\$0	\$0

FTE

0.00

0.00

0.00

0.00

**Department No. 540 - Adjutant General - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Total all funds	\$15,000,000	\$15,000,000
Less estimated income	15,000,000	15,000,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$15,000,000 is added from the proceeds of a loan for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - State Historical Society - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Operating expenses			\$294,500	\$294,500
Total all funds	\$0	\$0	\$294,500	\$294,500
Less estimated income	0	0	294,500	294,500
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 701 - State Historical Society - Detail of Senate Changes**

	Adds Funding for Litigation Expenses <sup>1</sup>	Total Senate Changes
Operating expenses	\$294,500	\$294,500
Total all funds	\$294,500	\$294,500
Less estimated income	294,500	294,500
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$294,500 is added from the strategic investment and improvements fund for litigation expenses.

**House Bill No. 1024 - Game and Fish Department - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$221,795	\$221,795
Operating expenses			201,929	201,929
Total all funds	\$0	\$0	\$423,724	\$423,724
Less estimated income	0	0	423,724	423,724
General fund	\$0	\$0	\$0	\$0

FTE 0.00 0.00 0.00 0.00

**Department No. 720 - Game and Fish Department - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Salaries and wages	\$221,795	\$221,795
Operating expenses	201,929	201,929
Total all funds	\$423,724	\$423,724
Less estimated income	423,724	423,724
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$423,724 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Parks and Recreation Department - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Natural resources			\$200,000	\$200,000
Total all funds	\$0	\$0	\$200,000	\$200,000
Less estimated income	0	0	200,000	200,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 750 - Parks and Recreation Department - Detail of Senate Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Senate Changes
Natural resources	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Department of Transportation - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages			\$287,000	\$287,000
Operating expenses			422,000	422,000

Total all funds	\$0	\$0	\$709,000	\$709,000
Less estimated income	0	0	709,000	709,000
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

**Department No. 801 - Department of Transportation - Detail of Senate Changes**

	<b>Adds Funding for Pipeline Protest Law Enforcement Support<sup>1</sup></b>	<b>Total Senate Changes</b>
Salaries and wages	\$287,000	\$287,000
Operating expenses	422,000	422,000
Total all funds	\$709,000	\$709,000
Less estimated income	709,000	709,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$709,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.

**House Bill No. 1024 - Other Changes - Senate Action**

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Adds a \$189,000 appropriation to the Commission on Legal Counsel for Indigents related to costs associated with Section 25 of Article I of the Constitution of North Dakota relating to victims' rights (Marsy's Law).
- Increases the appropriation to the Department of Human Services for Medicaid grants by \$4 million, from \$5 million to \$9 million.

This amendment also:

- Adds a section to provide appropriations to various state agencies from special funds the agency received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline.
- Adds a section to provide \$15 million of borrowing authority and the related appropriation authority through June 30, 2019, to the Adjutant General for expenses related to unlawful activity associated with the construction of the Dakota Access Pipeline.
- Increases the borrowing authority for the Commission on Legal Counsel for Indigents by \$168,000, from \$859,000 to \$1,027,000.
- Clarifies the purpose of the borrowing authority and appropriations to the judicial branch and the Commission on Legal Counsel for Indigents.
- Adds a section to provide one-time funding of \$294,500 from the strategic investment and improvements fund to the State Historical Society through June 30, 2019 related to litigation expenses.
- Adds a section to provide contingent funding of \$15.2 million from the strategic investment and improvements fund for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota.
- Provides for a transfer of \$155 million from the strategic investment and improvements fund to the general fund prior to the end of the 2015-17 biennium, resulting in an increase in the July 1, 2017, estimated beginning balance of the general fund.

- Adds a section authorizing the Attorney General to transfer funds between certain line items during the 2015-17 biennium.
- Adds a section to provide legislative intent related to repayment sources for loans obtained to provide the necessary funding to respond to the unlawful activity associated with the construction of the Dakota Access Pipeline.

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1024

#3

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of various state  
2 departments and institutions; to provide a contingent appropriation; to provide for borrowing  
3 authority; to provide for transfers; to provide a statement of legislative intent; and to declare an  
4 emergency.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 SECTION 1. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS

7 FUND - 2015-17 BIENNIUM. There is appropriated out of any moneys in the strategic  
8 investment and improvements fund, the sums as hereinafter provided or so much of the sums  
9 as may be necessary. These sums increase the special fund authority enacted by the sixty-  
10 fourth legislative assembly to the stated departments and institutions of the state of North  
11 Dakota for the purpose of defraying their expenses, for the period beginning with the effective  
12 date of this Act, and ending June 30, 2017, as follows:

13 Subdivision 1.

14 COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

15 <u>Commission on legal counsel for indigents</u>	<u>\$189,000</u>
16 <u>Total special funds</u>	<u>\$189,000</u>

17 Subdivision 2.

18 STATE DEPARTMENT OF HEALTH

19 Operating expenses	<u>\$250,000</u>
20 Total special funds	<u>\$250,000</u>

21 Subdivision ~~2~~.3.

22 DEPARTMENT OF HUMAN SERVICES

23 <del>Grants—Medical assistance</del>	<del><u>\$5,000,000</u></del>
24 <del>Total special funds</del>	<del><u>\$5,000,000</u></del>



1	Grants - medical assistance	\$9,000,000
2	Total special funds	\$9,000,000

3 Subdivision ~~3-4~~.

4 ADJUTANT GENERAL

5	Disaster costs	\$79,500
6	Total special funds	\$79,500

7 SECTION 1 TOTAL

8 ~~Grand total special funds~~ ~~\$5,329,500~~

9 Grand total special funds \$9,518,500

10 **SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN**

11 **PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received  
12 from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be  
13 necessary, to the agencies listed below for the purpose of defraying expenses of law  
14 enforcement support which were incurred after June 30, 2015, related to unlawful activity  
15 associated with the construction of the Dakota access pipeline, for the period beginning with the  
16 effective date of this Act, and ending June 30, 2019.

17 Subdivision 1.

18 ATTORNEY GENERAL

19	Salaries and wages	\$200,000
20	Total special funds	\$200,000

21 Subdivision 2.

22 STATE DEPARTMENT OF HEALTH

23	Operating expenses	\$1,420,000
24	Total special funds	\$1,420,000

25 Subdivision 3.

26 HIGHWAY PATROL

27	Field operations	\$3,234,000
28	Total special funds	\$3,234,000

29 Subdivision 4.

30 DEPARTMENT OF CORRECTIONS AND REHABILITATION

1	Adult services	\$500,000
2	Total special funds	\$500,000
3	Subdivision 5.	
4	GAME AND FISH DEPARTMENT	
5	Salaries and wages	\$221,795
6	Operating expenses	201,929
7	Total special funds	\$423,724
8	Subdivision 6.	
9	PARKS AND RECREATION DEPARTMENT	
10	Natural resources	\$200,000
11	Total special funds	\$200,000
12	Subdivision 7.	
13	DEPARTMENT OF TRANSPORTATION	
14	Salaries and wages	\$287,000
15	Operating expenses	422,000
16	Total special funds	\$709,000
17	SECTION 2 TOTAL	
18	Grand total special funds	\$6,686,724

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019  
- ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING**

**REQUEST.** The office of the adjutant general may borrow the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from

1 federal or other nonstate sources related to the state's expenses incurred due to unlawful  
2 activity associated with the construction of the Dakota access pipeline.

3 **SECTION 4. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**  
4 **- JUDICIAL BRANCH - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.**

5 The judicial branch may borrow the sum of \$1,500,000, or so much of the sum as may be  
6 necessary, from the Bank of North Dakota, for court costs that were incurred after June 30,  
7 2015, related to ~~unlawful activity~~criminal and infraction charges associated with the construction  
8 of the Dakota access pipeline, for the period beginning with the effective date of this Act and  
9 ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to  
10 the judicial branch for the purpose of defraying expenses of the judicial branch which were  
11 incurred after June 30, 2015, related to ~~unlawful activity~~criminal and infraction charges  
12 associated with the construction of the Dakota access pipeline, for the period beginning with the  
13 effective date of this Act and ending June 30, 2019. The department of emergency services  
14 shall include any amounts borrowed under this section in the request for reimbursement from  
15 federal or other nonstate sources related to the state's expenses incurred due to unlawful  
16 activity associated with the construction of the Dakota access pipeline.

17 **SECTION 5. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**  
18 **- COMMISSION ON LEGAL COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY**  
19 **SERVICES FUNDING REQUEST.** The commission on legal counsel for indigents may borrow

20 the sum of ~~\$859,000~~\$1,027,000, or so much of the sum as may be necessary, from the Bank of  
21 North Dakota, for legal costs that were incurred after June 30, 2015, related to ~~unlawful~~  
22 ~~activity~~criminal and infraction charges associated with the construction of the Dakota access  
23 pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019.  
24 The proceeds of the loan authorized in this section are appropriated to the commission on legal  
25 counsel for indigents for the purpose of defraying expenses of the commission on legal counsel  
26 for indigents which were incurred after June 30, 2015, related to ~~unlawful activity~~criminal and  
27 infraction charges associated with the construction of the Dakota access pipeline, for the period  
28 beginning with the effective date of this Act and ending June 30, 2019. The department of  
29 emergency services shall include any amounts borrowed under this section in the request for  
30 reimbursement from federal or other nonstate sources related to the state's expenses incurred  
31 due to unlawful activity associated with the construction of the Dakota access pipeline.

**SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS**

**FUND - STATE HISTORICAL SOCIETY - THROUGH JUNE 30, 2019.** There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$294,500, or so much of the sum as may be necessary, to the state historical society for the purpose of defraying litigation expenses, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 7. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE TREASURER - THROUGH JUNE 30, 2019.**

There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,200,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing any court-ordered payments to a bankruptcy estate, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota*. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 8. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 9. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of

1 chapter 37 of the 2015 Session Laws, for the period beginning with the effective date  
2 of this Act, and ending June 30, 2017.

3 **SECTION 10. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN**

4 **REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of  
5 emergency services seek reimbursement from the federal government or other nonstate  
6 sources for the costs of responding to unlawful activity associated with the construction of the  
7 Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these  
8 reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency  
9 commission and the legislative assembly, including loans of \$17,000,000 previously authorized  
10 by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth  
11 legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all  
12 obtained to provide the funding necessary to respond to the unlawful activity associated with the  
13 construction of the Dakota access pipeline. If the department of emergency services determines  
14 reimbursements from federal or other nonstate sources are not forthcoming, the department of  
15 emergency services and other state agencies that obtain a loan shall request a deficiency  
16 appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the  
17 amounts borrowed plus interest.

18 **SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

4-18-17 AH 1  
HB 1024

17.8101.02002

FIRST ENGROSSMENT

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1024

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of various state  
2 departments and institutions; to provide a contingent appropriation; to provide for borrowing  
3 authority; to provide for transfers; to provide a statement of legislative intent; and to declare an  
4 emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS**

7 **FUND - 2015-17 BIENNIUM.** There is appropriated out of any moneys in the strategic  
8 investment and improvements fund, the sums as hereinafter provided or so much of the sums  
9 as may be necessary. These sums increase the special fund authority enacted by the sixty-  
10 fourth legislative assembly to the stated departments and institutions of the state of North  
11 Dakota for the purpose of defraying their expenses, for the period beginning with the effective  
12 date of this Act, and ending June 30, 2017, as follows:

13 Subdivision 1.

14 COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

15 <u>Commission on legal counsel for indigents</u>	<u>\$189,000</u>
16 <u>Total special funds</u>	<u>\$189,000</u>

17 Subdivision 2.

18 STATE DEPARTMENT OF HEALTH

19 Operating expenses	<u>\$250,000</u>
20 Total special funds	<u>\$250,000</u>

21 Subdivision ~~2~~ 3.

22 DEPARTMENT OF HUMAN SERVICES

23 <del>Grants - Medical assistance</del>	<del><u>\$5,000,000</u></del>
24 <del>Total special funds</del>	<del><u>\$5,000,000</u></del>

Sixty-fifth  
Legislative Assembly

1 Grants - medical assistance \$9,000,000  
2 Total special funds \$9,000,000

3 Subdivision 3.4.

4 ADJUTANT GENERAL

5 Disaster costs \$79,500

6 Total special funds \$79,500

7 SECTION 1 TOTAL

8 ~~Grand total special funds~~ ~~\$5,329,500~~

9 Grand total special funds \$9,518,500

10 **SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN**

11 **PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received  
12 from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be  
13 necessary, to the agencies listed below for the purpose of defraying expenses of law  
14 enforcement support which were incurred after June 30, 2015, related to unlawful activity  
15 associated with the construction of the Dakota access pipeline, for the period beginning with the  
16 effective date of this Act, and ending June 30, 2019.

17 Subdivision 1.

18 ATTORNEY GENERAL

19 Salaries and wages \$200,000

20 Total special funds \$200,000

21 Subdivision 2.

22 STATE DEPARTMENT OF HEALTH

23 Operating expenses \$1,420,000

24 Total special funds \$1,420,000

25 Subdivision 3.

26 HIGHWAY PATROL

27 Field operations \$3,234,000

28 Total special funds \$3,234,000

29 Subdivision 4.

30 DEPARTMENT OF CORRECTIONS AND REHABILITATION

1	Adult services	<u>\$500,000</u>
2	Total special funds	\$500,000
3	Subdivision 5.	
4	GAME AND FISH DEPARTMENT	
5	Salaries and wages	\$221,795
6	Operating expenses	<u>201,929</u>
7	Total special funds	\$423,724
8	Subdivision 6.	
9	PARKS AND RECREATION DEPARTMENT	
10	Natural resources	<u>\$200,000</u>
11	Total special funds	\$200,000
12	Subdivision 7.	
13	DEPARTMENT OF TRANSPORTATION	
14	Salaries and wages	\$287,000
15	Operating expenses	<u>422,000</u>
16	Total special funds	\$709,000
17	SECTION 2 TOTAL	
18	Grand total special funds	\$6,686,724

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**

**- ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING**

**REQUEST.** The office of the adjutant general may borrow the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from



1 federal or other nonstate sources related to the state's expenses incurred due to unlawful  
2 activity associated with the construction of the Dakota access pipeline.

3 **SECTION 4. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**

4 **- JUDICIAL BRANCH - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.**

5 The judicial branch may borrow the sum of \$1,500,000, or so much of the sum as may be  
6 necessary, from the Bank of North Dakota, for court costs that were incurred after June 30,  
7 2015, related to ~~unlawful activity~~ criminal and infraction charges associated with the construction  
8 of the Dakota access pipeline, for the period beginning with the effective date of this Act and  
9 ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to  
10 the judicial branch for the purpose of defraying expenses of the judicial branch which were  
11 incurred after June 30, 2015, related to ~~unlawful activity~~ criminal and infraction charges  
12 associated with the construction of the Dakota access pipeline, for the period beginning with the  
13 effective date of this Act and ending June 30, 2019. The department of emergency services  
14 shall include any amounts borrowed under this section in the request for reimbursement from  
15 federal or other nonstate sources related to the state's expenses incurred due to unlawful  
16 activity associated with the construction of the Dakota access pipeline.

17 **SECTION 5. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**

18 **- COMMISSION ON LEGAL COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY**  
19 **SERVICES FUNDING REQUEST.** The commission on legal counsel for indigents may borrow

20 the sum of ~~\$859,000~~ \$1,027,000, or so much of the sum as may be necessary, from the Bank of  
21 North Dakota, for legal costs that were incurred after June 30, 2015, related to ~~unlawful~~  
22 ~~activity~~ criminal and infraction charges associated with the construction of the Dakota access  
23 pipeline, for the period beginning with the effective date of this Act and ending June 30, 2019.  
24 The proceeds of the loan authorized in this section are appropriated to the commission on legal  
25 counsel for indigents for the purpose of defraying expenses of the commission on legal counsel  
26 for indigents which were incurred after June 30, 2015, related to ~~unlawful activity~~ criminal and  
27 infraction charges associated with the construction of the Dakota access pipeline, for the period  
28 beginning with the effective date of this Act and ending June 30, 2019. The department of  
29 emergency services shall include any amounts borrowed under this section in the request for  
30 reimbursement from federal or other nonstate sources related to the state's expenses incurred  
31 due to unlawful activity associated with the construction of the Dakota access pipeline.

1       **SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS**

2       **FUND - STATE HISTORICAL SOCIETY - THROUGH JUNE 30, 2019.** There is appropriated  
3 out of any moneys in the strategic investment and improvements fund in the state treasury, not  
4 otherwise appropriated, the sum of \$294,500, or so much of the sum as may be necessary, to  
5 the state historical society for the purpose of defraying litigation expenses, for the period  
6 beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in  
7 this section is considered a one-time funding item and is not a part of the entity's base budget  
8 for the 2019-21 biennium.

9       **SECTION 7. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND**

10       **IMPROVEMENTS FUND - STATE TREASURER - THROUGH JUNE 30, 2019.** There is  
11 appropriated out of any moneys in the strategic investment and improvements fund in the state  
12 treasury, not otherwise appropriated, the sum of \$15,200,000, or so much of the sum as may be  
13 necessary, to the state treasurer for the purpose of providing any court-ordered payments to a  
14 bankruptcy estate, for the period beginning with the effective date of this Act, and ending  
15 June 30, 2019. The funding provided in this section may be expended only upon an order of the  
16 court pending the outcome of PW Enterprises, Inc. v. State of North Dakota. The funding  
17 provided in this section is considered a one-time funding item and is not a part of the entity's  
18 base budget for the 2019-21 biennium.

19       **SECTION 8. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO**

20       **GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer  
21 the sum of \$155,000,000 from the strategic investment and improvements fund to the general  
22 fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

23       **SECTION 9. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

- 24       1. The attorney general may transfer \$75,000 from the amount appropriated for the  
25 continuation of contracted higher education legal services in section 6 of chapter 3 of  
26 the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the  
27 2015 Session Laws, for the period beginning with the effective date of this Act, and  
28 ending June 30, 2017.
- 29       2. The attorney general may transfer \$5,000 from the amount appropriated for the  
30 continuation of contracted higher education legal services in section 6 of chapter 3 of  
31 the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of

1 chapter 37 of the 2015 Session Laws, for the period beginning with the effective date  
2 of this Act, and ending June 30, 2017.

3 **SECTION 10. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN**

4 **REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of  
5 emergency services seek reimbursement from the federal government or other nonstate  
6 sources for the costs of responding to unlawful activity associated with the construction of the  
7 Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these  
8 reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency  
9 commission and the legislative assembly, including loans of \$17,000,000 previously authorized  
10 by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth  
11 legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all  
12 obtained to provide the funding necessary to respond to the unlawful activity associated with the  
13 construction of the Dakota access pipeline. If the department of emergency services determines  
14 reimbursements from federal or other nonstate sources are not forthcoming, the department of  
15 emergency services and other state agencies that obtain a loan shall request a deficiency  
16 appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the  
17 amounts borrowed plus interest.

18 **SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

HB 1024  
4-20-17  
A#1

17.8101.02006  
Title.  
Fiscal No. 1

Prepared by the Legislative Council staff for  
Representative Delzer  
April 19, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

That the Senate recede from its amendments as printed on pages 1581-1591 of the House Journal and pages 1296-1306 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 1, replace "an appropriation" with "appropriations"

Page 1, line 2, after the semicolon insert "to provide a contingent appropriation; to amend and section 4 of chapter 552 of the 2016 special session session laws;"

Page 1, line 2, after the semicolon insert "to provide for transfers; to provide a statement of legislative intent;"

Page 1, line 4, after "APPROPRIATION" insert "- STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - 2015-17 BIENNIUM"

Page 1, after line 10, insert:

"COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Commission on legal counsel for indigents	<u>\$189,000</u>
Total special funds	\$189,000

Subdivision 2."

Page 1, line 14, replace "2." with "3."

Page 1, remove line 16

Page 1, replace line 17 with:

"Grants - medical assistance	<u>\$9,000,000</u>
Total special funds	\$9,000,000"

Page 1, line 18, replace "3." with "4."

Page 1, after line 21, insert:

" Subdivision 5.

STATE TREASURER

Property tax relief credits	\$8,100,000
Total special funds	\$8,100,000"

Page 1, replace line 23 with:

"Grand total special funds	\$17,618,500
----------------------------	--------------

**SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be necessary, to the agencies listed below

for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019.

Subdivision 1.

ATTORNEY GENERAL

Salaries and wages	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 2.

STATE DEPARTMENT OF HEALTH

Operating expenses	<u>\$1,420,000</u>
Total special funds	\$1,420,000

Subdivision 3.

HIGHWAY PATROL

Field operations	<u>\$3,234,000</u>
Total special funds	\$3,234,000

Subdivision 4.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Adult services	<u>\$500,000</u>
Total special funds	\$500,000

Subdivision 5.

GAME AND FISH DEPARTMENT

Salaries and wages	\$221,795
Operating expenses	<u>201,929</u>
Total special funds	\$423,724

Subdivision 6.

PARKS AND RECREATION DEPARTMENT

Natural resources	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 7.

DEPARTMENT OF TRANSPORTATION

Salaries and wages	\$287,000
Operating expenses	<u>422,000</u>
Total special funds	\$709,000

SECTION 2 TOTAL

Grand total special funds

\$6,686,724

**SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019 - ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.**

The office of the adjutant general may borrow the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support costs that were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are appropriated to the office of the adjutant general for the purpose of defraying expenses of law enforcement support which were incurred after June 30, 2015, related to unlawful activity associated with the construction of the Dakota access pipeline, for the period beginning with the effective date of this Act, and ending June 30, 2019. The department of emergency services shall include any amounts borrowed under this section in the request for reimbursement from the federal government related to the state's expenses incurred due to unlawful activity associated with the construction of the Dakota access pipeline."

Page 2, line 1, after "**APPROPRIATION**" insert "**- THROUGH JUNE 30, 2019**"

Page 2, line 4, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 4, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 7, after the second "branch" insert "which were incurred after June 30, 2015,"

Page 2, line 7, remove "unlawful"

Page 2, line 8, replace "activity" with "criminal and infraction charges"

Page 2, line 8, after "pipeline" insert a comma

Page 2, line 11, after "from" insert "the"

Page 2, line 11, replace "or other sources" with "government"

Page 2, line 13, after "**APPROPRIATION**" insert "**- THROUGH JUNE 30, 2019**"

Page 2, line 15, replace "\$859,000" with "\$1,027,000"

Page 2, line 16, after "costs" insert "that were incurred after June 30, 2015,"

Page 2, line 17, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 21, after "indigents" insert "which were incurred after June 30, 2015,"

Page 2, line 21, replace "unlawful activity" with "criminal and infraction charges"

Page 2, line 22, after "pipeline" insert a comma

Page 2, line 24, after "from" insert "the"

Page 2, line 24, replace "or other sources" with "government"

Page 2, after line 25, insert:

**"SECTION 6. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ATTORNEY GENERAL - THROUGH JUNE 30, 2019.**

There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$15,200,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing any court-ordered payments to a bankruptcy estate or payments to be made pursuant to the terms of a settlement agreement approved by order of the court, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota or pursuant to the terms of a settlement agreement approved by order of the court. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 7. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 8. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 9. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline.

**SECTION 10. AMENDMENT.** Section 4 of chapter 552 of the 2016 special session session laws is amended and reenacted as follows:

**SECTION 4. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND.** ~~If, during~~During the period beginning with the effective date of this Act and ending June 30, 2017, the

director of the office of management and budget determines the state general fund will not have a projected positive June 30, 2017, balance, the industrial commission shall transfer \$100,000,000, or so much of the sum as may be necessary, from the earnings and accumulated and undivided profits of the Bank of North Dakota to the state general fund. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. The sum of the amounts transferred may not exceed the lesser of \$100,000,000 or the amount necessary to provide for a positive June 30, 2017, general fund balance."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1024 - Summary of Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
<b>State Treasurer</b>						
Total all funds	\$0	\$0	\$0	\$0	\$15,200,000	(\$15,200,000)
Less estimated income	0	0	0	0	15,200,000	(15,200,000)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Attorney General</b>						
Total all funds	\$0	\$0	\$15,400,000	\$15,400,000	\$200,000	\$15,200,000
Less estimated income	0	0	15,400,000	15,400,000	200,000	15,200,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Judicial Branch</b>						
Total all funds	\$0	\$1,500,000	\$0	\$1,500,000	\$1,500,000	\$0
Less estimated income	0	1,500,000	0	1,500,000	1,500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Commission on Legal Counsel for Indigent</b>						
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000	\$1,027,000	\$0
Less estimated income	0	859,000	168,000	1,027,000	1,027,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Department of Health</b>						
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000	\$1,420,000	\$0
Less estimated income	0	0	1,420,000	1,420,000	1,420,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Highway Patrol</b>						
Total all funds	\$0	\$0	\$3,234,000	\$3,234,000	\$3,234,000	\$0
Less estimated income	0	0	3,234,000	3,234,000	3,234,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Department of Corrections and Rehab.</b>						
Total all funds	\$0	\$0	\$500,000	\$500,000	\$500,000	\$0
Less estimated income	0	0	500,000	500,000	500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Adjutant General</b>						
Total all funds	\$0	\$0	\$15,000,000	\$15,000,000	\$15,000,000	\$0
Less estimated income	0	0	15,000,000	15,000,000	15,000,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Historical Society</b>						
Total all funds	\$0	\$0	\$0	\$0	\$294,500	(\$294,500)
Less estimated income	0	0	0	0	294,500	(294,500)
General fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Game and Fish Department</b>						
Total all funds	\$0	\$0	\$423,724	\$423,724	\$423,724	\$0
Less estimated income	0	0	423,724	423,724	423,724	0



General fund	\$0	\$0	\$0	\$0	\$0	\$0
Parks and Recreation Department						
Total all funds	\$0	\$0	\$200,000	\$200,000	\$200,000	\$0
Less estimated income	0	0	200,000	200,000	200,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Department of Transportation						
Total all funds	\$0	\$0	\$709,000	\$709,000	\$709,000	\$0
Less estimated income	0	0	709,000	709,000	709,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
Bill total						
Total all funds	\$0	\$2,359,000	\$37,054,724	\$39,413,724	\$39,708,224	(\$294,500)
Less estimated income	0	2,359,000	37,054,724	39,413,724	39,708,224	(294,500)
General fund	\$0	\$0	\$0	\$0	\$0	\$0

**House Bill No. 1024 - Attorney General - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$200,000	\$200,000	\$200,000	
Settlement Payment			15,200,000	15,200,000		15,200,000
Total all funds	\$0	\$0	\$15,400,000	\$15,400,000	\$200,000	\$15,200,000
Less estimated income	0	0	15,400,000	15,400,000	200,000	15,200,000
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 125 - Attorney General - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Provides Contingent Funding for Settlement Payment <sup>2</sup>	Total Conference Committee Changes
Salaries and wages	\$200,000		\$200,000
Settlement Payment		15,200,000	15,200,000
Total all funds	\$200,000	\$15,200,000	\$15,400,000
Less estimated income	200,000	15,200,000	15,400,000
General fund	\$0	\$0	\$0
FTE	0.00	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

<sup>2</sup> Contingent funding of \$15.2 million from the strategic investment and improvements fund is added for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of PW Enterprises, Inc. v. State of North Dakota. The Senate appropriated the funding to the State Treasurer.

**House Bill No. 1024 - Commission on Legal Counsel for Indigent - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Pipeline protest trials		\$859,000	\$168,000	\$1,027,000	\$1,027,000	
Total all funds	\$0	\$859,000	\$168,000	\$1,027,000	\$1,027,000	\$0

Less estimated income	0	859,000	168,000	1,027,000	1,027,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Trials <sup>1</sup>	Total Conference Committee Changes
Pipeline protest trials	\$168,000	\$168,000
Total all funds	\$168,000	\$168,000
Less estimated income	168,000	168,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Borrowing authority and the related appropriation authority are increased by \$168,000, from \$859,000 to \$1,027,000, for additional costs related to pipeline protest trials, the same as the Senate.

**House Bill No. 1024 - State Department of Health - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Operating expenses			\$1,420,000	\$1,420,000	\$1,420,000	
Total all funds	\$0	\$0	\$1,420,000	\$1,420,000	\$1,420,000	\$0
Less estimated income	0	0	1,420,000	1,420,000	1,420,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 301 - State Department of Health - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Operating expenses	\$1,420,000	\$1,420,000
Total all funds	\$1,420,000	\$1,420,000
Less estimated income	1,420,000	1,420,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$1,420,000 is added from special funds received for the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Highway Patrol - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Field operations			\$3,234,000	\$3,234,000	\$3,234,000	

Total all funds	\$0	\$0	\$3,234,000	\$3,234,000	\$3,234,000	\$0
Less estimated income	0	0	3,234,000	3,234,000	3,234,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 504 - Highway Patrol - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Field operations	\$3,234,000	\$3,234,000
Total all funds	\$3,234,000	\$3,234,000
Less estimated income	3,234,000	3,234,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$3,234,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Department of Corrections and Rehab. - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Adult services			\$500,000	\$500,000	\$500,000	
Total all funds	\$0	\$0	\$500,000	\$500,000	\$500,000	\$0
Less estimated income	0	0	500,000	500,000	500,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 530 - Department of Corrections and Rehab. - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Adult services	\$500,000	\$500,000
Total all funds	\$500,000	\$500,000
Less estimated income	500,000	500,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$500,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Adjutant General - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Total all funds	\$0	\$0	\$0	\$0	\$0	\$0
Less estimated income	0	0	15,000,000	15,000,000	15,000,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 540 - Adjutant General - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Total all funds	\$15,000,000	\$15,000,000
Less estimated income	15,000,000	15,000,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$15,000,000 is added from the proceeds of a loan for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Game and Fish Department - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$221,795	\$221,795	\$221,795	
Operating expenses			201,929	201,929	201,929	
Total all funds	\$0	\$0	\$423,724	\$423,724	\$423,724	\$0
Less estimated income	0	0	423,724	423,724	423,724	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 720 - Game and Fish Department - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Salaries and wages	\$221,795	\$221,795
Operating expenses	201,929	201,929
Total all funds	\$423,724	\$423,724
Less estimated income	423,724	423,724
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$423,724 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Parks and Recreation Department - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Natural resources			\$200,000	\$200,000	\$200,000	
Total all funds	\$0	\$0	\$200,000	\$200,000	\$200,000	\$0
Less estimated income	0	0	200,000	200,000	200,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 750 - Parks and Recreation Department - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Natural resources	\$200,000	\$200,000
Total all funds	\$200,000	\$200,000
Less estimated income	200,000	200,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$200,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

**House Bill No. 1024 - Department of Transportation - Conference Committee Action**

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages			\$287,000	\$287,000	\$287,000	
Operating expenses			422,000	422,000	422,000	
Total all funds	\$0	\$0	\$709,000	\$709,000	\$709,000	\$0
Less estimated income	0	0	709,000	709,000	709,000	0
General fund	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Department No. 801 - Department of Transportation - Detail of Conference Committee Changes**

	Adds Funding for Pipeline Protest Law Enforcement Support <sup>1</sup>	Total Conference Committee Changes
Salaries and wages	\$287,000	\$287,000
Operating expenses	422,000	422,000
Total all funds	\$709,000	\$709,000

Less estimated income	709,000	709,000
General fund	\$0	\$0
FTE	0.00	0.00

<sup>1</sup> Funding of \$709,000 is added from special funds received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline, the same as the Senate.

### House Bill No. 1024 - Other Changes - Conference Committee Action

This amendment provides for the following changes to agency deficiency appropriations from the strategic investment and improvements fund:

- Adds a \$189,000 appropriation to the Commission on Legal Counsel for Indigents related to costs associated with Section 25 of Article I of the Constitution of North Dakota relating to victims' rights (Marsy's Law). The Senate also added this section.
- Increases the appropriation to the Department of Human Services for Medicaid grants by \$4 million, from \$5 million to \$9 million. The Senate also provided this funding increase.
- Adds a \$8.1 million appropriation to the State Treasurer for property tax relief credit payments. Neither the House nor the Senate included this funding.

This amendment also:

- Adds a section to provide appropriations to various state agencies from special funds the agency received from the Adjutant General for expenses of law enforcement support related to unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate also added this section.
- Adds a section to provide \$15 million of borrowing authority and the related appropriation authority through June 30, 2019 to the Adjutant General for expenses related to unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate also added this section.
- Increases the borrowing authority for the Commission on Legal Counsel for Indigents by \$168,000, from \$859,000 to \$1,027,000. The Senate also increased the borrowing authority.
- Clarifies the purpose of the borrowing authority and appropriations to the judicial branch and the Commission on Legal Counsel for Indigents, the same as the Senate.
- Adds a section to provide contingent funding of \$15.2 million from the strategic investment and improvements fund for any required payments to a bankruptcy estate. The funding may be expended only upon an order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota*. The Senate appropriated the funding to the State Treasurer.
- Provides for a transfer of \$155 million from the strategic investment and improvements fund to the general fund prior to the end of the 2015-17 biennium, resulting in an increase in the July 1, 2017, estimated beginning balance of the general fund. The Senate also added this section.
- Adds a section authorizing the Attorney General to transfer funds between certain line items during the 2015-17 biennium. The Senate also added this section.
- Adds a section to provide legislative intent related to repayment sources for loans obtained to provide the necessary funding to respond to the unlawful activity associated with the construction of the Dakota Access Pipeline. The Senate added a section with similar language.
- Amends Section 4 of Chapter 552 of the 2016 Special Session Laws relating to 2015-17 biennium transfers from the profits of the Bank of North Dakota to the general fund. Neither the House nor the Senate made this change.

AH1 4/25/17  
HB 1024

the terms of a settlement agreement approved by order of the court. The funding provided in this section is considered a one-time funding item and is not a part of the entity's base budget for the 2019-21 biennium.

**SECTION 6. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer the sum of \$155,000,000 from the strategic investment and improvements fund to the general fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 7. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

1. The attorney general may transfer \$75,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.
2. The attorney general may transfer \$5,000 from the amount appropriated for the continuation of contracted higher education legal services in section 6 of chapter 3 of the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of chapter 37 of the 2015 Session Laws, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 8. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of emergency services seek reimbursement from the federal government for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly, including loans of \$17,000,000 previously authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the legislative assembly that provisions of section 54-16-13 apply to the loans, except that emergency commission approval does not apply.

**SECTION 9. AMENDMENT.** Section 4 of chapter 552 of the 2016 special session session laws is amended and reenacted as follows:

**SECTION 4. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND.** ~~If, during~~During the period beginning with the effective date of this Act and ending June 30, 2017, the ~~director of the office of management and budget determines the state general fund will not have a projected positive June 30, 2017, balance, the~~ industrial commission shall transfer \$100,000,000, ~~or so much of the sum as may be necessary,~~ from the earnings and accumulated and undivided profits of the Bank of North Dakota to the state general fund. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. ~~The sum of the amounts~~

17.8101.02008  
Title.

Prepared by the Legislative Council staff for  
Representative Carlson  
April 24, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

That the Senate recede from its amendments as printed on pages 1581-1591 of the House Journal and pages 1296-1306 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 2, after the semicolon insert "to provide legislative intent;"

Page 2, after line 25, insert:

**"SECTION 4. LEGISLATIVE INTENT - COST REIMBURSEMENT - LOAN REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that:

1. The department of emergency services and the governor accept reimbursement in the form of land, cash, or other assets from nonstate sources for state costs incurred relating to unlawful activity associated with the construction of the Dakota access pipeline.
2. Any reimbursements received be used to repay the bank of North Dakota loans authorized by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly; and loans authorized in sections 2 and 3 of this Act, which were all obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline.
3. If the department of emergency services of the governor receive land or other noncash assets as reimbursement, the department of emergency services or the governor request authorization from the sixty-sixth legislative assembly to convey the land or noncash assets and use any proceeds for repayment of any remaining outstanding loans."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT**

This amendment provides legislative intent that the Department of Emergency Services and the Governor accept reimbursement from nonstate sources for state costs relating to the Dakota Access Pipeline protests.



Att 3 4/25/17  
HB 1024

17.8101.03000

Sixty-fifth  
Legislative Assembly  
of North Dakota

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED HOUSE BILL NO. 1024**

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of various state  
2 departments and institutions; to provide a contingent appropriation; to provide for borrowing  
3 authority; to provide for transfers; to provide a statement of legislative intent; and to declare an  
4 emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS**

7 **FUND - 2015-17 BIENNIUM.** There is appropriated out of any moneys in the strategic  
8 investment and improvements fund, the sums as hereinafter provided or so much of the sums  
9 as may be necessary. These sums increase the special fund authority enacted by the sixty-  
10 fourth legislative assembly to the stated departments and institutions of the state of North  
11 Dakota for the purpose of defraying their expenses, for the period beginning with the effective  
12 date of this Act, and ending June 30, 2017, as follows:

13 Subdivision 1.

14 COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

15 Commission on legal counsel for indigents	\$189,000
16 Total special funds	\$189,000

17 Subdivision 2.

18 STATE DEPARTMENT OF HEALTH

19 Operating expenses	\$250,000
20 Total special funds	\$250,000

21 Subdivision 3.

22 DEPARTMENT OF HUMAN SERVICES

23 Grants - medical assistance	\$9,000,000
24 Total special funds	\$9,000,000

Sixty-fifth  
Legislative Assembly

1 Subdivision 4.

2 ADJUTANT GENERAL

3 Disaster costs \$79,500

4 Total special funds \$79,500

5 SECTION 1 TOTAL

6 Grand total special funds \$9,518,500

7 **SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN**

8 **PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received  
9 from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be  
10 necessary, to the agencies listed below for the purpose of defraying expenses of law  
11 enforcement support which were incurred after June 30, 2015, related to unlawful activity  
12 associated with the construction of the Dakota access pipeline, for the period beginning with the  
13 effective date of this Act, and ending June 30, 2019.

14 Subdivision 1.

15 ATTORNEY GENERAL

16 Salaries and wages \$200,000

17 Total special funds \$200,000

18 Subdivision 2.

19 STATE DEPARTMENT OF HEALTH

20 Operating expenses \$1,420,000

21 Total special funds \$1,420,000

22 Subdivision 3.

23 HIGHWAY PATROL

24 Field operations \$3,234,000

25 Total special funds \$3,234,000

26 Subdivision 4.

27 DEPARTMENT OF CORRECTIONS AND REHABILITATION

28 Adult services \$500,000

29 Total special funds \$500,000

30 Subdivision 5.

31 GAME AND FISH DEPARTMENT

Sixty-fifth  
Legislative Assembly

1	Salaries and wages	\$221,795
2	Operating expenses	<u>201,929</u>
3	Total special funds	\$423,724

4 Subdivision 6.

5 PARKS AND RECREATION DEPARTMENT

6	Natural resources	<u>\$200,000</u>
7	Total special funds	\$200,000

8 Subdivision 7.

9 DEPARTMENT OF TRANSPORTATION

10	Salaries and wages	\$287,000
11	Operating expenses	<u>422,000</u>
12	Total special funds	\$709,000

13 SECTION 2 TOTAL

14	Grand total special funds	\$6,686,724
----	---------------------------	-------------

15 **SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**

16 **- ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING**

17 **REQUEST.** The office of the adjutant general may borrow the sum of \$15,000,000, or so much  
18 of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support  
19 costs that were incurred after June 30, 2015, related to unlawful activity associated with the  
20 construction of the Dakota access pipeline, for the period beginning with the effective date of  
21 this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are  
22 appropriated to the office of the adjutant general for the purpose of defraying expenses of law  
23 enforcement support which were incurred after June 30, 2015, related to unlawful activity  
24 associated with the construction of the Dakota access pipeline, for the period beginning with the  
25 effective date of this Act, and ending June 30, 2019. The department of emergency services  
26 shall include any amounts borrowed under this section in the request for reimbursement from  
27 federal or other nonstate sources related to the state's expenses incurred due to unlawful  
28 activity associated with the construction of the Dakota access pipeline.

29 **SECTION 4. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**

30 **- JUDICIAL BRANCH - DEPARTMENT OF EMERGENCY SERVICES FUNDING REQUEST.**

31 The judicial branch may borrow the sum of \$1,500,000, or so much of the sum as may be

1 necessary, from the Bank of North Dakota, for court costs that were incurred after June 30,  
2 2015, related to criminal and infraction charges associated with the construction of the Dakota  
3 access pipeline, for the period beginning with the effective date of this Act and ending June 30,  
4 2019. The proceeds of the loan authorized in this section are appropriated to the judicial branch  
5 for the purpose of defraying expenses of the judicial branch which were incurred after June 30,  
6 2015, related to criminal and infraction charges associated with the construction of the Dakota  
7 access pipeline, for the period beginning with the effective date of this Act and ending June 30,  
8 2019. The department of emergency services shall include any amounts borrowed under this  
9 section in the request for reimbursement from federal or other nonstate sources related to the  
10 state's expenses incurred due to unlawful activity associated with the construction of the Dakota  
11 access pipeline.

12 **SECTION 5. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**  
13 **- COMMISSION ON LEGAL COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY**  
14 **SERVICES FUNDING REQUEST.** The commission on legal counsel for indigents may borrow  
15 the sum of \$1,027,000, or so much of the sum as may be necessary, from the Bank of North  
16 Dakota, for legal costs that were incurred after June 30, 2015, related to criminal and infraction  
17 charges associated with the construction of the Dakota access pipeline, for the period beginning  
18 with the effective date of this Act and ending June 30, 2019. The proceeds of the loan  
19 authorized in this section are appropriated to the commission on legal counsel for indigents for  
20 the purpose of defraying expenses of the commission on legal counsel for indigents which were  
21 incurred after June 30, 2015, related to criminal and infraction charges associated with the  
22 construction of the Dakota access pipeline, for the period beginning with the effective date of  
23 this Act and ending June 30, 2019. The department of emergency services shall include any  
24 amounts borrowed under this section in the request for reimbursement from federal or other  
25 nonstate sources related to the state's expenses incurred due to unlawful activity associated  
26 with the construction of the Dakota access pipeline.

27 **SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS**  
28 **FUND - STATE HISTORICAL SOCIETY - THROUGH JUNE 30, 2019.** There is appropriated  
29 out of any moneys in the strategic investment and improvements fund in the state treasury, not  
30 otherwise appropriated, the sum of \$294,500, or so much of the sum as may be necessary, to  
31 the state historical society for the purpose of defraying litigation expenses, for the period

1 beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in  
2 this section is considered a one-time funding item and is not a part of the entity's base budget  
3 for the 2019-21 biennium.

4 **SECTION 7. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND**  
5 **IMPROVEMENTS FUND - STATE TREASURER - THROUGH JUNE 30, 2019.** There is  
6 appropriated out of any moneys in the strategic investment and improvements fund in the state  
7 treasury, not otherwise appropriated, the sum of \$15,200,000, or so much of the sum as may be  
8 necessary, to the state treasurer for the purpose of providing any court-ordered payments to a  
9 bankruptcy estate, for the period beginning with the effective date of this Act, and ending  
10 June 30, 2019. The funding provided in this section may be expended only upon an order of the  
11 court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota*. The funding  
12 provided in this section is considered a one-time funding item and is not a part of the entity's  
13 base budget for the 2019-21 biennium.

14 **SECTION 8. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO**  
15 **GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer  
16 the sum of \$155,000,000 from the strategic investment and improvements fund to the general  
17 fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

18 **SECTION 9. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

19 1. The attorney general may transfer \$75,000 from the amount appropriated for the  
20 continuation of contracted higher education legal services in section 6 of chapter 3 of  
21 the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the  
22 2015 Session Laws, for the period beginning with the effective date of this Act, and  
23 ending June 30, 2017.

24 2. The attorney general may transfer \$5,000 from the amount appropriated for the  
25 continuation of contracted higher education legal services in section 6 of chapter 3 of  
26 the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of  
27 chapter 37 of the 2015 Session Laws, for the period beginning with the effective date  
28 of this Act, and ending June 30, 2017.

29 **SECTION 10. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN**  
30 **REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of  
31 emergency services seek reimbursement from the federal government or other nonstate

Sixty-fifth  
Legislative Assembly

1 sources for the costs of responding to unlawful activity associated with the construction of the  
2 Dakota access pipeline. It is further the intent of the sixty-fifth legislative assembly that these  
3 reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency  
4 commission and the legislative assembly, including loans of \$17,000,000 previously authorized  
5 by the emergency commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth  
6 legislative assembly; and loans authorized in sections 3, 4, and 5 of this Act, which were all  
7 obtained to provide the funding necessary to respond to the unlawful activity associated with the  
8 construction of the Dakota access pipeline. If the department of emergency services determines  
9 reimbursements from federal or other nonstate sources are not forthcoming, the department of  
10 emergency services and other state agencies that obtain a loan shall request a deficiency  
11 appropriation from the sixty-sixth legislative assembly sufficient for the repayment of the  
12 amounts borrowed plus interest.

13 **SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

HH 4/25/17 HB 1024

**Delzer, Jeff W.**

---

**From:** Cronquist, Alex J.  
**Sent:** Monday, April 24, 2017 4:15 PM  
**To:** Delzer, Jeff W.; Holmberg, Ray E.; Lee, Gary A.  
**Cc:** Knudson, Allen H.  
**Subject:** RE: DAPL protest related costs

Representative Delzer, Senator Holmberg, and Senator Lee,

This email is in response to your request for information regarding the differences between the costs paid to date and the estimated costs through June 30, 2017. The Adjutant General anticipates paying an additional \$12 million in DAPL-related costs by June 30, 2017, including \$3 million to Morton County and \$9 million for mutual aid, emergency management assistance compact (EMAC), and equipment costs that have not yet been reimbursed. The judicial branch anticipates an additional \$61,291 in court costs through June 30, 2017, which have not yet been incurred. The Commission on Legal Counsel for Indigents was unable to estimate when costs will be incurred, as the timing of trials is not in their control, therefore, the entire estimated cost for the 425 DAPL-related cases assigned to the Commission on Legal Counsel for Indigents was shown in the schedule.

If you have any questions or would like to request additional information, please feel free to contact us.

Alex Cronquist  
Fiscal Analyst  
North Dakota Legislative Council  
(701)328-4238  
[ajcronquist@nd.gov](mailto:ajcronquist@nd.gov)

**From:** Cronquist, Alex J.  
**Sent:** Monday, April 24, 2017 2:55 PM  
**To:** Delzer, Jeff W. <[jdelzer@nd.gov](mailto:jdelzer@nd.gov)>  
**Cc:** Knudson, Allen H. <[aknudson@nd.gov](mailto:aknudson@nd.gov)>  
**Subject:** DAPL protest related costs

Representative Delzer,

This email is in response to your request for information regarding state costs relating to the Dakota Access Pipeline protests. The schedule below identifies the costs paid to date and the estimated costs to be paid through June 30, 2017, relating to the Dakota Access Pipeline protests:

Agency	Cost To Date	Estimated Cost Through June 30, 2017
Adjutant General	\$26,151,236	\$38,151,236
Judicial Branch	43,709	105,000
Commission on Legal Counsel for Indigents	7,500	1,027,000
<b>Total</b>	<b>\$26,202,445</b>	<b>\$39,283,236</b>

The estimated cost through June 30, 2017, for the Commission on Legal Counsel for Indigents includes all costs anticipated to be paid by the agency relating to the Dakota Access Pipeline protests, as the agency wasn't able to project the timing of expenses.

17.8101.02009

FIRST ENGROSSMENT

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1024

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide ~~an appropriation~~ appropriations for defraying the expenses of  
2 various state departments and institutions; to provide a contingent appropriation; to amend and  
3 section 4 of chapter 552 of the 2016 special session session laws; to provide for borrowing  
4 authority; to provide for transfers; to provide statements of legislative intent; and to declare an  
5 emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS**

8 **FUND - 2015-17 BIENNIUM.** There is appropriated out of any moneys in the strategic  
9 investment and improvements fund, the sums as hereinafter provided or so much of the sums  
10 as may be necessary. These sums increase the special fund authority enacted by the sixty-  
11 fourth legislative assembly to the stated departments and institutions of the state of North  
12 Dakota for the purpose of defraying their expenses, for the period beginning with the effective  
13 date of this Act, and ending June 30, 2017, as follows:

14 Subdivision 1.

STATE TREASURER

16	<u>Property tax relief credits</u>	<u>\$8,100,000</u>
17	<u>Total special funds</u>	<u>\$8,100,000</u>

18 Subdivision 2.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

20	<u>Commission on legal counsel for indigents</u>	<u>\$189,000</u>
21	<u>Total special funds</u>	<u>\$189,000</u>

22 Subdivision 3.

23 STATE DEPARTMENT OF HEALTH





~~SECTION 5. BORROWING AUTHORITY - APPROPRIATION - COMMISSION ON LEGAL  
COUNSEL FOR INDIGENTS - DEPARTMENT OF EMERGENCY SERVICES FUNDING~~

~~REQUEST. The commission on legal counsel for indigents may borrow the sum of \$859,000, or  
so much of the sum as may be necessary, from the Bank of North Dakota, for legal costs  
related to unlawful activity associated with the construction of the Dakota access pipeline, for  
the period beginning with the effective date of this Act and ending June 30, 2019. The proceeds  
of the loan authorized in this section are appropriated to the commission on legal counsel for  
indigents for the purpose of defraying expenses of the commission on legal counsel for  
indigents related to unlawful activity associated with the construction of the Dakota access  
pipeline for the period beginning with the effective date of this Act and ending June 30, 2019.  
The department of emergency services shall include any amounts borrowed under this section  
in the request for reimbursement from federal or other sources related to the state's expenses  
incurred due to unlawful activity associated with the construction of the Dakota access pipeline.~~

**SECTION 2. APPROPRIATION - SPECIAL FUNDS FROM ADJUTANT GENERAL LOAN**

**PROCEEDS - THROUGH JUNE 30, 2019.** There is appropriated from special funds received  
from the adjutant general, the sums as hereinafter provided, or so much of the sums as may be  
necessary, to the agencies listed below for the purpose of defraying expenses of law  
enforcement support which were incurred after June 30, 2015, related to unlawful activity  
associated with the construction of the Dakota access pipeline, for the period beginning with the  
effective date of this Act, and ending June 30, 2019.

Subdivision 1.

ATTORNEY GENERAL

Salaries and wages	<u>\$200,000</u>
Total special funds	\$200,000

Subdivision 2.

JUDICIAL BRANCH

Pipeline protest trials	<u>\$1,500,000</u>
Total special funds	\$1,500,000

Subdivision 3.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

1	Pipeline protest trials	<u>\$1,027,000</u>
2	Total special funds	\$1,027,000
3	Subdivision 4.	
4		
	STATE DEPARTMENT OF HEALTH	
5	Operating expenses	<u>\$1,420,000</u>
6	Total special funds	\$1,420,000
7	Subdivision 5.	
8		
	HIGHWAY PATROL	
9	Field operations	<u>\$3,234,000</u>
10	Total special funds	\$3,234,000
11	Subdivision 6.	
12		
	DEPARTMENT OF CORRECTIONS AND REHABILITATION	
13	Adult services	<u>\$500,000</u>
14	Total special funds	\$500,000
15	Subdivision 7.	
16		
	GAME AND FISH DEPARTMENT	
17	Salaries and wages	\$221,795
18	Operating expenses	<u>201,929</u>
19	Total special funds	\$423,724
20	Subdivision 8.	
21		
	PARKS AND RECREATION DEPARTMENT	
22	Natural resources	<u>\$200,000</u>
23	Total special funds	\$200,000
24	Subdivision 9.	
25		
	DEPARTMENT OF TRANSPORTATION	
26	Salaries and wages	\$287,000
27	Operating expenses	<u>422,000</u>
28	Total special funds	\$709,000
29		
	SECTION 2 TOTAL	
30	Grand total special funds	\$9,213,724

1       **SECTION 3. BORROWING AUTHORITY - APPROPRIATION - THROUGH JUNE 30, 2019**

2       **- ADJUTANT GENERAL - DEPARTMENT OF EMERGENCY SERVICES FUNDING**

3       **REQUEST.** The office of the adjutant general may borrow the sum of \$10,000,000, or so much  
4 of the sum as may be necessary, from the Bank of North Dakota, for law enforcement support  
5 costs that were incurred after June 30, 2015, related to unlawful activity associated with the  
6 construction of the Dakota access pipeline, for the period beginning with the effective date of  
7 this Act, and ending June 30, 2019. The proceeds of the loan authorized in this section are  
8 appropriated to the office of the adjutant general for the purpose of defraying expenses of law  
9 enforcement support which were incurred after June 30, 2015, related to unlawful activity  
10 associated with the construction of the Dakota access pipeline, for the period beginning with the  
11 effective date of this Act, and ending June 30, 2019. The department of emergency services  
12 shall include any amounts borrowed under this section in the request for reimbursement from  
13 the federal government related to the state's expenses incurred due to unlawful activity  
14 associated with the construction of the Dakota access pipeline.

15       **SECTION 4. CONTINGENT APPROPRIATION - STRATEGIC INVESTMENT AND**

16 **IMPROVEMENTS FUND - ATTORNEY GENERAL - THROUGH JUNE 30, 2019.** There is  
17 appropriated out of any moneys in the strategic investment and improvements fund in the state  
18 treasury, not otherwise appropriated, the sum of \$15,872,000, or so much of the sum as may be  
19 necessary, to the attorney general for the purpose of providing any court-ordered payments to a  
20 bankruptcy estate or payments to be made pursuant to the terms of a settlement agreement  
21 approved by order of the court, for the period beginning with the effective date of this Act, and  
22 ending June 30, 2019. The funding provided in this section may be expended only upon an  
23 order of the court pending the outcome of *PW Enterprises, Inc. v. State of North Dakota* or  
24 pursuant to the terms of a settlement agreement approved by order of the court. The funding  
25 provided in this section is considered a one-time funding item and is not a part of the entity's  
26 base budget for the 2019-21 biennium.

27       **SECTION 5. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO**

28 **GENERAL FUND - 2015-17 BIENNIUM.** The office of management and budget shall transfer  
29 the sum of \$155,000,000 from the strategic investment and improvements fund to the general  
30 fund during the period beginning with the effective date of this Act, and ending June 30, 2017.

31       **SECTION 6. LINE ITEM TRANSFERS - ATTORNEY GENERAL - 2015-17 BIENNIUM.**

- 1       1.    The attorney general may transfer \$75,000 from the amount appropriated for the  
2            continuation of contracted higher education legal services in section 6 of chapter 3 of  
3            the 2015 Session Laws to the litigation fees line item in section 1 of chapter 37 of the  
4            2015 Session Laws, for the period beginning with the effective date of this Act, and  
5            ending June 30, 2017.
- 6       2.    The attorney general may transfer \$5,000 from the amount appropriated for the  
7            continuation of contracted higher education legal services in section 6 of chapter 3 of  
8            the 2015 Session Laws to the arrest and return of fugitives line item in section 1 of  
9            chapter 37 of the 2015 Session Laws, for the period beginning with the effective date  
10           of this Act, and ending June 30, 2017.

11       **SECTION 7. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN**

12       **REPAYMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of  
13       emergency services seek reimbursement from the federal government for the costs of  
14       responding to unlawful activity associated with the construction of the Dakota access pipeline. It  
15       is further the intent of the sixty-fifth legislative assembly that these reimbursements be used to  
16       repay the Bank of North Dakota loans authorized by the emergency commission and the  
17       legislative assembly, including loans of \$17,000,000 previously authorized by the emergency  
18       commission; loans in Senate Bill No. 2174, as approved by the sixty-fifth legislative assembly;  
19       and loans authorized in section 3 of this Act, which were all obtained to provide the funding  
20       necessary to respond to the unlawful activity associated with the construction of the Dakota  
21       access pipeline. It is further the intent of the legislative assembly that provisions of  
22       section 54-16-13 apply to the loans, except that emergency commission approval does not  
23       apply.

24       **SECTION 8. LEGISLATIVE INTENT - COST REIMBURSEMENT - LOAN REPAYMENTS.**

25       It is the intent of the sixty-fifth legislative assembly that:

- 26       1.    The department of emergency services and the governor accept reimbursement in the  
27            form of land, cash, or other assets from nonstate sources for state costs incurred  
28            relating to unlawful activity associated with the construction of the Dakota access  
29            pipeline.
- 30       2.    Any reimbursements received be used to repay the bank of North Dakota loans  
31            authorized by the emergency commission; loans in Senate Bill No. 2174, as approved

1 by the sixty-fifth legislative assembly; and loans authorized in section 3 of this Act,  
2 which were all obtained to provide the funding necessary to respond to the unlawful  
3 activity associated with the construction of the Dakota access pipeline.

- 4 3. If the department of emergency services of the governor receive land or other noncash  
5 assets as reimbursement, the department of emergency services or the governor  
6 request authorization from the sixty-sixth legislative assembly to convey the land or  
7 noncash assets and use any proceeds for repayment of any remaining outstanding  
8 loans.

9 **SECTION 9. AMENDMENT.** Section 4 of chapter 552 of the 2016 special session session  
10 laws is amended and reenacted as follows:

11 **SECTION 4. ~~CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO~~**  
12 **STATE GENERAL FUND.** ~~If, during~~During the period beginning with the effective date  
13 of this Act and ending June 30, 2017, ~~the director of the office of management and~~  
14 ~~budget determines the state general fund will not have a projected positive June 30,~~  
15 ~~2017, balance,~~ the industrial commission shall transfer \$100,000,000, ~~or so much of~~  
16 ~~the sum as may be necessary,~~ from the earnings and accumulated and undivided  
17 profits of the Bank of North Dakota to the state general fund. The moneys must be  
18 transferred in amounts and at such times as requested by the director of the office of  
19 management and budget. ~~The sum of the amounts transferred may not exceed the~~  
20 ~~lesser of \$100,000,000 or the amount necessary to provide for a positive June 30,~~  
21 ~~2017, general fund balance.~~

22 **SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.