Prepared by the Legislative Council staff for Senate Appropriations - Government Operations Division Committee
February 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2012

Introduced by

Appropriations Committee

A BILL for an Act to provide an appropriation for defraying the expenses of the department of transportation; to create and enact a new section to chapter 54-27 of the North Dakota Century Code, relating to a legacy earnings fund; to amend and reenact section 6-09.4-10.1, subsection 1 of section 21-10-06, and sections 24-02-37.3, 49-17.1-05, 54-27-19.3, and 57-40.3-10 of the North Dakota Century Code, relating to funds invested by the state investment board, the flexible transportation fund, the state rail fund, and motor vehicle excise tax collections; to repeal sections 21-10-12 and 21-10-13 of the North Dakota Century Code, relating to legacy fund definitions and a legacy earnings fund; to provide a continuing appropriation; to provide an effective date; and to provide an exemption.

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 other funds derived from special funds and federal funds, to the department of transportation for the purpose of defraying the expenses of the department of transportation, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
~~Salaries and wages~~	~~$219,279,648~~	~~$0~~	~~$219,279,648~~
~~Operating expenses~~	~~316,256,474~~	~~0~~	~~316,256,474~~

~~Capital assets~~	~~1,101,395,065~~	~~0~~	~~1,101,395,065~~
~~Grants~~	~~112,821,458~~	~~0~~	~~112,821,458~~
~~Total other funds~~	~~$1,749,752,645~~	~~$0~~	~~$1,749,752,645~~
~~Full-time equivalent positions~~	~~1,001.00~~	~~0.00~~	~~1,001.00~~
Salaries and wages	$219,279,648	$16,710,943	$235,990,591
New and vacant FTE pool	0	13,364,077	13,364,077
Operating expenses	316,256,474	71,088,648	387,345,122
Capital assets	1,101,395,065	851,594,552	1,952,989,617
Grants	112,821,458	(3,581,000)	109,240,458
Total other funds	$1,749,752,645	$949,177,220	$2,698,929,865
Full-time equivalent positions	1,001.00	3.00	1,004.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SEVENTIETH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items included in the appropriation in section 1 of this Act, which are not included in the entity's base budget for the 2027-29 biennium and which the entity shall report to the appropriations committees of the seventieth legislative assembly regarding the use of this funding:

One-Time Funding Description	Other Funds
Facility improvements	$5,970,000
Appointment system upgrade	3,000,000
Inventory tracking system	350,000
Federal formula funds match	171,300,000
United States highway 85 project	100,000,000
Increased roadway maintenance costs	9,842,212
Walking trail grant	100,000
Equipment	5,872,000
Total	$296,434,212

SECTION 3. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST. The department of transportation may not spend funds appropriated in the new and vacant FTE pool line item in section 1 of this Act, but may request the office of management and budget to transfer funds from the new and vacant FTE pool line item to the salaries and wages line item in

accordance with the guidelines and reporting provisions included in House Bill No. 1015, as approved by the sixty-ninth legislative assembly.

SECTION 4. 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 5. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. The estimated income line item in section 1 of this Act includes the sum of $171,300,000 from the strategic investment and improvements fund to match federal highway formula funds and $100,000,000 from the strategic investment and improvements fund for a United States highway 85 project from reference point 120.3 north to the long x bridge.

SECTION 6. AMENDMENT. Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.

There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section ~~21-10-13~~10 of this Act. Moneys in the fund may be spent by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs.

SECTION 7. AMENDMENT. Subsection 1 of section 21-10-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of section 21-10-02, the board shall invest the following funds:
   a. State bonding fund.
   b. Teachers' fund for retirement.
   c. State fire and tornado fund.
   d. Workforce safety and insurance fund.
   e. Public employees retirement system.

f. Insurance regulatory trust fund.

g. State risk management fund.

h. Budget stabilization fund.

i. Water projects stabilization fund.

j. Health care trust fund.

k. Cultural endowment fund.

l. Petroleum tank release compensation fund.

m. Legacy fund.

n. ~~Legacy earnings fund.~~

~~o.~~ Opioid settlement fund.

~~p.~~o. A fund under contract with the board pursuant to subsection 3.

SECTION 8. AMENDMENT. Section 24-02-37.3 of the North Dakota Century Code is amended and reenacted as follows:

24-02-37.3. Flexible transportation fund - Budget section approval - State treasurer distributions to political subdivisions - Report. (Retroactive application - See note)

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 ten 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.~~The director shall allocate a portion of funds deposited in the flexible transportation fund for the benefit of road and bridge maintenance and projects in counties, cities, and townships as follows:

a. Twelve and one-half percent of state funds deposited in the fund must be allocated by the director to non-oil-producing counties for projects or grants for the benefit of counties and organized and unorganized townships for the maintenance and improvement of county and township paved and unpaved roads and bridges.

b. Six and one-quarter percent of state funds deposited in the fund must be allocated by the director for grants to eligible townships located in non-oil-producing counties for road and bridge repair and replacement projects with priority given for road graveling projects.

c. Twelve and one-half percent of state funds deposited in the fund must be allocated by the director for grants to eligible counties for bridge repair and replacement projects. Grants provided under this subdivision must:

(1) Give priority to projects based on the number of bridge needs for each county as identified in the most recent data available from the department's bridge condition assessment inventory.

(2) Give priority to projects that include the permanent closure and removal of a different bridge in the same county.

(3) Require counties to provide matching funds equal to ten percent of total project costs except for projects that include the permanent closure and removal of a different bridge in the same county.

d. Six and one-quarter percent of state funds deposited in the fund must be allocated by the director for grants to eligible cities for road and bridge repair and replacements projects.

e. The director shall establish criteria to distribute the funds under this subsection. Priority must be given to projects that match federal or private funds and to projects that improve roadways that serve as local corridors. Priority for organized township road projects must be given to projects located in townships that levy at least eighteen mills for general purposes and have a general fund balance of less than one hundred thousand dollars as of December thirty-first of the prior year.

f. The amount allocated to organized townships under this subsection must be paid by the county treasurer to each organized township and the amount allocated for unorganized townships under this subsection must be credited by the county treasurer to a special fund for unorganized township roads.

5. The state treasurer shall allocate a portion of funds deposited in the flexible transportation fund for the benefit of road and bridge maintenance and projects in counties, cities, and townships, as follows:

a. Six and one-quarter percent of state funds deposited in the fund must be distributed to non-oil-producing counties for the benefit of organized and unorganized township road needs using the distribution method in section 54-27-19.4. To receive an allocation under this subdivision, an organized township must levy at least eighteen mills for general purposes and have a general fund balance of less than one hundred thousand dollars as of December thirty-first of the prior year.

b. Six and one-quarter percent of state funds deposited in the fund must be distributed to counties and cities using the formula established in subsection 4 of section 54-27-19.

6. For purposes of this section, "non-oil-producing county" means a county that had average annual oil production of fewer than ten million barrels based on the average annual oil production in the three-year period ending with the most recently completed even-numbered fiscal year before the start of each biennium.

~~5.~~7. The director shall provide periodic reports to the budget section regarding the status of the fund and projects receiving allocations from the fund.

SECTION 9. AMENDMENT. Section 49-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

49-17.1-05. Subsidy of railway lines - Continuing appropriation.

The department, with the approval of the commission, may provide financial assistance~~, within the limits of funds appropriated by the legislative assembly,~~ for the continuation of operations and maintenance of any railroad within the state, as provided for in the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.], or other relevant federal legislation. Moneys in the state rail fund are appropriated to the department on a continuing basis for distributions authorized under this section. The department or the commission may act as the agent in cooperation with the federal government, any local or regional transportation authority, local governmental units, any group of rail users, or any person in any rail service assistance program.

SECTION 10. A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

Legacy earnings fund - State treasurer - Legacy fund distribution - Allocations.

1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys distributed by the state treasurer from the legacy fund pursuant to section 26 of article X of the Constitution of North Dakota. The distribution from the legacy fund on July first of each odd-numbered year must be equal to eight percent of the five-year average value of the legacy fund balance as reported by the state investment board. The average value of the legacy fund balance must be calculated using the fund balance at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.
2. From the amount distributed to the legacy earnings fund under subsection 1, the state treasurer shall allocate seven-eighths of the funding in July of each odd-numbered year in the following order:
   a. The first one hundred two million six hundred twenty-four thousand dollars or an amount equal to the amount appropriated from the legacy sinking and interest fund for debt service payments for a biennium, whichever is less, to the legacy sinking and interest fund under section 6-09.4-10.1.
   b. The next two hundred twenty-five million dollars to the general fund to provide support for tax relief initiatives approved by the legislative assembly.
   c. The next one hundred million dollars to the legacy earnings highway distribution fund for allocations under section 54-27-19.3.
   d. The remaining amount as follows:
      (1) Fifty percent to the general fund.
      (2) The remainder to the strategic investment and improvements fund to be used in accordance with section 15-08.1-08.
3. From the amount distributed to the legacy earnings fund under subsection 1, the state treasurer shall allocate the remaining one-eighth of the funding in July of each odd-numbered year to the flexible transportation fund for allocations under section 24-02-37.3.

SECTION 11. AMENDMENT. Section 54-27-19.3 of the North Dakota Century Code is amended and reenacted 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~~10 of this Act. 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. 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.

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 under section 24-02-37.3.

SECTION 13. REPEAL. Sections 21-10-12 and 21-10-13 of the North Dakota Century Code are repealed.

SECTION 14. DEPARTMENT OF TRANSPORTATION - UNITED STATES HIGHWAY 85 PROJECT - REPORT. The department of transportation shall prepare and complete an environmental impact statement process to construct a four-lane highway for the remaining sections of the Theodore Roosevelt expressway which do not have four lanes from the South Dakota border to interstate highway 94 and from Williston to the Montana border. The

department shall provide reports to the legislative management regarding the costs and status of the impact statement process.

SECTION 15. REST AREA COOPERATIVE AGREEMENT. During the biennium beginning July 1, 2025, and ending June 30, 2027, the director of the department of transportation shall review options to enter a cooperative agreement pursuant to section 24-02-02.5 to jointly administer a rest area at the Theodore Roosevelt national park painted canyon visitor center. The director may expend moneys from the state highway fund within the limits of legislative appropriations for operational support of the facility and for facility improvements to support year-round operations of the facility.

SECTION 16. 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, 2025, and ending June 30, 2027:

1. The sum of $100,000,000 appropriated from special funds for the purpose of road and bridge construction projects in subsection 2 of section 13 of chapter 15 of the 2021 Session Laws;
2. The sum of $317,000,000 appropriated from federal funds for state, county, and township road and bridge projects in section 7 of chapter 548 of the 2021 Session Laws;
3. 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;
4. 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;
5. The sum of $9,125,000 appropriated from the general fund in the operating expenses line item relating to information technology projects in section 1 of chapter 12 of the 2023 Session Laws;
6. The sum of $2,500,000 appropriated from special funds 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 in section 2 of chapter 12 of the 2023 Session Laws;

7. The sum of $5,000,000 appropriated from special funds for an environmental study of a portion of United States highway 52, in section 1 of chapter 12 of the 2023 Session Laws;
8. The sum of $757,000 included in the deferred maintenance funding pool line item and transferred to the department of transportation pursuant to section 9 of chapter 640 of the 2023 Special Session Session Laws; and
9. The sum of $161,000,000 appropriated from special funds for flexible transportation fund projects in section 1 of chapter 12 of the 2023 Session Laws.

SECTION 17. EFFECTIVE DATE. Section 12 of this Act is effective for motor vehicle excise tax collections transmitted to the state treasurer after July 31, 2025.