

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1161

Introduced by

Representatives Kempenich, Brandenburg, Headland, Louser, D. Ruby, Schmidt

Senators Bowman, Rust

1 A BILL for an Act to amend and reenact sections 54-27-23, 54-44.1-03, 54-44.1-12, and
2 54-44.1-12.1 of the North Dakota Century Code, relating to the control over the rate of
3 expenditures.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 54-27-23 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-27-23. Cash flow financing.**

8 In order to effectively meet the cyclical cash flow needs of state government, the office of
9 management and budget upon approval of the emergency commission is hereby authorized to
10 issue certificates in anticipation of revenue, notes, or bonds, to special funds on deposit in the
11 state treasury. Any issue of such certificates, notes, or bonds must be approved by the
12 emergency commission and are to be used for cash flow financing only, and not to offset
13 projected deficits in state finances unless first approved by the budget section of the legislative
14 management. The budget section may approve additional cash flow financing not to exceed
15 eighty percent of estimated general fund revenues relating to sales or production occurring prior
16 to June thirtieth, to be collected in July and August after the end of the biennium. Such
17 additional cash flow financing is only effective for sixty days unless an extension or reapproval
18 is received from the budget section. If a revenue shortfall of greater than five percent occurs,
19 the office of management and budget shall order budget ~~allotments~~reductions under section
20 54-44.1-12 prior to approval by the budget section of such additional cash flow financing. It is
21 the intent of the legislative assembly that all borrowing must be repaid by the end of the
22 biennium. The terms of any specific issue of such certificates, notes, or bonds may not exceed
23 one hundred eighty days from the date of issuance whereupon the principal and interest on the
24 certificates, notes, or bonds must be paid in full from the state general fund or from another

1 issue of a similar nature. All principal and interest on such issues made during a biennial period
2 must be repaid in full at the close of the biennial period from the state general fund. When
3 certificates, notes, or bonds are issued for cash flow purposes to funds which otherwise would
4 be invested, with the investment income accruing to the special fund, the certificate must bear
5 an investment rate of return which must be agreed upon by the state investment board, and
6 must be at a level commensurate with the yield to be reasonably expected by such fund if
7 invested in alternate securities.

8 **SECTION 2. AMENDMENT.** Section 54-44.1-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-44.1-03. Powers and duties of the director of the budget.**

11 The director of the budget, or such subordinate officer as the director of the budget shall
12 designate, shall:

- 13 1. Be vested with the duties, powers, and responsibilities involved in securing budget
14 estimates and work programs from the several departments and agencies of the state
15 government.
- 16 2. Be vested with the duties, powers, and responsibilities involved in the preparation of
17 revenue and fixed expense estimates.
- 18 3. Develop financial policies and plans as the basis for budget recommendations to the
19 legislative assembly, and prepare detailed documents in accordance with such
20 financial policies and plans for presentation to the legislative assembly.
- 21 4. Coordinate the fiscal affairs and procedures of the state to assure the carrying out of
22 the financial plans and policies approved by the legislative assembly.
- 23 5. Exercise continual control over the execution of the budget affecting the departments,
24 institutions, and agencies of the executive branch of the state government involving
25 approval of all commitments for conformity with the program provided in the budget,
26 frequent comparison of actual revenues and budget estimates, and control of the rate
27 of expenditures through a system of semiannual, quarterly, or monthly
28 ~~allotments~~budget reductions.
- 29 6. Investigate, examine, and make exhaustive studies:
 - 30 a. Of the structure and operation of the entire executive branch of government and
31 of every office, institution, and agency thereof.

- 1 b. Of all the functions, duties, and services of all executive branch offices,
2 departments, institutions, industries, boards, bureaus, and commissions.
- 3 c. Of all the books, records, and methods of accounting of each office or agency of
4 the executive branch to ascertain and determine whether their policies, practices,
5 and systems of accounting are sound, necessary, practical, and efficient.
- 6 7. Develop a long-term capital improvements budget for consideration by the legislative
7 assembly.
- 8 8. Have the authority to procure from the various officers, departments, agencies, and
9 employees such information as may be necessary for the preparation and execution of
10 the budget.
- 11 9. Provide such assistance as the legislative assembly may request and be available to
12 assist its appropriations committees with any needed information or material and make
13 its records and information available at all times to the legislative assembly and its
14 committees and designees.
- 15 10. Perform all other necessary duties to carry out the provisions of this chapter and of
16 chapter 54-14.

17 **SECTION 3. AMENDMENT.** Section 54-44.1-12 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-44.1-12. Control over rate of expenditures.**

- 20 1. The director of the budget shall exercise continual control over the execution of the
21 budget affecting the departments and agencies of state government, with the
22 exception of the legislative and judicial branches. Execution means the analysis and
23 approval of all commitments for conformity with the program provided in the budget,
24 frequent comparison of actual revenues and budget estimates, and on the basis of
25 these analyses and comparisons control the rate of expenditures through a system of
26 ~~allotments~~budget reductions. The ~~allotment~~budget reductions must be made by
27 specific fund and all departments and agencies that receive moneys from that fund
28 must be ~~allotted~~reduced on a uniform percentage basis, except that appropriations to
29 the department of public instruction for state school aid, transportation aid, and special
30 education aid may only be ~~allotted~~reduced to the extent that the ~~allotment~~reduction
31 can be offset by transfers from the foundation aid stabilization fund as follows:

- 1 a. The first two and one-half percent ~~allotment~~budget reduction from the general
2 fund must be offset with a transfer from the foundation aid stabilization fund.
- 3 b. Any general fund ~~allotment~~budget reduction in excess of two and one-half
4 percent that is necessary, after all moneys available in the budget stabilization
5 fund have been transferred to the general fund under section 54-27.2-03, may be
6 offset with a transfer from the foundation aid stabilization fund.
- 7 2. Before an ~~allotment~~budget reduction is made which will reduce the amount of funds
8 which can be disbursed pursuant to an appropriation or before an ~~allotment~~budget
9 reduction disallowing a specific expenditure is made, the director shall find one or
10 more of the following circumstances to exist:
 - 11 a. The moneys and estimated revenues in a specific fund from which the
12 appropriation is made are insufficient to meet all legislative appropriations from
13 the fund.
 - 14 b. The payment or the obligation incurred is not authorized by law.
 - 15 c. The expenditure or obligation is contrary to legislative intent as recorded in any
16 reliable legislative records, including:
 - 17 (1) Statements of legislative intent expressed in enacted appropriation
18 measures or other measures enacted by the legislative assembly; and
 - 19 (2) Statements of purpose of amendment explaining amendments to enacted
20 appropriation measures, as recorded in the journals of the legislative
21 assembly.
 - 22 d. Circumstances or availability of facts not previously known or foreseen by the
23 legislative assembly which make possible the accomplishment of the purpose of
24 the appropriation at a lesser amount than that appropriated.

25 **SECTION 4. AMENDMENT.** Section 54-44.1-12.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **54-44.1-12.1. Implementation of legislative intent - Legislative objection to execution**
28 **of budget - Effect of objection.**

- 29 1. The budget section of the legislative management may object to any ~~allotment~~budget
30 reduction made under section 54-44.1-12, any expenditure of a budget unit, or any
31 failure to make an ~~allotment~~budget reduction or expenditure if the budget section

determines that the ~~allotment~~budget reduction or expenditure or the failure to make an-
~~allotment~~a budget reduction or expenditure is contrary to legislative intent as recorded
in any reliable legislative records. The budget section shall file that objection in
certified form with the legislative council. The filed objection must contain a concise
statement of the budget section's reasons for the objection.

2. The legislative council shall attach to each objection a certification of the time and date
of the filing of the objection and, as soon as possible, shall transmit a copy of the
objection and the certification to the director of the budget and the affected budget
unit. The legislative council shall maintain a permanent register of all objections under
this section.

3. Within fourteen days after the filing of an objection, the affected budget unit shall
respond in writing to the budget section. After receipt of that response, the budget
section may withdraw or modify its objection.

4. After the filing of an objection, the burden of persuasion is upon the budget unit in any
action for judicial review of whether the ~~allotment~~budget reduction or expenditure or
the failure to make an ~~allotment~~a budget reduction or expenditure is contrary to law. If
the budget unit fails to meet its burden of persuasion, the court shall render judgment
against the budget unit for court costs. These court costs must include reasonable
attorney's fees and must be payable from the appropriation of the budget unit.