

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1012
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to provide a continuing appropriation; to create and enact a new section to chapter 24-01 and sections 54-27-19.3 and 54-27-19.4 of the North Dakota Century Code, relating to designating state highway 13, the legacy earnings highway distribution fund, and legacy earnings township highway aid fund; to amend and reenact section 24-02-37.3 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2113, as approved by the sixty-eighth legislative assembly, section 57-40.3-10 of the North Dakota Century Code, and section 13 of chapter 15 and section 10 of chapter 80 of the 2021 Session Laws, relating to the flexible transportation fund, motor vehicle excise tax allocations, an appropriation for township roadway funding, and the appropriation of bond proceeds for transportation projects; to provide an exemption; to provide a report; to provide for a legislative management study; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the department of transportation for the purpose of defraying the expenses of the department of transportation, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$204,109,585	\$13,636,811	\$217,746,396
Operating expenses	270,888,188	61,993,286	332,881,474
Capital assets	902,431,344	653,963,721	1,556,395,065
Grants	118,085,610	2,485,848	120,571,458
Contingent loan authorization	0	<u>78,500,000</u>	<u>78,500,000</u>
Total all funds	\$1,495,514,727	\$810,579,666	\$2,306,094,393
Less estimated income	<u>1,495,514,727</u>	<u>800,204,666</u>	<u>2,295,719,393</u>
Total general fund	\$0	\$10,375,000	\$10,375,000
Full-time equivalent positions	982.00	19.00	1,001.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Road and bridge projects and matching funds	\$255,000,000	\$0
Contingent loans	50,000,000	78,500,000
Bond proceeds	70,000,000	0
Federal funds authority	498,609,357	0
Beyond visual line of sight infrastructure	5,000,000	0
Construction and materials management system	9,660,000	0
Township emergency repair grants	750,000	0
State matching funds	0	114,000,000
Federal highway funds	0	290,000,000
State flexible transportation fund	0	51,000,000
Roadway management system project	0	6,250,000
Door security	0	865,000

Automated vehicle location	0	2,010,000
Short line railroad programs	0	6,500,000
United States highway 52 environmental study	0	5,000,000
Flood projects study	0	2,500,000
Rural transit program grants	<u>0</u>	<u>1,250,000</u>
Total all funds	\$889,019,357	\$557,875,000
Less estimated income	<u>889,019,357</u>	<u>547,500,000</u>
Total general fund	\$0	\$10,375,000

The 2023-25 biennium one-time funding amounts are not a part of the department's base budget for the 2025-27 biennium. The department of transportation shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 3. EXEMPTION - LINE ITEM TRANSFERS. Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority among the salaries and wages, operating expenses, capital assets, and grants line items in section 1 of this Act as requested by the director of the department of transportation when it is cost-effective for construction and maintenance of highways. The department of transportation shall notify the legislative council of any transfers made pursuant to this section.

SECTION 4. CONTINGENT LOAN AUTHORIZATION - CONTINGENT FUNDING - HIGHWAY IMPROVEMENT PROJECTS. The department of transportation may borrow from the Bank of North Dakota, \$50,000,000, or so much of the sum as may be necessary, which is appropriated to the department of transportation in the contingent loan authorization line item in section 1 of this Act for matching federal funds that may become available, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funds may be borrowed and spent only upon certification by the director of the department of transportation to the director of the office of management and budget that the department has been awarded additional federal grants related to United States highway 85 during the biennium beginning July 1, 2023, and ending June 30, 2025. The department of transportation shall request from the sixty-ninth legislative assembly an appropriation to repay any outstanding loans authorized in this section.

SECTION 5. CONTINGENT LOAN AUTHORIZATION - CONTINGENT FUNDING - FLOOD PROJECTS. The department of transportation may borrow from the Bank of North Dakota, \$28,500,000, or so much of the sum as may be necessary, which is appropriated to the department of transportation in the contingent loan authorization line item in section 1 of this Act for matching funds made available from the state of Minnesota for northern Red River valley transportation projects, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funds authorized in this section may be borrowed and spent only upon certification by the director of the department of transportation to the office of management and budget that the Minnesota department of transportation will match these funds on a dollar-for-dollar basis. The funds may be borrowed and spent for phase one of a project to address northern Red River valley flooding issues and are available for design, redesign, preliminary and final engineering, environmental analysis, right of way acquisition, and construction, including demolition. The department of transportation shall request from the sixty-ninth legislative assembly an appropriation to repay any outstanding loans authorized in this section.

SECTION 6. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The estimated income line item in section 1 of this Act includes the sum of \$179,000,000 from the strategic investment and improvements fund for the following purposes:

1. The sum of \$114,000,000 for matching federal highway funding;
2. The sum of \$51,000,000 to establish a state flexible transportation fund;
3. The sum of \$6,500,000 to enhance existing loan programs to assist short line railroads with rail improvement projects;

4. The sum of \$2,500,000 to match funding from the state of Minnesota and other sources for studies, preliminary engineering, and environmental studies to address northern Red River valley infrastructure affected by flooding; and
5. The sum of \$5,000,000 for an environmental study of a portion of United States highway 52.

SECTION 7. RURAL TRANSIT FUNDING. The grants line item in section 1 of this Act includes the sum of \$1,250,000 from the general fund for grants to rural transit providers in nonurban areas.

SECTION 8. CONSTRUCTION OF REST AREA AND VISITOR CENTER. Notwithstanding any other provision of law, the director of the department of transportation may enter into a cooperative agreement with a public or private entity and may expend moneys from the state highway fund or any moneys within the limits of the legislative appropriations for the purpose of constructing a rest area and visitor center in western North Dakota, for the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 9. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

Trooper Beryl McLane memorial highway - State highway 13 - Continuing appropriation.

The department shall designate state highway 13 from Edgeley to LaMoure as the Trooper Beryl McLane memorial highway and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating state highway 13 as the Trooper Beryl McLane memorial highway.

SECTION 10. AMENDMENT. Section 24-02-37.3 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2113, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

24-02-37.3. Flexible transportation fund - Budget section approval - Report.

There is created in the state treasury the flexible transportation fund. The fund consists of eligible federal or state funding and any contributed private funds.

1. The flexible transportation fund must be administered and expended by the director and may be used for the following:
 - a. Providing a match for federal funding obtained by the department of transportation.
 - b. State-funded road and bridge construction and maintenance, and transportation support costs including staffing, facilities, and operational expenditures on the state highway system.
 - c. State-funded road and bridge construction and maintenance activities within the state but off of the state highway system. The director shall establish the terms and provisions of the program.
2. All money derived from the investment of the flexible transportation fund or any portion of the fund, must be credited to the flexible transportation fund. The director shall monthly transmit all moneys collected and received under this chapter to the state treasurer to be transferred and credited to the flexible transportation fund.
3. The director must receive budget section approval for any project that utilizes more than fifteen million dollars from the fund except for projects that match federal or private funds and the amount utilized from the fund is fifty percent or less of total project costs. Any request considered by the budget section must comply with section 54-35-02.9.

4. The director shall allocate at least twenty-five percent of motor vehicle excise tax collections deposited in the flexible transportation fund pursuant to section 57-40.3-10 for non-oil-producing county and township road and bridge projects as follows:
 - a. The funds must be allocated by the department to counties for projects or grants for the benefit of counties and organized and unorganized townships;
 - b. The department shall establish criteria to distribute the funds;
 - c. The funds must be used for the maintenance and improvement of county and township paved and unpaved roads and bridges;
 - d. Priority must be given to projects that match federal funds and to projects that improve roadways that serve as local corridors;
 - e. An organized township is not eligible to receive funding if the township does not maintain any roadways or does not levy at least eighteen mills for general purposes; and
 - f. For purposes of this subsection, "non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.
5. The director shall provide periodic reports to the budget section regarding the status of the fund and projects receiving allocations from the fund.

SECTION 11. Section 54-27-19.3 of the North Dakota Century Code is created and enacted as follows:

54-27-19.3. Legacy earnings highway distribution fund.

A legacy earnings highway distribution fund is created as a special fund in the state treasury into which must be deposited any allocations of legacy fund earnings made under section 21-10-13. Any moneys in the legacy earnings highway distribution fund must be allocated and transferred by the state treasurer, as follows:

1. Sixty percent must be transferred to the department of transportation for deposit in the state highway fund;
2. Ten percent must be transferred to the legacy earnings township highway aid fund;
3. One and five-tenths percent must be transferred to the public transportation fund; and
4. Twenty-eight and five-tenths percent must be allocated to cities and counties using the formula established in subsection 4 of section 54-27-19. Moneys received by counties and cities must be used for roadway purposes in accordance with section 11 of article X of the Constitution of North Dakota.

SECTION 12. Section 54-27-19.4 of the North Dakota Century Code is created and enacted as follows:

54-27-19.4. Legacy earnings township highway aid fund.

A legacy earnings township highway aid fund is created as a special fund in the state treasury into which must be deposited any allocations of legacy fund earnings made under section 54-27-19.3 which must be allocated as follows:

1. The state treasurer shall allocate and distribute all money in the legacy earnings township highway aid fund to non-oil-producing counties of the state based on the length of township roads in each non-oil-producing county compared to the length of all township roads in all the non-oil-producing counties;
2. The county treasurer shall allocate the funds received to the organized townships in the county based on the length of township roads in each of those organized townships compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for road and bridge purposes;
3. If a county does not have organized townships, or has some organized and some unorganized townships, the county shall retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county. Moneys retained by a county for the benefit of unorganized townships under this section must be deposited in the county road and bridge fund; and
4. For purposes of this section, "non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.

SECTION 13. AMENDMENT. Section 57-40.3-10 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-10. Transfer of revenue.

All moneys collected and received under this chapter must be transmitted monthly by the director of the department of transportation to the state treasurer to be transferred and credited to the general fund. After the deposits under sections 57-39.2-26.1, 57-39.2-26.2, and 57-39.2-26.3, moneys collected and received under this chapter must be deposited monthly in the state treasury and allocated as follows:

1. Fifty percent to the general fund; and
2. The remaining fifty percent to the flexible transportation fund.

SECTION 14. AMENDMENT. Section 13 of chapter 15 of the 2021 Session Laws is amended and reenacted as follows:

SECTION 13. 2019-21 BIENNIUM APPROPRIATION - TRANSFER - GENERAL FUND TO HIGHWAY FUND - 2021-23 BIENNIUM APPROPRIATION - HIGHWAY FUND AND FEDERAL FUNDS - EXEMPTION - REPORT.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000,000, which the office of management and budget shall transfer to the highway fund during the period beginning with the effective date of this Act, and ending June 30, 2021. The funds transferred to the highway fund must be maintained and reported separately from other funds in the highway fund.
2. There is appropriated out of any moneys in the highway fund, not otherwise appropriated, the sum of \$100,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of matching federal discretionary funds received in excess of the regular federal funding amounts included in the department's 2021-23 biennium budget, for the biennium beginning July 1, 2021, and ending June 30, 2023. Of this amount, the department shall use at least \$10,000,000 for matching federal funds for township road and bridge projects as follows:

- a. The funds must be allocated by the department to counties for projects or grants for the benefit of organized and unorganized townships;
 - b. The department shall establish criteria to distribute the funds;
 - c. The funds must be used for the maintenance and improvement of township paved and unpaved roads and bridges;
 - d. Priority must be given to projects that match federal funds and to projects that improve roadways that serve as local corridors; and
 - e. A township is not eligible to receive funding if the township does not maintain any roadways.
3. There is appropriated from federal funds, the sum of \$100,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of defraying the expenses of road and bridge construction projects for the biennium beginning July 1, 2021, and ending June 30, 2023.
 4. ~~On June 30, 2023, the office of management and budget shall transfer any unexpended and unobligated funds transferred to the highway fund under subsection 1 to the general fund~~The appropriation provided in this section is not subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025.
 5. During the 2021-22 interim, the department of transportation shall provide quarterly reports to the budget section regarding the use of funds transferred from the general fund to the highway fund.

SECTION 15. AMENDMENT. Section 10 of chapter 80 of the 2021 Session Laws is amended and reenacted as follows:

~~**SECTION 10. APPROPRIATION - HIGHWAY FUND - CONTINGENT TRANSFER EXEMPTION.**~~ There is appropriated out of any moneys in the highway fund in the state treasury, not otherwise appropriated, the sum of \$70,000,000, or so much of the sum as may be necessary, derived from bond proceeds to the department of transportation for state highway road and bridge projects and for matching federal funds that may become available, for the biennium beginning July 1, 2021, and ending June 30, 2023. Of the \$70,000,000, \$35,000,000 is designated for state highway bridge projects, and \$35,000,000 is designated for matching federal funds that may become available for state highway projects in excess of the federal funds appropriated to the department of transportation as part of its 2021-23 biennial budget. By October 1, 2022, the director of the department of transportation shall certify to the office of management and budget the amount of funding committed to matching excess federal funds from the \$35,000,000 provided under this section. If the amount committed is less than \$35,000,000, the office of management and budget shall transfer any uncommitted amounts to the infrastructure revolving loan fund under section 6-09-49The appropriation provided in this section is not subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 16. LEGISLATIVE MANAGEMENT STUDY - ELECTRIC VEHICLES. During the 2023-24 interim, the legislative management shall consider studying the effect of electric vehicles in the state. As part of the study, the legislative management shall consider the assessment of fees to offset reductions in motor fuel tax revenues; the impact of electric vehicles on electric demand and the electrical grid; the installation of electric vehicle charging infrastructure by private and public entities, including potential funding sources; the impact to public services and public transportation providers; and the effect on employment opportunities and other economic impacts, including tourism, automobile dealers, the energy industry, and the critical minerals industry. The study must include input from key stakeholders, including electric vehicle manufacturers, electric vehicle dealers, electric utilities, electric vehicle charging station manufacturers, and other transportation entities. The legislative management

shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 17. DEPARTMENT OF TRANSPORTATION - UNITED STATES HIGHWAY 85 PROJECT - REPORT. The department of transportation shall develop a plan to complete the United States highway 85 four-lane project in its entirety as approved in the final environmental impact statement document for project number 9-085(085)075, PCN20046. The plan must include a review of federal approvals received for the project and options to complete the project before the approvals expire. As part of the plan, the department shall identify funding sources, including the issuance of revenue anticipation bonds, to complete the project. The department shall present its plan to the legislative management before August 1, 2024.

SECTION 18. EXEMPTION - UNEXPENDED APPROPRIATIONS. The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$750,000 appropriated from the state disaster relief fund for emergency township road repairs in section 4 of chapter 40 of the 2021 Session Laws;
2. The sum of \$1,609,357 appropriated from federal funds for grants to transit providers in subdivision 10 of section 2 of chapter 28 of the 2021 Session Laws;
3. The sum of \$55,000,000 appropriated from federal funds to match state bond proceeds in section 5 of chapter 15 of the 2021 Session Laws;
4. The sum of \$317,000,000 appropriated from federal funds for state, county, and township road and bridge projects in section 2 of chapter 28 of the 2021 Session Laws;
5. The sum of \$61,700,060 appropriated from federal funds for surface transportation grants in subdivision 10 of section 1 of chapter 27 of the 2021 Session Laws; and
6. The sum of \$13,660,000 appropriated from special funds for information technology projects in section 1 of chapter 40 of the 2021 Session Laws.

SECTION 19. EFFECTIVE DATE. Section 13 of this Act is effective for motor vehicle excise tax collections transmitted to the state treasurer after July 31, 2023.

SECTION 20. EMERGENCY. Sections 14 and 15 of this Act are declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1012 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 91 Nays 1 Absent 2

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,
at _____ o'clock _____ M.

Secretary of State