

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2090

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2090

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2090

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/04/07

Recorder Job Number: 624 and 626

Committee Clerk Signature

Veronica Spurling

Minutes:

Roll was taken and all members were present.

Sen. Dever, Chairman opened the hearing on SB 2090, A Bill for an Act to amend and reenact section 48-10-02 of the North Dakota Century Code, relating to use of and expenditures from the capitol building fund. John Boyle, director of Facility Management OMB introduced SB 2090. See attachment #1.

Senator Lee asked when the \$50,000.00 budget had been established. John Boyle replied that it was established in 1979.

Sen. Horne asked what projects would be done with this money.

John mentioned that in anticipation of our capitol building turning 100 years old the Capitol Grounds Planning Commission in 2006 determined that restoration work needs to be done.

They determined that it would cost 18 million but are requesting to use 750,000 at this time.

Sen Nelson said that when she served on the Capitol Grounds Planning Commission in 2000 they came up with a master plan. She asked whether that master plan was being followed.

John Boyle listed parts of the master plan that have been done but reminded them that this is a totally different budget matter. Discussion of different projects followed and whether they

pertained to this bill. It was emphasized that the money referred to in this bill is specifically for restoration of the capitol building, not expansion.

Rep. Mary Ekstrom from District 11 spoke from the viewpoint of having worked on the Capitol Grounds Planning Commission and also that she spent three days with an architect evaluating the status of needed restorations. She has been an owner of an architectural firm for 30 years and emphasized that we have a gem here but it needs to be kept up. She also emphasized that restorations take time. She did an overview of what restoration was necessary and why and mentioned liability issues with cuts in the marble steps. She referred to the state of Minnesota spending 86 million dollars to upgrade their capitol building when it hit the centennial mark.

Rep Bette Grande from Dist 41 has also served on the Capitol Grounds Planning Commission. She spoke in favor of the bill citing different surfaces that are showing wear including brass, wood, and marble.

Sen. Lee asked what amount was in the Capitol Building Fund and where it came from.

Jeff Engleson, the Investment Director for the Land Department, answered by expounding on attachment #2. The land in the trust was granted at statehood and is now valued at \$100,000.00. This is to be added to the \$750,000.00, the value of the facility on the property. The trust grows by \$100,000.00 per year. At the end of the biennium it is projected that there will still be \$200,000.00 in the trust fund.

Senator Dever asked about the growth of the trust fund.

There was discussion about the fund and the fact that it is growing by \$100,000.00 per year and it is in CD's or other safe investments which do not lose money.

Senator Horne asked what the \$750,000 will be used for. John Boyle said the details are all in SB 2015. All committee members would like a copy of SB 2015 to peruse.

Merl Paaverud, Director of the State Historical Society and member of the Capitol Grounds Planning Commission, spoke in favor of the bill and mentioned that we should make our Capitol Building a priority.

Opposition –

Neutral –

Chairman Dever closed the hearing.

Job #626

Senator Dever reopened the discussion on SB 2090.

Discussion:

Senator Nelson moved a Do Pass.

Senator Lee seconded the motion.

Discussion:

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: Senator Nelson

Date : 1-4-07
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Nelson Seconded By Lee

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

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

REPORT OF STANDING COMMITTEE (410)
January 4, 2007 1:32 p.m.

library
Module No: **SR-02-0240**
Carrier: **Nelson**
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2090: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2090
was placed on the Eleventh order on the calendar.

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2090

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4637

Committee Clerk Signature

Morgan Renny

Minutes:

John Boyle: *I'm here today to testify in favor of SB 2090. One of my duties as the director is to implement the project that are approved by the capital grounds planning commission. The capital grounds planning commission, through the office of OMB, is requesting to changes to the century code. As you can see by the bill the first change is deleting lines 17-21 of the bill. This change will permit OMB to request special funds from the capital building trust to proceed with projects that have been approved by the capital grounds commission. In the second change in the bill is found in page 2 on line 2. This one is requesting that the amount of the biennium appropriation be increased from \$50,000 to \$100,000.*

Rep. Meier: How much money is in this fund?

John Boyle: Right now there is approximately \$850,000 in the trust. It grows at about \$200,000 per biennium so we would use \$750,000. At the end of the 2007-2009 there should be about \$300,000 in the remaining balance.

Rep. Weiler: Where does the money come from?

John Boyle: That money is revenues that are generated. The capital building trust is comprised of 10,000 or more acres of land which generate revenue. Most of it is just rented out for grazing and stuff. The land that is owned attracts that money. The land department

manages those revenues and they invest those revenues into cd's. It is mainly the interest we get off the cd's and the annual revenue that comes in.

Rep. Weiler: So is that the only money that gets spent is the interest of the cd's and the revenue?

John Boyle: No. The money that gets spent in this particular interest is about \$750,000 which would be the principal amount because there is a balance right now of about \$150,000 so we are going to take the principle away. What doesn't get spent is if we were to go out and sell the lands and then I think they have it at \$1,000 an acre so \$10 million. We never sell the land, it is only the revenues that come from the land and the interest. The ongoing appropriation at \$100,000 is mainly just interest and a little bit of revenue that comes out.

Rep. Weiler: The fund has a balance of about \$850,000 in it. Your going to take \$700,000 out and use it on projects? What kind of projects are you looking at doing?

John Boyle: They are all restoration projects for the capital. They include like cleaning of the glass columns, cleaning of the marble, the staircase. They are more of things that need to be cleaned that the everyday public would come see. We would also clean some brass and bronze that is on the ground floor as well. We want to do as much of that as we can. The whole idea for us doing this is that the Capital grounds had a study that showed \$18 million worth of work that needed to be done. On the worth of work that needed to be done. The 100th year anniversary is going to be coming up in 2005. The planning commission wanted to start spending some money out of the capital building trust as well as getting money through the general fund to start taking care of the restorations.

Rep. Weiler: So the cleaning of the brass rails is not regular maintenance?

John Boyle: We wipe down the brass but as you can see your hands have natural oils and the

brass gets tarnished. Those do get wiped down but there hasn't been a restoration of those columns for a long time.

Rep. Kasper: Why was that wing never built?

John Boyle: I don't know why it was never built. That is part of the original bill. The capital grounds maintenance can use that money any way it chooses. It has never been used for the purpose of expanding the legislative wing. It has always been used for other projects. We just wanted to clean up the language because we thought the capital grounds were asking that we use the money for cleaning brass columns and other aesthetic type things. They thought we shouldn't break the law because it says not to be used for that purpose.

Rep. Kasper: I don't agree with the decisions that have been made on that. I would imagine this bill was passed 40 or 50 years ago or whenever it was, and we have been sitting around for that long and we still don't have a place fit.

Rep. Grande: That fund would have to fit into the multi million dollars then to decide where it was to be placed on the ground. Now the master plan can go out numerous years.

John Boyle: The most revised master plan was in 2000.

Rep. Grande: And that plan does include a legislative wing.

John Boyle: The actual legislative wing does not change. It includes additional buildings on the grounds which would move agencies around which could possibly free up space elsewhere.

Rep. Froseth: I guess you always learn new things. I thought all the income from state owned lands went into the land trust fund. I didn't realize that it went to this fund. Are these other specific parts of land located all over the state ?

John Boyle: I can bring you a map identifying all those lands. The land department manages that. That is something that I can provide.

Rep. Kasper: I would also like to see the master plan to see what we are supposed to be doing that we aren't doing, and what is being done that is not in the master plan. It would be interesting to find out the thinking of that committee.

Rep. Potter: I keep hearing of restoration and the different things you have talked about don't seem like restoration they seem more like cleaning. What is restoration? What are we doing that restoration? Are we fixing or just cleaning?

John Boyle: What we are doing far exceeds the capabilities of what our custodial staff does. We are bringing experts that are actually going to come in, strip down the coating that has been applied to the columns, and bring it back to it's original condition. Of course it is going to go all the way up to the ceiling. We have to plastic it all off and ventilate because of the chemicals they use. It is a very extensive project. It is called restoration but we are basically refurbishing every part of the column.

Rep. Meier: Do we bring them in from out of state or do we have them in our state?

John Boyle: I'm sure that there are people in the state that can do that work. We of course have to go with the lowest bid. Most likely it will be an in state company.

Rep. Amerman: How did the state get these lands or end up with them?

John Boyle: The land department is actually the one that determines which land goes in which building trust. I can get that answer for you. Originally it goes way back to the settlement. These are still lands being owned. I can get that answer.

Rep. Weiler: How are we doing on our smoking issue?

John Boyle: I know it has been discussed. I have not heard any results from any outcome.

Rep. Haas: Is there any other testimony? If not we will close the hearing on SB 2090.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4639

Committee Clerk Signature

Morgan Penick

Minutes:

Rep. Froseth: I would move a do pass.

Rep. Potter: I second that.

Rep. Haas: Is there any further discussion?

Rep. Weiler: Is there any possible way we can wait until Rep. Kasper comes because I think he has some comments. I'm going to oppose this. There is a lot of questions I have regarding where is the money. If this fund is generating \$200,000 a biennium or year, and it is only spending \$50,000 on little projects around the grounds, where is the other \$150,000 going?

Rep. Haas: It would be building up. That is why we have \$850,000 in the funds.

Rep. Weiler: When was this fund put in place?

Rep. Haas: It looks like 1967 and modified in 1979 and 1991. The earliest date is 1967.

Rep. Weiler: If OMB is using some of this money on other restoration projects, they aren't supposed to. It says in here they can only use \$50,000 out of this every biennium.

Rep. Grande: I don't know that OMB is using it.

Rep. Weiler: It says an expenditure may be made after the capital grounds master plan for projects or planning that shall not exceed \$50,000 per biennium.

Rep. Haas: The amendment would increase that to \$100,000.

Rep. Grande: I think the commission is limited to that.

Rep. Weiler: If OMB is taking the money and spending it somewhere else, I would like to know what they are spending it on.

Rep. Grande: I think it is going to various other projects whether it was wind damage or so on.

Rep. Weiler: My question is that is why I would like to hold off on this vote. Rep. Grande is only guessing and not knowing. If this has been in effect since 1967, then there has got to be some money missing.

Rep. Haas: We had a do pass motion on the floor. We will leave that motion there and hold this bill until tomorrow morning to give you time to get answers to your questions.

Rep. Schneider: I would also be curious to know what the committee's expenditures were last biennium and are they continually hitting this cap?

Rep. Haas: They were controlled by the \$50,000 cap. That was the maximum.

Rep. Schneider: I'm wondering if the expenditures were actually close to \$50,000.

Rep. Haas: I think you better go to OMB to get your answers.

Rep. Grande: I think for awhile the expenditures were held together. I was there when it started. The memorial hall, the great seal was a capital grounds project. It took 6 years to get the money to be able to do that. They had to pool their biennium dollars.

Rep. Froseth: There must be another appropriation that deals with the expenditures to include them in the upgrading. I know that these probably haven't been replaced in years. I know that replacing all the lights and stuff can't be handled by the \$50,000. There must be another appropriation from the general fund that deals with improvements. These two meeting rooms were \$175,000. That money comes out of the general fund. I think it would be nice to know exactly where this money comes from.

Rep. Haas: We will need a report of that.

Rep. Amerman: This might be to Rep. Grande, if this fund is to keep building up and there wasn't too many expenditures, if someday we needed to build a new governor's mansion could it come out of the general fund?

Rep. Grande: That could be a possibility. As far as I can remember from the master plan, the building of a new governor's mansion was not on the list. One of the things is if you go over by the little building my the library, those are included. The walking path by the trees and markers, the signs, and all that are included.

Rep. Amerman: I was just curious because it is on the capital grounds.

Rep. Grande: As far as I can remember it isn't. I know a lot of people don't think it looks nice enough but it isn't near on the list of things we need.

Rep. Karls: I walk here at night and there are no lights around the oval, has that ever been discussed? It is black.

Rep. Grande: I would have to look. I could take a look at that but I don't recall anything about lighting.

Rep. Haas: We will hold this bill until we get our information.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

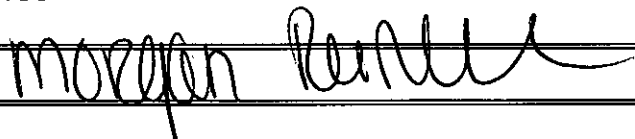
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 15, 2007

Recorder Job Number: 5136

Committee Clerk Signature



Minutes:

Rep. Haas: We had Rep. Weiler, Rep. Schneider, and Rep. Kasper working on getting some questions answered on this bill. This is the capital building fund that John Boyle came and testified on last week.

Rep. Kasper: Rep. Weiler and I have copies of this.

Rep. Schneider: Thinking back on it I think my question was answered at the time of the testimony.

Rep. Kasper: If the committee will recall a number of us were on page 1 of the bill on line 17 where we were striking out the reference to the capital building fund which has been in law since the 70's to accumulate dollars and supposedly to get a new legislative wing. Rep. Weiler and I had some visits around the area. What we are going to be handing out will be some information that shows how these facilities management dollars in the capital fund have drained out since 1979. Then we will hand out copies of the legislative appropriations bills where they siphoned the money out of this fund. With Mr. Boyle now in the head of this, since 2001 he has been very fruvalent on how to manage this fund. He has taken less than \$50,000 in that period of time. Now this bill wants to take it all out and do something else with it. Rep. Weiler and I were concerned about the original intent of this fund and the fact that it should be

staying there for its original intent. We will also show you a chart that shows a little more detail on how these dollars were spent and appropriated in the various years and how they were siphoned out of this fund. We've got amendments that we will share with the committee. That sort of gives you an overview of what we have done. We did do a little investigating on the smoking side of the area. We will talk about that later.

Rep. Weiler: When the other information comes back we are going to explain this. The good news from the committee is if we pass this amendment then we don't have to deal with mine. If you don't pass this we have a lot more stuff that we have to do.

Rep. Potter: We want to know the whole thing.

Rep. Kasper: You're going to know the whole thing, the beginning and the end.

Rep. Weiler: As you recall we had a bill from Rep. Kingsbury that wanted to ban the smoking on the entire capital grounds, which is a very large area. If you recall this committee dealt with that issue and basically had John Boyle come down and we were assured that Pam Sharp and OMB that this issue would be addressed fairly soon. We spoke with John Boyle and he basically said that he has mentioned it to Pam but she hasn't said anything to me about any meetings set up. I mentioned that we actually visited with Pam about the smoking issue. She said that they are kind of busy with stuff right now and they haven't discussed it or had a meeting but they intend to some time after the session.

Rep. Haas: That is consistent with what she told me.

Rep. Weiler: Correct.

Rep. Haas: She said she would have time after session.

Rep. Weiler: I guess that we both feel that things are moving just a little too slowly. So we asked Pam Sharp if she would have a problem if we did what we did. She said no. I said I did not want to step on her toes. She is fine with this. In the amendment of what we want to add as

far as smoking on the capital grounds. It starts with subsection 3. Smoking would be prohibited in the following outdoor areas of the state capital grounds. Within 100 feet on the main public entrances on the north, east and west sides of the capital. Currently on the south OMB has something in the rules that you can't smoke in that area. It's got to be way out there. We left that. It's the same that they currently have in their statute. Let's go back to the north, east, and west side. I went to the door on the east side and paced it off 100 feet. That got us to the street. I play golf and pace off my measurements and they are very correct. The east entrance is where they have the problem now because if you recall since they put the ban on the south side, the east side has become the problem. If we go 100 feet from the main public entrance, that gets you out into that driveway or street. There is currently in subsection 4, prohibition in subdivision A of subsection 3 would respect that a main public entrance on the east side of the capital does not apply to the enclosed structure and the area immediately adjacent to the structure. They put the hut there and then they have the concrete and a half wall which is an area for that hut. We thought that when it was 105 degrees you don't want to stand in that hut. That area is within 100 feet of the main door. We had to make that exception to that area.

Rep. Haas: Or move the hut.

Rep. Weiler: Yeah we chose not to move the hut.

Rep. Haas: Yes you would take more money out of that fund.

Rep. Weiler: Now you are catching up. Basically you need to be 100 ft. from the north, west, and east door with the exception of the smoking hut. And what currently stands on south side is what is in statute.

Rep. Grande: Where is 100 feet out the south door?

Rep. Weiler: You would get out about halfway to the curb.

Rep. Grande: What about 100 feet west?

Rep. Weiler: Across the street.

Rep. Grande: Would that be more?

Rep. Haas: No you would be out.

Rep. Weiler: Or over by the sidewalk.

Rep. Grande: How about to the north?

Rep. Weiler: About halfway into that parking lot. If 100 feet got to a street on every side it would be great. We don't want to have 50 feet on the west side, 25 feet on the north side, and 100 feet on the east. We just figured we would make it 100 feet. If someone stands 50 feet from the door but they are on the other side of the street that will be ok. Let's let whoever controls that deal with it. At least let's get the smoking away from the main entrances.

Rep. Grande: How are they going to patrol that?

Rep. Weiler: In the same way they deal with them on the south side now. That is currently under OMB's laws. I'm not sure how they handle that.

Rep. Meier: Are they going to post signs saying that they can't smoke anymore? I'm wondering about the public that comes here. They won't know they can't smoke.

Rep. Weiler: That is a good thought. Maybe the capital will have to do that.

Rep. Kasper: If we pass this legislation they are going to do whatever it takes to enforce it. If that means putting signs up or whatever. It will be their responsibility to do that. I think we should just let them figure out how to do it. We are giving them the direction to go to.

Rep. Meier: I was just curious to see if you had a conversation about signs and stuff like that.

Rep. Weiler: The only bad thing that happened is when I was out pacing the sidewalk. John Walstad was standing outside smoking. About 30 feet from the door he asked me a question so I put my hand up to hold off a second. He knew that we were pacing off footage.

Rep. Kasper: As we refer you back to the handouts here, if you look at this one first which has the seven numbers on it you will be able to see that the capital business fund has been rated since 1981. Those are the biannual amounts that have been taken out of the fund throughout the years. The bottom total was over \$9.5 million. We have close to \$10 million in that fund. If that would have been handled properly it would have gone a long way to accomplish the bill and the law. If you look at this handout that has more detail and goes by the biennium. The numbers don't quite match exactly because it might come out in different stages of what they were authorized. It gives you a good idea to where they are taking this money and what they are using it on. They aren't appropriating it out of the general fund. Then they did cover themselves with the appropriations bills that allowed these dollars to come out.

Rep. Haas: Is it always the capital Improvements line item?

Rep. Kasper: As an example on the first page, go to section 3, appropriations transfer. The amount appropriated in section 1 is \$866,000 that should be transferred by OMB and the capital building fund.

Rep. Froseth: What is the formula for money going into the capital improvement fund? Is that a line item appropriation as well?

Rep. Kasper: It is funds coming from a number of things. The state owns 10,000 acres of land. It is the rental income coming in that is being leased for farming. What Rep. Weiler and I did in addition to the amendment is removing the overstrike. We are actually getting rid of the ability to do what they did to them. As I think about this we maybe should have put stronger language in there that says in the future the dollar amounts can only be limited to \$50,000 and the fund must continue to grow.

Rep. Weiler: However we did leave on the back of page 2; we did allow the ability to access \$100,000 per biennium.

Rep. Grande: Today the legislative body that authorizes it cannot use it. John has done a wonderful job of what he is doing.

Rep. Kasper: All you have to do is look at the records since he's taken over since 2001.

Rep. Grande: I just want to be clear of that. I certainly do not want any of this information coming back to John. He is doing a very good job. He is great at his position.

Rep. Amerman: If we accept the amendments and look back at the language that it can only go to the wing, where would they get the money that they have been using in the funds now?

Rep. Haas: General funds.

Rep. Amerman: So they would have to ask for an additional appropriation.

Rep. Kasper: What we have experienced since we've come here is it's so easy to tap those funds that have been set aside for other purposes when you get down to the end of the section and the appropriations committee is looking for more money. Rather than using these trust funds for what they were meant to be originally. I would almost like to go back and add another amendment.

Rep. Grande: A lot of times we put this into code thinking that it's going to be a good idea. If we get a few years down the road and we find out that it probably was unnecessary and we find something to be used differently or in a better fashion. Or the new legislators come in and make adjustments to the law. It happens all the time. This happens to be the case that a master plan has been drawn up and a 30 year schedule has been put together. The priorities were laid out in a full sense and a readjustment of that has taken place. It's for repair of the building and improvement. We need to see how that fund should be used. I think that the current facility manager has done a very good job and has been good with the management of that fund. He has the authority to use it. He has proven he is conservative with it. I think we can leave that authority to him.

Rep. Kasper: The intent of this fund is very clear in the law. It says on line 20 that it shall take necessary steps to accumulate and conserve the money and property in the capital building fund for the purpose of capital building fund. I don't dispute the fact that the capital building grounds needs money. They need to get it from the general fund, not robbing this fund. We are allowing on the back \$100,000 per biennium to come out of the fund anyway. That is plenty. The long term capital grounds plan used to have a legislative wing. If we had been following the law we would have over \$10 million in there today. I would suggest that when statute is implemented that it should be followed and make the legislator in the future sessions change the statute if they wish to.

Rep. Weiler: I do want to comment on Rep. Grande's comments on Mr. John Boyle. He has been very strict with this and I understand that. Over the last 5 bienniums that he's been here he has not asked for more than \$50,000. The problem existed prior to his arrival. You can see the total dollar amount that was taken out. What happens is that at the end of the session the OMB bill gets added in. It would be my guess that at the bottom of the OMB bill your going to see appropriated out of the capital building fund and how much. Nobody sees it because we have about 2 hours to look at the entire bill. No one sees it and no one notices it. Nobody cares. That is why this fund has no money in it. Rep. Grande you talked about the capital grounds plan. You know I was impressed by that. If you go up there it has the whole thing laid out. It's pretty impressive. I would suggest for you to take a few minutes out of your day and go look at the plan. The problem is that they have a plan and that will not happen unless we protect this fund. You are making the case as far as I'm concerned on why we have to keep money in this fund and not rob it for other projects that it shouldn't be there.

Rep. Potter: I'd agree with what you said. A lot of the money went missing in the 1980's. I'm not pointing fingers at anyone in my view. I can see how they can construe what it says in law

that they can take it. It does say that it provides for money and property in the capital building fund. To me this is the problem. If they want to otherwise appropriate something right on out of there, they can do that. It seems like it gives us the ability to do that. If we want to take that out and amend it to make it stronger, it seems smart to me. It keeps it right there. I just don't see how we are ever going to get enough money to build any kind of offices. We need to have a fund and start saving.

Rep. Haas: My impression is that sometime probably back in the late 80's the legislator made the decision that a new legislative wing was not a real high priority. They were going to start using this money for something else. I personally believe that if and when the legislative wing becomes a high priority, the money will be appropriated out of the general fund. I don't have a problem with the way this is.

Rep. Kasper: If I recall history in ND, there were difficult budget times back in those late 80's. I think in the 89-91 biennium the appropriation to higher education or K-12 actually had to be cut back because there was no money. My guess is that back in those days the budgets were a lot tighter and they were looking for ways to fulfill their current spending. That is why this fund was used. I think now that what is going on with the economy and where we are moving, the more we can preserve these funds for the future. If we do get to tough times again we will still see a legislative wing down the road when we do see the money.

Rep. Haas: Is there any further discussion? This is all pre motion discussion.

Rep. Kasper: I think we would like to go see John Walstad about a small change in the amendment that we passed out.

Rep. Weiler: If we look at the bill the way it is, the amendment strips the overstrike language on line 17-21 on page 1. If we go back and overstrike the words on line 17 except as, and go to line 18 and overstrike otherwise appropriated. If we would do that then it would read

"provided further all moneys and other property in the capital building fund are hereby dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing of the state capital building.

Rep. Haas: If you want to do that than I would suggest that you would probably have to strike lines 22-24 on page 1 and lines 1-5 on page 2. There is no appropriation authority. They can't spend \$100,000 out of there a year.

Rep. Weiler: I think the purpose of our amendment is to allow them to access that. I don't want to cut that off.

Rep. Haas: Yes. You will have to see Mr. Walstad. Is there any other discussion? If not we will take up this bill next week.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 15, 2007

Recorder Job Number: 5174

Committee Clerk Signature

Morgan Reilly

Minutes:

Rep. Weiler: I will consider it.

Rep. Haas: Do you think you will be prepared to bring that back tomorrow? We don't have to. We have next week and we can wait until next Thursday.

Rep. Kasper: Well if we get a chance to talk to the committee between now and tomorrow we might be ready for tomorrow.

Rep. Froseth: I was thinking about the language that was taken out of that bill to eliminate the legislative office complex or whatever was said. I really don't see any need for that. I think there are needs for new offices. There was a suggestion for a new governor's residence. There might be needs for large scale improvements that could be substituted into that.

Rep. Haas: Well that is a good point. If the entire fund was made available to the Capital Planning Commission you could specify where it should be used to operate the maintenance for specific types of improvements on the grounds. That might not be a bad idea.

Rep. Froseth: Part of the reason is that I don't see the legislative body getting larger in numbers. We will probably get smaller. We have gone down from 51 districts to 47. That trend might continue. There is already empty desks on the floors in the chambers right now. I don't really see a need for a lot of extra space to be built just to accommodate the legislator.

Rep. Kasper: That is why when Rep. Weiler suggested that the committee goes out and sees the master plan it would be good. There are plans for a lot of changes in the new structure. It's not just for the legislators. It would be moving things around and more efficient and effective. It is much more than the legislative wing. As far as using the funds, that is exactly the reason that I believe we need to lock the funds up. We have a \$500 million surplus and we are talking about spending more money in a trust fund that should be used on some building whether it is a legislator building or the governor's mansion. If they want to take the \$10 million out of here and build a new governor's mansion, it is in statute, and they can do it. At least we will have money in there to do something instead of blowing it all on stuff we don't need to spend it on.

Rep. Haas: I don't think technically it's a trust fund. It's a capital building fund.

Rep. Kasper: But it was meant to be there and not to be robbed. That was the intent.

Rep. Haas: Any other discussion? We aren't going to act on this today.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 22, 2007

Recorder Job Number: 5474

Committee Clerk Signature

Morgan Benall

Minutes:

Rep. Haas: We were holding this bill if you recall because Rep. Schneider had a question on it which was answered. Rep. Weiler was working on an amendment that is being passed out right now.

Rep. Weiler: The amendment is .0105.

Rep. Haas: Does this amendment deal only with smoking violations?

Rep. Weiler: No it does not. It has other parts of it covering the issue. If you look at the bottom of page 1 it says it is prohibited on the grounds. What has changed there is before it simply said building. Now it says grounds. We have expanded this to all the buildings on the capitol grounds within 100 feet of the main public entrances of the capitol. C is a new section and B stays the same. B was a self entrance. Subsection 4 is the smoking hut and the area around that. Then as we go further down the bill, page 1 line 17, we are going to remove the overstrike over provided further all monies and property in the capitol building fund. On page 1 line 18 we are going to remove the overstrike. We are also going to remove the overstrike on lines 19-21. On page 1 line 23, after exceed insert '\$100,000 or' then insert 'whichever amount is less'. I am going to read this how it would read.

Rep. Kasper: What it does is removes the ability of the appropriations committee's to raid the fund except for the lesser of 50% of the fund balance. This is what the intent of the capitol fund has been all along. If you recall it was established many years ago over \$9 million has been taken out. It was established for a legislative west wing. It had never been built. It was part of a master plan that was never been built. There is some information that says the legislative west wing will be designed for the legislator only. That is not the act the master plan calls for. It calls for underground parking and a building to be built which would allow for all kinds of office space. All this amendment would do is start building that principal backup that someday down the road when the legislator decides if and when to build the building. At least we would have a start for the fund. As we said earlier it would be very interesting if you went to John Boyle's office and looked on the wall to see what the plan really looks like.

Rep. Weiler: I would like some clarification as to page 2 line 2. I want to make sure that it is correct.

Rep. Kasper: Page 2, line 2 overstrikes 'but shall not exceed' and removes 100. It would read the expenditure may be made at the consideration of the capitol grounds master plan with projects that are planned. On line 3 it would say the expenditure may only be made upon approval of 2/3 vote of the commission.

Rep. Weiler: So in the original bill the purpose was to change the \$50,000 to \$100,000 and that has been done on a pervious page. That is how council did it? I move the amendment.

Rep. Kasper: I second that.

Rep. Froseth: About the construction of the addition to the legislative wing, could that probably include a parking ramp?

Rep. Grande: Yes.

Rep. Wolf: I have an extremely hard time thinking that we are going to put an addition onto the legislative branch. Our state population is decreasing, we are decreasing in number of districts. I know our work space is little. It is tiny. I just can't justify or imagine how to explain to my constituents back home that we are putting money aside to someday build our own offices or rearrange other people's offices in the building when we aren't funding the things they need first. It is selfish.

Rep. Potter: My question is the amendment on page 1 line 17. It says provided further. Why do we need those words in there?

Rep. Weiler: Rep. Kasper went to legislative council and explained how he would like this to read and for whatever reason that is what they said. And I want to comment on Rep. Wolf's question. We are actually not asking that a legislative wing be built. All we are doing is putting back into a language because the original bill struck it out. All we are doing is asking for it to be put back in because 20 or 30 years ago a master plan of the capitol grounds had that in. That is the purpose of the bill. I don't believe that it is our responsibility to decide 30 years later that we don't need a legislative wing. In all honesty if there is other buildings on the capitol grounds that are going to be built, I question whether or not a legislative wing would be first. At least the intention that those who served before us, I think it is ok to do this.

Rep. Dahl: Even though our population is declining, we are adding 200 more FTE's to the session so maybe they can go in that new wing. In a more serious comment I am going to resist this amendment because I don't think we need to put smoking parameters in the century code when it will be done administratively. Just because it hasn't been done doesn't mean it won't be done.

Rep. Boehning: The first comment I have is that we are going to be building a new Attorney General's office by the new WSI building. Personally I think all the buildings should be built on

the capitol grounds. The people should see the government at work. We have had buildings all around the Bismarck area. We should be building so people know how big the government is getting. They don't realize how big government is in this town. There are thousands of employees spread all around Bismarck. My other comment is with the smoking. I do support the amendment. If the governor has a barbeque is he going to be able to smoke outside the residence?

Rep. Weiler: There is not a public entrance to the Governor's entrance. It is definitely a private place. There is no need to mention the governor's place.

Rep. Kasper: I just want to address Rep. Wolf's concern. This bill or these amendments are not creating the funds. The building fund is in current law and it has been there for 20-30 years. All this amendment is doing is saying that the fund is secure. The only dollars will come out are in statute. The rest will continue in the building fund. This also does not say that we must build a legislative wing. It does provide dollars in the future that if we are going to build a legislative wing or administrative wing that the original intent of the bill will be honored. What has been happening in the past is that because we have allowed the money to come out of an appropriated basis that the money can be spent. I also want to comment on Rep. Dahl's concern on smoking. When Rep. Weiler and I talked to Pam Sharp with OMB I got the impression that this smoking thing was not a high priority even after the legislative session. She told us directly that she can't promise us that they are going to take any action to change the smoking policy around the capitol. John Boyle has to do what Pam Sharp tells him to do. I don't think it's a priority. You have heard about people being concerned about smoking and the message it is sending to the public and I think that is correct. I don't like the way Rep. Kingsbury's bill went about it but I think this is a good compromise to move in that direction.

Rep. Weiler: I did directly ask Pam Sharp if she had a problem if we did put something into law regarding the smoking issue and she said no. Rep. Kasper was right next to me when I said I didn't want to step on her toes.

Rep. Haas: I had a request from the committee member to divide the amendment and vote on the smoking part separate from the section that remains. Will you let us divide that question?

Rep. Kasper: I would resist that.

Rep. Weiler: Me too.

Rep. Haas: Is there any other debate? If not we will take a voice vote on SB 2090. We will take a roll call vote. The amendment passes 8-5-0.

Rep. Weiler: I move a do pass as amended.

Rep. Meier: I second that.

Rep. Haas: Is there any further discussion?

Rep. Dahl: What happens with the money for cleaning and so forth?

Rep. Weiler: If this bill as amended gets defeated on the floor, Rep. Carlson in appropriations will take care of the money. He has seen the budget.

Rep. Grande: The permissive language there was what Mr. Boyle brought up with the cleaning, restoration and so forth. That is what was coming out of the fund. The \$100,000 is just the other maintenance dollars that they can use.

Rep. Kasper: This is exactly the purpose of this amendment. To stop the raiding of the fund because it is convenient. The intent of the fund was not for this. It was to build a building sometime in the future. We have a \$500 million surplus. The Governor needs to find the fund in another place.

Rep. Haas: I would suggest that we do not have a \$500 million surplus. We are trying to shave over \$300 million to balance the budget.

Rep. Kasper: We have a \$500 million surplus but we have a demand for \$800 million and so we need to prioritize on what we spend.

Rep. Haas: The surplus is gone.

Rep. Kasper: Not until we adjourn this session.

Rep. Haas: Is there any other discussion on a do pass as amended motion? If not we will take a roll call vote on a do pass motion for SB 2090. The do pass motion passes with a vote of 8-5-0. Is there a volunteer to carry this?

Rep. Kasper: I will.

Date: 3-8-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2090

Action Taken DO PASS

Motion Made By Rep Froseth Seconded By Rep Potter

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weiler					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2090

Page 1, line 1, replace "section" with "sections 23-12-10 and"

Page 1, line 2, after "to" insert "smoking restrictions on the capitol grounds and to the"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10. Smoking restrictions - Exceptions - Retaliation - Application.

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
 - a. Public places; and
 - b. Places of employment.
2. The following areas are exempt from subsection 1:
 - a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.
 - c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of places of employment, except a sports arena.
 - e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
 - f. Bars.
 - g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
 - h. Separately enclosed areas in truckstops which are accessible only to adults.
3. Smoking is prohibited in the following outdoor areas of the state capitol grounds:
 - a. Within one hundred feet [30.48 meters] of the main public entrances on the north, east, and west sides of the state capitol building; and

- b. With respect to the main public entrance on the south side of the state capitol building, within the greater of one hundred feet [30.48 meters] or the area designated by the office of management and budget as a smoke-free area in the policy that became effective on October 3, 2005.
- 4. The prohibition in subdivision a of subsection 3, with respect to the main public entrance on the east side of the state capitol building, does not apply to the enclosed structure, and the area immediately adjacent to the structure, designated as a smoking area, as it existed on January 1, 2007, which is located near the east entrance.
- 5. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
- 4- 6. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
- 5- 7. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws."

Page 1, remove the overstrike over lines 17 through 21

Renumber accordingly

**House Amendments to SB 2090 (78086.0105) - Government and Veterans Affairs
Committee 03/22/2007**

Page 1, line 1, replace "section" with "sections 23-12-10 and"

Page 1, line 2, after "to" insert "smoking restrictions on the capitol grounds and to the"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

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 - a. Public places; and
 - b. Places of employment.
2. The following areas are exempt from subsection 1:
 - a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.
 - c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of places of employment, except a sports arena.
 - e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
 - f. Bars.
 - g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
 - h. Separately enclosed areas in truckstops which are accessible only to adults.
3. Smoking is prohibited in the following outdoor areas of the state capitol grounds:
 - a. Within one hundred feet [30.48 meters] of the main public entrances on the north, east, and west sides of the state capitol building;

- b. With respect to the main public entrance on the south side of the state capitol building, within the greater of one hundred feet [30.48 meters] or the area designated by the office of management and budget as a smoke-free area in the policy that became effective on October 3, 2005; and
- c. Within one hundred feet [30.48 meters] of the public entrances of all other buildings on the state capitol grounds.
- 4. The prohibition in subdivision a of subsection 3, with respect to the main public entrance on the east side of the state capitol building, does not apply to the enclosed structure, and the area immediately adjacent to the structure, designated as a smoking area, as it existed on January 1, 2007, which is located near the east entrance.
- 5. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
- 4- 6. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
- 5- 7. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws."

Page 1, line 17, remove the overstrike over "~~Provided further, all moneys and other property in the capitol building fund~~"

Page 1, line 18, remove the overstrike over "~~are hereby dedicated and reserved to the exclusive purpose of the~~"

Page 1, remove the overstrike over lines 19 through 21

Page 1, line 23, after "exceed" insert "one hundred thousand dollars or"

Page 1, line 24, after the comma insert "whichever amount is less,"

**House Amendments to SB 2090 (78086.0105) - Government and Veterans Affairs
Committee 03/22/2007**

Page 2, line 2, overstrike "but shall not exceed", remove "one hundred", and overstrike "thousand dollars per"

Page 2, line 3, overstrike "biennium"

Renumber accordingly

Date: 3-22-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2090

Action Taken DO NOT PASS move amendment

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman		X	Rep. Bill Amerman		X
Rep. Bette Grande VC		X	Rep. Louise Potter	X	
Rep. Randy Boehning	X		Rep. Jasper Schneider	X	
Rep. Stacey Dahl		X	Rep. Lisa Wolf		X
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper	X				
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total (Yes) 8 No 5

Absent 0

Floor Assignment _____

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

Date: 3-22-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

SB 2090

Action Taken

DO PASS as amended

Motion Made By

Rep. Weiler

Seconded By

Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Rep. C.B Haas Chairman		X	Rep. Bill Amerman		X
Rep. Bette Grande V.P		X	Rep. Louise Potter	X	
Rep. Randy Boehning	X		Rep. Jasper Schneider	X	
Rep. Stacey Dahl		X	Rep. Lisa Wolf		X
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper	X				
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total

(Yes)

8

No

5

Absent

0

Floor Assignment

Rep. Kasper

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

REPORT OF STANDING COMMITTEE

SB 2090: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). SB 2090 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 23-12-10 and"

Page 1, line 2, after "to" insert "smoking restrictions on the capitol grounds and to the"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

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 - a. Public places; and
 - b. Places of employment.
2. The following areas are exempt from subsection 1:
 - a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.
 - c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of places of employment, except a sports arena.
 - e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
 - f. Bars.
 - g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
 - h. Separately enclosed areas in truckstops which are accessible only to adults.
3. Smoking is prohibited in the following outdoor areas of the state capitol grounds:

- a. Within one hundred feet [30.48 meters] of the main public entrances on the north, east, and west sides of the state capitol building;
- b. With respect to the main public entrance on the south side of the state capitol building, within the greater of one hundred feet [30.48 meters] or the area designated by the office of management and budget as a smoke-free area in the policy that became effective on October 3, 2005; and
- c. Within one hundred feet [30.48 meters] of the public entrances of all other buildings on the state capitol grounds.
4. The prohibition in subdivision a of subsection 3, with respect to the main public entrance on the east side of the state capitol building, does not apply to the enclosed structure, and the area immediately adjacent to the structure, designated as a smoking area, as it existed on January 1, 2007, which is located near the east entrance.
5. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
4. 6. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
5. 7. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws."

Page 1, line 17, remove the overstrike over "~~Provided further, all moneys and other property in the capitol building fund~~"

Page 1, line 18, remove the overstrike over "~~are hereby dedicated and reserved to the exclusive purpose of the~~"

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Page 1, line 23, after "exceed" insert "one hundred thousand dollars or"

Page 1, line 24, after the comma insert "whichever amount is less,"

Page 2, line 2, overstrike "but shall not exceed", remove "one hundred", and overstrike "thousand dollars per"

Page 2, line 3, overstrike "biennium"

Renumber accordingly

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

SB 2090

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2090

Senate Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: 4/03/07

Recorder Job Number: 5710

Committee Clerk Signature

Monica Spaulding

Minutes:

Senator Dever, Chairman, called the conference committee on SB 2090 to order.

Roll was taken and all members were present except Senator Nelson who arrived 5 minutes late.

Representative Haas explained the changes the House made to the bill. The bill came into the Senate dealing only with the Capitol Building Fund. In the House committee meeting the discussion was raised asking what the original intent of the Capitol Building Fund was. The House Government and Veteran Affairs committee brought an amendment in an effort to preserve the original intent of the bill which was the proceeds that go into the Capitol Building Fund were to be dedicated to the exclusive purpose of the construction of the addition of the legislative wing of the State Capitol Building, etc. and the Capitol Grounds Planning Commission shall take necessary steps to accumulate and conserve the money, etc. (He was reading from the 0100 version of the bill, lines 17 through 21.) With that in mind if we go to the 0200 version of the bill, page 3, lines 9 through 13 you can see that language was struck in the original bill and was restored in the amended version from the House. The four words "except as otherwise appropriated" were stricken from that language. That means the fund has to set

there and accumulate until such time that the legislature would take other action to use the funds for the original intent. That was that part of the change.

The other part related to the smoking issue. Earlier in the session they had a House bill that was defeated in the House that would have banned smoking on the entire Capitol Grounds. The bill he feels was defeated on two rationales. First, 54-21-18 says... See attachment #1. There was some discussion in the House committee and on the floor of the House that this should not be a matter of statute, it should be in the realm of OMB to establish rules that would control smoking. They have done this on the south side of the Capitol. The House Government and Veteran Affairs committee adopted the amendment to further control smoking around the entrances of the capitol. During the conversations some people felt OMB was acting too slowly in establishing smoking policies around the Capitol entrances. Others felt it should be left to OMB. The House floor passed it 68-22 with the amendment.

Senator Oehlke asked why the House in the 0200 version on page 3, line 19 crossed out "but shall not exceed fifty thousand dollars per biennium." So now they can spend up to \$100,000.00, is that it?

Representative Haas said that was the idea. By taking the "except as otherwise appropriated" out it limited the expenditure in the case it used to be \$50,000.00 per biennium but now in this case it would be \$100,000.00 without an appropriation or 50% of the unencumbered balance whichever is less. It was to put a restriction on the maximum amount that could be spent out of the fund in any given biennium.

Senator Oehlke said, "sort of a cap."

Representative Haas agreed.

Representative Schneider said the part of the bill he didn't like as it came from the Senate was the intent of the statute was not being kept. It didn't protect the money well enough to make

sure that the legislative wing would ever be realized. It has been in law since 1989 and he feels the intent should be protected. He has not been able to view the Master Plan. They put the language in about smoking after a bill about banning smoking was defeated.

There was discussion about what the legislative wing would entail, an underground parking lot, new entrance, tunnel, office building. They discussed that we are 8-9 years into a 20 year plan. People who served on the planning commission did not remember the legislative wing being a priority.

Senator Oehlke said as the Senate discussed this bill they were mindful of the approach of the 100 year anniversary of our Capitol Building and the restoration that would be needed. He mentioned the brass that needs to be refurbished so it will look good in twenty years.

Senator Nelson said it took 6 years to accomplish the Great Seal being placed. They want to plan ahead so it will be done in time so it will be in pristine shape.

Senator Dever asked if John Boyle, the Director of Facility Management with OMB could address the group.

Mr. Boyle said there has never been a legislative wing expansion put into any of the master plans. It was always areas around the legislative wing as Senator Dever mentioned taking out the parking lot, making a mall that replicates the mall on the south side of the building, adding new buildings, adding new parking lots, adding to the Heritage Center, making a big pavilion garden area behind the Heritage Center but there has never been... This is the third master plan that was done. The first one was when the new Capitol was built. The next one was in the 50's or 60's, and this one was done in 2000. In all of those master plans the legislative wing has always looked like the legislative wing. There has been discussion about if a new building was added to the Capitol Grounds such as the one the master plan calls for that they would relocate agencies already on the grounds like Health and Human Services from the Judicial

Wing over to that building and then move people within the tower maybe over to the Judicial Wing. That would free up some space in the tower possibly for offices for legislative people. That is the only time that there has ever been discussion and that discussion didn't really go anywhere. It did take 6 years to get the Great Seal on the wall but it did get completed. The Capitol Grounds Planning Commission had a restoration study done. Architect Michael Burns worked with Representative Ekstrom to do a preliminary study. They came up with \$18 million worth of project that the Capitol Grounds Planning Commission would like to complete prior to the 100 year anniversary. They thought they would need to get \$1 million per year, \$2 million per biennium to go towards that project so that everything would be completed in the next 20 years. The Capitol Grounds Planning Commission had requested OMB requested special funds out of the Capitol Building Trust in the amount of \$750,000.00 to go towards the aesthetically pleasing type of projects, the columns, the black Belgium marble walls. Then in their budget in 2015 they received an additional \$2 million in deferred maintenance which will go toward other projects that are identified in the restoration study. All the money that is coming out of the Capitol Building Trust will be used for the aesthetic areas where the other portion will be cleaning of limestone, replacing marble on the outside and inside. A portion of the general fund that they are receiving in the one time deferred maintenance items that the governor put in his budget recommendations. So the whole \$750,000.00 they really will be spending twice that much but they wanted to use some of the special funds that were available in the Capitol Building Trust.

Senator Dever asked John to explain if the principal of the Capitol Building Fund was set aside for the legislative wing and the interest from it was to be used for other projects.

John said originally the intent was for the money to be set aside, principle and interest, to go toward a new legislative wing. That was in 1967. Later on they added that the Capitol Grounds

Planning Commission could use as much as \$50,000.00 a biennium which would be about the interest and the rental that they receive from the land that is rented. Currently they get about \$200,000.00 to \$250,000.00 per biennium. It used to be about \$50,000.00. They did leave in the \$100,000.00 so it will grow each biennium but only by about \$150,000.00. So it will take a long time for that to grow to the amount that will be needed to do any kind of legislative wing enhancements.

Senator Dever said, "So the deletion of the language regarding the legislative wing becomes consistent with the language that was changed later to allow that money to be used for other projects."

John said he believed that is correct.

Representative Schneider said he feels everyone agrees that there are several restoration projects that need to be done. He feels they should just appropriate the money they need to do that. He is frustrated that we are raiding trust funds that have been set up for specific purposes to pay for the things that they want to accomplish. The bill that has been on the books for several decades says this money was dedicated and reserved to the exclusive purpose of the construction of an addition to the legislative wing. Session after session we have been raiding that fund to handle all these restoration projects when really that money should have been appropriated out of the general fund. If we take out this language we have to be realistic that the legislative wing probably will never happen.

Senator Dever said the position of the Senate when it passed the bill was that it probably would never happen and the position of the House was that it should.

Senator Nelson questioned if that was the motive of the House or was the House looking for a way to put the smoking restrictions on and this was a good vehicle because it dealt with the Capitol.

Senator Oehlke said from a tour of the Capitol he learned that the original building cost \$2 million. There has been inflation since then. \$250,000.00 of rental income and interest on that fund per biennium it would be a long time before anything could be built from that fund.

Senator Nelson said she asked Mr. Boyle what the cost of the Master Plan was and he said \$200,000.00 and that is the 2000 version.

Senator Nelson asked if at the next meeting there could be minutes from the committee meetings in the Senate and the House available.

Senator Dever said the rules around the capitol grounds are really an executive decision. He feels a lot of them agree that it is not pleasant to walk through cigarette smoke to get into the building and something should be done but he thinks a better vehicle would be to ask the governor to deal with it or to perhaps put it in the hands of the Capitol Grounds Planning Commission to come up with a way to deal with it. One of the problems that has been expressed to him is if we were to ban smoking within 100 feet of the doors there needs to be signage. If we were to put it in statute the 100 feet may be appropriate at some doors and not at other doors. For example getting out of your car in the west parking lot you are already within 100 feet of the door.

Senator Oehlke said he feels the money and time spent on creating laws to ban smoking would be better spent encouraging individual businesses to impose their own rules for their establishments. Making laws about it takes responsibility away from the individuals who should be responsible for it.

Senator Dever recessed the conference committee on SB 2090 and they will meet again at a later date.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2090

Senate Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: 4-05-07

Recorder Job Number: 5785

Committee Clerk Signature

Virginia Spaulding

Minutes:

Senator Dever, Chairman, called the conference committee on SB 2090 to order.

Roll was taken and all members were present.

Senator Dever expressed that he can understand there is a concern about the smoke at the east door of the Capitol Building but he is not sure making a statute about it is the way to handle it.

Senator Grande said the House had discussed the ban in connection to another bill and they made mention that it was a matter for the executive branch but they felt the issue wasn't being dealt with quickly enough. They had no assurances that the issue would be addressed so they put it onto this bill. Whether that is usurping of powers or not is the point of discussion on that. They don't want to walk through smoke at the east entrance.

Senator Dever said he heard someone say they could smell smoke in the Prairie Room. He checked and the intake is on the roof so he is not sure how the smell gets around. It is an issue that needs to be addressed but he is not sure that this is the best way to address it.

There are three issues: the smoking issue, another is whether it should stay in statute that the legislative wing is a priority that he understands was established by the legislature in 1967, and whether or not \$750,000.00 that is in the OMB bill is an appropriate way to spend money. He

understands that the legislature does have authority to spend money out of the Capitol Building Fund.

Senator Nelson said the original intent of the Senate was to have nothing to do with the smoking issue and just leave that up to the Capitol Grounds Committee. The concern was getting ready for 2032 and having a plan in place to have the Capitol Building in good shape for the centennial of the building, knowing how long it takes to get things done.

Senator Dever mentioned it is a major departure from the intent of the bill.

Representative Haas said they realize that and he said they were not prepared to take any action on the bill today.

Senator Dever told the committee he had information that gave the history of this bill. See attachment # 1. It started with the Enabling Act of 1889. February 22, 1889 just prior to statehood the federal government deeded land to the state for the purpose of building buildings on the Capitol Grounds. That was amended in the 1960's to include upgrades and maintenance, etc. He offered to make copies of the information for the committee members. He said we can be proud of our Capitol Grounds and the care that is provided for it. Senator Grande said she would appreciate if copies of the history of the bill could be provided to the committee members.

The committee was recessed until a later date.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2090

Senate Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: 4-10-07

Recorder Job Number: 5865

Committee Clerk Signature

Monica Spaulding

Minutes:

Chairman Dick Dever called the conference committee on SB 2090 to order.

Roll was taken and all members were present.

Senator Dever gave a brief history of the Capitol Building Fund. The Enabling Act of 1889 said they were to use the proceeds to build buildings. There were 50 sections of land provided and they could use some of the land to generate revenue through sale of the land or income derived from the land. In the 60's it was amended by Congress to allow for maintenance and upgrades to buildings on the Capitol Grounds. In the 60's another section was placed in that said the Building Fund would be dedicated to the addition of a legislative wing except as otherwise appropriated so the legislature as it saw fit could appropriate money for other projects that fit into the construction upgrade/maintenance for buildings on the Capitol Grounds. It was also in about that time frame that \$50,000.00 per biennium from the building fund could be used by the Capitol Grounds Planning Commission for the purpose of maintaining around the Capitol Grounds. My understanding is that the Capitol Building Fund has two components: One is the plan continues to exist for that purpose, and the other is the cash that has grown from those proceeds. So as the law stands right now the Building Fund can be used for additions to the legislative wing except as otherwise appropriated, that is if the

legislature chooses to do something else with it. And \$50,000.00 can be used for purposes as determined by the Capitol Grounds Planning Commission. The bill as it left the Senate removed the paragraph including the legislative wing, and provided that the \$50,000.00 was \$100,000.00. That was the position of the Senate. In the House then the paragraph including the legislative wing was put back into the bill with the words "except as otherwise appropriated" stricken. So regarding that provision the building fund was not to be used for any other purpose, but the \$50,000.00 increased to \$100,000.00 increased from income derived from the building fund. Then the House amended it to include the smoking provision to ban smoking within 100 feet of the doors.

Senator Grande said they would like to divide it into two issues. One of these would be the smoking issue.

Senator Dever said the tower of the Capitol Building acts as a chimney and because of negative pressure the air rushes in when the doors are opened. The smoke smell does get into the Capitol Building. The provision in the bill would still allow smoking in the Plaza area between the Capitol Building and the Heritage Center.

There was some discussion about where to ban smoking and how best to do it.

Senator Dever presented two possible amendments to consider. See attachment # 1 and 2.

They discussed the merits and drawbacks of the two amendments.

Representative Grande preferred 0107 because she feels a deadline is important.

Senator Dever pointed out that as the bill stands it says August 1st.

There was discussion of a specified deadline being challenging to comply with because the commission does not meet very often.

Representative Haas also preferred 0107 because he felt the mention of the date in the amendment would make them immediately aware there is a deadline. They would then put the wheels in motion to take care of the problem.

Representative Grande preferred 0107 because it spells out a uniform policy that is very easy to follow. 0109 bans smoking altogether and the House considered that idea and killed it. They wanted a footage type policy.

Representative Haas made a motion that the House accede from its amendments.

The motion was seconded by Senator Nelson.

Roll Call Vote: Yes 5 No 1 Absent 0

Representative Grande made a motion to adopt amendment 0107.

The motion was seconded by Representative Haas.

Roll Call Vote: Yes 6 No 0 Absent 0

Representative Schneider said his concern with this bill as it came out of the Senate was the overstrike of line 17-21. With the words "except as otherwise appropriated" he doesn't see the need to take out that language. Also a trust fund is usually set up with a specific purpose in mind. Without the language in there he feels it becomes a fund without a specified purpose.

He would like to see lines 17-21 brought back into the bill.

There was some discussion about the merit of putting it back into the bill.

Representative Schneider felt it could give direction and guidance to future legislative assemblies as to the purpose of the fund and at the same time giving flexibility to use the funds for other purposes.

Senator Dever said it was the intention of the legislative assembly in 1967 that that be the first priority but is that the intention of the legislative assembly in 2007.

Representative Schneider said without that language the fund lacks a purpose.

Senator Dever said the purpose is the construction of buildings, the upgrade and maintenance of facilities. So that none of us are unaware there is \$750,000.00 appropriated in OMB for repairs too.

Representative Schneider said with that language put back in they would still be able to do that. There is still flexibility but the language of the bill would remind the assembly of the purpose of the fund.

Senator Nelson said she doesn't feel it is important but to move things along she made a motion to amend SB 2090 by removing the overstrike on page 1, lines 17 through 21.

Senator Nelson's motion was seconded by Representative Schneider.

Representative Haas said the language in line 22 through the end of the bill whether lines 17 through 21 are in there or not the rest of the provision says that the Capitol Funds Planning Commission may appropriate up to \$100,000.00 per biennium. The rest of the money can only be accessed through legislative action. He feels that would be true whether lines 17 through 21 are added back in or not.

Roll Call Vote: Yes 6 No 0 Absent 0

Senator Oehlke made a motion to pass the bill as amended.

The motion was seconded by Senator Nelson.

Roll Call Vote: Yes 6 No 0 Absent 0

Chairman Dever closed the meeting.

April 9, 2007

#/

PROPOSED AMENDMENTS TO SENATE BILL NO. 2090

That the House recede from its amendments as printed on pages 1135 and 1136 of the Senate Journal and pages 1126 and 1127 of the House Journal and that Senate Bill No. 2090 be amended as follows:

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 23-12-10 of the North Dakota Century Code, relating to an outdoor smoking policy for certain areas on the state capitol grounds; and"

Page 1, after line 3, insert:

"SECTION 1. A new subsection to section 23-12-10 of the North Dakota Century Code is created and enacted as follows:

Before October 1, 2007, with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds, the office of management and budget shall develop and implement a uniform policy regarding the smoking restrictions in those areas."

Renumber accordingly

vote 1
4-10-07

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 2090 (, as (re)engrossed):

Date: 4-10-07

Your Conference Committee _____

*motion: Haas
second: Nelson*

For the Senate:

For the House:

	Yes	No		Yes	No
<i>Dwyer</i> ✓	✓		<i>Haas</i> ✓	✓	
<i>Dehke</i> ✓	✓		<i>Hande</i> ✓	✓	
<i>Nelson</i> ✓	✓		<i>Schneider</i> ✓		✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1135 -- 1136

_____ and place _____ on the Seventh order.

✓, adopt (further) amendments as follows, and place 2090 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 2090 was placed on the Seventh order of business on the calendar.

DATE: _____

HOUSE CARRIER: _____

SENATE CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT: ____ YES ____ NO ____ ABSENT

April 9, 2007

#2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2090

That the House recede from its amendments as printed on pages 1135 and 1136 of the Senate Journal and pages 1126 and 1127 of the House Journal and that Senate Bill No. 2090 be amended as follows:

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 23-12-10 of the North Dakota Century Code, relating to smoking restrictions on the state capitol grounds; and"

Page 1, after line 3, insert:

"SECTION 1. A new subsection to section 23-12-10 of the North Dakota Century Code is created and enacted as follows:

Except for those areas designated by the office of management and budget as smoking areas, smoking is prohibited in all outdoor areas of the state capitol grounds."

Renumber accordingly

Date : 4-10-07
Roll Call Vote # : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

Senate **Government and Veterans Affairs** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken 107

Motion Made By Grande Seconded By Haas

Senators	Yes	No	Representatives	Yes	No
✓ Senator Dick Dever - Chairman	✓		✓ Representative Haas	✓	
✓ Senator Dave Oehlke - VC	✓		✓ Representative Grande	✓	
✓ Senator Carolyn Nelson	✓		✓ Representative Schneider	✓	

Total (Yes) 6 No 0

Absent _____

Floor
Assignment _____

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

Date : 4-10-07
Roll Call Vote # : 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

Senate **Government and Veterans Affairs** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number amend

Action Taken _____

Motion Made By Nelson Seconded By Schneider

Senators	Yes	No	Representatives	Yes	No
Senator Dick Dever - Chairman	✓		Representative Haas	✓	
Senator Dave Oehlke - VC	✓		Representative Grande	✓	
Senator Carolyn Nelson	✓		Representative Schneider	✓	

Total (Yes) _____ No _____

Absent _____

Floor
Assignment _____

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

Date : 4-10-07
Roll Call Vote # : 4

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Att. 1
Sec.

Motion Made By Oehlke Seconded By Nelson

Senators	Yes	No	Representatives	Yes	No
Senator Dick Dever - Chairman	✓		Representative Haas	✓	
Senator Dave Oehlke - VC	✓		Representative Grande	✓	
Senator Carolyn Nelson	✓		Representative Schneider	✓	

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

remove overstrikes on 17-21 Adopt bill as amended
by roll call votes 1, 2, & 3.

REPORT OF CONFERENCE COMMITTEE

SB 2090: Your conference committee (Sens. Dever, Oehlke, Nelson and Reps. Haas, Grande, Schneider) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1135-1136, adopt amendments as follows, and place SB 2090 on the Seventh order:

That the House recede from its amendments as printed on pages 1135 and 1136 of the Senate Journal and pages 1126 and 1127 of the House Journal and that Senate Bill No. 2090 be amended as follows:

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 23-12-10 of the North Dakota Century Code, relating to an outdoor smoking policy for certain areas on the state capitol grounds; and"

Page 1, after line 3, insert:

"SECTION 1. A new subsection to section 23-12-10 of the North Dakota Century Code is created and enacted as follows:

Before October 1, 2007, the office of management and budget shall develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds."

Page 1, remove the overstrike over lines 17 through 21

Renumber accordingly

SB 2090 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2090

TESTIMONY ON SB 2090
By John Boyle, Director
OMB Facility Management Division
January 4, 2007

Good morning Chairman Dever and members of the Government and Veterans Affairs Committee, for the record my name is John Boyle. I am the director of the Facility Management Division within the Office of Management and Budget. I am here today to testify on Senate Bill 2090.

One of my duties as the director of Facility Management is to implement the projects approved by the Capitol Grounds Planning Commission.

The office of management and budget is requesting two changes to NDCC 48-10-02. The first change is the deletion of lines 17 through 21 as printed on the bill. This change will permit the office of management and budget to request special funds from the Capitol Building Trust to proceed with projects approved by the Capitol Grounds Planning Commission.

The second change is found on Page 2, line 2. The office of management and budget is requesting the amount of appropriated spending each biennium be increased from \$50,000 to \$100,000.

Mr. Chairman that concludes my remarks. At this time, I would be happy to answer any of your questions.

attachment # 2

BOARD OF UNIVERSITY AND SCHOOL LANDS
REVENUE PROJECTIONS FOR THE CAPITOL BUILDING TRUST

5/5/06

	2005-07 BIENNIUM	2007-09 BIENNIUM
BEGINNING BALANCE	\$666,422	\$856,971
MINERAL ROYALTIES	18,417	15,069
MINERAL RENTS	2,516	2,000
MINERAL BONUSES	34,941	-
SURFACE RENTS	175,205	185,875
INVESTMENT INCOME	51,889	44,546
TOTAL REVENUE & TRANSFERS	282,969	247,491
TRANSFER TO FAC. MNGT.	50,000	2850,000
ADMINISTRATIVE EXPENSE	34,302	36,390
IN-LIEU PROPERTY TAX	1,702	1,806
5% NET INCOME PAYMENT TO CO.'S	6,416	6,807
TOTAL TRANSFERS & EXPENSES	92,419	695,003
ESTIMATED ENDING BALANCE	\$856,971	\$409,459
		3

NOTE:

Asset balance includes land valued at \$10.00/acre for a total balace of \$99,919. Spendable, liquid assets are therefore \$99,919 less than the amounts shown above

Bienn	Cost	Description	Biennium	Cost	Description
89-91	\$ 522,658.00	Boiler Project	93-95	\$ 1,049.00	Parking Lots
	\$ 49,428.00	Governor's Residence Renovation		\$ 95,962.00	Contingency misc repairs
	\$ 21,157.00	Heating & Cooling Gov Residence		\$ 9,472.00	Overhead garage doors
	\$ 15,425.00	Asphalt Sealing		\$ 68,661.00	Roofing repairs
	\$ 26,280.00	Refinishing woodwork Chambers & Sec of State Off		\$ 33,970.00	Capitol entrances
	\$ 37,133.00	Carpet replacement		\$ 21,393.00	Security System
	\$ 24,820.00	Trash Compactor		\$ 12,050.00	Grounds maintenance
	\$ 257,650.00	Automation of elevators		\$ 33,695.00	Carpet replacement
	\$ 72,157.00	SOB basement renovation		\$ 276,252.00	
	\$ 141,105.00	Steam line J Wing			
	\$ 12,440.00	Fire Safety requirements	95-97	\$ 318,590.00	Parking Lots
	\$ 22,976.00	Agency remodels		\$ 53,391.00	Carpet replacement
	\$ 11,103.00	Miscellaneous repairs		\$ 22,664.00	DOT Carpet
	\$1,214,332.00			\$ 19,348.00	Agency remodel
				\$ 3,081.00	Base board heating
91-93	\$ 525,686.00	Building Automation		\$ 97,176.00	Contingency misc repairs
	\$ 36,928.00	Memorial Hall Windows		\$ 212,906.00	Maintenance building
	\$ 22,495.00	Parking Lot Resurfacing		\$ 727,156.00	
	\$ 36,504.00	Concrete Replacement			
	\$ 13,237.00	Heritage Center Sprinkling system	97-99	\$ 46,627.00	Capitol/Heritage Ctr Carpet
	\$ 45,670.00	DOT Carpeting		\$ 15,000.00	Liberty Memorial bldg roof
	\$ 337,796.00	Phase II Elevator Project Automation		\$ 49,403.00	ADA
	\$ 9,036.00	Reroof Legislative Wing		\$ 73,336.00	DOT Carpet
	\$ 99,880.00	Reroof Heritage Center		\$ 31,963.00	Agency remodel
	\$ 42,625.00	Heritage Center Plaza		\$ 63,068.00	Baseboard heating
	\$ 7,666.00	West Entrance		\$ 103,008.00	Contingency misc repairs
	\$ 43,070.00	Centra Vac Overhaul		\$ 2,819.00	Capitol roof
	\$ 54,405.00	Jwing Plaza & Capitol Steps		\$ 8,621.00	Granite paver repair
	\$ 7,817.00	Radio Security System		\$ 35,990.00	Chiller overhaul
	\$ 13,515.00	Landscaping		\$ 93,619.00	Capitol repair
	\$ 93,833.00	Contingency misc repairs		\$ 57,932.00	Bldg automation
	\$ 25,744.00	Agency Renovations		\$ 92,850.00	Ballast replacement
	\$1,059,665.00	State Office Bldg Renovation		\$ 674,236.00	
	\$ 338,974.00	San Haven Closer			
	\$ 4,525.00	Forest Maintenance	99-01	\$ 256,610.00	Roofs
	\$ 2,417.00	Carpet Replacement		\$ 20,700.00	Paver repairs
	\$2,821,488.00			\$ 32,000.00	Capitol automation
				\$ 224,535.00	Master Plan
				\$ 533,845.00	

<u>Biennium</u>	Dollars transferred to Facilities Management
79-81	\$0
81-83	\$1,122,107
83-85	\$34,376
85-87	\$929,370
87-89	\$1,522,544
89-91	\$1,020,000
91-93	\$2,498,000
93-95	\$300,000
<u>FY</u>	
1996	\$490,000
1997	\$300,000
1998	\$580,000
1999	\$230,000
2000	\$467,000
2001	\$34,269
2002	
2003	\$1,000
2004	
2005	\$37,500
2006	\$27,000
	As of March 31-2006
Total	\$9,593,166

CHAPTER 5

HOUSE BILL NO. 1006
(Committee on Appropriations)

DIRECTOR OF INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various divisions under the supervision of the director of institutions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the director of institutions of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

DIRECTOR OF INSTITUTIONS

Salaries and wages	\$ 3,290,902
Operating expenses	3,405,193
Postage revolving fund	10,000
Institutional medical fees	615,000
Equipment	32,839
Capital improvements	866,290
Total all funds	\$ 8,220,224
Less appropriation from capitol building funds	866,290
Total general fund appropriation	\$ 7,353,934

Subdivision 2.

STATE COMMUNICATIONS

Operating expenses	\$ 6,571,322
Data processing	18,731
Total all funds	\$ 6,590,053
Less estimated income	3,294,306
Total general fund appropriation	\$ 3,295,747
Grand total general fund appropriation H.B. 1006	\$ 10,649,681
Grand total special funds appropriation H.B. 1006	\$ 4,160,596
Grand total all funds appropriated H.B. 1006	\$ 14,810,277

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION - TRANSFER. The amount appropriated in section 1 of this Act includes \$866,290 which shall be transferred by the office of management and budget from the capitol building fund for the biennium beginning July 1, 1985, and ending June 30, 1987, as required for disbursement by the director of institutions.

SECTION 4. LEGISLATIVE INTENT - DIRECTOR OF INSTITUTIONS - REPORT TO BUDGET SECTION. It is the intent of the legislative assembly that the director of institutions present a detailed proposal, including alternatives and cost estimates, to the budget section during the 1985-86 interim regarding future plans, including alternatives for the old state office building. The alternatives shall include both renovating and demolishing the old state office building and the construction of a new building.

Approved April 15, 1985

CHAPTER 41

SENATE BILL NO. 2005
(Committee on Appropriations)

DIRECTOR OF INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of the director of institutions of the state of North Dakota and providing for a transfer from the capitol building fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$3,103,333
Operating expenses	3,112,489
Institutional medical fees	300,000
Equipment	28,110
Capital improvements	1,146,300
Total all funds	\$7,690,232
Less estimated income	1,076,300
Total general fund appropriation	\$6,613,932

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. TRANSFER. The amount of \$1,076,300, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the capitol building fund to the director of institutions for the biennium

beginning July 1, 1987, and ending June 30, 1989. However, the amount of the transfer shall be reduced to the extent of private grants and donations received for repairs to the governor's residence.

SECTION 4. CAPITOL BUILDING ADDITION - FEASIBILITY STUDY - COST ESTIMATES. Included in the capital improvements line item in section 1 of this Act is \$15,000 from the capitol building fund to be used for a feasibility study including preliminary drawings and cost estimates for a capitol building addition for additional committee rooms. The director of institutions shall contract for the services and provide progress reports and the final report to the capitol grounds planning commission and the legislative council's legislative procedure and arrangements committee during the 1987-89 biennium.

Approved April 21, 1987
Filed April 27, 1987

Judicial branch	490,000
Legislative branch	170,000
Other	2,740,000
Total	<u>\$20,000,000</u>

The amount of \$2,740,000 included as other must be reduced proportionately by the office of management and budget from other general fund appropriations not otherwise reduced by this Act. The chief justice of the supreme court shall determine the line items from which reductions are to be made for the judicial branch and the chairman of the legislative council shall determine the line items from which reductions are to be made for the legislative branch.

SECTION 14. CONTINGENT SUSPENSION. The provisions of this Act supersede sections 54-44.1-12 and 54-44.1-13.1 if it is determined reductions are needed as provided in section 13 for appropriations from the state general fund or the state aid distribution fund for the period July 1, 1989, through June 30, 1991, unless for any reason the provisions of section 13 of this Act are not effective. If the reductions in appropriation authority provided in section 13 are not sufficient to meet the shortfall in an affected fund, the provisions of sections 54-44.1-12 and 54-44.1-13.1 are applicable for additional reductions in appropriation authority.

SECTION 15. EMERGENCY. Section 11 of this Act is declared to be an emergency measure.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 4

HOUSE BILL NO. 1005
(Committee on Appropriations)

DIRECTOR OF INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of the director of institutions of the state of North Dakota; to provide for a transfer from the capitol building fund; to provide for a statement of legislative intent regarding state employee compensation adjustments; 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 thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income to the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$3,110,245
Operating expenses	2,906,832
Equipment	34,030
Capital improvements	1,466,350
Institutional medical fees	180,000
Total all funds	<u>\$7,697,457</u>
Less estimated income	1,479,650
Total general fund appropriation	<u>\$6,217,807</u>

SECTION 2. TRANSFER - CAPITOL BUILDING FUND. The amount of \$1,416,350, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the capitol building fund to the director of institutions for the period beginning with the effective date of this section and ending June 30, 1991.

SECTION 3. LEGISLATIVE INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-first legislative assembly that 1989-91 compensation adjustments for state employees in the classified service are to be average increases of 7.1 percent beginning with the month of July 1989 to be paid in August 1989. All classified employees not on a probation status are entitled to receive increases of at least fifty dollars per month. Pay grade maximums shall not limit the amount of such an increase. No further increases are provided in the appropriations made by the fifty-first legislative assembly for the 1989-91 biennium.

SECTION 4. EMERGENCY. The capital improvements line item in section 1 and section 2 of this Act are declared to be emergency measures.

Approved April 28, 1989
Filed April 28, 1989

Capital improvements	2,025,000
Total all funds	\$ 7,629,565
Less estimated income	2,025,000
Total general fund appropriation	\$ 5,604,565

Subdivision 3.

INFORMATION SERVICES DIVISION

Salaries and wages	\$ 8,830,037
Operating expenses	21,597,600
Equipment	6,910,000
Total special funds appropriation	\$37,337,637

Subdivision 4.

CENTRAL DUPLICATING SERVICES

Salaries and wages	\$ 1,222,623
Information services	50,510
Operating expenses	2,058,752
Equipment	31,500
Total special funds appropriation	\$ 3,363,385
Grand total general fund appropriation S.B. 2004	\$16,935,198
Grand total special funds appropriation S.B. 2004	\$73,741,398
Grand total all funds appropriation S.B. 2004	\$90,676,596

SECTION 2. TRANSFER. Upon approval of the budget section, the director of the office of management and budget may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 3. ADDITIONAL INCOME. All income in excess of estimated income in the budget appropriated by the legislative assembly to the office of management and budget for the biennium beginning July 1, 1991, and ending June 30, 1993, must be deposited in the appropriate operating funds in the state treasury and can be expended with the authorization of the emergency commission.

SECTION 4. EXEMPTION. The information services appropriation contained in section 1 of chapter 3 of the 1989 Session Laws is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation shall be available for continued development and operation of the accounting, management, and payroll systems during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 5. FACILITY MANAGEMENT. The amount of \$2,025,000, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act, is to be spent by the facility management division from the capitol building fund during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-second legislative assembly that 1991-93 compensation adjustments for state employees in the classified service are to be average increases of 4.0 percent beginning with the month of July 1991 to be paid in August 1991. All classified employees not on a probation status are entitled to receive increases of at least fifty dollars per month. Pay grade maximums shall not limit the amount of such an increase.

SECTION 7. APPROPRIATION. The director of the office of management and budget shall appoint a three-member committee on public sector support employment consisting of a representative from the office of vocation rehabilitation, department of human services; a representative of the executive budget office, office of management and budget; and a representative of the central personnel division, office of management and budget.

The committee shall have authority to consider applications from state agencies and institutions for permission to have and fill a support employment position or positions within that agency or institution. The committee may approve or disapprove such applications based upon objective criteria established by the committee, or may return them with suggestions for modification. If the committee approves an original or modified application it shall also authorize the addition to the payroll of the appropriate number of full- or part-time positions. The emergency commission is authorized to transfer, where necessary, funds from the appropriation made by this section to the salary line item of the applicant agency or institution. State agencies and institutions upon emergency commission approval may spend special funds not to exceed an aggregate of \$500,000 which funds are hereby appropriated for the supported employment program during the biennium beginning July 1, 1991, and ending June 30, 1993.

Agency or institution applications pursuant to this section must be presented to the committee prior to April 1, 1992; and must assure that the agency or institution will evaluate the position regularly, and, if the position is of value to the agency or institution, assure that it will include the position and appropriate salary funding in its budget submission for the 1993-95 biennium.

SECTION 8. APPROPRIATION. There is hereby appropriated out of the moneys in the general fund in the state treasury, not otherwise appropriated the sum of \$1,000,000, or so much thereof as may be necessary, to the board of higher education for the purpose of remodeling, renovation, and maintenance of buildings at the institutions under its control, including the following projects, for the biennium beginning July 1, 1991, and ending June 30, 1993:

University of North Dakota - Williston
Physical plant operating expenses
University of North Dakota
Physical plant operating expenses
North Dakota college of science
Capital improvements
NDSU-Bottineau - Interactive video
network site

SECTION 9. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the following institutions of higher learning under the supervision of the board of higher education for the purpose of defraying expenses which would otherwise be paid from tuition increases, for the biennium beginning July 1991, and ending June 30, 1993:

University of North Dakota	\$1,165,215
North Dakota state university	902,037

54-21-18. Custody of office building — Considered part of capitol building — Director has control of public property — Rules — Penalty.

Text

The director of the office of management and budget shall control, manage, and maintain the state office building. The building must be considered a part of the state capitol building within the meaning of statutes relating to the custody, maintenance, and control of the state capitol building **and grounds**, and within the meaning of statutes requiring state departments or agencies to maintain their offices in the state capitol building. Except as otherwise provided by law, the director of the office of management and budget has charge and control of the executive mansion, the capitol, and the park and public grounds connected therewith. Except as provided by sections 39-10-48, 39-10-50, 44-08-18, and 54-21-17.1, the director may adopt rules to promote the health, safety, and general welfare, to prohibit disturbances and disorderly assemblies, to keep the peace, and to regulate nuisances on the capitol grounds and in any of the buildings located on the capitol grounds. The rules may include regulation of public assemblies and accessibility to the buildings and grounds, obstructions, fees, insurance, forms, indemnification by users, and waiver of insurance and indemnity requirements by the director. A person who violates a rule adopted by the director under this section is guilty of an infraction.

History

Source. S.L. 1887, ch. 162, § 1; R.C. 1895, § 154; R.C. 1899, § 154; R.C. 1905, § 238; C.L. 1913, § 376; S.L. 1915, ch. 229, § 1; 1925 Supp., § 376; R.C. 1943, § 54-2118; S.L. 1957, ch. 341, § 1; 1957 Supp., § 54-2118; S.L. 1959, ch. 369, §§ 4, 5; 1969, ch. 440, § 9; 1981, ch. 529, § 1; 1991, ch. 592, § 32; 1997, ch. 451, § 2; 2005, ch. 490, § 3.

H/

CAPITOL BUILDING FUND USES

This memorandum provides information on the history of legislation relating to the Capitol building fund.

According to the State Land Department, the Capitol building fund was established at the time of statehood by the Enabling Act of 1889. Section 12 of the Enabling Act provided 50 sections of land to North Dakota upon statehood to be used for the purpose of financing construction of public buildings for legislative, executive, and judicial use. The Capitol building fund is made up of the land, proceeds from the sale of the land, and any investment income from the proceeds. Section 12 of the Enabling Act was amended by Congress in 1957 to expand the fund's use to construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvements of public buildings at the Capitol of the state.

Section 1 of Chapter 314 of the 1965 Session Laws created the Capitol Grounds Planning Commission and established the membership of the commission as being the Governor and three representatives each from the House and the Senate. The function of the commission is to confer with qualified consultants to select sites for buildings to be constructed on the Capitol grounds and to develop and modify long-term plans for the development of the Capitol grounds.

Section 2 of Senate Bill No. 388 (1967) stated that the Capitol building fund is to be administered by the Capitol Grounds Planning Commission acting through the State Land Commissioner and the State Land Department. All money, properties, and income from the fund, unless otherwise appropriated, are dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing. The Capitol Grounds Planning Commission is to take steps to accumulate and conserve the money and property in the Capitol building fund for such purpose.

An appropriation in Section 3 of Senate Bill No. 388 provided \$30,000 from the Capitol building fund to the commission for the purpose of conducting a study of legislative facilities and exploring the feasibility of converting additional space within the existing State Capitol for committee rooms, office space, and other legislative needs. If additional space within the State Capitol is not available, the commission is to prepare plans for a new wing or an addition to the existing legislative wing to provide sufficient space to meet the present and foreseeable future needs of the Legislative Assembly.

Testimony presented in favor of Senate Bill No. 388 indicated the intent of the bill was to continue the Capitol Grounds Planning Commission for another two years. Language providing for an appropriation of \$995,000 for the construction of an addition to the

legislative wing and language authorizing the commission to issue and sell certificates of indebtedness in the amount of \$700,000 were removed from the bill before final passage.

House Bill No. 1117 (1979) amended North Dakota Century Code (NDCC) Section 48-10-02 to remove language relating to the Capitol Grounds Planning Commission acting through the State Land Commissioner and the State Land Department in administering the Capitol building fund and provides that the Board of University and School Lands shall invest and manage the fund on behalf of the Capitol Grounds Planning Commission. The bill further amended Section 48-10-02 to provide a continuing appropriation to the Capitol Grounds Planning Commission from the interest and income from the Capitol building fund not to exceed 50 percent of the unencumbered balance. Expenditures made under the continuing appropriation may be made, after consideration of the Capitol grounds master plan, for projects or planning but may not exceed \$50,000 per biennium. The bill provided that expenditures may only be made upon approval by two-thirds of the total membership of the commission.

The original version of House Bill No. 1117 (1979) would have removed language from NDCC Section 48-10-02 that provided for money and property in the fund, except as otherwise appropriated, to be dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing. This language was restored in the final version of the bill.

Testimony presented in favor of House Bill No. 1117 (1979) indicated the intent of the bill was to provide the Capitol Grounds Planning Commission authority to use the reserved funds for other purposes. The purpose of the amendment to the bill was to have the permanent fund dedicated and reserved for legislative use while providing an appropriation to the commission from the income of the fund.

A 1993 Attorney General's opinion (Letter Opinion 93-L-119) dated April 1, 1993, addressed the issue of whether the principal of the Capitol building fund may be expended pursuant to legislative appropriation. The opinion stated that neither the Enabling Act nor the state constitution provide for permanent status of any portion of the Capitol building fund. The opinion further stated that funds derived from the Capitol land grant are not meant to be kept permanent and may be used as the Legislative Assembly determines. The opinion concluded that the Legislative Assembly may appropriate funds for capital improvements which results in the expenditure of the fund's principal.

September 1981

"BACKGROUND AND HISTORY OF THE CAPITOL GROUNDS PLANNING COMMISSION

The Capitol Grounds Planning Commission was created by the 39th Legislative Assembly (1965) and consisted of six legislators, three from each house, plus the Governor as commission chairman (see 1965 Session Laws of North Dakota, ch. 314, p. 602). The enabling legislation gave the commission the duty of selecting the site for the Highway Building and appropriated \$2,500,000 for the construction of that building.

In 1967 the Legislative Assembly amended the basic authorizing statutes to make the commission permanent. That legislation also gave the commission responsibility for building site selection on the Capitol grounds, for the development of long-term plans for Capitol grounds growth, and the responsibility for approving or disapproving the exterior design of any building or facility to be constructed upon the Capitol grounds (see 1967 Session Laws of North Dakota, ch. 364, p. 884).

1967 * Chapter 364 also gave the commission general powers of superintendence over the Capitol building fund, both principal and income, and dedicated and reserved the moneys in that fund to the construction of an addition to the legislative wing of the State Capitol. ~~The Capitol building fund consists of real estate given to the state by the federal government, the moneys from sale of portions of that real estate, and the investment income from that money.~~ The land (50 sections) was given when North Dakota became a state for the purpose of providing financing for "public buildings at the capital" for governmental purposes (Enabling Act, Sec. 12, 25 Stat. 676).

1967 Finally, Chapter 364 directed the commission to study legislative facilities and explore the feasibility of adapting additional space within the existing Capitol for use by the Legislative Assembly for committee rooms, office space, and other legislative needs. If different utilization of existing space were found not to be feasible, the commission was to prepare plans for a "suitable wing or an addition to the legislative wing" to meet present and future space needs of the Legislative Assembly.

In the 43rd Legislative Assembly (1973) the authorizing statutes for the commission were amended to increase the commission membership to eight by adding two citizen members appointed by the Governor (see 1973 Session Laws of North Dakota, ch. 377, p. 1078).

1979 In 1979 (see Session Laws of North Dakota, ch. 494, p. 1244) the Legislative Assembly expanded the commission's authority over the Capitol building fund by authorizing the commission to expend up to \$50,000 per biennium from that fund, upon approval by two-thirds

\$50,000

of the total membership of the commission (six members). That authority was utilized during the 1979-80 interim for the purpose of paying certain additional parking lot construction costs. The amount expended was \$48,220.

1970
Master
Plan
The commission, in carrying out its responsibilities for Capitol grounds master planning, hired the consulting firm of Barton-Aschman to develop a Capitol grounds master plan. ~~That same firm updated the master plan in 1970.~~ On February 4, 1980, the commission retained the firm of Tvenge-Larson Architects/Planners (Bismarck) to begin an update of the master plan. The commission believed it was a good time to update the master plan as all building projects on the Capitol grounds will soon be completed. The master plan update project is still underway, and the commission will be making decisions concerning that project during this legislative interim.

1980
update

Over the last several bienniums the commission has employed a North Dakota architect as its consultant. The architect is paid on a retainer basis. Currently that retained architect is Mr. Warren Tvenge.

Over the last several bienniums, the commission has, as it considered changes in facilities or plantings on the grounds, had the benefit of input from the Capitol Grounds Arboretum Committee. That committee has been appointed by the Governor and has advised the commission regarding such matters.

The 47th Legislative Assembly (1981) adopted two bills relevant to the future work of the commission. First was Senate Bill No. 2259 (see 1981 Session Laws of North Dakota, ch. 89, p. 153) which appropriates \$125,000 to the commission for "planning and implementing an external and internal capitol security system" during this biennium. The second, House Bill No. 1563 (see 1981 Session Laws of North Dakota, ch. 470, p. 1300) creates a nine-member Capitol Arts and Historic Preservation Advisory Committee to be appointed by the Governor. That committee is to "advise" the commission on matters relating to the physical aesthetic features of the "interior of all buildings on the capitol grounds." It is not clear what the relationship of that committee will be to the commission, since the commission does not have jurisdiction over projects that affect only the interior of buildings on the Capitol grounds.

During the course of its existence, the commission has made siting and exterior design decisions with respect to the Heritage Center, the new east wing to the Capitol (Judicial Wing and State Office Building), and with respect to lighting on the Capitol grounds, Capitol parking plans, various vegetation planting plans, and other similar matters.

BACKGROUND MEMORANDUM ON THE CAPITOL BUILDING FUND

The Capitol building fund consists of real estate given to the state by the federal government, the moneys from the sale of portions of that real estate, and the investment income from that money. ~~The land (50 sections) was given when North Dakota became a state for the purpose of providing financing for public buildings at the Capitol for governmental purposes.~~ This included construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvements of such buildings and the acquisition of land for the buildings (Enabling Act, Section 12, 25 Stat. 676).

The 40th Legislative Assembly (1967) gave the Capitol Grounds Planning Commission general powers of administration over the Capitol building funds, both principal and income. The Board of University and School Lands, on the commission's behalf, sees to the investment and management of the funds. In 1967 the Capitol building fund was dedicated and reserved, except as otherwise appropriated, to the construction of an addition to the legislative wing of the State Capitol.

1967
 LEGIS/other
 Wing

In 1979 the Legislative Assembly expanded the commission's authority over the Capitol building fund by authorizing the commission to expend up to \$50,000 per biennium from the interest and income fund for projects or planning, upon approval by two-thirds of the total membership of the commission.

1979
 take out
 \$50,000
 Bi-ennium

The following is a list of appropriations out of the Capitol building funds since 1965:

<u>Legislative Assembly</u>	<u>Description</u>	<u>Appropriation</u>
1965	Defray expenses of the Capitol Grounds Planning Commission	\$ 10,000
1967	Defray expenses of the commission	30,000
	Repair of roof - 17th floor	15,000
	Plaza renovation	30,000
1971	Building of roadways, parking lots and landscaping of Capitol grounds	150,000
1981	Capitol security system	125,000
	Renovation of legislative wing, portions of ground floor and 2nd floor of executive tower	1,200,000
Total		<u>\$1,560,000</u>

In addition to these appropriations, the Capitol Grounds Planning Commission approved expenditures of \$48,220 during the 1979-80 interim for parking lot construction costs. The commission also approved expenditure of up to \$6,000 for removal of trees from the Capitol grounds during the 1981-83 interim. As of August 31, 1982, \$2,000 of this amount had been expended. Also, up to 10 percent of the income derived from these funds is deposited in the state lands maintenance fund for the operation of the office of the Commissioner of University and School Lands.

The following is a schedule of Capitol building fund collections since 1977:

<u>Collection Period</u>	<u>Permanent Fund</u>	<u>Income Fund</u>	<u>Total Collections</u>
1977-79 Biennium	\$ 372,246	\$ 348,900	\$ 721,146
1979-81 Biennium	1,127,005	580,642	1,707,647
July 1, 1981 - August 31, 1982	64,683	346,438	411,121*
 Total	 <u>\$1,563,934</u>	 <u>\$1,275,980</u>	 <u>\$2,839,914</u>

* Estimated income for the period September 1, 1982, through June 30, 1983, is \$326,963. Estimated income for the 1983-85 biennium is \$750,000.

The following is a statement of the status of the Capitol building funds as of August 31, 1982:

CAPITOL BUILDING FUNDS
August 31, 1982

Capitol Building Permanent Fund

U.S. treasury notes	\$2,017,035.95
G.N.M.A. certificates	44,932.15
	<u>\$2,061,968.10</u>
Land sold on contract	132,402.00
Cash balance	14,512.80
Balance - Permanent Fund	<u>\$2,208,882.90</u>

Capitol Building Interest and Income Fund

U.S. treasury notes	\$ 171,609.38
Certificate of deposit	500,000.00
	<u>\$ 671,609.38</u>
Cash balance	61,158.92
Balance - Interest and Income Fund	<u>\$ 732,768.30</u>

Total Capitol Building Funds

\$2,941,651.20**

Acquired Land	160.00 acres
Unsold Grant Land	9,144.17 acres
Cancelled Contracts	877.00 acres
Total	<u>10,181.17 acres</u>

(Note: Constitutional minimum value is \$10 per acre.)

- ** There is \$26,000 which has been appropriated for the Capitol security system but has not been expended as of August 31, 1982. Also, the Capitol Grounds Planning Commission may expend an additional \$48,000 during this biennium. Estimated income from investments for the Capitol building funds for the period September 1, 1982, through June 30, 1983, is \$326,963. The \$1,200,000 appropriated for Capitol renovation by the 47th Legislative Assembly (1981) has been spent prior to August 31.

BACKGROUND AND HISTORY OF THE
CAPITOL GROUNDS PLANNING COMMISSION

The Capitol Grounds Planning Commission was created by the 1965 Legislative Assembly and consisted of six legislators, three to be chosen from each house of the Legislative Assembly, plus the Governor as chairman of the commission. The enabling legislation gave the commission the duty of selecting the site for the new Highway Building and appropriated \$2.5 million for the construction of that building.

The 1967 Legislative Assembly amended the basic authorizing statutes to make the Capitol Grounds Planning Commission permanent. That legislation also gave the commission responsibility for building site selection on the Capitol grounds for the development of long-term plans for Capitol grounds growth, and the responsibility for approving or disapproving the exterior design of any building or facility to be constructed upon the Capitol grounds. This authority is presently contained in North Dakota Century Code (NDCC) Chapter 48-10.

The 1967 legislation also gave the Capitol Grounds Planning Commission general powers of superintendence of the Capitol building fund and dedicated and reserved the moneys in that fund to the construction of an addition to the legislative wing of the State Capitol. The Capitol building fund originated at the time North Dakota became a state when the federal government dedicated 50 sections of land in the state for the purpose of providing financing for public buildings at the Capitol for governmental purposes. The Capitol building fund presently consists of real estate remaining from the original grant by the federal government, moneys from sale of portions of that real estate, and investment income from that money.

The 1967 legislation directed the Capitol Grounds Planning Commission to study legislative facilities and explore the feasibility of adapting additional space within the existing Capitol for use by the Legislative Assembly for committee rooms, office space, and other legislative functions. If utilization of existing space was found not to be feasible, the commission was directed to prepare plans for a suitable wing or an addition to the legislative wing to meet present and future space needs of the Legislative Assembly.

The 1973 Legislative Assembly amended the statutes regarding the Capitol Grounds Planning Commission to increase the commission membership to eight by adding two citizen members to be appointed by the Governor.

The 1979 Legislative Assembly expanded the Capitol Grounds Planning Commission authority over the Capitol building fund by

authorizing the commission to expend up to \$50,000 per biennium from that fund, upon approval by two-thirds of the total membership of the commission after consideration of the Capitol grounds master plan, for projects or planning. Since the time of that authorizing, expenditures by the Capitol Grounds Planning Commission from legislative appropriations and the standing appropriation authority can be summarized as follows:

<u>Biennium</u>	<u>Legislative Appropriation 1/ Expenditure</u>	<u>Standing Appropriation - Expenditure</u>
1979-81	\$ 24,000 - 7,014.45	\$50,000 - 48,220
1981-83	24,000 - 7,723.03	50,000 - 0
	125,000 - 66,444.10 2/	
1983-85	10,000 - 5,009.88	50,000 - 18,809.01
1985-87	10,000 - 8,859.30 3/	50,000 - 50,000

- 1/ Legislative appropriations by the 1979, 1981, and 1983 Legislative Assemblies to the Capitol Grounds Planning Commission were from the state general fund. The 1985 legislative appropriation to the Capitol Grounds Planning Commission was from the Capitol building fund.
- 2/ 1981 Senate Bill No. 2259 provided a separate appropriation of \$125,000 from the Capitol building fund to the Capitol Grounds Planning Commission for installation of a security system for the Capitol grounds. From this appropriation a total of \$66,444.10 was expended for the project.
- 3/ The Capitol Grounds Planning Commission has an outstanding debt to its architectural consultant of \$2,569.13.

Because expenditures of the Capitol Grounds Planning Commission and modifications to the Capitol grounds are to be made in consideration of the Capitol grounds master plan, and because the Capitol grounds master plan was last updated in 1972, the commission retained the firm of Tvenge-Larson Architects/Planners on February 4, 1980, to begin an update of the master plan. This update of the master plan has not been completed as of January 1987, although work on portions of the update has been completed.

Over the last several bienniums the Capitol Grounds Planning Commission has employed a North Dakota architect as its consultant. The consultant attends meetings of the Capitol Grounds Planning Commission and is assigned responsibility for various functions and reports on these responsibilities to the Capitol Grounds Planning Commission. The consultant is paid on a retainer basis and at an hourly rate. Currently, the Capitol Grounds Planning Commission consultant is Mr. Warren Tvenge.

During the course of its existence, the Capitol Grounds Planning Commission has made siting and exterior design decisions with respect to the Heritage Center, the Highway Building, the east

wing to the Capitol (judicial wing and state office building), lighting and security systems on the Capitol grounds, parking arrangements, vegetation planting and removal, location of monuments and memorials, and construction of the Capitol grounds arboretum trail.

The present estimate for the unobligated balance in the Capitol building fund at the end of the 1985-87 biennium is \$3,764,276. Of this amount, \$2,386,453 is in the permanent Capitol building fund and \$1,377,823 is in the interest and income fund of the Capitol building fund. Legislation introduced in the 1987 Legislative Assembly calls for appropriations from the Capitol building fund in the amount of \$1,080,000. A recent analysis of the fund is attached. It is also provided in NDCC Section 48-10-02 that the Capitol Grounds Planning Commission has standing appropriation authority to expend up to \$50,000 per biennium, which is not reflected in the attached analysis.

Prepared by the Legislative Council
staff

January 9, 1987

**ANALYSIS OF THE CAPITOL BUILDING FUND
JULY 1, 1987, THROUGH JUNE 30, 1989,
AS RECOMMENDED IN THE EXECUTIVE BUDGET**

	<u>Interest and Income Fund</u>	<u>Permanent Fund</u>	<u>Total Capitol Building Fund</u>
Estimated balance - July 1, 1987	<u>\$1,377,823</u>	<u>\$2,386,453</u>	<u>\$3,764,276</u>
Add estimated receipts:			
Investment income	\$ 430,950		\$ 430,950
Rentals, royalties, bonuses, contracts	69,250	\$ 22,480	91,730
Total receipts	<u>\$ 500,200</u>	<u>\$ 22,480</u>	<u>\$ 522,680</u>
Total available	<u>\$1,878,023</u>	<u>\$2,408,933</u>	<u>\$4,286,956</u>
Less estimated expenditures:			
Capitol Grounds Planning	\$ 13,000		\$ 13,000
Commission operating expenditures			
State lands maintenance fund	16,200		16,200
Director of Institutions' office ^{1/}			
Boiler replacement/thermal storage	710,000		710,000
Main interior stairway repair	110,000		110,000
Maintain forested areas	15,000		15,000
New roof on Governor's residence	75,000		75,000
Repairs to Governor's residence	90,800		90,800
Capital improvement contin- gencies for institutions under the control of DOI	50,000		50,000
Total expenditures	<u>\$1,080,000</u>	<u>\$ 0</u>	<u>\$1,080,000</u>
Estimated ending balance - June 30, 1989	<u>\$ 798,023</u>	<u>\$2,408,933</u>	<u>\$3,206,956</u>

March 2007

CAPITOL BUILDING FUND

This memorandum provides information on the history of revenue and transfers from the capitol building fund. The table below includes information

provided by the Land Department related to the revenues and transfers from the fund for the 1995-97 through 2003-05 bienniums:

	1995-97	1997-99	1999-2001	2001-03	2003-05
Beginning fund balance	\$1,243,984	\$1,078,750	\$490,181	\$161,697	\$308,985
Revenues	651,917	242,161	199,308	178,179	427,259
Expenditures	(27,151)	(20,730)	(26,523)	(29,891)	(32,322)
Transfer to Facility Management Division	(790,000) ¹	(810,000) ²	(501,269) ³	(1,000)	(37,500)
Ending fund balance	\$1,078,750	\$490,181	\$161,697	\$308,985	\$666,422
Net change in fund balance	(\$165,234)	(\$588,569)	(\$328,484)	\$147,288	\$357,437

¹Includes carryover authority of \$300,000 from the 1993-95 biennium for Capitol parking lots.

²Includes carryover authority of \$285,339 from the 1995-97 biennium for carpeting, ADA projects, agency remodeling, baseboard heat, and roof repairs for Liberty Memorial Building.

³Includes carryover authority of \$309,310 from the 1997-99 biennium for new Capitol roofs, paver repair and caulking, and Capitol automation.

The following legislation authorized transfers from the capitol building fund:

- Section 3 of House Bill No. 1006 (1985) provided for a transfer of \$866,290 to the Director of Institutions for capital improvements for the 1985-87 biennium.
- Section 3 of Senate Bill No. 2005 (1987) provided for a transfer of \$1,076,300 to the Director of Institutions for capital improvements for the 1987-89 biennium.
- Section 2 of House Bill No. 1005 (1989) provided for a transfer of \$1,416,350 to the Director of Institutions for capital improvements for the 1989-91 biennium.
- Section 5 of Senate Bill No. 2004 (1991) provided for a transfer of \$2,025,000 to the Facility Management Division for capital improvements for the 1991-93 biennium.
- Section 6 of House Bill No. 1005 (1993) provided for a transfer of \$500,000 to the Facility Management Division of the Office of Management and Budget for the 1993-95 biennium.
- Section 4 of Senate Bill No. 2015 (1995) provided for a transfer of \$695,879 to the Facility Management Division for the 1995-97 biennium.
- Section 5 of House Bill No. 1015 (1997) provided for a transfer of \$605,850 to the Facility Management Division for the 1997-99 biennium.

- Section 5 of Senate Bill No. 2015 (1999) provided for a transfer of \$225,000 to the Facility Management Division and provides for \$25,000 to be spent by the Administration Division for Capitol grounds planning for the 1999-2001 biennium.
- Section 3 of House Bill No. 1015 (2001) provided for \$25,000 to be spent by the Administration Division of the Office of Management and Budget for Capitol grounds planning for the 2001-03 biennium.
- Section 2 of Senate Bill No. 2015 (2003) provided for \$25,000 to be spent by the Administration Division for Capitol grounds planning for the 2003-05 biennium.
- Section 4 of House Bill No. 1015 (2005) provided for \$25,000 to be spent by the Administration Division for Capitol grounds planning for the 2005-07 biennium.

Attached as an appendix is a schedule of capital projects for the 1989-91 through 1999-2001 bienniums provided by the Facility Management Division of the Office of Management and Budget.

ATTACH: 1

administration of such Federal reserved public lands."

and that a new paragraph be added immediately following the above, as follows:

"All exchanges heretofore made under section 11 of the Act approved February 22, 1889 (25 Stat. 676), as amended by the Act approved May 7, 1932 (47 Stat. 150), for reserved public lands of the United States that were subject to exchange under law pursuant to which they were being administered and the requirements thereof have been met, are hereby approved to the same extent as though the lands exchanged were unreserved public lands."

and that the present paragraph 2 of section 11 be amended to read as follows:

"The said lands may be leased under such regulations as the legislature may prescribe." [Public Law 91-463. 84 U.S. Statutes at Large p 987. Approved October 16, 1970.]

1889 → ORIGINAL Enabling Act

SEC. 12. That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said States, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said States for the purpose of erecting public buildings at the capital of said States for legislative, executive, and judicial purposes.

Reviser's note: Section 12 has been amended by Congress as follows:

AN ACT To amend section 12 of the Act approved February 22, 1889 (25 Stat. 676) relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, by providing for the use of public lands granted to the States therein for the purpose of construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvement of public buildings at the capital of said States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 12 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, is amended to read as follows:

"That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this Act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes."

SEC. 2. This Act shall take effect as of February 22, 1889. [Public Law 85-6. 71 U.S. Statutes at large p 5. Approved February 26, 1957.]

SEC. 13. That five per centum of the proceeds of the sales of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively.

SEC. 14. That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States, and any portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective States aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said States severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the State of Washington for the purposes of a university in said State. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the

Enabling Act

AN ACT to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States.

(Approved February 22, 1889.) [25 U.S. Statutes at Large, c 180 p 676.]

[President's proclamation declaring Washington a state: 26 St. at Large, Proclamations, p 10, Nov. 11, 1889.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

SEC. 2. The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said Territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

SEC. 3. That all persons who are qualified by the laws of said Territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed States; and the qualifications for delegates to such conventions shall be such as by the laws of said Territories respectively persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed States, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief-justice, and the secretary of said Territories; and the governors of said Territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed States, to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty-nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty-nine; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said Territories regulating elections therein for Delegates to Congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be seventy-five; and all persons resident in said proposed States, who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed states, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said States:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said States shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said States shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the States on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said States from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said Territories shall be assumed and paid by said States, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control.

SEC. 5. That the convention which shall assemble at Bismarck shall form a constitution and State government for a State to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and State government for a State to be known as South Dakota: *Provided*, That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words "For the Sioux Falls constitution," or the words "Against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at the election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed State, to the re-apportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the State of South Dakota shall be admitted as a State in the Union under said constitution as hereinafter provided; but the archives, records, and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said States. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "against the Sioux Falls constitution", then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and State government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

SEC. 6. It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said States shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such States respectively.

SEC. 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the Territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the Territory so rejecting its proposed constitution shall continue under the Territorial government of the present Territory of Dakota, but shall, after the State adopting its constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be: *Provided*, That if either of the proposed States provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the Territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed State for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall

apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed State.

SEC. 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed State on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana, and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed States, respectively, for ratification or rejection at elections to be held in said proposed States on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed States shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said Territories, who with the governor and chief-justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed States are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation.

SEC. 9. That until the next general census, or until otherwise provided by law, said States shall be entitled to one Representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the fifty-first Congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said State officers are elected and qualified under the provisions of each constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories.

SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Reviser's note: Section 11 has at various times been amended by Congress as follows:

(1) August 11, 1921:

AN ACT To amend an Act approved February 22, 1889, entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and

Washington to form constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," approved February 22, 1889, be, and the same hereby is, amended by adding the following: *Provided, however, That the State may, upon such terms as it may prescribe, grant such easements or rights in such lands as may be acquired in, to, or over the lands of private properties through proceedings in eminent domain: And provided further, That any of such granted lands found, after title thereto has vested in the State, to be mineral in character, may be leased for a period not longer than twenty years upon such terms and conditions as the legislature may prescribe.* [42 U.S. Statutes at Large, c 61 p 158. Approved, August 11, 1921.]

(2) May 7, 1932:

AN ACT To amend section 11 of the Act approved February 22, 1889 (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Act approved February 22, 1889 (25 Stat. 676), be, and the same is hereby, amended to read as follows:

"That all lands granted by this Act shall be disposed of only at public sale after advertising - tillable lands capable of producing agricultural crops for not less than \$10 per acre and lands principally valuable for grazing purposes for not less than \$5 per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the State.

"The said lands may be leased under such regulations as the legislature may prescribe; but leases for grazing and agricultural purposes shall not be for a term longer than five years; mineral leases, including leases for exploration for oil and gas and the extraction thereof, for a term not longer than twenty years; and leases for development of hydroelectric power for a term not longer than fifty years.

"The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: Provided, however, That none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the State.

"With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various State institutions for which the lands have been granted. Rentals on leased lands, interest on deferred payments on lands sold, interest on funds arising from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions. Any State may, however, in its discretion, add a portion of the annual income to the permanent funds.

"The lands hereby granted shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted."

SEC. 2. Anything in the said Act approved February 22, 1889, inconsistent with the provisions of this Act is hereby repealed. [47 U.S. Statutes at Large c 172 p 150. Approved, May 7, 1932.]

(3) June 25, 1938:

AN ACT To increase the period for which leases may be made for grazing and agricultural purposes of public lands donated to the States of North Dakota, South Dakota, Montana, and Washington by the Act of February 22, 1889, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the second paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, as reads "but leases for grazing and agricultural purposes shall not be for a term longer than five years", is amended to read as follows: "but leases for grazing and agricultural purposes shall not be for a term longer than ten years".

[52 U.S. Statutes at Large c 700 p 1198. Approved, June 25, 1938.]

(4) April 13, 1948:

AN ACT To authorize the States of Montana, North Dakota, South Dakota, and Washington to lease their State lands for production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, for such terms of years and on such conditions as may be from time to time provided by the legislatures of the respective States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the second paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, is amended to read as follows: "Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration

for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective States; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years." [62 U.S. Statutes at Large c 183 p 170.]

Approved April 13, 1948.]

(5) June 28, 1952:

AN ACT To authorize each of the States of North Dakota, South Dakota, and Washington to pool moneys derived from lands granted to it for public schools and various State institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fourth paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended (47 Stat. 151), is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this section, each of the States of North Dakota, South Dakota, and Washington may pool the moneys received by it from oil and gas and other mineral leasing of said lands. The moneys so pooled shall be apportioned among the public schools and the various State institutions in such manner that the public schools and each of such institutions shall receive an amount which bears the same ratio to the total amount apportioned as the number of acres (including any that may have been disposed of) granted for such public schools or for such institutions bears to the total number of acres (including any that may have been disposed of) granted by this Act. Not less than 50 per centum

of each such amount shall be covered into the appropriate permanent fund." [66 U.S. Statutes at Large c 480 p 283. Approved June 28, 1952.]

(6) May 31, 1962:

AN ACT To amend the Act admitting the State of Washington into the Union in order to authorize the use of funds from the disposition of certain lands for the construction of State charitable, educational, penal, or reformatory institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676, as amended), is amended by inserting before the period at the end of the first sentence in the fourth paragraph of section 11 a comma and the following: "except that proceeds from the sale and other permanent disposition of the two hundred thousand acres granted to the State of Washington for State charitable, educational, penal, and reformatory institutions may be used by such State for the construction of any such institution". [Public Law 87-473. 76 U.S. Statutes at Large p 91.]

Approved May 31, 1962.]

(7) June 30, 1967:

AN ACT To authorize the States of North Dakota, South Dakota, Montana, and Washington to use the income from certain lands for the construction of facilities for State charitable, educational, penal, and reformatory institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of the fourth paragraph of section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676), as amended, is amended to read as follows: "Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such

schools and institutions." [Public Law 90-41. 81 U.S. Statutes at Large p 106. Approved June 30, 1967.]

(8) October 16, 1970:

AN ACT To amend section 11 of the Act approved February 22, 1889 (25 Stat. 676) as amended by the Act of May 7, 1932 (47 Stat. 150), and as amended by the Act of April 13, 1948 (62 Stat. 170) relating to the admission to the Union of the States of North Dakota, South Dakota, Montana, and Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of the first paragraph of section 11 of the Act approved February 22, 1889 (25 Stat. 676), as amended by the Act of May 7, 1932 (47 Stat. 150), is hereby amended to read as follows:

"Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to Federal lands that are surveyed, nonmineral, unreserved public lands within the State, or are reserved public lands within the State that are subject to exchange under the laws governing the

Territory of Dakota, for an asylum for the insane shall, upon the admission of said State of South Dakota into the Union, become the property of said State.

SEC. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby, granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said State of South Dakota, for the purposes therein designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the Territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the State of Montana.

SEC. 16. That ninety thousand acres of land, to be selected and located as provided in section 10 of this act, are hereby granted to each of said States, except to the State of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said States, as provided in the acts of Congress making donations of lands for such purpose.

SEC. 17. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said States, the following grants of land are hereby made, to wit:

To the State of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for State normal schools, eighty thousand acres; for public buildings at the capital of said State, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said State may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the State of North Dakota a like quantity of land as in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for State normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a State reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the State, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the State of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for public buildings at the State capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective States may severally provide.

SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivisions or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and the benefit of the common schools of said States.

SEC. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects.

SEC. 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to each of said Territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the Treasury of the United States.

SEC. 21. That each of said States, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the States, respectively; and the circuit and district courts therefor shall be held at the capital of such State for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said State. The regular terms of said courts shall be held in each district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The Marshal, district attorney, and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Nebraska.

SEC. 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of either of the Territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts may be heard and determined by said Supreme Court of the United States. And the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the State succeeding the Territory from which such record is or may be pending, or to the supreme court of such State, as the nature of the case may require: *Provided*, That the mandate of execution or of further proceedings shall, in cases arising in the Territory of Dakota, be directed by the Supreme Court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the State of North Dakota, or to the supreme court of the Territory of North Dakota, as the nature of the case may require. And each of the circuit, district, and State courts, herein named, shall, respectively, be the successor of the supreme court of the Territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the Territories mentioned in this act, in any case arising within the limits of any of the proposed States prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

SEC. 23. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of either of the Territories mentioned in this act at the time of the admission into the Union of either of the States mentioned in this act, and arising within the limits of any such State, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the Territories mentioned in this act at the time of the admission of such Territory into the Union, arising within the limits of said proposed State, the courts established by such State shall, respectively, be the successors of said supreme and district Territorial courts; and all the files, records, indictments, and proceedings relating to any such cases, shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the States mentioned in this act, shall be pending in any Territorial court in any of the Territories mentioned in this act, shall abate by the admission of any such State into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district or State court, as the case may be: *Provided, however*, That in all civil actions, causes, and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request such cases shall be proceeded with in the proper State courts.

SEC. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full State governments, including members of the legislatures and Representatives in the fifty-first Congress; but said State

governments shall remain in abeyance until the States shall be admitted into the Union, respectively, as provided in this act. In case the constitution of any of said proposed States shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States; and the governor and secretary of state of such proposed State shall certify the election of the Senators and Representatives in the manner required by law; and when such State is admitted into the Union, the Senators and Representatives shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the officers of the State governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such State officers; and all laws in force made by said Territories, at the time of their admission into the Union, shall be in force in said States, except as modified or changed by this act or by the constitutions of the States, respectively.

SEC. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said Territories or by Congress, are hereby repealed.

Approved, February 22, 1889. [25 U.S. Statutes at Large, c 180 p 676.]

LETTER OPINION
93-L-119

April 1, 1993

Timothy L. Kingstad
State Land Commissioner
ND State Land Department
918 East Divide Avenue, Suite 410
Drawer No. 5523
Bismarck, ND 58502-5523

Dear Mr. Kingstad:

Thank you for your March 3, 1993, letter asking whether the principal of the capitol building fund may be expended pursuant to legislative appropriation.

The capitol building fund has its origins in the state's Enabling Act. 25 Stat. 676, ch. 180, Feb. 22, 1889. Section 12 of the act states that upon North Dakota's admission to the Union 50 sections of public land "are hereby granted to [North Dakota] for public buildings at the capital. . . ." Section 17 of the act makes an additional grant of 50,000 acres "for public buildings at the capital." The proceeds from sales of this land and income derived from leasing it are placed in what is known as the capitol building fund. N.D.C.C. ? 48-10-02.

The Enabling Act places restrictions on the way in which the state may use proceeds from some of the land the act grants to the state. The common schools trust fund, for example, is a "permanent fund." *Id.* at ?? 11, 14. Only the income earned by the corpus and none of the corpus of the common schools trust fund may be spent. *E.g., id.; State ex rel. Board of University and School Lands v. McMillan*, 12 N.D. 280, 96 N.W. 310 (1903).

The Enabling Act, however, does not describe the proceeds of the land granted for public buildings at the capital (capitol building fund) as a permanent fund. Indeed, a part of section 11 of the act indicates that the fund does not have the status of a

Timothy L. Kingstad
April 1, 1993
Page 2

permanent fund. Section 11 states, in part:

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted.

(Emphasis supplied).

Even though the Enabling Act may not require preservation of the corpus of the capitol building fund, the state's constitution must also be examined to determine if it makes this fund a permanent fund.

The only relevant provision of the North Dakota Constitution is Article IX, Section 12, which states that the "seat of government" is to be located at Bismarck and is ~~"to have the lands specifically granted to it by the Enabling Act, to be disposed of and used in such manner as the legislative assembly may prescribe"~~ This provision does not give the capitol building fund the status of a permanent fund, nor does any other part of the constitution. The N.D. Supreme Court has confirmed this by saying:

What we have said in reference to the limitations imposed by the enabling act and the Constitution upon the power of the Legislature, has no application to what is known as the "capitol land grant." The funds derived from this grant are not required to be kept permanent; on the contrary, under the terms of the grant, they may be used at such times and in such manner as the Legislature may determine. This grant was made expressly "for the purpose of erecting public buildings at the capital for legislative, executive, and judicial purposes." Sections 12 and 17 of the enabling act. The only limitation upon the power of the Legislature is that the proceeds of this grant shall be used for the purposes for which it was made, to wit the erection of buildings at the state capital.

State v. McMillan, 96 N.W. at 315.

Timothy L. Kingstad
April 1, 1993
Page 3

In conclusion, it is my opinion that the legislative assembly may appropriate funds from the capitol building fund which would result in the expenditure of the fund's principal for capital improvements.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

CMC/mh

**Requested Special Fund Projects
2007-2009 Biennium**

<u>Project</u>	<u>Cost</u>
Brass/bronze restoration	\$200,000
Black belgium marble wall restoration	\$190,000
Granite replacement	\$180,000
Granite repairs and cleaning	\$83,000
Cleaning of exterior ornamental metal	\$22,000
Restoration study	<u>\$75,000</u>
Total Project Cost:	<u><u>\$750,000</u></u>