

2009 HOUSE APPROPRIATIONS

HB 1023

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1023**

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: **February 5, 2009**

Recorder Job Number: 8740

Committee Clerk Signature

*Jan Prindle*

Minutes:

**Chm. Svedjan** called the meeting of the House Appropriations Committee to order. The clerk, Holly Sand, called the roll. Chm. Svedjan discussed the schedule of what's to come with regard to bills, timing and the probable number of bills that need to be moved through the Committee.

**Chm. Svedjan opened the hearing on HB 1023.**

**Pam Sharp, OMB**, approached the podium to discuss HB 1023. This is the deficiency bill that was included in the Governor's budget recommendation. It is broken down agency by agency. Each agency will be here today to talk about their specific appropriation. I will address OMB.

**Greg Wilz, Deputy Director, Department of Emergency Services** approached the podium and distributed and reviewed his written testimony (Attachment A).

**Chm. Svedjan:** Has anyone prepared the amendment required for that additional \$1.4 million?

**Mr. Wilz:** We have not, but we certainly will.

**Chm. Svedjan:** We may as well as Counsel to do that for us because that will have to be considered.

**Rep. Kerzman:** On your spread sheet you say "closes . . . the public assistance, hazardous materials down to and including the 2004 flood." Does that close out all those loans?

**Mr. Wilz:** The note that says "closes PA" that's only one piece of it. For example the '97 flood, you will note it says that "closed to public assistance." That's only a part of it. There is still mitigation open on that grant. In the case right below it, you will note that 1279 closes both PA and HazMat. That means the entire grant is closed and there is no more state exposure remaining on that disaster.

**Chm. Svedjan:** Following up on that, you go to 1376 where it closes Haz Mat but it doesn't close PA, does that mean that one is still open?

**Mr. Wilz:** That is correct—that means the public assistance piece of that is still open.

**Rep. Nelson:** What is the status of the snow situation? What you have done and where you are at as far as moving in to the month or so?

**Mr. Wilz:** Shortly after the declaration was signed by the Governor and the emergency commission took action, we developed the program rules. The rules were sent out and we have had numerous questions about them. Right now the staff is gathering the 5-year averages of expenses for snow removal for the months we are dealing with—January, February, March and April. We are working with the counties on how to report what their expenses are in relation to 5-year averages so we can determine the State's share above the 200%. We originally had ten counties, the Governor added three more. There may be a couple of more counties added. We have four that have requested to be included in the declaration. Will be meeting Friday morning with the National Weather Service, the Water Commission and us to see if they are qualified based on the criteria that have been set.

**Rep. Nelson:** Is the program that was established in action now in the field? Is there snow being removed from county and state road now as part of this program?

**Mr. Wilz:** Yes. It is active in the field today. This past weekend with the high winds, the roads filled up again. Many of those counties that may have gained some with the couple of nice days beforehand actually ended up starting over.

**Rep. Skarphol:** On the balance of this spreadsheet from 2005 down, can you give us what are our potential obligations might be into the future? Can you tell me how to read this spreadsheet and figure that out?

**Mr. Wilz:** You actually cannot get that number from this spreadsheet. I have that number with me.

**Rep. Skarphol:** Could provide that to the Committee for informational purposes.

**Mr. Wilz:** I can. I have the estimated state exposure for all open disasters in to the future so you know exactly what you are dealing with.

**Rep. Delzer:** The \$1.5 million you are estimating for snow removal, is that state exposure only if there is no presidential declaration?

**Mr. Wilz:** It depends. We are working on a letter for the Governor to send to the President requesting a declaration. I assume action will be taken on that within the next 5-7 days. It depends on the declaration starting and end dates. Getting snow declarations at the presidential level is getting more and more difficult. If the date goes back to Jan. 1, then 75% of that \$1.5 million would not be state exposure. If it's some day after that, the costs the state has provided would be eligible for the 75% effective on the date of the declaration.

**Rep. Delzer:** What would happen if we put the \$1.5 million in and you get the federal money? Does it turn back at the end of biennium then or what happens?

**Mr. Wilz:** I would assume we would return that money. If the federal dollars come in to offset the state expense and exposure, I don't know what else that money would be used for.

**Rep. Delzer:** If we appropriate this as a deficiency appropriation, does that lessen our chance of receiving the Presidential declaration?

**Mr. Wilz:** I don't believe it does. If anything, I think it helps our cause because it shows that the state is doing everything they can to deal with at a local level and then it reaches a point where the state needs federal assistance.

**Rep. Skarphol:** You are saying that approved deficiency appropriation request of \$1.4 million of the \$1.5. Is that correct?

**Mr. Wilz:** I believe it would be the whole \$1.5 million because anything we normally get from the Emergency Commission is also a deficit spending against the agency's budget. I believe the \$100,000 plus the \$1.4 million needs to be covered.

**Rep. Skarphol:** If the requests do not exceed what we have available, what is the likelihood we will receive a Presidential declaration?

**Mr. Wilz:** I think that lessens our chances.

**Chm. Svedjan:** (15:42) As you develop that amendment, that would identify the extent of the \$100,000 plus the \$1.4 million and then it would have language in it that would allow for the expenditure for as much of that as may be necessary. Is that not correct? As you develop that amendment it is with the understanding that they spend only what they need up to a certain level. What isn't necessary, the presumption is that it would go back in to the General Fund.

**Becky Keller, Legislative Council:** That would be correct.

**Mr. Wilz concluded his remarks.**

**Pam Sharp** approached the podium again. OMB's part of the deficiency bill relates to Centers of Excellence. In the current biennium and what you appropriated last biennium was \$15 million from the Permanent Oil Tax Trust Fund for the Centers of Excellence and \$5 million of

borrowing authority for OMB to go to the BND for a total \$20 million authority for the Centers. To date awards have amounted to \$19.5 million so we do need this additional \$5 million to allow us to pay back our borrow from the BND.

**Rep. Delzer:** You have not actually borrowed that money from the BND yet?

**Ms. Sharp:** That is correct. We have not actually borrowed the money from the BND yet because about \$10 million has been paid out so we have not needed that cash. But, we will eventually need this cash to fully fund the awards.

**Rep. Delzer:** You won't actually spend that until the next biennium, right? So if we cover that in OMB budget that would cover it as well as passing the deficiency appropriation?

**Ms. Sharp:** As long as we have enough money and carryover authority to fully fund the awards that have been given we will be okay.

**Rep. Delzer:** The actual amount that will be expended in this biennium is slightly over \$9 million. They would need to expend in the next biennium \$8.7 and what they told us is the biennium after that they would need slightly over a million to cover the awards the way they are projected.

**Ms. Sharp:** Shane Goettle is here if you would like to hear about the staggered distribution works.

**Shane Goettle, Commissioner of the ND Department of Commerce** approached the podium. With the changes in the governing statute for Centers of Excellence last session, you required us to ask the Centers to submit applications in which they would propose staggered distribution of funds. Staggering gives us a monitoring control over the centers. We can between awards monitor the Centers to see that they are on budget, on track and meeting milestones. We asked each for a disbursement plan. Of the awards made in this biennium we are looking at disbursement plans requiring \$9,704,568 this biennium, \$8,741,543 in the next

biennium, but the award disbursement plans go beyond that in to the first quarter of 2012. We need still another \$1,003,089 in order to meet those awards. It isn't just carryover authority. We are requesting a continuing appropriation. There's \$50,000 in administrative expenses. That brings us up to that total of \$19.5 million.

**Rep. Delzer:** We have requested some amendments in the OMB budget that we were planning to take care of this. If that were accepted by the full Committee and the House, we would not need the \$5 million in the deficiency appropriation.

**Kathy Roll, Financial Administrator, Office of the Attorney General** approached the podium and distributed Attachment B. She reviewed the information on the attachment. The first item is litigation which includes: expert witness fees, deposition and transcript costs, and other out of pocket associated with litigation in which our office is involved. An additional \$20,000 in general fund expenses is anticipated to be incurred this biennium for a total \$70,000 in expenditures. We received an appropriation this biennium for \$50,000 and anticipate we will need \$20,000 more. I've listed for you our appropriation and expenses have been for a number of biennia. The third line item, the operating expenses is for prosecution witness fees. Those are reimbursed to district court criminal and juvenile court cases. This biennium we received an appropriation of \$100,000 and that was depleted in May 2008. Based on average usage we anticipate an additional \$74,000 GF funds will be needed. I have also listed what we have spent to date and prior biennia and what our appropriation have been. That includes \$109,000 from the Emergency Commission that we have already requested and we've almost spent that as well. We are requesting the addition of a capital assets deficiency appropriation. The Crime Lab is receiving additional federal funds for the purchase of capital assets which were not anticipated at the time we put together our budget and this body approved that budget. We are requesting \$140,000 in additional federal fund

authority for those purposes. Lastly, the return of fugitive line item can be eliminated. We requested \$10,000 from the Emergency Commission and they increased that amount to \$15,000 so there is no need for the deficiency appropriation at this time.

**Chm. Svedjan:** The \$140,000, there is no language in the bill that provides the authorization to receive that money.

**Ms. Roll:** That line item and language would need to be added.

**Chm. Svedjan:** There are two amendments required. You haven't had those prepared?

**Ms. Roll:** I didn't. When we have prepared them in the past, Legislative Counsel has done one mass amendment.

**Chm. Svedjan:** We will need those amendments prepared as well.

**Ms. Keller:** Right.

**Rep. Delzer:** Are we going to work this today—I want to get some more information.

**Chm. Svedjan:** We will hear this and get all the information, identify the amendments but will finalize this later.

**Alice Brekke, Interim Vice President for Finance and Operations, University of North Dakota** approached the podium and reviewed her testimony, Attachment C. I am here to present testimony on subdivision 4, of HB 1023. In the original bill the amount included in that subdivision is \$1,310,955. Since that request was submitted which was approved by the Board back in September, we have had additional correspondence with FEMA and we are proposing a revision to that amount. In September FEMA offered settlement of the last element still pending. We still had opportunity for one additional appeal and that is still pending. What is included in the amendment is a deficiency of \$2,858,771. That is a "not to exceed" amount. It would position the UND to close out the flood of 1997 regardless of what final action takes. FEMA offered a settlement of \$1.255 million. That would have left \$1.750



unfunded. We have since appealed and if FEMA comes back with a \$0, we would need to access the full \$2.858 million. Anything FEMA approves based on the documentation now been provided to them above that settlement offer would reduce what we are requesting in this appropriation. The appeal went to FEMA on October 24 and was forwarded out of the Division of Emergency Management with their recommendation for FEMA approve the funds. We are told that as of last week it is under review at the regional level and they are hoping to send their recommendation to the national level next week. Unfortunately our history with FEMA is that the timeline tends to fluctuate so we are not really sure when they will take action.

**Chm. Svedjan:** If we were to amend this up to \$2.8 and if FEMA were to settle during the time we are in session then we could adjust that further. If the money does not come in before then, the money would remain in the General Fund.

**Ms. Brekke:** The first thing we would want to do as soon as this bill is signed is to pay off the balance with the BND and the accrued interest so that would stop incurring additional cost. We have projected that to April. We would obviously hope that FEMA would have ruled long since on the ruled on the appeal. At that time there would be no further funds accessed. (31:45)

**Chm. Svedjan:** It's unlikely that they will make a final determination before we end the session.

**Ms. Brekke:** I really don't have any feel for that. We want to bring the flood of '97 to closure.

**Rep. Wald:** The first item when you show under the '97 flood—10% cost share and insurance—I think you had litigation against two insurance companies. Of that \$4.262 million how much was the 10% and how much the insurance recovery.

**Ms. Brekke:** I think the insurance would be fairly small. It's not broken out on my sheet.

Everything has been resolved. The only thing pending is the last appeal with FEMA on the project management.

**Rep. Delzer:** If FEMA offered \$1.2 million, I can't imagine them offering less than that.

**Ms. Brekke:** No, but what we are hoping is that they will add on. We are assuming the \$1.2 million is the least we will get and that was factored into the \$2.8 million.

**Chm. Svedjan:** Counsel we should draft that amendment as well.

**Ms. Keller agreed.**

**Gary Wavers, comptroller, NDSU,** approached the podium and distributed Attachment D. He discussed the North Dakota State University request of \$527,842. That is the remaining bottom line deficit after all of the activity is complete. All of the costs of the flood have been paid. This includes the line of credit with the BND. Total cost related to the flood was \$21,157,449. The larger damages for the campus were for the library building and library contents. Another significant expense was the telecom center and damages to the steam lines on campus. NDSU made requests from the Legislature starting in the '01 session. This is expected to be the final request related to the campus damages from the June 2000 flood.

**Chm. Svedjan:** You are not asking for any change? This will close it out and take care of it.

**Mr. Wavers:** This will close it out and take care of it. There will have been no profits involved and no losses if this deficiency request is met.

**Rep. Skarphol:** Has the telecommunications equipment been moved out of the basement and the books in the basement of the library so we don't have to look forward to this again this spring? Is there a plan in place to prevent this from happening again?

**Mr. Wavers:** I know that the Library has been rearranged. There may be some books down there but for the most part—no. The telecommunications equipment I believe is still there.

**John Adams, vice president for Finance and Administration, NDSU:** As part of the repair process, the steam tunnel has been somewhat protected so that this kind of backwater will not occur again. We are hoping to move the telecommunication equipment at some point but for now it's the only place we have for it.

**Tim Faller, Agriculture Experiment Station:** I would like to cover the last three subdivisions 6, 7, and 8 together. They are really the same issue. In the 2005 session, capital bonds were approved for construction projects at three of the research centers in addition to the headquarters office complex at the Central Grasslands Center in Streeter for \$270,000, an agronomy lab and greenhouse at the North Central Center in Minot for \$440,000 and a research greenhouse complex at the main station in Fargo for \$2.0 million. During the '07-'09 biennium the first payments on those bonds became due on December 1, 2008 with the second payment due on June 1 of this year. New funding for these payments was inadvertently excluded in the '07-'09 Legislative session appropriation request for agriculture. The State Industrial Commission has sufficient funds to cash flow the December payment for us. On behalf of NDSU Agriculture and University Extension, I hereby request a deficiency appropriation of \$136,152 in order to make the June 1 payments and to reimburse the State Industrial Commission for the payments made on our behalf in December. Future payments are included in SB 2020 going forward this session.

**Rep. Kaldor:** Do you have the testimony you presented in print?

**Mr. Faller:** No, but I can provide it for you.

**There being no further testimony,** Chm. Svedjan closed the hearing on HB 1023.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1023

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 17, 2009

Recorder Job Number: 9627 & 9628

Committee Clerk Signature

*Ellen Letang*

Minutes:

2 jobs: 16 and 17

**Chm. Svedjan:** Rep Delzer, did you say that you have amendments HB 1023? HB 1023 is the deficiency appropriation bill.

**Rep. Delzer** distributed and explained amendment .0101 (Attachment A) to HB 1023.

**Chm. Svedjan** discussed the changes that needed to be made. My records indicate and I will need counsel to help me on this, we will be considering an amendment that relates to the Center of Excellence. The Office of Attorney General, there needs to be two amendments; one for \$140,000 in authority but \$5,000 that not needed and with the Adjutant General, an additional 1.5 million, 1.4 which is deficiency appropriation. \$100,000 was from the action from the emergency commission from the contingency fund. The University of North Dakota needs to amend their amount from 1.3 to 2.858. On all else of that budget, there were no suggested amendment. We probably don't have all the amendments drawn for those? I haven't had a chance to look this over.

Rep. Delzer moves .0101 to HB 1023.

Rep Skarphol seconded.

Rep Delzer: It is my understanding of what this does is in the OMB bill, we will address the Center of Excellence for the upcoming biennium. This five million here would have been

money to repay a loan that they have not taken yet to cover the cost of the Center of Excellence for the next biennium.

**Audio difficulties.**

**Chm. Svedjan:** In the Attorney General's testimony, there was indication that 5,000 was not needed. (page 2 of testimony)

**Rep. Kempenich:** The arrest and return of the fugitives, the emergency commission approved an additional 15,000 for arrest and return of fugitives on October of 2008. This deficiency amount is no longer needed.

**Chm. Svedjan:** It's removing the 5,000 amount on line 17.

**Rep. Skarphol:** Right above are the capital assets it talks about the capital assets.

**Chm Svedjan:** Further discussion?

**Voice roll call was taken with all ayes. Amendments are adopted.**

**Rep Delzer:** Moves a Do Pass as Amended.

**Rep Nelson:** Second.

**Chm Svedjan:** Further discussion?

**Rep. Bellew:** This will be our last payment to UND for the 97 flood? Is that correct?

**Chm. Svedjan:** That is my understanding.

**Rep. Skarphol:** Do that mean we have paid all the costs incurred by UND there were not covered by FeMA? Are we paying only a portion of it? In other words, is there a local match required to the university system or are we paying all costs incurred on that flood that are in excess?

**Rep. Delzer:** It was decided in '07 that the state would pick up the local's share on the FeMA part. The stuff that FeMa did not consider valid, I'm not sure if we are paying that or not? I might be mistaken but that's how I remember it.

**Chm. Svedjan:** The description of the full 2.858 is interest current through June 30, of 109,000, interest estimated through April 30, 2009, 49,000 and other FEMA illegible steam line, where the was denied. I think she said that they will appeal that one more time and that 1.1 million. Then other FEMA ineligible related to project management that appeal is not final and that's 1.57 million and there are litigation costs of a little over 12,000.

**Rep. Skarphol:** My point is in other disasters we require a local match. I just want to insure that I'm accurate if I make the statement we funded all non-FEMA cost associated with the flood.

**Chm. Svedjan:** It increases the appropriation to UND for the final payments of that state's share of the '97 flood damage expense. A section is added that these funds be spent for any other purpose and if any unspent appropriation authority be canceled by the end of the biennium. If the appeals would be successful, they would not spend the money.

**Rep. Berg:** On the five million on the Center of Excellence, did we add that to five million to the OMB budget, this is for last year? Correct?

**Rep. Delzer:** What we did in OMB and the amendments will purpose is we put in for the upcoming biennium \$8 million, ½ from general fund. What it does is that it covers all the costs for the awarded COE that have been awarded now that will be needed to cover the '09-11 expenditures. This is what the five million was to be part of was to cover those costs.

**Chm Svedjan:** Further discussion, we will take a roll call count.

**Roll call was taken on HB1023 for a Do Pass as Amended with 23 ayes, 0 nays, 2 absent and Rep Delzer is the carrier.**

VR  
2/17/09  
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1023

Page 1, remove lines 11 through 14

Page 1, line 17, replace "Arrest and return of fugitives" with "Capital assets" and replace  
"5,000" with "140,000"

Page 1, after line 18, insert:

"Total all funds	\$234,000
Less estimated income	<u>140,000</u>

Page 1, line 19, replace "99,000" with "94,000"

Page 1, line 20, replace "3" with "2"

Page 1, line 22, replace "3,422,553" with "4,822,553"

Page 1, line 23, replace "3,422,553" with "4,822,553"

Page 1, line 24, replace "4" with "3"

Page 2, line 2, replace "1,310,955" with "2,858,771"

Page 2, line 3, replace "1,310,955" with "2,858,771"

Page 2, line 4, replace "5" with "4"

Page 2, line 8, replace "6" with "5"

Page 2, line 12, replace "7" with "6"

Page 2, line 16, replace "8" with "7"

Page 2, line 20, replace "10,496,503" with "8,439,319"

Page 2, after line 20, insert:

"Grand total special funds	\$140,000
Grand total all funds	\$8,579,319"

Page 2, line 21, replace "appropriation" with "sum of \$3,422,553" and replace "subsection 3"  
with "subdivision 2"

Page 2, after line 25, insert:

**"SECTION 3. UNSPENT APPROPRIATION AUTHORITY.** The appropriation in subdivision 2 of section 1 of this Act includes \$1,400,000 for expenses incurred for the snow emergency in January 2009. Any unexpended funds from this appropriation may not be spent for other purposes and the appropriation authority must be canceled at the end of the biennium ending June 30, 2009, in accordance with section 54-44.1-11.

2 of 2

**SECTION 4. UNSPENT APPROPRIATION AUTHORITY.** The appropriation in subdivision 3 of section 1 of this Act is for paying the final university of North Dakota expenses relating to the 1997 flood disaster. Notwithstanding any other provision of law, any unexpended funds from this appropriation may not be spent for other purposes and the appropriation authority must be canceled at the end of the biennium ending June 30, 2009, in accordance with section 54-44.1-11."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment provides the following changes to the supplemental appropriation bill:

- Removes the general fund appropriation of \$5 million to the Office of Management and Budget for centers of excellence loan repayments.
- Removes \$5,000 from the general fund appropriation to the Attorney General for the arrest and return of fugitives and provides \$140,000 of federal funds for capital assets for the Crime Laboratory.
- Increases the general fund appropriation by \$1.4 million to the Adjutant General for the snow emergency in January 2009. A section is added that these funds may not be spent for any other purpose and any unspent appropriation authority be canceled at the end of the biennium.
- Increases the general fund appropriation to the University of North Dakota for the final payments of the state's share of the 1997 flood damage expenses. A section is added that these funds may not be spent for any other purpose and that any unspent appropriation authority be canceled at the end of the biennium.



Date: 2/17/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1023

Full House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 98023.0101

Action Taken adpt .0101

Motion Made By Delzer Seconded By Shaydab

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glassheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

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

Absent \_\_\_\_\_

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

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

*Voie Vote - carries*

Date: 2/17/09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1023

Full House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 0101

Action Taken Do Pass as Amended

Motion Made By Hulzer Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew	✓		Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 23 23 No 0

Absent 2 2

Floor Assignment Hulzer

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

**REPORT OF STANDING COMMITTEE**

**HB 1023: Appropriations Committee (Rep. Svedjan, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (23 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1023 was placed on the Sixth order on the calendar.

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- Increases the general fund appropriation to the University of North Dakota for the final payments of the state's share of the 1997 flood damage expenses. A section is added that these funds may not be spent for any other purpose and that any unspent appropriation authority be canceled at the end of the biennium.

2009 SENATE APPROPRIATIONS

HB 1023

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1023

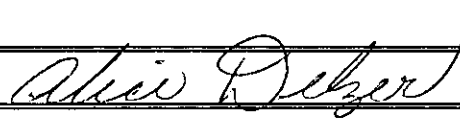
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-02-09

Recorder Job Number: 9980

Committee Clerk Signature



Minutes:

**Chairman Holmberg** opened the hearing on HB 1023 in regards to A BILL for an Act to provide an appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency. This is a deficiency appropriation. He asked if they are asking for the amount in the budget or asking for more.

**Kathy Roll, Financial Director for Attorney General** testified in favor of HB 1023 and provided written testimony # 1 in support of the bill. She stated they have adopted the amount sometimes we don't always spend that amount. Rather than ask for additional authority to spend our philosophy is to come back and ask for more funds if we need it. She continued her written testimony regarding prosecution witness fees.

**Chairman Holmberg** stated in either case you are making before us today you have been in control over that. She stated yes. She shared about capital assets regarding the Crime Lab (3.27).

**Senator Krauter** had questions regarding the litigation fees and the expenses regarding this matter.

**Kathy Roll** said what we normally do is purchase the intoxalizers or the hand held units. We also purchase items that are used to analyze the samples we receive.

**Senator Krauter** had further questions regarding litigation fees. ((4.24) He was told yes.

**V. Chair Grindberg** had questions regarding the capitol assets and why wouldn't that request be in your agency request. Why is it a deficiency request?

**Kathy Roll** stated we have those monies available now, so we would like to spend it at this point rather than wait for the new biennium for appropriations.

**Senator Seymour** asked what are some of the going rates for expert witness fees.

**Kathy Role** stated for example, the medical physicians who testify, their rates are high. The judge in the case actually approves those fees and we have no control over these charges.

**Senator Kilzer** stated that he had never been a witness under those kinds of reimbursement but I have been subpoenaed and the reimbursement is very much different if you are a subpoenaed witness.

**Greg Wilz, Deputy Director, Department of Emergency Services of the Office of Adjacent**

**General** testified in favor of HB 1023 and provided written testimony # 2. He referred to the spread sheet attached.(10.47)

**V. Chair Bowman** asked if we are caught up after we borrow the money to pay the bank.

**Greg Wilz** provided a handout regarding that issue written testimony # 3 entitled Open Disasters – Public Assistance. He explained the three columns and commented that the PW stands for project worksheets. Some of those have been delayed. Some of those have been in an appeal process with FEMA and it just takes time to work some of these out. We are working very hard to get as many of these closed out as we possibly can. The third sheet is the Hazard Mitigation side of it and it again shows the disaster year, the applicant receiving the funds and the estimated remaining costs.

**V. Chair Bowman** there is actually two balances after the bill where you get the money to pay off the amount.

**Greg Wilz** stated that is correct. This is what has been extended over this past biennium to keep the projects going and this is what we believe what is left from here until the projects close out.

**Senator Christmann** asked with the snow removal, basically, all of that that was discussed with the counties hinges on this if this passes. Let's assume this passes and has emergency clause, how long do you keep this open and will the money be spread around proportionately.

**Greg Wilz** stated I don't know. Clearly, if the projections we had for January are accurate, we will use quite a bit of that right at the get go. We will have to see what happens in March and some degree there will be impacts, local budgets are strained already. He stated the initial plan when the governor signed, was to prorate and pay, we may have the same approach. We don't know where the presidential recommendation is yet regarding this matter. (17.50) We are asking them to come in and pay snow removal costs.

**Senator Fischer** asked if he can explain the South Fargo diversion project from 1997 and had questions regarding the PWs and the time allotment concerning them.

**Greg Wilz** stated I don't have data with I believe that is a project that is in appeal with FEMA. The PWs are actually state expenses, we have to go out and be sure the match was done, we are close on that, with the audits left to do on the local level.

**Senator Fischer** asked so when you come out and there is a drain that failed because of the flood, who comes to investigate this? He then asked for a breakdown of what a research district pays, like for instance, North Cass County District.

**Greg Wilz** stated one would be the auditor people and one an engineer, where we have staff costs involved, regarding FEMA. He said he can provide that information to Senator Fischer



**Senator Krauter** stated that amount pays off about 5 of these on this list. We are still going to have some incurred costs and had more questions regarding the incurred costs. He also had questions regarding the time frame.

**Greg Wilz** said this is two years of expenses on all open disasters These are our best guesses what it will cost. The first 3 they will be done. The 97 flood the only thing we will have open is the litigation project. In the Hazard Mitigation there is a dispute on the funds available and used. He stated this thing is so huge. (24.14)

**V. Chair Bowman** asked how long are the books open on something that happened in 1997. How long have they got to put in a claim? When does it become a point and time that it is questionable if it was flood related or not? How do you know what the truth is?

**Greg Wilz** stated I think it is at some level indefinite. I don't like it. It is not something we are advocating. We are doing our very best to close these out and get them off the books I agree with V. Chair Bowman. For whatever reason there is, these things were left to fester. I can't explain it. I make a promise to you I will have hoped to close a lot of these out and get them out of the books. We will inspect records as soon as we get notification that we can.

**Chairman Holmberg** stated you have to deal with FEMA and Mr.Wilz said sometimes our hand are tied.

**V. Chair Grindberg** asked if they can provide us within this bill what we are paying for. He was told yes.

**Alice Brekke, Interim Vice President for Finance and Operations UND**, testified in favor of HB 1023 and provided written testimony # 4. (28.24) I am here to report on the flood of 1997. I want to thank you for your support and your patience. We have spent 4 years to close this out with FEMA. All the flood related costs, all the projects were actually completed in the 2003-05 biennium. We have spent 4 years focused on the FEMA closeout process and appeals. One

of the difficulties in this process is that although the federal regulations required that the institution respond within a certain period of time with additional information or to appeal process. There is not a similar requirement that FEMA come back in a particular time with their ruling on the appeals. So our final appeal documents went in in October of 2008. We have no idea at what point FEMA will actually issue a final ruling on that appeal. (32.04)

**Chairman Holmberg** asked if they have met all the deadlines as far as FEMA is concerned.

**Alice Brekke** stated yes and one other point regarding that I will call your attention to section 4 in HB 1023 lines 5 and 6. It came to our attention in the engrossed bill there was language inserted, first of all, to indicate the intent that we would not be able to spend money for any other purpose which we clearly understood. The part of this language in these last 2 lines that is problematic is the appropriation authority would be cancelled at June 30, 2009. We don't know that FEMA will have responded by that time. So, the amount we have requested would be sufficient to bring to closure under the worse-case scenario but only if FEMA responds by June 30<sup>th</sup> so that is potentially problematic because we don't control the timing under which FEMA responds.

**Senator Robinson** stated you referenced appeals and I have followed this fairly closely, is there not enough limit the amount of appeals you can have with FEMA . I was under the impression they're fairly restrictive that if you don't get help the first time around the second is almost negligent, your chances are nil, but you are talking various aspects on the 1997 flood.

**Alice Brekke** said that would be correct. The item that is on the table right now under appeal is project management clause which is kind of the umbrella over the whole flood recovery effort, the construction part of it. And what they were questioning wanting additional documentation and what has been provided to them, which had actually been provided to them previously, but unfortunately when you are dealing with FEMA there is high turnover among

their employees. We send in documents and you sometimes need to send them in again. we have provided literally reams of paper with the details rolled off into a summary.

**Senator Robinson** asked is this the first appeal on the general contractor phase of the project.

**Alice Brekke** commented no, it is the second and final appeal. We have no recourse beyond this last step. No it is the second and final appeal. We have no other recourse.

**Chairman Holmberg** stated they have little choice because we would want them to appeal in case they can get some additional aid from them.

**Alice Brekke** stated one of the items when they came back with their settlement offer and it did not fully fund these costs, FEMA referenced that they did not have certain documentation. That is what prompted the final appeal because we had the documentation and it wasn't clear to us why they didn't have that in hand because according to our records they should have had that. So we felt the final appeal was a reasonable step to take and to exercise that last appeal.

**Senator Robinson** stated we are working in our district with a FEMA appeal and the Adjacent General buys this because of the absence of leadership of FEMA for a period of time there might be some hope that someone at FEMA will want to clear up this backlog and I hope that is the case here.

**Alice Brekke** said we are hopeful and we have done absolutely everything we could that would result in a favorable ruling by FEMA but at this point all we can do is wait.

**John Adams Vice President of Finance for the Administration for the NDSU** testified in favor of HB 1023 and provided written testimony # 5, NDSU State Deficiency Appropriation Request, which gives the dollar amount requested from the state deficiency appropriation and a financial summary of the June 2000 flood at NDSU. He stated he hoped this would be the last time he has to appear on this issue. He continued reading his testimony #1 to the committee. (39.45)

**John Adams** presented written testimony # 6 entitled 2009-11 Deficiency Appropriation Request NDSU Agriculture and University Extension. In the 2005 Legislative session, capital bonds were approved for construction projects at three Research Centers. The funds were never included in the 2007-09 biennium and The State Industrial Commission had sufficient funds to cash flow for the December payments. On behalf of NDSU Agriculture and University Extension, I hereby request for a deficiency appropriation in order to make the June 1 payments and to reimburse the State Industrial commission for the payments made on our behalf in December (see testimony #6)

**Chairman Holmberg** asked if he knows if the money to pay the bonds going into the future for next biennium are included. He was told yes.(42.37)

**Senator Fischer** made comments concerning FEMA.

**Chairman Holmberg** closed the hearing on HB 1023.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1023

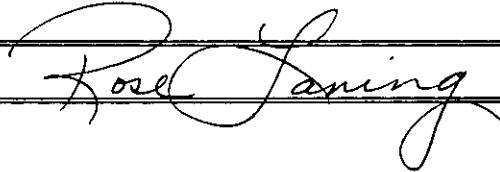
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2009

Recorder Job Number: 11705

Committee Clerk Signature



Minutes:

**Chairman Holmberg:** We had 2 items of testimony on this. After this bill was drafted, the office of Attorney General is receiving highway safety funds of \$200,000, that we need to appropriate. So the amendment does two things, it increases funds by 200,000 to reflect how much they are actually paid and second, that the amount of money we have in here will cover everything no matter what. If they receive a deduction and they win their final appeal, any money that comes back to appropriations will go back to the general fund. We are saying in the way the bill was written, that the appropriation authority must be canceled at the end of this biennium and their problem is they have no control over when FEMA responds. The request was to extend that out to the next biennium when they are confident that everything will be settled.

**V. Chair Grindberg:** Do we have testimony as such?

**Chairman Holmberg:** Yes, from Alice Brekke.

**Senator Wardner:** Moved to adopt amendments.

**Senator Seymour:** Seconded.

Voice vote approved.

**Senator Wardner:** Moved Do Pass as Amended.

**Senator Seymour:** Seconded.

Page 2

Senate Appropriations Committee

Bill/Resolution No. 1023

Hearing Date: April 2, 2009

A Roll Call vote was taken. Yea: 14 Nay: 0 Absent: 0

**Senator Seymour** : To carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1023

Page 1, line 13, replace "140,000" with "340,000"

Page 1, line 15, replace "234,000" with "434,000"

Page 1, line 16, replace "140,000" with "340,000"

Page 2, line 20, replace "140,000" with "340,000"

Page 2, line 21, replace "8,579,319" with "8,779,319"

Page 3, line 5, replace "2009" with "2011"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment increases the appropriation to the Attorney General for capital assets by \$200,000 to provide a total of \$340,000 and changes the date of cancellation for unexpended funds for the University of North Dakota relating to 1997 flood costs from June 30, 2009, to June 30, 2011.

Date: April 2, 2009  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1023

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .0201

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Wardner Seconded By Seymour

*voice  
vote  
approved*

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer			Senator Warner		
Senator Christmann			Senator Robinson		
Senator Krebsbach			Senator Krauter		
Senator Bowman			Senator Lindaas		
Senator Kilzer			Senator Mathern		
Senator Grindberg			Senator Seymour		
Senator Wardner					
Chairman Holmberg					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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



Date: April 2, 2009  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1023

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Wardner Seconded By Seymour

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach	✓		Senator Seymour	✓	
Senator Fischer	✓		Senator Lindaas	✓	
Senator Wardner	✓		Senator Robinson	✓	
Senator Kilzer	✓		Senator Warner	✓	
V. Chair Bowman	✓		Senator Krauter	✓	
Senator Christmann	✓		Senator Mathern	✓	
V. Chair Grindberg	✓				
Chairman Holmberg	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Seymour

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

**REPORT OF STANDING COMMITTEE**

HB 1023, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1023 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "140,000" with "340,000"

Page 1, line 15, replace "234,000" with "434,000"

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2009 TESTIMONY

HB 1023

**2009 ENGROSSED HOUSE BILL NO. 1023, SUBDIVISION 1  
DEFICIENCY APPROPRIATION INFORMATION  
OFFICE OF ATTORNEY GENERAL  
KATHY ROLL, FINANCIAL ADMINISTRATOR**

**LITIGATION FEES**

- ❖ The Litigation Fees special line item is used for the costs of litigation including expert witness fees, deposition and transcription costs, and other out-of-pocket expenses associated with litigation in which the Office of Attorney General is involved.
- ❖ An additional \$20,000 in general fund expenses is anticipated to be incurred this biennium, for a total of \$70,000 in expenditures.
- ❖ Current and previous biennia Litigation Fees expenses and appropriations totaled:

<u>Biennium</u>	<u>Expenses</u>	<u>Appropriation</u>
2007-09 to date	\$ 45,153	\$ 50,000
2005-07	\$ 86,140	\$ 50,000
2003-05	\$ 36,601	\$ 50,000
2001-03	\$ 6,899	\$ 50,000
1999-01	\$ 7,154	\$ 50,000
1997-99	\$125,444	\$139,024
1995-97	\$ 8,906	\$143,324

**PROSECUTION WITNESS FEES**

- Prosecution witness fees and expenses are reimbursed for district court criminal and juvenile court cases.
- For the 2007-09 biennium \$100,000 was appropriated to the Office of Attorney General for this purpose which was depleted in May 2008.
- Based on average usage, an additional \$74,000 in general fund monies are estimated to be needed to reimburse prosecution witness fees for the remainder of the 2007-09 biennium.
- The Office of Attorney General 2009-11 biennium appropriation bill contains \$100,000 for prosecution witness fees reimbursement.

Current and previous biennia prosecution witness fees expenses totaled:

<u>Biennium</u>	<u>Expenses</u>	<u>Appropriation</u>
○ 2007-09 to date	\$201,448	\$209,000 (including Emergency Commission approvals)
• 2005-07	\$161,849	\$100,000
• 2003-05	\$157,654	\$100,000
• 2001-03	\$146,791	\$100,000
• 1999-01	\$121,356	\$100,000

• 1997-99	\$166,501	\$195,445
• 1995-97	\$175,422	\$210,000

### **CAPITAL ASSETS**

The Crime Lab will be receiving additional highway safety federal funds for the purchase of capital assets not anticipated at the time the 2007-09 biennium appropriation was finalized. This request is to add \$200,000 in additional federal funds authority to the \$140,000 capital assets line item requested.

2009 HOUSE BILL NO. 1023, SUBDIVISION 2  
DEFICIENCY APPROPRIATION INFORMATION  
OFFICE OF ATTORNEY GENERAL  
KATHY ROLL, FINANCIAL ADMINISTRATOR

**LITIGATION FEES**

- ❖ The Litigation Fees special line item is used for the costs of litigation including expert witness fees, deposition and transcription costs, and other out-of-pocket expenses associated with litigation in which the Office of Attorney General is involved.
- ❖ An additional \$20,000 in general fund expenses is anticipated to be incurred this biennium, for a total of \$70,000 in expenditures.
- ❖ Current and previous biennia Litigation Fees expenses and appropriations totaled:

<u>Biennium</u>	<u>Expenses</u>	<u>Appropriation</u>
2007-09 to date	\$ 44,740	\$ 50,000
2005-07	\$ 86,140	\$ 50,000
2003-05	\$ 36,601	\$ 50,000
2001-03	\$ 6,899	\$ 50,000
1999-01	\$ 7,154	\$ 50,000
1997-99	\$125,444	\$139,024
1995-97	\$ 8,906	\$143,324

**PROSECUTION WITNESS FEES**

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- For the 2007-09 biennium \$100,000 was appropriated to the Office of Attorney General for this purpose which was depleted in May 2008.
- Based on average usage, an additional \$74,000 in general fund monies are estimated to be needed to reimburse prosecution witness fees for the remainder of the 2007-09 biennium.
- The Office of Attorney General 2009-11 biennium appropriation bill contains \$100,000 for prosecution witness fees reimbursement.

Current and previous biennia prosecution witness fees expenses totaled:

<u>Biennium</u>	<u>Expenses</u>	<u>Appropriation</u>
o 2007-09 to date	\$195,143	\$209,000 (including Emergency Commission approvals)
• 2005-07	\$161,849	\$100,000
• 2003-05	\$157,654	\$100,000
• 2001-03	\$146,791	\$100,000
• 1999-01	\$121,356	\$100,000

• 1997-99	\$166,501	\$195,445
• 1995-97	\$175,422	\$210,000

### **CAPITAL ASSETS**

The Crime Lab will be receiving additional federal funds for the purchase of capital assets not anticipated at the time the 2007-09 biennium appropriation was finalized. This request is to add \$ 140,000 in additional federal funds authority to the capital assets line item.

### **ARREST & RETURN OF FUGITIVES**

The Emergency Commission approved an additional \$15,000 for Arrest & Return of Fugitives at its October 2008 meeting. As a result, this deficiency amount is no longer needed.

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1023 Deficiency approp INFO.doc

TESTIMONY – HB 1023  
SENATE APPROPRIATIONS COMMITTEE  
March 2, 2009  
BY GREG WILZ  
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and Members of the Committee:

The Department of Emergency Services has requested a deficiency appropriation of \$3,422,553 to repay state disaster response and recovery costs and related loans from the Bank of North Dakota as provided in NDCC 37-17.1-23. The deficiency appropriation request includes Presidential Disaster Declarations occurring in 1997, 1999, 2000, 2001, 2004, 2005, 2006, and 2007.

Presidential Disaster Declarations automatically generate FEMA programs requiring non-federal cost sharing. Public Assistance (PA) and the Hazard Mitigation Grant Program (HMGP) normally require a 75% federal, 15% local, and 10% state share. However, the magnitude of flooding events that occurred in 1997, 1999, and 2000 was so enormous the PA cost share threshold was adjusted to 90% federal, 5% state, and 5% local.

Our current Bank of North Dakota loan authority is \$3,298,000, approved by the Emergency Commission and Budget Section to pay the state's cost share. We have borrowed \$993,513 to date and estimate an additional state cost payment through June 30, 2009 of \$2,429,040, which includes interest of \$41,963 (see attached spreadsheet).

Our agency is also requesting a deficiency appropriation in response to Governor Hoeven's snow emergency declaration dated January 22, 2009. On that same date, the Emergency Commission provided the agency \$100,000 in contingency funds and approved the deficiency appropriation request of \$1,400,000. The original estimated cost of the snow emergency was \$1,500,000. Currently, costs in January are projected at \$2,247,150. As members are aware, SB 2393 appropriates an additional \$1,000,000 into the Snow Emergency Program which is expected to cover January's expenses. The Governor's Presidential Request has not been acted upon to date. More data quantifying the additional impacts of February snowfalls was submitted to the Federal Emergency Management Agency (FEMA) last Friday.

I would be pleased to respond to any questions, Mr. Chairman.



**OFFICE OF ADJUTANT GENERAL**  
**DEPARTMENT OF EMERGENCY SERVICES**  
**DISASTER DEFICIENCY 2007-2009 BIENNIUM**

		<b>BANK DRAWS AS OF 1/31/09</b>	<b>ESTIMATED OUTLAYS 2/09 - 6/09</b>	<b>TOTALS BY DISASTER</b>	
1174	1997 FLOOD	\$ 19,170.27	\$ 1,873,158.71	\$ 1,892,328.98	CLOSES PA
1279	1999 FLOOD		\$ 5,027.25	\$ 5,027.25	CLOSES PA & HAZ MIT
1334	2000 FLOOD		\$ 25,000.00	\$ 25,000.00	CLOSES PA & HAZ MIT
1376	2001 FLOOD	\$ 80,090.74	\$ 30,576.89	\$ 110,667.63	CLOSES HAZ MIT
1515	2004 FLOOD	\$ 70,233.92	\$ 78,893.81	\$ 149,127.73	CLOSES HAZ MIT
1597	2005 FLOOD	\$ 45,718.37	\$ 2,015.95	\$ 47,734.32	
1616	2005 WESTERN ND SNOW STORM	\$ 1,136.01	\$ 200,584.01	\$ 201,720.02	
1621	2005 ICE STORM	\$ 35,684.92	\$ 262.50	\$ 35,947.42	
1645	2006 FLOOD	\$ 54,118.07	\$ 12,820.53	\$ 66,938.60	
PDM	PREDISASTER MITIGATION	\$ 14,702.56	\$ 1,205.21	\$ 15,907.77	
1713	2007 FLOOD	\$ 259,823.29	\$ 18,548.47	\$ 278,371.76	
725	2007 STORMS & TORNADOS	\$ 87,493.18	\$ 3,205.20	\$ 90,698.38	
1726	2007 NORTHWOOD TORNADO	\$ 325,341.78	\$ 135,778.55	\$ 461,120.33	
	<b>Total</b>	<b>\$ 993,513.11</b>	<b>\$ 2,387,077.08</b>	<b>\$ 3,380,590.19</b>	
			<b>LOAN INTEREST THRU 1/31/09</b>	<b>\$ 30,962.81</b>	
			<b>ESTIMATED INTEREST 2/09 THRU 6/09</b>	<b>\$ 11,000.00</b>	
			<b>ESTIMATED TOTAL DEFICIENCY 07-09</b>	<b>\$ 3,422,553.00</b>	

TESTIMONY – HB 1023  
HOUSE APPROPRIATIONS COMMITTEE  
FEBRUARY 5, 2009  
BY GREG WILZ  
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and Members of the Committee:

The Department of Emergency Services has requested a deficiency appropriation of \$3,422,553 to repay state disaster response and recovery costs and related loans from the Bank of North Dakota as provided in NDCC 37-17.1-23. The deficiency appropriation request includes Presidential Disaster Declarations occurring in 1997, 1999, 2000, 2001, 2004, 2005, 2006, and 2007.

Presidential Disaster Declarations automatically generate FEMA programs requiring non-federal cost sharing. Public Assistance (PA) and the Hazard Mitigation Grant Program (HMGP) normally require a 75% federal, 15% local, and 10% state share. However, the magnitude of flooding events that occurred in 1997, 1999, and 2000 was so enormous the PA cost share threshold was adjusted to 90% federal, 5% state, and 5% local.

Our current Bank of North Dakota loan authority is \$3,298,000, approved by the Emergency Commission and Budget Section to pay the state's cost share. We have borrowed \$984,965 to date and estimate an additional state cost payment through June 30, 2009 of \$2,437,588, which includes interest of \$41,407 (see attached spreadsheet).

Our agency is also requesting a deficiency appropriation in response to Governor Hoeven's snow emergency declaration dated January 22, 2009. On that same date, the Emergency Commission provided the agency \$100,000 in contingency funds and approved the deficiency appropriation request of \$1,400,000. The original estimated cost of the snow emergency was \$1,500,000, but more accurate data is being gathered as actual costs are submitted by jurisdictions that have qualified for assistance. Our current best estimate is that the deficiency will be \$1,400,000. As soon as a more precise dollar amount becomes available, we will provide the Committee a revised estimate.

I would be pleased to respond to any questions, Mr. Chairman.

HB 1023 3

## Open Disasters - Public Assistance

Disaster - Year	Applicant	Estimate of Remaining State Costs
DR 1376 (2001)	Monitoring Costs	\$26,930.00
DR 1515 (2004)	State Management Costs	\$2,000.00
	Monitoring Costs	\$41,000.00
DR 1597 (2005)	State Management Costs	\$2,000.00
	Monitoring Costs	\$59,300.00
	Richland County PW 1011	\$40,210.00
	Trail Co. Wtr. Resr. PW 391	\$19,143.00
DR 1621 (2005)	State Management Costs	\$2,000.00
	Dakota Valley Elec. PW 7	\$200,000.00
DR 1645 (2006)	State Management Costs	\$23,206.00
	Monitoring Costs	\$48,700.00
	Trail Co. Water Resource Dist.	
	PW 690	\$54,303.00
	PW 604	\$7,714.00
	North Cass Water Resource Dist.	
	PW 647	\$21,144.00
	Maple River Water Resource Dist.	
	PW 655	\$29,198.00
DR 1713 (2007)	State Management Costs	\$36,000.00
	Monitoring Costs	\$34,400.00
	Richland County PW 221	\$12,852.00
DR 1725 (2007)	State Management Costs	\$1,000.00

## Open Disasters - Public Assistance

Disaster - Year	Applicant	Estimate of Remaining State Costs
DR 1726 (2007)	State Management Costs	\$38,900.00
	Monitoring Costs	\$36,100.00
	Northwood Park Dist. PW 18	\$1,390.00
	Northwood Fire Dist. PW 33	\$500.00
	PW 109	\$500.00
	Northwood Deacon Health Center	
	PW 119	\$500.00
	Northwood School PW 106	\$659,458.00
	PW 118	\$29,746.00
	PW 121	Insurance
	City of Northwood PW 61	\$55,989.00
	PW 63	Insurance
	PW 64	Insurance
	PW 69	\$13,450.00
	PW 73	\$40,908.00
	PW 92	\$5,996.00
	PW 95	\$8,463.00
All Disasters	Small Project overruns, Insurance	\$50,000.00
	adjustments and audit adjustments	
TOTAL ESTIMATE OF REMAINING STATE COSTS →		\$1,603,000.00

## Hazard Mitigation - State Costs 7-1-2009 to Closure

Disaster - Year	Applicant	Estimate of Remaining State Costs
DR 1174 (1997)	South Fargo Division Project	\$1,154,420.00
DR 1597 (2005)	City of Fargo - Relief Storm Sewer	\$27,066.67
DR 1645 (2006)	Grand Forks Co Acquisition	\$3,290.00
DR 1713 (2007)	Projects - Not Yet Determined	\$43,283.20
DR 1725 (2007)	Projects - Not Yet Determined	\$9,640.67
DR 1726 (2007)	Projects - Not Yet Determined	\$100,551.47
All Disasters	State Management Costs	\$59,062.50
*Includes staff costs for Pre Disaster Mitigation	*Includes 1.5 FTEs thru 12-31-2012	
TOTAL ESTIMATE OF REMAINING STATE COSTS		\$1,397,314.51

*Attachment C*  
*2/5/09*  
*HB 1023*  
*Same given to Senate*

**Testimony on House Bill 1023  
House Appropriations Committee  
February 5, 2009**

**2007-2009 Deficiency Appropriation Request (Revised) – 1997 Flood  
Alice Brekke, Interim Vice President for Finance and Operations  
University of North Dakota**

**Deficiency Appropriation Summary (Cumulative) through 2007-2009:**

o 10% Cost Share and Insurance	\$4,262,972
o Interest on Bank Loan-previously reported	2,262,119
o Disaster Grants Management Consultant (DMG Maximus)	707,147
o Other FEMA Ineligible-previously reported (adj.)	1,914,652
o Interest on Bank Loan-current through 6/30/08	109,066
o Interest on Bank Loan-estimated through 4/30/09	49,000
o Other FEMA Ineligible-Steam line (previously reported)	1,499,590
o Other FEMA Ineligible-Steam line (appeal denied)	1,114,431
o Other FEMA Ineligible-Project Mgmt. (appeal not final)	1,573,840
o Litigation Costs (previously reported)	271,204
o Litigation Costs (current)	<u>12,434</u>

1997 Flood Expenditures-Total Estimated Deficiency \$13,776,455

Funded in 1997-99; 1999-2001; 2001-03; 2003-05; 2005-07 10,917,684

**Net Estimated 2007-09 Deficiency \$2,858,771**

**2007-2009 Deficiency Request**

o Interest-current through 6/30/08	\$109,066
o Interest-estimated through 4/30/09	49,000
o Other FEMA Ineligible-Steam line (appeal denied)	1,114,431
o Other FEMA Ineligible-Project Mgmt (appeal not final)	1,573,840
o Litigation costs	<u>12,434</u>
	<b>\$2,858,771</b>

At the time of the initial flood deficiency appropriation request, the following additional costs were pending resolution of FEMA appeals, resulting in either payment by FEMA or an additional deficiency request.

• Project management - steam line	1,836,658
• Project management - other projects	<u>1,169,165</u>
Total Costs Appealed	<b>\$3,005,823</b>

UND has since received a settlement offer from FEMA of \$1,255,390 which would result in a total of \$1,750,433 of the costs appealed as ineligible. Although a final appeal has been submitted to FEMA, the amount of the deficiency request has been increased to reflect the most

recent action by FEMA. This positions the University to bring the recovery from the flood of 1997 to closure.

Note: Interest on the Bank of North Dakota line of credit will continue to accrue until funds are available to repay the outstanding principle of \$1,456,465 plus any remaining interest due. If the outstanding appeals are denied, remaining funds would need to be refunded to FEMA.

**Deficiency Appropriation:**

All flood related projects were completed in the 2003-05 biennium. Efforts over the past four years have been focused on the FEMA close out process, including appeals.

**Steam Line Project:** FEMA Ineligible – Steam line (appeal denied)

In the close out process, and again in the follow up appeal process, FEMA denied reimbursement for expenditures which, in their opinion, were considered to be improvements to the steam system and for change orders which, again in their opinion, were not required, should have been included in the base contract, or did more than simply replace in kind. FEMA also denied reimbursement of \$399,398 for final grading, topsoil, seeding/sod and watering for restoring 11 miles of trenching on the basis that, in practice, they only reimburse for these restoration costs for erosion purposes when the slope exceeds a 2:1 ratio.

Because the steam line is a high pressure, high volume, heat distribution system, it is inherently dangerous to operate and maintain. To minimize UND's exposure to liability and ensure employee safety, the new system was installed to current standards for safe usage. Under no circumstance was any work undertaken with a knowledge or belief that the work was in some way any more than the minimum requirements for creating a heating utility that could be operated in a safe and efficient manner. The steam line is basically 12 miles of pipe line buried within a 100 year old campus which contains over 8 miles of water mains, 5 miles of storm water systems, 7 miles of sanitary sewer, 4 miles of telecommunication wiring, 10 miles of high voltage electrical cable, and the abandoned 12 mile steam system it replaced all in the same general vicinity. The objective was to simply get the pipe in place to deliver the utility within current safety/access standards.

Following are the major categories of costs incurred in the replacement of the steam line that FEMA deemed ineligible and are included in the deficiency appropriation request:

Change orders: \$67,497

This refers to additional work that was completed by the contractor at extra cost. FEMA ruled that the change orders were not required, should have been included in the base contract, or did more than simply replace in kind.

Landscape/Sod: \$399,398

Luneth Additional: \$673,560 (see explanation under litigation)

**Steam Line Project Summarized:**

Costs incurred to restore the campus steam line were \$30,310,967.

FEMA reimbursable	\$22,808,864
State match	2,734,025
Insurance and other	126,041
FEMA ineligible – UND	165,334
FEMA ineligible – previous	1,499,590
FEMA ineligible – appeal denied	1,140,455
Pending appeal:	
Project management	1,836,658

**Project Management and Engineering:**

April 17, 2002, UND submitted the cost analysis and request for final review of project management and engineering costs (non-steam line) to NDDEM. As of January 4, 2007, UND had not yet received a final closeout DSR from FEMA for this project. The final closeout DSR reports FEMA's final disposition of the applicant's request, detailing what they have found eligible and ineligible. UND made numerous requests for a final closeout DSR for this project. Absent the final closeout DSR, UND was not able to complete a reconciliation between the amount claimed and FEMA's disposition of that claim.

Total costs for project management and engineering were \$1,655,950.

The OIG's audit report recommended disallowance of \$1,169,165 in project management costs related to projects other than the steam line because of inadequate supporting documentation from the project manager and lack of documentation to identify the method of procurement, the rationale for the procurement, or the selection of the contractor (project manager). UND obtained additional supporting documentation from the project manager, compiled documentation regarding the procurement of the project manager and submitted an appeal on October 20, 2006. In their transmittal letter to FEMA of the supplemental information UND provided, NDDEM requested FEMA allow the project management costs claimed as fair and reasonable.

On September 8, 2008, UND received a close out DSR for project management and engineering from the ND Department of Emergency Services which indicated that FEMA offered \$1,255,390 in settlement of UND's claim of \$3,005,823 for project management. UND has submitted a final appeal to FEMA.

**Bank of North Dakota Loan:**

The current loan balance is \$1,456,465. The interest cost through June 30, 2008 is \$109,066. Interest continues to accrue and the effective rate as of July 1, 2008 is 3.961 percent. Additional funding would be needed for interest costs from 7/1/08 through the date of final payment. This deficiency request also includes estimated interest of \$49,000 through 4/30/09.

**Litigation:**

Lunseith Plumbing and Heating Co. v. North Dakota State Board of Higher Education



On or about May 29, 2002, pursuant to a contract between the North Dakota State Board of Higher Education (on behalf of the University of North Dakota) and Lunseth Plumbing and Heating, Lunseth commenced an arbitration seeking payment for work performed as part of Phase I of UND's steam distribution system restoration project. Lunseth claimed an unpaid balance in excess of \$4,339,000. Lunseth subsequently included Phase II of the project.

On June 19, 2002, UND filed a response and asserted counterclaims based on untimely and defective work performed by Lunseth. UND also brought a motion to dismiss based on lack of jurisdiction.

In addition to these claims, Lunseth alleged negligence on the part of UND, its architect, EAPC, and its construction manager, Barton Malow, and demanded damages.

The arbitration was to begin on June 13, 2005. However, by Settlement Agreement and Release dated May 25, 2005, and Stipulation of Dismissal with Prejudice dated May 27, 2005, the matter has been resolved, and the arbitration and the case were closed.

Based on the Settlement Agreement and Release, UND has made a final payment to Lunseth of \$999,999. This amount was then submitted to FEMA for reimbursement. FEMA provided reimbursement of \$61,575 and declared the remaining \$938,424 ineligible. Of this total, \$236,198 was funded as part of the 2005-07 deficiency appropriation and the remaining \$695,384 is now included above under the steam line project FEMA ineligible for which the appeal has now been denied.

#### **Other FEMA Ineligible**

Through the process of damage assessment, repairs, costing, insurance claims, litigation and final close out of each DSR, decisions have been made by FEMA to assign costs to UND as ineligible for FEMA funding. In all instances UND has made a good faith effort to comply with FEMA regulations, pursue reasonable avenues of appeal and maximize cost recovery from other applicable sources.

**2009-11 Deficiency Appropriation Request**  
**NDSU Agriculture and University Extension**

In the 2005 Legislative session, capital bonds were approved for construction projects at three Research Centers:

- An addition to the headquarters office complex at the Central Grasslands Center in Streeter for \$270,000;
- An agronomy lab and greenhouse at the North Central Center in Minot for \$440,000;
- and a research greenhouse complex at the Main Station in Fargo for \$2,000,000.

During the 2007-09 biennium, the first payments on those bonds became due on December 1, 2008 with the second payment due on June 1, 2009. New funding for these payments was inadvertently excluded in the 2007-09 Legislative session appropriation request. The State Industrial Commission had sufficient funds to cash flow the December payments.

On behalf of NDSU Agriculture and University Extension, I hereby request a deficiency appropriation of \$136,152 in order to make the June 1 payments and to reimburse the State Industrial Commission for the payments made on our behalf in December.



North Dakota State University  
State Deficiency Appropriation Request  
February 5, 2009

*Attachment D*  
*2-5-09*  
*HB 1023*

North Dakota State University is requesting a \$527,842 state deficiency appropriation for the 2007-2009 biennium. This is expected to be the final request related to the campus damages from the June 2000 flood. If this appropriation request is granted, it would be used to fund the 10% state match on the five FEMA project worksheets closed out during the fiscal year ended June 30, 2008 (\$276,852), along with other project costs above the FEMA eligible project worksheets over the life of the project (\$250,990).

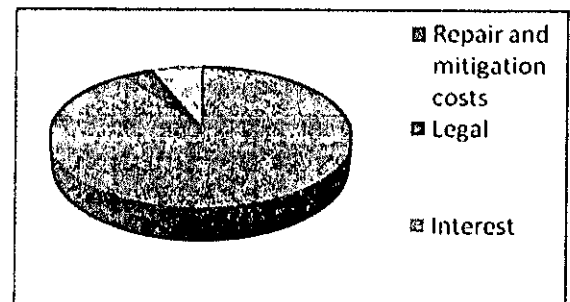
At this point all FEMA project worksheets have been closed out, all insurance settlements are complete, all monies received from FEMA and insurance are received and all project costs are paid. The Bank of North Dakota Line of Credit that was approved for several years following the disaster is no longer used. The principal and interest on that Line of Credit is paid.

*Same given to the Senate*

A financial summary of the June 2000 flood at NDSU is as follows:

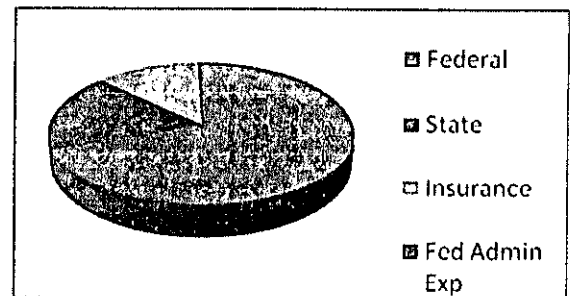
Uses:

Repair and mitigation costs	\$ 19,060,166
Legal	\$ 817,888
Interest	\$ 1,279,395
Total Costs	<u>\$ 21,157,449</u>



Sources:

Federal	\$ 14,270,689
State	\$ 3,661,220
Insurance	\$ 2,583,593
Fed Admin Exp	\$ 114,105
Total Reimbursements	<u>\$ 20,629,607</u>



Deficit \$ 527,842

The requested \$527,842 is currently being carried on the books of NDSU as a net asset deficit. The only other possible future need related to this disaster would be if a future audit revealed significant questioned costs.

In the 2007 legislative request NDSU represented that one more deficiency appropriation request would likely be needed in the next biennium, because at that point there were five FEMA project worksheets that were still outstanding. Those final project worksheets were closed out during the fall of 2007.