

**2019 SENATE APPROPRIATIONS**

**SB 2055**

# 2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

SB 2055  
1/25/2019  
Job # 31459

- Subcommittee  
 Conference Committee

Committee Clerk Signature Rose Laning / Florence Mayer

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

Relating to agency requests for budget section approval.

Minutes:

No attachments.

Legislative Council: Levi Kinnischtzke

OMB: Becky Keller

**Chairman Holmberg:** Called the committee to order on SB 2055. Roll call was taken.

**Senator Rich Wardner, District 37, Senate Majority Leader:** Introduced SB 2055 and walked through the bill. The reason for the bill is because last interim we went to court with the governor. Not only did we deal with the issues in the vetoes, but whether the budget section was constitutional or not in making decisions dealing with appropriating money. For years everyone has said the budget section is walking on thin ice. The supreme court ruled in favor of the governor and the executive branch, that what we have been doing for years in the budget section was not constitutional and we could not do that. It was Representative Carlson was the one having this bill drafted, and I said I'd put my name on to see what we could do. Allen Knudson is here and he will make some comments later on. On page 3 it says the legislative assembly or the budget section, then it says 'if the legislative assembly is not in session, any request considered by the budget section must comply with section 15 of this act' which would give the budget section authority to act in the place of the legislature. The real changes in the bill are on page 10. It says budget section, and it talks about the appointments which is the same, and the powers and duties. If you look at Subsection 4 line 21, it says the legislative assembly, by law, may provide the authority for the budget section to approve specific actions, projects, and transfers. That is the backbone of this piece of legislation and is this constitutional or not. I have been counseled that 3 different parties that said this bill doesn't get it done. We need to dig into it a little bit more. Going forward, if we can't operate like we did in the past, in which the legislature gave power to the budget section to make decisions on transferring money and approving different appropriations. Under this bill, we could do things as in the past. If it's not constitutional, we would have to put a trigger in there and say when they completed thus far or spent the first allotment, that would trigger the second allotment. The budget section would not be involved; the legislature would be making that mandate. Allen Knudson was involved in the drafting, so I would like him to make some comments. What we have done in the past is not constitutional.

**(7:19) Senator Bekkedahl:** I've always had a feeling, even though I'm on the budget section now, fiduciary we all had the responsibility to expend the funds and not just a small section. I do understand the necessity that when we have bi-annual session, things need to get done in the meantime. Would annual sessions be a consideration?

**Senator Wardner:** Yes, that would be an option. I'd like Allen to come up and make some comments.

**(8:15) Allen Knudson, Legislative Council:** Testified in a neutral position. I'm just going to walk you through the bill and tell you what sections are affected.

The bill amends 17 statutory duties in current law relating to the budget section. There are 2 session law sections that are repealed at the end of the bill. The bill does not affect the duties relating to the emergency commission budget approval.

**Chairman Holmberg:** The bill before us has flaws. We will have to determine whether we want to have it redone, to more closely attempt to be what the sponsors wanted.

**Allen Knudson:** Pages 4-5, at the bottom it deals with the state disaster relief fund. As of now the Adjutant General is the one who receives those appropriations. They get the appropriation during the session, then before they can spend it they must go to the emergency commission and budget section to get approval. The court said once the legislature appropriates the money, there can't be any restrictions. We removed emergency commission and budget section approval requirement. Just providing a reporting requirement on top of page 5, that before they make an expenditure from the fund, they need to get a report to the budget section. The next bill is Sb 2095, that also amends this same section. In that bill the reporting is after the fact.

**(11:33) Chairman Holmberg:** one of the embarrassing points last interim was this very issue. The budget section over ruled the legislature, which was kind of tacky.

**Allen Knudson:** The 2 repeals at the end, one is from 2013. It authorized the transfer of land at the North Central Research Center in Minot and the NW Research Center in Williston. They could transfer land, parts of land in Ward County and 1 ¼ sections in Williams County. They never did come for approval for that. We repealed that, if they need it, they can ask for it again. The other one is 2017 session law relating to the Western area water supply. During this current biennium, the industrial commission has to do a study on the future of the Western area. The main provisions are on pages 10-11 of the bill where is establishes a budget section in statute and provides the guidelines for approvals if they do come before the budget section.

**(14:08) Senator Matherne:** Senator Wardner noted a concept of a trigger in a bill. How does that work from your perspective? Is that like another decision that someone makes half way through? Is that totally in the executive branch or can it be somewhat related to a report to the budget section?

**Allen Knudson:** In the past triggers have been based on revenue levels. The director at OMB would determine if the revenues exceeded a certain level. It's pretty much been an

executive branch function. There may be some way to involve the budget section, we'd have to take another look at that.

**Chairman Holmberg:** It appears we have a bill before us that is not ready to come out of the oven. I have talked to our lawyer who is looking at the case. We will put a subcommittee to work with LC and the sponsors of the bill. That Subcommittee will be chaired by Senator Hogue, Senator Holmberg & Senator Robinson. We will see what might be more appropriate language to try to resolve the questions that were raised, rather than beat on this horse that has been in the ditch for a while. Is there anyone else who wants to testify?

Closed the hearing on SB 2055.

# 2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

**SB 2055 & SB 2095**  
2/11/2019  
Job # 32528 & 32534

- Subcommittee  
 Conference Committee

Committee Clerk: Rose Laning

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

Relating to agency requests for budget section approval (SB 2055).

Relating to the process of expending funds from the disaster relief fund (SB 2095).

**Minutes:**

Testimony Attached # 1.

**(This bill having to do with agency requests is being heard at the same time as SB 2095 which involves the disaster relief fund. Both are being discussed together.)**

Legislative Council: Allen Knudson

OMB: Becky Deichert

**Senator Hogue** called the sub-committee to order on SB 2055. **Senators Holmberg** and **Senator Robinson** were also present.

**Senator Hogue** said he is hearing the two bills at the same time because there is a relationship between them because they relate to some interim spending decisions that are made by various entities including the budget section and the emergency commission. He asked John Bjornson to come and explain the bill because he is involved in the budget section.

**SB 2055** (Job # 32528)

## **John Bjornson, Director, Legislative Council:**

I'm here in a neutral position but here at the request of the chairman to address some of the provisions of the bill.

This relates back to the veto lawsuit that we experienced at the end of the last legislative session. We were asked to prepare a bill that would address the court's decision. The court's decision was a mixed decision and with respect to the five vetoes that were challenged, the Legislative Assembly prevailed on four of the five. Then there was a separate issue of the authority of the budget section to approve transfer of funds with respect to the Water Commission and to also approve their expenditure of certain funds with respect to the Land Department and a computer project. The court came up with a split decision. Two of the justices indicated that the budget section approval authority granted in those two bills

amounted to a violation of a separation of powers doctrine. The chief justice dissented and said that it was not a violation of separation of powers and further indicated that he was not convinced the delegation to the budget section, if proper standards were in place, would violate the non-delegation of legislative authority doctrine. Where uninvited authority is the unlawful delegation of legislative powers, the chief justice was unwilling to conclude that it also violates the principals of separation of powers. And then the other two justices also weighed in and said the court shouldn't have even addressed the issue of separation of powers. They addressed it on a delegation issue which is essentially where the chief justice was so there were not four of the five justices that are required to declare an act unconstitutional. There were not four of the five in concurrence that this was an unconstitutional provision. Those were unconstitutional provisions with the respect to the separation of powers. So we drafted a bill for the member who is no longer here that would have established, by statute, the budget section which currently the budget section does not have a formal provision in the code. There are several references to it and as you see in the bill, there are many sections that reference the budget section but there is no formal creation of the budget section. We began by setting up the budget section and that is section 15 of the bill. We leave the membership as it is established now and then we set forth some duties of the budget section which basically is in place to provide flexibility in the management of state funds between regular sessions of the legislative assembly and to minimize the need for any expense of special sessions. It goes on to provide a list of eight factors that would be considered by the budget section when reviewing state agency requests. That goes to what the chief justice indicated – if there were standards in place. There were bills that were challenged, or portions of bills that were challenged; the water commission transfers and the land department computer project, and simply stated “upon approval of the budget section” these actions could occur. There were no standards or guidelines for the budget section to consider when reviewing those requests.

So what this bill does is put those eight standards or factors in place. If the budget section were to take any action to approve or review a request or all the requests that are in the other sections of the bill, they would have to look at those eight factors. The factor such as, does this comply with legislative intent. They are all listed in section 15. This, we believe, would be consistent with what the chief justice had in mind when he said that if standards were in place, he believes that it wouldn't have been a delegation issue. It's important to distinguish between a delegation issue which can be fixed with standards and a separation of powers issue. In some instances, we need to be careful that the legislative assembly doesn't go too far in exercising authority that would be executive in nature. We try to inform you if we see something that goes across that line. But with these statutory sections that are in place, there are reviews or approval of actions that follow in those standards we believe would comply with what the chief justice had in mind. That is the intent of the bill – to codify what the chief justice indicated would be an appropriate way for the budget section to exercise its authority.

**Senator Hogue:** The state supreme court made a ruling, but we know it takes four out of the five justices to invalidate as unconstitutional legislative actions. So that's sort of the basis for the counsels continued belief that we can do something short of amending the constitution that is within our legislative authority to continue to delegate some things to the budget section.

**John Bjornson:** That is correct. As long as those functions that you delegate are legislative functions and not executive functions.

**Senator Hogue:** So the bill actually formalizes the appointment of the budget section, something we had apparently been doing informally, but in section 15 which is the guidelines that you referenced in response to Chief Justice VandeWalle's dissent, why wouldn't we say "and also if the budget section action is within the appropriation that the full legislature made". That criteria stood out to me, as being critical.

**John Bjornson:** That certainly wouldn't hurt. I guess it was our assumption that if it's already in statute or if it's something in a bill that both houses passed, it would be a delegation from the full legislative assembly, but I certainly wouldn't discourage you from adding additional criteria. We somewhat based this on the legislative rules committee and their authority, but that would certainly be an appropriate amendment.

**Senator Holmberg:** One of the items that comes up from time to time is the budget section, if it's a large amount, or emergency commission being able to tell an agency that they can switch money between their various line items, but the budget section doesn't have the ability to increase an appropriation that the legislature has passed. The budget section does approve some monies that come in from outside sources. I don't think it hurts to put it there, but I don't think the budget section should be able to increase an appropriation of the legislature.

**John Bjornson:** We were somewhat baffled by two justices saying the emergency commission would be a more appropriate body to make these decisions than the budget section. That's an even smaller group of people making that decision.

**Senator Robinson:** I like the idea of legitimizing or the formality of establishing the budget section. We never increase budgets but by formalizing the existence of the budget section, perhaps there should be some language that would speak to the ability of the budget section to accept these grants that come in between sessions, during the interim – just to clarify the role and responsibility of the budget section so we have it in black and white.

**John Bjornson:** The idea of the budget section, at least in this bill, historically has been to grant some degree of flexibility to the executive branch of government because you meet once every two years. You also give many agencies a significant amount of flexibility through continuing appropriation authority and the ability to accept funds. For example, historically in the Governor's office budget, you give the governor broad authority to accept gifts, donations, federal monies and expend those funds with very little or no oversight. Should there be more oversight over that oversight of actually accepting those federal funds or other funds – am I correct?

**Senator Robinson:** Yes, I would agree with that but the very nature of the budget section allowing them to do that provides an opportunity for the legislature to review and critique what they did do with those dollars even though it might be months later when they report back at the next session. Maybe we need to tighten up the requirements and expectations of the legislative assembly.

**John Bjornson:** Now that you're starting to review some of the agency budgets, some of the staff have indicated that water commission would be granted flexibility subject to budget section review. When we had that discussion, there was a question of whether we can do

this. We are hoping that if this bill would pass, it would go one step in legitimizing that again. One of the things that occurred to us was if that authority was vetoed again post session, or if there were some judicial determination again that certain budget section review isn't appropriate, at some point you may want to consider if you want to grant that flexibility. They say they want flexibility, but we don't want any oversight. Maybe the time has come to include in this bill or somewhere else, that if due to executive or judicial action the authority of the budget section to review these decisions or these approved transfer of funds is eliminated, those provisions in other bills are repealed. It would be a contingent repeal on another portion of another bill to take away that flexibility. Sort of a counter move.

**Senator Hogue:** We just voted to give the governor continuing appropriation authority for dollars that come into his agency. We also voted not to have annual sessions. In light of those two votes, this SB 2055 is a good compromise. It's not what a fiercely sovereign executive agency would want, but it adjusts for the realities that we have; we're not going to meet annually. Sometimes we want to give that continuing appropriation authority and other times we want to forward look. I think SB 2055 represents good policy and is a reasonable reaction to the supreme court decision and to the vetoes.

**Senator Robinson:** Would you suggest we need any addition or refinement to the language or do you think the way the bill is drafted is sufficient?

**Senator Hogue:** I think it's sufficient. We may tweak the criteria as time goes by, but I think there will always be this tension between continuing appropriations that we give on an ad hoc basis and budget committee oversight. I think that will continue.

**Senator Holmberg:** I'm ok with moving the bill forward.

**(Vote #1)**

**Senator Robinson:** I would move the bill forward to the full committee.

**Senator Holmberg:** Seconded the motion.

**A Roll Call Vote was taken: Yes: 3 No: 0 Absent: 0.  
Motion carried.**

**SB 2095 (Job # 32534)**

**Senator Hogue:** (Talking about the emergency commission) He asked John Bjornson for comments.

**Allen Knudson, Legislative Council:** This same section is being amended in SB 2055 as well. If you look at section 6 of SB 2055, under current law, the legislature appropriates the money to the adjutant general from the state disaster fund. Before they can spend it, they need to get emergency commission and budget section approval. That's been the process up until now. Once the legislature does make an appropriation, that it can hold or kind of keep strings attached to it, so the way 2055 amends it is to simply say that the adjutant general report to the budget section before it makes the expenditure on what the

expenditures are going to be. In SB 2095, there expanding the use of the fund and then they report after they make the expenditures. That's the difference between the two sections.

**Senator Holmberg:** What does the language mean when you say 'they report'? It doesn't say they get approval; they just have to report because what you're saying is that the court was clear that the budget section should not be overruling the legislature which one could argue happened during the last interim.

**Cody Schulz, Deputy Director, Department of Emergency Services (DES) and Director, Division of Homeland Security:**

SB 2095 was an agency bill that we put forward to solve two problems. The one half was addressed in 2055 regarding process on the emergency commission budget section. The other piece, lines 9,10 and 11 specifically relate to aligning some language in Century Code with changes in federal law. In 2018, there was some changes to the Disaster Recovery Reform Act which amended the Stafford Act as it relates to which types of grants we do state cost shares with. I would respectfully request that if we do make any changes regarding lines 12,13 and 14, that we'd look at those other changes in a separate light. I'd be glad to answer any questions on either of the two issues that we're trying to address.

**Senator Hogue:** Lines 9-10 are addressing a separate policy concern than lines 11 and 14?

**Cody Schulz:** That is correct.

**Senator Holmberg:** If we utilize the language in 2055 to resolve the one issue, if we follow your suggestion, we're going to have to amend one of the bills. So do we amend this language in 2095 into 2055 and just have one bill? Or utilizing that section, we'd have two separate bills? We can do either one.

**Senator Hogue:** Yes, we have to decide whether we're comfortable with the reporting versus reporting after they made the expenditure.

**Cody Schulz:** In an administrative perspective, the reporting is something we're absolutely willing to do in any form or fashion. The concern I would have in getting the approval or the report before the expenditure, is it could, depending on how the language in 2055, I would ask for some clarity in what "before" meant. How would we administratively accomplish that? Would we do monthly reports, quarterly reports? By which, if we are submitting it before making those expenditures, there may be a delay in getting the money out to the local political subs.

**Senator Holmberg:** One of the issues that has constantly come up in this area is a contractor does work – for some disaster, or whatever, the bill will be paid, but if we have to wait until the budget section approves, the contractor is on the hook for two, three, four months waiting to get paid even though the legislature has appropriated the money for that very purpose.

**Senator Robinson:** I can recall instances in the past few years where we've been in this situation. The reporting after the work is all done? Does it take some of the meaning out of the reporting? It's almost a rubber stamp. Would some legislators have a problem?

**Senator Holmberg:** But that is what happens in a lot of situations in the state budgeting. You pay the bills and there's either an audit or a report to the legislature.

**Senator Robinson:** Those who are concerned about that issue is that the only course the legislature would have is to do something the next time around.

**Cody Schulz:** Given some discussion with our legal counsel and looking at the language of 2055, the question came up again, we are talking about appropriated funds that were previously appropriated. We did not have an answer that if we are submitting these to the appropriation committees, do they have the authority to renege on those funds within the current session or is it simply a recording function as its written right now. Simply, the before the fact reporting versus an after the fact reporting.

**Senator Robinson:** I was disappointed in the actions this past year when we caused your agency to jump through and delay. There are some legislators who are sensitive to these issues.

**Senator Hogue:** 2055 contains a reporting – before you expend, you report. There is no ability for the budget section to delay that. It's just a reporting requirement as we just passed in 2055. Are we OK with that?

**Senator Holmberg:** Notification doesn't mean then under that interpretation of what's written there. It doesn't mean that you have to wait a week before the budget section meets. You have the bill that is going to be audited anyway that someone has performed a function, the state owes them the money and you notify the budget section or however that is done through the chairman of the budget section, etc. and then you go ahead and expend the money.

**Senator Hogue:** It sounds like we're still comfortable with what Mr. Knudsen has pointed out to us. You notify in advance but no withholding of any spending authority.

**Senator Robinson:** Go with two bills or everything into one?

**Cody Schulz:** I need lines 9, 10, and 11.

**John Bjornson:** Just put it in the similar language in both the reporting into 2095 so there isn't a conflict between 2055 and 2095 with respect to the budget section and the reporting function. That way it's not left to the code reviser to try and figure out how to resolve that conflict. So if that language was the same and then the other language they need, with respect to the other portion be left as is in 2095, we can reconcile those in codification.

**Senator Hogue:** You're saying to transplant the language in 2055 into 2095?

**John Bjornson:** That is correct.

**(Vote #2)**

**Senator Robinson:** Moved to move the language of 2055 into 2095.

**Senator Holmberg:** Seconded the motion.

**Voice vote consensus.**

**Kelvin Hullet, Bank of North Dakota:** (Proposed Amendment to SB 2055 – Attached # 1.) In section 19 of SB 2055, there are two sections of session law that are repealed. In particular, with the BND, is section 10 of chapter 19 of the 2017 session laws. The last legislative session, we made a series of actions with the Western Area Water Supply (WAWS) including consolidating their notes with the BND and also bringing in \$25M general fund loan into that note, so we have about an \$88M note with WAWS. As part of that, we had worked with the legislature to put in place a secondary repayment source, so the first repayment source is the industrial sales and revenues from that. The secondary repayment source, if they happen to run short is the ability to go to the legislative council and the Industrial Commission and let them know that the WAWS is going to be short and they can direct the State Water Commission to make up the rest of that payment either to the bank or if we ever bond, from the Resources Trust Fund. When section 19 was put in and repealed those session laws, it repealed our secondary repayment source and we would like to bring that repayment source back in.

**Senator Hogue:** How did that get into this bill? It doesn't seem related.

**John Bjornson:** section 9.

**Allen Knudson:** There was another section that the Industrial Commission was to evaluate the WAWS for this interim and come up with a plan to refinance. It's two options. This legislature would deal with that issue again because this was just a section of session law that was taken out.

**Kelvin Hullet:** To clarify – there were various sections in that bill and one was for the Industrial Commission to conduct a study of the WAWS to determine if the assets could be leased or sold. The conclusion was that they could not lease or sell those assets. Based on that there were two pathways in the law of which we took pathway B which basically says that there is not going to be any lease or sale of the assets and therefore we move forward with longer term financing related to WAWS. That section did expire. We did not intend for the secondary repayment source to expire as part of that. We anticipated that to be an ongoing obligation of the Water Commission.

**Senator Hogue:** Has this subject been broached with the Water Commission budget?

**Kelvin Hullet:** We've worked very closely with the State Water Commission on this issue and they're very aware of the secondary repayment source in their obligation.

**Senator Robinson:** This issue hasn't been discussed in the SB 2020 subcommittee with the Water Commission this session.

**Kelvin Hullet:** This was just a continuing obligation. We've discussed it with staff.

**Senator Hogue:** There are all kinds of things in this bill that are jumping out. I think this needs some study. This is not what I'd characterize within this subcommittee's realm. I see this as being in the Water Commission's authority.

**Allen Knudson:** That was one of the reasons we put it in was because it was in session laws and it depended on the Industrial Commission review. So that's the reason we took it out feeling that this session could decide whether that should continue potentially in the Water Commission bill.

**Senator Holmberg:** That's a bill has a lot of issues too.

**Senator Hogue:** We've been focused on budget section authority, interim authority and this is relating to the security of the BND in the event the initial collateral fails or defaults. I think this should go to the Water Commission.

**Senator Holmberg:** And then amend this to take out section 19 and then when the Industrial Commission budget comes over, if it's still something that has not had some kind of resolution, I'm sure you will be back to remind us.

**Senator Hogue:** Can we go back to our action on SB 2055?

(Vote #3)

**Senator Robinson rescinded his first motion on SB 2055.**

**Senator Holmberg: Seconded the motion.**

Voice vote carried.

(Vote #4)

**Senator Robinson: moved to remove Section 19 from SB 2055.**

**Senator Holmberg: Seconded the motion.**

**Allen Knudson:** Then there would not have to be a change in the Water Commission bill because their secondary financing would be covered.

A Roll Call Vote was taken: Yes: 3 No: 0 Absent: 0.  
Motion carried.

# 2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

SB 2055  
2/12/2019  
Job # 32566

- Subcommittee  
 Conference Committee

Committee Clerk: Rose Laning

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

Relating to agency requests for budget section approval.

Minutes:

Amendment # 19.0406.01001

Legislative Council: Brady Larson  
OMB: Stephanie Gullickson

**Chairman Holmberg** called the committee to order on SB 2055.

**Senator Hogue** presented amendment 19.0406.01001 and explained that the bill provides guidelines to approve interim decisions as they are brought to the budget section.

**Senator Hogue: moved amendment 19.0406.01001.**

**Senator Robinson: Seconded the motion.**

**Chairman Holmberg** state that there were unintended consequences when bill was put together.

**Voice vote approved.**

**Senator Hogue: moved Do Pass on SB 2055 as Amended.**

**Senator Robinson: Seconded the motion.**

A Roll Call Vote was taken: Yes: 14 No: 0 Absent: 0.

**Senator Hogue:** will carry the bill.

SL  
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#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2055

Page 1, line 7, remove "and section 10 of"

Page 1, line 8, remove "chapter 19 of the 2017 Session Laws"

Page 1, line 9, remove "and the authority of the state water"

Page 1, line 10, remove "commission to provide payment for western area water supply loans"

Page 17, line 12, remove "and section 10"

Page 17, line 13, replace "of chapter 19 of the 2017 Session Laws are" with "is"

Renumber accordingly

#### STATEMENT OF PURPOSE OF AMENDMENT:

This amendment removes the repeal of a section of 2017 Session Laws providing for Budget Section approval of a request for the Water Commission to repay the outstanding debt of the Western Area Water Supply Authority to the Bank of North Dakota if the authority defaults on its payments.

Date: 3-11-2019  
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2055

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

Move the bill forward to the full committee

Motion Made By Robinson Seconded By Holmberg

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	X		Senator Matherne		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson	X	
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue	X				

Total (Yes) 3 No 0

Absent 0

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

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

Date: 2-11-19  
Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2055**

Senate Appropriations Committee

### Subcommittee

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

Other Actions:  Reconsider  Move the language of 2055 into 2095

Motion Made By Kobinson Seconded By Holmberg

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

**Absent** \_\_\_\_\_

## Floor Assignment

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

Voice Vote  
Carried

Date: 2-11-2019

Roll Call Vote #: 3

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2055**

## Senate Appropriations

## Committee

## Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment <input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass <input type="checkbox"/> As Amended <input type="checkbox"/> Place on Consent Calendar <input type="checkbox"/> Reconsider	<input type="checkbox"/> Without Committee Recommendation <input type="checkbox"/> Rerefer to Appropriations
Other Actions:	<input checked="" type="checkbox"/> Passaged 1st reading	

Other Actions:  Reconsider  Rescinded  1st Mot.

Rescinded 1st motion

Motion Made By Robinson Seconded By Holmberg

Seconded By Holmberg

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Absent

## Floor Assignment

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

Voice Vote  
Carried

Date: 2-11-2019

Roll Call Vote #: 4

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2055

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: Remove Section 19 from bill

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 Robinson Seconded By Holmberg

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	X		Senator Matherne		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson	X	
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue	X				

Total (Yes) 3 No 0

Absent 0

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

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

Date: 2-12-19  
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2055

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.0406 - 01001

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 Hogue Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

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

Absent \_\_\_\_\_

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

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

*Vote. it carried.*

Date: 2-12-19  
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2055

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  
 Reconsider

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

Motion Made By Hogue Seconded By Roberson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzenk	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Hogue

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

**REPORT OF STANDING COMMITTEE**

**SB 2055: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2055 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "and section 10 of"

Page 1, line 8, remove "chapter 19 of the 2017 Session Laws"

Page 1, line 9, remove "and the authority of the state water"

Page 1, line 10, remove "commission to provide payment for western area water supply loans"

Page 17, line 12, remove "and section 10"

Page 17, line 13, replace "of chapter 19 of the 2017 Session Laws are" with "is"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment removes the repeal of a section of 2017 Session Laws providing for Budget Section approval of a request for the Water Commission to repay the outstanding debt of the Western Area Water Supply Authority to the Bank of North Dakota if the authority defaults on its payments.

**2019 HOUSE APPROPRIATIONS**

**SB 2055**

# 2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

SB 2055  
3/4/2019  
33139

- Subcommittee  
 Conference Committee

Committee Clerk: Risa Bergquist

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

**Relating to agency requests for budget section approval; and to repeal section 1 of chapter 67 of the 2013 Session Laws, relating to the authority of the state board of agricultural research and education to sell certain real property.**

## Minutes:

**Chairman Delzer:** Called the meeting to order for SB 2055, this bill deals with the duties for the budget section as well as duties for the adjutant general.

**Senator Wardner, District 37 in Dickinson:** I bring SB 2055 before you. Quick history on why this bill is here, first of all this stems from the interim in which the governor vetoed some provisions in our legislation. Legislative management brought suit against the governor's veto, it went before the supreme court and the governor was defended by the attorney general and the attorney general added the budget section as being a body that wasn't constitutionally bona fide to be operating the way we were. This bill was drafted by legislative council under the direction of Representative Carlson.

**1:35** There are two parts that I would like to direct you to, page 5 of the bill, top of the page, "*the state share of funding for expenses associated with presidential declared disasters in the state and for the purpose of reimbursing costs under section 37-17.1-28. Any interest of other fund earnings must be deposited in the fund. Before any expenditures is made from the fund the agency authorized to make the expenditure shall provide information on the purpose and the payee of the expenditure to the appropriation committee of the house of Representatives and senate or to the budget section if the legislative assembly is not in session.*" Actually we have been doing that along with the emergency management and the national guard as they are working with emergency services around the state. We are putting it in code, it wasn't there before.

**2:50 Chairman Delzer:** That deals strictly with the state disaster relief fund, I want to get this on record; you're understanding of this is if this was to go forward and be adopted by the house it would say anything appropriated in the adjutant general's budget, they would have authority to spend simply by telling us what they are spending it on? Would they have access to the whole fund?

**Senator Wardner:** No, that is not the case just what is appropriated.

**Chairman Delzer:** This is also SB 2095 which we don't need both of them.

**4:00 Senator Wardner:** Next it's page 10 and section 15, it's the attorney general's opinion that it's still unconstitutional but before we didn't have it in code anywhere this puts in code what we have been doing with the budget section. If we pass this, we will proceed as we always have. It may be challenged but at least we would have something in code to back up what we are doing. Budget Section-Appointments-Powers and duties, "*to provide for flexibility in the management of state funds between regular sessions of the legislative assembly and to minimize the need for and the expense of a special session*". That's why we have done the way we have over the years. "*The legislative management, during each biennium, shall appoint a budget section.*" We feel that if we put this into code we have a road map and it is giving the budget section the authority to do these things.

**7:00** page 11 number 6, "*the request improves state efficiencies and promotes effective state government; If the request is for a new program, the program does not extend beyond the current biennium and The request addresses a state emergency.*" It's putting it into code what we have been doing and even tightened it up some more.

**Chairman Delzer:** Subparagraph 7, The request for a new program, the program doesn't extend beyond the current biennium? Even after the veto we did start up a software upgrade for financial services, I know the emergency commission passed it and the budget section passed it but with this language now that couldn't happen, correct?

**Senator Wardner:** It does tighten it up. If it's something that needs to be, the full body would weigh in on it.

**Chairman Delzer:** Subparagraph F under number 2, page 10, it says "*Each member of the legislative assembly who served during the most recently completed regular session of the legislative assembly on the appropriations committees of the house of Representatives and the senate.*" I think we need to put some language in there for the December meeting, the organizational session, when you have new members show up that they would be allowed to be on there for that December budget meeting.

**Senator Wardner:** I would agree with you, that should be amended in there.

**Chairman Delzer:** Questions by the committee? The rest of the sections are all just changing dates and saying the legislative assembly is not in session?

**Allen Knutson, LC:** Those are 17 statutory duties that the budget section has now and it's clarifying that it complies with the guidelines and gives the budget section the authority to make those decisions.

**Chairman Delzer:** Is this something that we would need to update each time or would this carry on?

**Mr. Knutson, LC:** The provisions that are included in that section would be in statute, so each legislation would not have to address those. We are trying that if there's a new budget section duty that is being added to include certain criteria with the budget section would need to consider when they are approving or denying a request.

**Chairman Delzer:** There is a repealer on this bill, what does that do?

**Mr. Knutson, LC** That relates to 2013 bill that was in section laws, it authorizes some land transfer by the Williston research extension center and the north central research center in Minot, it authorized those transfers of land with budget section approval. Those centers never did come in and request approval, we did repeal that thinking that if there was still a need for land transfer they could make a new request.

House Appropriations Committee  
SB 2024  
March 4<sup>th</sup> 2019  
Page 3

**Representative Monson:** Even if we pass this we may not be within the constitutional authority?

**Chairman Delzer:** Well until someone challenges it.

**Senator Wardner:** There are two major players in the next level don't agree with this and say it's unconstitutional.

**Chairman Delzer:** If the budget section isn't valid I don't see how the emergency commission is valid at all.

**Senator Wardner:** If the budget section is not then the emergency commission for sure is not.

**Chairman Delzer:** Further support? Any opposition to SB 20055? Hearing none we will close this meeting.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

SB 2055  
3/4/2019  
33154

- Subcommittee
- Conference Committee

Committee Clerk: Risa Bergquist

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

**Relating to agency requests for budget section approval; and to repeal section 1 of chapter 67 of the 2013 Session Laws, relating to the authority of the state board of agricultural research and education to sell certain real property.**

## Minutes:

**Chairman Delzer:** Allen do we have any kind of language for making it so the newly appointed members of the appropriation committee can sit on that December meeting?

**Allen Knutson, LC:** We haven't written that up yet but we certainly will do that.

**Chairman Delzer:** I thought that was already in the mix. Anybody else see anything that we need to work on with this? We should also probably have an amendment drafted to have the discussion about putting the line from SB 2095 into this bill.

**Representative Kempenich:** When you read through this, we are going to have to start to manage our days because they are going to start to challenge more of this.

**Chairman Delzer:** That may be true but it's worth a shot. If there's nothing more we will close this meeting. The only one that really fought this situation was the attorney general, we will get those amendments and take this back up before we take up SB 2095.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

SB 2055  
3/14/2019  
33754

- Subcommittee  
 Conference Committee

Committee Clerk: Risa Bergquist

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

**Relating to agency requests for budget section approval; and to repeal section 1 of chapter 67 of the 2013 Session Laws, relating to the authority of the state board of agricultural research and education to sell certain real property.**

## Minutes:

**Chairman Delzer:** Called meeting to order, SB 2055 is the bill that is a result of the law suit; the Supreme Court said that the legislature needed to better define the duties of the budget section. Section 15 of the bill defines those duties and then section 6 of the bill is the ones that deals with SB 2095. The proposed amendment, 19.0406.02002, put in after “expenses” insert and administration and then page 5 line 1 overstrike “presidential declared disasters in the state and insert immediately thereafter Federal emergency management agency disaster response, recovery and mitigation grants. Which is the same language as 2095. The proposed amendment 19.0406.02001 adds page 10 line 14, remove “who serve during the most recently” and then page 10 line 15, replace completed regular session of the legislative assembly with appointed to serve. The newly elected can serve on that if they are appointed. Comment questions on the bill or the amendments?

**Representative Monson: Motion to amend with 19.0406.2002 and 19.0406.02001**

**Representative Howe: Second**

**Chairman Delzer:** Further discussion on the motion to amend?

**Voice vote, All in Favor, motion carries.**

**Chairman Delzer:** We have the amended bill before us.

**Representative Beadle: Do Pass as Amended**

**Representative Brandenburg: Second**

**Representative Bellew:** Does this bill make the budget section obsolete?

**Chairman Delzer:** Legislative Council believes this is what the supreme court asked the legislature to do to make it a viable entity to do what the legislature asked it to do. That's where section 15 comes in, it guidelines what the budget sections can look at and how they have to look at it and what they have to consider when they are looking at it.

**Representative Vigesaa:** There are several other sections in the bill, those are all just clarifying language with regard to the budget section?

**Brady Larson, Legislative Council:** That is correct, they are clarifying several sections that state that budget section may approve an item. The clarifying language is that the budget section may approve an item but it must also consider section 15 of this act which provides the guidelines.

**Chairman Delzer:** That would be why this would still pertain and work. Any further discussion? Seeing none we will call the roll.

**A Roll Call vote was taken. Yea: 19 Nay: 0 Absent: 2**

**Motion Carries Representative Bellew will carry**

**Chairman Delzer:** With that we will close this meeting on SB 2055.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2055

Page 10, line 14, remove "who served during the most recently"

Page 10, line 15, replace "completed regular session of the legislative assembly" with  
"appointed to serve"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2055

Page 4, line 31, after "expenses" insert "and administration"

Page 5, line 1, overstrike "presidential-declared disasters in the state" and insert immediately thereafter "federal emergency management agency disaster response, recovery, and mitigation grants"

Renumber accordingly

DP 3/15/19

19.0406.02003  
Title.03000

Prepared by the Legislative Council staff for  
the House Appropriations Committee  
March 14, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2055

Page 4, line 31, after "expenses" insert "and administration"

Page 5, line 1, overstrike "presidential-declared disasters in the state" and insert immediately thereafter "federal emergency management agency disaster response, recovery, and mitigation grants"

Page 10, line 14, remove "who served during the most recently"

Page 10, line 15, replace "completed regular session of the legislative assembly" with "appointed to serve"

Renumber accordingly

Date: 3/14/2019  
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2055**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.0406.02002 and 19.0406.02001

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 Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich					
Representative Anderson			Representative Schobinger		
Representative Beadle			Representative Vigesaa		
Representative Bellew					
Representative Brandenburg					
Representative Howe			Representative Boe		
Representative Kreidt			Representative Holman		
Representative Martinson			Representative Mock		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

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

Absent \_\_\_\_\_

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

**Voice Vote/Motion Carries**

Date: 3/14/2019  
Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2055**

House Appropriations Committee

Subcommittee

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

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

Motion Made By Representative Beadle Seconded By Representative Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	A				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	A	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 19 No 0

Absent 2

Floor Assignment Representative Bellew

**Motion Carries**

**REPORT OF STANDING COMMITTEE**

**SB 2055, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (19 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2055  
was placed on the Sixth order on the calendar.

Page 4, line 31, after "expenses" insert "and administration"

Page 5, line 1, overstrike "presidential-declared disasters in the state" and insert immediately  
thereafter "federal emergency management agency disaster response, recovery, and  
mitigation grants"

Page 10, line 14, remove "who served during the most recently"

Page 10, line 15, replace "completed regular session of the legislative assembly" with  
"appointed to serve"

Renumber accordingly

**2019 TESTIMONY**

**SB 2055**

# 1

SB 2055  
2-11-2019

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## Proposed Amendment to SB2055

~~SECTION 19. REPEAL. Section 1 of chapter 67 of the 2013 Session Laws and section 10 of chapter 19 of the 2017 Session Laws are repealed.~~

### **SECTION 19. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE SHORTFALL - BUDGET**

**SECTION APPROVAL.** If the western area water supply authority defaults on its payment of the principal or interest on a loan through the Bank of North Dakota or revenue bonds issued to finance long-term debt, the Bank of North Dakota shall notify the legislative council and the North Dakota Industrial Commission and the state water commission shall provide a payment in an amount of the default as certified to the budget section by the Bank of North Dakota. Funds may be advanced only in the event that an authorization has first been received from the legislative assembly or the budget section. Any request considered by the budget section must comply with section 15 of this Act.

19.0406.01001  
Title.

#1 SB 2055  
2-12-2019  
Prepared by the Legislative Council staff for  
Senator Hogue  
February 11, 2019

Pg 1

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2055

Page 1, line 7, remove "and section 10 of"

Page 1, line 8, remove "chapter 19 of the 2017 Session Laws"

Page 1, line 9, remove "and the authority of the state water"

Page 1, line 10, remove "commission to provide payment for western area water supply loans"

Page 17, line 12, remove "and section 10"

Page 17, line 13, replace "of chapter 19 of the 2017 Session Laws are" with "is"

Renumber accordingly

#### STATEMENT OF PURPOSE OF AMENDMENT:

This amendment removes the repeal of a section of 2017 Session Laws providing for Budget Section approval of a request for the Water Commission to repay the outstanding debt of the Western Area Water Supply Authority to the Bank of North Dakota if the authority defaults on its payments.