

Sections 4 through Section 12 are exemption requests under North Dakota Century Code (NDCC) 54-44.1-11, which requests that state and federal funding appropriated in the 21 – 23 biennium be allowed to be expended in the 23 – 25 biennium.

All references made to House and Senate bills in the following discussion reference bills passed during the 67<sup>th</sup> Regular Legislative Session and 67<sup>th</sup> Special Legislative Session.

**SECTION 4. EXEMPTION – EMERGENCY ROAD REPAIR GRANTS.** Section 54-44.1-11 does not apply to the \$750,000 in section 4 of chapter 40 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of providing grants to townships for emergency township road repairs.

- *Funding granted under Senate Bill 2012, Section 4 from the state disaster relief fund for grants to townships for emergency township road repairs.*
- **Expenditure Line Item:** 80167
- **Expenditures:** \$421,407
- **Remaining:** \$328,593

**SECTION 5. EXEMPTION – TRANSPORTATION GRANTS.** Section 54-44.1-11 does not apply to the \$1,609,357 in subdivision 10 of section 2 of chapter 28 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of COVID-19 grants.

- *Funding granted under House Bill 1395, Section 2 from the American Rescue Plan Act (ARPA) via the Federal Transit Administration for grants to transit providers.*
- **Expenditure Line Item:** 80168
- **Expenditures:** \$397,759
- **Remaining:** \$1,211,598

**SECTION 6. EXEMPTION – DISCRETIONARY MATCH.** Section 54-44.1-11 does not apply to the \$100,000,000 in section 13, subsection 2, of chapter 15 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of matching federal discretionary funds.

- *Funding granted under House Bill 1015, Section 13 from general funds for the purpose of matching federal discretionary funds received in excess of regular federal funding amounts included in NDDOT's 21 – 23 biennium budget.*
- **Expenditure Line Item:** 80153
- **Expenditures:** \$0
- **Remaining:** \$100,000,000\*

*\*Of the \$100,000,000, a total of \$90,000,000 was for matching federal discretionary funds for state road and bridge projects and \$10,000,000 was for matching federal discretionary funds for township road and bridge projects. To date \$64,903,040 of the \$90,000,000 has been committed to grants received for state road and bridge projects. A total of \$1,500,000 in grant applications are pending for township road and bridge projects, should these grants be awarded \$1,500,000 would be required of the \$10,000,000 to match these federal discretionary funds.*

**SECTION 7. EXEMPTION – INFRASTRUCTURE PROJECTS.** Section 54-44.1-11 does not apply to the \$100,000,000 in section 13, subsection 3, of chapter 15 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of defraying the expenses of road and bridge construction projects.

- *Funding granted under House Bill 1015, Section 13 for federal funds intended to match state funding provided in this same section of House Bill 1015.*
- **Expenditure Line Item:** 80150
- **Expenditures:** \$0
- **Remaining:** \$100,000,000\*

*\*Of the \$100,000,000 a total of \$90,000,000 was for federal discretionary funds for state road and bridge projects and \$10,000,000 was for federal discretionary funds for township road and bridge projects. Please see above (Section 6) for additional information.*

**SECTION 8. EXEMPTION – INFRASTRUCTURE PROJECTS.** Section 54-44.1-11 does not apply to the \$55,000,000 in section 5 of chapter 15 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of road and bridge projects.

- *Funding granted under House Bill 1015, Section 5 for federal funds for the purpose of matching state bond proceeds (\$35 million state funding in HB 1431, Section 10) and matching township road and bridge projects (\$20 million state funding in HB 1015, Section 4).*
- **Expenditure Line Item:** 80150
- **Expenditure:** \$0 (matching bond proceeds) and \$0 (township road/bridge projects)
- **Remaining:** \$35,000,000 (matching bond proceeds) and \$20,000,000 (township road/bridge projects)

**SECTION 9. EXEMPTION – INFRASTRUCTURE PROJECTS.** Section 54-44.1-11 does not apply to the \$70,000,000 in section 10 of chapter 80 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of state highway bridge projects and for matching federal funds for state highway projects.

- *Funding granted under House Bill 1431, Section 10 for state bond proceeds designated for state highway bridge projects (\$35 million) and matching federal funds that may become available for state highway projects in excess of the federal funds appropriated to the NDDOT in the 21 – 23 biennium (\$35 million).*
- **Expenditure Line Item:** 80150
- **Expenditure:** \$12,887,362 (state bridge projects) and \$0 (matching federal funds)
- **Remaining:** \$22,112,638 (state bridge projects) and \$35,00,000 (matching federal funds)

**SECTION 10. EXEMPTION – INFRASTRUCTURE PROJECTS.** Section 54-44.1-11 does not apply to the \$317,000,000 in section 7 of chapter 548 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of road and bridge projects.

- *Funding granted under Special Session House Bill 1505, Section 7 for federal funds for state road and bridge projects (\$200 million), county bridge projects facilitated by the NDDOT (\$24.6 million), county road and bridge projects facilitated by the county distributed by formula (\$75.3 million), and township road and bridge projects facilitated by the township distributed by formula (\$17 million).*
- **Expenditure Line Item:** 80152
- **Expenditures:** \$75,383,379 (state road/bridge projects and county bridge projects)
- **Remaining:** \$149,269,050 (state road/bridge projects and county bridge projects)\*

*\*The \$75.3 million allocated to counties and the \$17 million allocated to townships went directly to these local entities via the state treasurer. These funds did not pass through the NDDOT, therefore the NDDOT is unable to provide any information pertaining to amounts allocated to each county or township and amounts expended or remaining.*

**SECTION 11. EXEMPTION – TRANSPORTATION GRANTS.** Section 54-44.1-11 does not apply to the \$61,700,060 in subdivision 10 of section 1 of chapter 27 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the purpose of COVID-19 surface transportation grants.

- *Funding granted under House Bill 1394, Section 1 for federal funds for the purposes of defraying COVID-19 and other expenditures, including transit agency funding (\$115,202) and revenue replacement funding due to diminishing fuel tax revenue (\$61.5 million).*
- *The \$61.5 million in revenue replacement funding due to diminishing fuel tax revenue was shared with locals, allocations were made utilizing the Highway Tax Distribution Fund formula and the NDDOT received \$37,812,818.*
- **Expenditure Line Item:** 80174 and 80164
- **Expenditure:** \$90,811 (transit funding) and \$47,172,123 (revenue replacement funding)
- **Remaining:** \$24,391 (transit funding) and \$12,870,791 (revenue replacement funding)\*

*\*This funding was appropriated with an emergency clause making it available in the 19 – 21 biennium, a total of \$1,641,943 was expended immediately. Therefore, a total of \$48,814,066 has been expended in the 19 – 21 biennium and the 21 – 23 biennium.*

**SECTION 12. EXEMPTION – INFORMATION TECHNOLOGY PROJECTS.** Section 54-44.1-11 does not apply to the \$13,660,000 in the operating expenses line item relating to the information technology projects in section 1 of chapter 40 of the 2021 Session Laws and any unexpended funds must be continued into the biennium beginning July 1, 2023, and ending June 30, 2025, and may be expended only for the construction and materials management system, traffic counting and data estimating and analysis program, and the website drupal uplift.

- *Funding granted under Senate Bill 2012, Section 1 for state funded large information technology projects TDEA/Traffic Counting Program (\$3.5 million), Drupal Website Uplift (\$500,000) and Construction and Materials Management System - RIMS (\$9.6 million).*
- **Expenditure Line Item:** 80150
- **Expenditure:** \$0 (TDEA/Traffic Counting Program), \$15,145 (Drupal Website Uplift), \$180,819 (Construction and Materials Management System – RIMS)
- **Remaining:** \$3,500,000 TDEA/Traffic Counting, \$484,855 Drupal Website Uplift, \$9,479,181 (Construction and Materials Management System - RIMS)

**SECTION 13. CONTINGENT LOAN AUTHORIZATION – CONTINGENT APPROPRIATION – 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, to match \$50,000,000 of federal funds that may become available, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funds borrowed under this section from the Bank of North Dakota and the federal funds are appropriated to the department of transportation. The department of transportation shall request from the sixty-ninth legislative assembly an appropriation to repay any outstanding loans authorized in this section.

*Section 13 provides a \$50 million contingent loan authorization to match federal funding that may become available during the 23 – 25 biennium. This contingent loan authorization has historically been intended to match a grant for the US Hwy 85 expansion project. This section would allow the NDDOT to borrow funds from the Bank of North Dakota and request funding from the 69<sup>th</sup> Legislative Assembly for repayment of any outstanding loan amount.*

*The NDDOT currently has a Mega grant program application pending award notification for the expansion of US Hwy 85 from Long X Bridge to the intersection of US Hwy 85 and ND Hwy 200. The current grant application was submitted in May 2022.*

*The Mega grant program known statutorily as the National Infrastructure Project Assistance program supports large, complex projects that are difficult to fund by other means and likely to generate national or regional economic, mobility, and safety benefits.*

**SECTION 14. ESTIMATED INCOME – STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income and the capital assets line items in section 1 of this Act include the sum of \$300,000,000 from the strategic investment and improvements fund for infrastructure projects and matching federal formula and discretionary grants.

*Section 14 provides \$300 million in funding from the Strategic Investment and Improvement Fund (SIIF). A total of \$74 million in SIIF monies will be used to match federal funding that may become available from the federal aid program (formula funding) and \$226 million will be used to match federal funding that may become available from federal discretionary grant programs.*

**SECTION 15. 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 15 authorizes the construction of a rest area in western North Dakota.*

**SECTION 16. AMENDMENT.** Section 10 of chapter 80 of the 2021 Session Laws is amended and reenacted as follows:

**SECTION 10. APPROPRIATION - HIGHWAY FUND - CONTINGENT TRANSFER.** 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 state highway 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 6-09-49.~~

*Section 16 extends the availability of bond proceeds. The 67<sup>th</sup> Legislative Assembly passed House Bill 1431, Section 10 which appropriated \$70 million in state bond proceeds to the NDDOT. Of these funds, \$35 million was designated for state bridge projects and \$35 million was designated for matching excess federal funds made available during the 21 – 23 biennium.*

*The \$35 million in bond proceeds designated for state bridge projects has been fully committed.*

*The NDDOT was required on October 1, 2022 to certify to the Office of Management and Budget how much of the \$35 million in bond proceeds designated for matching excess federal funds was committed. Any uncommitted funds as of October 1 were to be transferred to the Infrastructure Revolving Loan Fund at the Bank of North Dakota. The NDDOT was unable to commit any of the \$35 million in bond proceeds designated for matching excess federal funds. Accordingly, these funds were transferred to the Infrastructure Revolving Loan Fund.*

*This section would update the 2021 session law, eliminating the requirement to certify to OMB and the subsequent transfer of the remaining bond proceeds to the Infrastructure Revolving Loan Fund. Ultimately, extending the availability of these bond proceeds to the NDDOT into the 23 – 25 biennium.*

*The NDDOT requires the passage of House Bill 1103 **or** the inclusion and passage of the proposed amendment to House Bill 1012 to extend the availability of the remaining bond proceeds.*

*The NDDOT believes that it is highly probably that additional federal funding will become available which will allow the NDDOT to use this bond funding for its intended purpose. Currently the NDDOT has more than \$350 million in pending grant applications awaiting an award announcement.*

**SECTION 17. 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.** Seventy-five percent of all ~~All~~ moneys collected and received under this chapter during the period of July 1, 2023, through June 30, 2024, and fifty percent of all moneys collected and received under this chapter thereafter 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. Twenty-five percent of all moneys collected and received under this chapter during the period of July 1, 2023, through June 30, 2024, and fifty percent of all moneys collected and received under this chapter thereafter must be transmitted monthly by the director to the department of transportation highway fund. Upon the creation of a flexible transportation fund, the director of the department of transportation shall transfer all moneys collected and received from motor vehicle excise tax from the department of transportation highway fund to the flexible transportation fund.

*Section 17 would transfer 25% of all motor vehicle excise tax available from July 1, 2023 to June 30, 2024 and 50% of all motor vehicle excise tax permanently beginning July 1, 2024 to the state highway fund. Should the flexible transportation fund be created the motor vehicle excise tax received would be transferred to this fund.*