

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/16/2019**

Amendment to: HB 1523

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2017-2019 Biennium |             | 2019-2021 Biennium |             | 2021-2023 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       |                    |             |                    |             |                    |             |
| <b>Expenditures</b>   |                    |             |                    |             |                    |             |
| <b>Appropriations</b> |                    |             |                    |             |                    |             |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

|                         | 2017-2019 Biennium | 2019-2021 Biennium | 2021-2023 Biennium |
|-------------------------|--------------------|--------------------|--------------------|
| <b>Counties</b>         |                    |                    |                    |
| <b>Cities</b>           |                    |                    |                    |
| <b>School Districts</b> |                    |                    |                    |
| <b>Townships</b>        |                    |                    |                    |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill requires the transfer to the Legacy Fund of special fund balances over a specified threshold. The threshold is \$250,000 or annual expenses of the agency, institution or board, whichever is higher.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill will reallocate special fund moneys from state agency, institution and licensing board funds to the Legacy Fund. Individual agencies, institutions and licensing boards will be affected, but it is not possible to estimate the fiscal impact or identify which fund balances could be affected as of the August 1, 2021 effective date. Agencies, institutions, and boards with significant seasonal fluctuations in funding sources and fund balances could be adversely affected by the fiscal year end balance limitation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Joe Morrissette

**Agency:** OMB

**Telephone:** 701-328-4606

**Date Prepared:** 01/16/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/16/2019**

Bill/Resolution No.: HB 1523

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|                       | 2017-2019 Biennium |             | 2019-2021 Biennium |             | 2021-2023 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       |                    |             |                    |             |                    |             |
| <b>Expenditures</b>   |                    |             |                    |             |                    |             |
| <b>Appropriations</b> |                    |             |                    |             |                    |             |

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|-------------------------|--------------------|--------------------|--------------------|
| <b>Counties</b>         |                    |                    |                    |
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| <b>School Districts</b> |                    |                    |                    |
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**Name:** Joe Morrissette

**Agency:** OMB

**Telephone:** 701-328-4606

**Date Prepared:** 01/16/2019

**2017 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1523**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1523  
1/25/2019  
31514

- Subcommittee  
 Conference Committee

Committee Clerk Carmen Hart

### Explanation or reason for introduction of bill/resolution:

Relating to the operating fund balances of state agencies, departments, and institutions; relating to accounts of occupational professional boards, associations, and commissions, and to provide an effective date

### Minutes:

Attachments 1-15

**Chairman Kasper** opened the hearing on HB 1523.

**Rep. B. Koppelman** appeared in support of HB 1523. He reviewed the bill. He then went over Attachment 1 which is the State Special Funds Performance Audit Report. (2:24-17:44)

**Rep. Hoverson:** It seems like we do not want the money in this bucket so put it into another bucket. How we would really avoid from trying to micromanage their budgets when we really don't know a whole lot about what they do?

**Rep. B. Koppelman:** I believe the money in all these buckets is taxpayers' money.

**Rep. Hoverson:** It would be going into the legacy fund.

**Rep. B. Koppelman:** The intent here was to give time for boards, commissions, and agencies to come to us and say here is what works for us. This bill is trying to recognize that most of these groups do need to have some reserves, but what should they be?

**Rep. Schauer:** You used the term blank check for what they carry over. Will this legislation, if approved, tie the hands of these organizations not to have that reserve money that they feel comfortable with when a situation like 2016 happened?

**Rep. B. Koppelman:** If that group did nothing, they would receive this arbitrary cap. In many cases, those that do have concerns that this is going to restrict them have the opportunity of all interim and all legislative session to come up with policies that make sense. In addition, they have that entire interim to decide how to use excess funds if they feel they are not going to be able to justify those excess funds.

**Rep. Schauer:** Does this penalize the groups who are really watching their dollars carefully, having that reserve fund, investing that reserve fund, making sure they are earning money off that reserve fund, and take away that control aspect of the financial situation?

**Rep. B. Koppelman:** Use a licensure board for example. I believe it is their job to charge enough that they can operate their board. If they are charging an excess of what they need to operate their board today, I believe there needs to be some perimeters of why they are charging more than what they need to operate their board today.

**Josh Gallion, State Auditor,** appeared and gave an oversight in what he discovered in his audit. (24:42) What started this was the electrical board that we came across with an excessive fund balance. That was the compliance finding in here, and as we continued to expand and look at other special funds, we saw a growing trend where we had a large amount of money. We tried to uncover what these special funds were. We looked at which ones had general fund appropriations with it and the different balances. We compiled that information in a report for the purpose of providing more transparency of the taxpayers' funds to the legislature and the citizens of ND. (25:54)

**Rep. Laning:** If these special funds are not funded by tax dollars, do you see any reason to restrict the board from accumulating? If their board is willing to have a five-year reserve, why do we care if it is not tax dollars?

**Mr. Gallion:** We made no recommendations. This entire report is just to identify those for the goal of transparency.

**Chairman Kasper:** Are all of these agencies outlined in the report receiving general funds?

**Mr. Gallion:** Not all of them. For Objective 1 we identified agencies that had special funds and general funds. Objective 2 is the boards and commissions.

## **Opposition**

**Mark Hardy, Executive Director of North Dakota State Board of Pharmacy,** appeared in opposition. Attachment 2. (28:24-33:56)

**Rep. Schauer:** How much money your organization receives in public dollars each year?

**Mr. Hardy:** Around \$600,000 which is license fees.

**Rep. Schauer:** What is your reserve fund right now?

**Mr. Hardy:** Our reserve fund is probably less than \$1 million right now.

**Rep. B. Koppelman:** Is your board going to be able to establish new policy?

**Mr. Hardy:** The difficult part is when it is statutorily set.

**Rep. B. Koppelman:** If this bill was to pass and does what it is intended to do, do you believe you would be able to come back to the 2021 session with a proposed set of rules to put into law for the pharmacy board?

**Mr. Hardy:** We wouldn't put in a set of rules, but we would look for the legislature to create some sort of statutory policy.

**James Schmidt, Executive Director, North Dakota State Electrical Board,** appeared in opposition. Attachment 3. (37:29-41:55)

**Tammy Dolan, Vice Chancellor for Administrative Affairs,** appeared asking to exclude the state institutions of higher education. Attachment 4. (42:17-47:22)

**Rep. C. Johnson:** I think you would fall underneath the requirements of the bill, because they are allowing up to 100% reserves.

**Tammy Dolan:** We are truly uncertain which is why we wanted to testify on behalf of the institutions. The definition of operating fund as laid out in the bill would be critical for us to know that.

**Bonnie Storbakken, Executive Secretary for the North Dakota Board of Medicine,** appeared in opposition. Attachment 5. (49:07-51:33)

**Rep. Rohr:** Was your policy established at the time the board was set up, or was that just recent?

**Bonnie Storbakken:** That was just recent. I am new to the board and started in 2017. I recommended to the board to establish a policy and worked through our auditor's office which is Brady Martz to make sure that we would be okay in doing that.

**JoDee Wiedmeier, Executive Director, North Dakota Board of Podiatric Medicine,** appeared in opposition. Attachment 6. (52:53-56:04)

**Rep. Rohr:** (56:33) Does your board have a policy in place?

**JoDee Wiedmeier:** We did have to come to the legislature and asked to get our fees increased a little, because we were basically in the red. We are now trying to put some money away for a reserve fund. There really hasn't been discussion about exactly what we need to do.

**Rep. B. Koppelman:** Do you think there is anything your board could do better to be transparent to the public?

**JoDee Wiedmeier:** In general, we all can do things better. We can always be fiscally responsible, and I believe our board and probably boards in general are very cognizant of that.

**Clark Coleman, Serve on the North Dakota Oilseed Council**, appeared in opposition. Attachment 7 (1:00-1:02)

Attachment 8 was handed out to the committee by the law intern.

**Deana Wiese, Executive Director, North Dakota Ethanol Council**, appeared in opposition. Attachment 9 (1:02:50-1:04:57)

**Rep. Rohr:** You have two policies, a reserve fund policy and a refund revision as well?

**Deana Wiese:** The ND Ethanol Council is set up similarly to the agricultural commodity organizations in that they are a checkoff. They have an assessment from the five plants that is in statue, and then the board has set up a separate operating reserve policy that is not in state statue.

Attachments 10-13 were written testimony submitted in opposition, but they were unable to attend.

## **Neutral**

**Scott Rising, ND Soybean Growers**, appeared in a neutral position. The Soybean Growers Association is a member driven group. The Soybean Council which I will be talking about is a checkoff group, very different missions. The amendment I offer is one to exempt the commodity checkoff groups from the provisions of this bill. Attachment 14. Then he explained about the checkoff groups and the Soybean Council (1:07-1:09:58). The amendment was worked with Rep. Koppelman, and hopefully, you will give that a do pass.

**Rep. Schauer:** (1:10) If the amendment passes, you would be in support of 1523?

**Mr. Rising:** No. The reality is that the farmers who asked for this ability to pay this fee do an outstanding job of running that organization. It is audited regularly so that the folks that pay the fee know there is no \_\_\_ going on. In the case of the Soybean Council, if they don't get what they believe are solid research proposals, they are not going to spend the money to spend the money, and they don't. They spend between \$1.5 million to slightly over \$2 million a year in research, and if it is involved in agriculture and it touches a soybean, that is the field they play in. They regularly and reoccurring do foreign market either hosting or visiting to develop their own markets, so I don't think they would be in favor of having someone looking over their shoulder saying you are doing wrong.

**Joe Morrissette, Director, Office of Management and Budget**, appeared in a neutral position. Attachment 15. (1:12-1:15:40)

**Vice Chair Steiner:** Do you have any concerns about the ending fund balances in some of the state agencies yourself?

**Mr. Morrissette:** I don't. We don't look closely at every single state fund that is out there, but if we do as part of the examination in the budget process feel like there is a fund that can

be used to replace general funds, we will typically adjust an agency's budget in the executive budget proposal to spend more from that special fund and spend less general funds.

**Rep. B. Koppelman:** Would that printing fund you gave as an example have in excess of a quarter million dollars saved to purchase an individual piece of equipment?

**Mr. Morrissette:** Right now I believe it would have over that dollar threshold. It would not be in excess of its annual expenditures at this point. It could be an issue as they accumulate funds for equipment replacement.

**Rep. B. Koppelman:** How do we have these large ending cash balances in agencies that are not turned back?

**Mr. Morrissette:** Our office does publish fiscal and administrative policies for state agencies to follow in their fiscal operations, and that is not an official fiscal policy. That is taken from a note within the financial statement based on what I believe is considered to be a best practice.

**Rep. B. Koppelman:** If that is not an official fiscal policy, then is it common practice in agencies to spend their general funds first and only spend their special funds when general funds fall short or have some special project to do?

**Mr. Morrissette:** Because there really isn't a formal policy, that certainly could be the case.

**Rep. Rohr:** Aren't there any industry guidelines out there determining risks of various departments that could be used to determine policy?

**Mr. Morrissette:** I think that would be hard to have kind of blanket guidelines, because the situation might be so different. Each fund has its own specific purpose in statute.

**Rep. Rohr:** Right now there isn't anything like that used in your business at all?

**Mr. Morrissette:** There is not.

**Rep. Schauer:** What is your opinion? Do we need more oversight on these organizations?

**Mr. Morrissette:** No. My opinion is that there is oversight through the budget process and if legislators on the appropriate committees who have a close look at this feel that balances are excessive, they make adjustments.

**Chairman Kasper:** If this bill were changed to require a report from the state agencies on the concerns that have been expressed either to the interim committee or the budget section, would that be an onerous thing for each state agency to comply with?

**Mr. Morrissette:** I don't think so. That financial information is readily available and would not require compiling new information that they wouldn't already have.

Chairman Kasper closed the hearing.

House Government and Veterans Affairs Committee

HB 1523

1/25/19

Page 6

A subcommittee of Rep. B. Koppelman, C. Johnson, Schneider, and Karls was formed.

(HOUSE) (SENATE) BILL NO. LS23 SUBCOMMITTEE OF THE

GVA STANDING COMMITTEE

Meeting location: House Chambers

Date of meeting: 1/29/19

Time meeting called to order: 4:25

Members present: Reps: B. Koppelman, Schneider

Others present (may attach attendance sheet):

Topics discussed:

Possible amendments & possible legislative management study.

Motion and vote:

To pursue amendments suggested by those w/ concerns about the bill. ~~Also~~ Also pursue ideas for amendments that the committee suggested. Vote 2-0 in favor

Time of adjournment: 4:45

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

HB 1523  
1/31/2019  
31929

- Subcommittee  
 Conference Committee

Committee Clerk Signature Carmen Hart

## Explanation or reason for introduction of bill/resolution:

Relating to the operating fund balances of state agencies, departments, and institutions; relating to accounts of occupational and professional boards, associations, and commissions, and to provide an effective date

## Minutes:

**Chairman Kasper** opened the meeting on HB 1523.

**Rep. B. Koppelman:** The subcommittee met once and discussed the concerns and various pieces of testimony and came up with approximately four subjects for amendment to the bill. We plan to meet after this meeting this morning to go over those and will probably have something to discuss with the committee this afternoon or tomorrow.

**Chairman Kasper:** If we have time, either time would work. One of the things I am concerned about are the professional organizations. Are you addressing that in your discussions? The other thing of concern is the fact that the money that has been collected from dues goes to the legacy fund. I really do not like that.

**Rep. B. Koppelman:** I think those amendments that I will present to the rest of the subcommittee will address those concerns.

The meeting ended.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

HB 1523  
1/31/2019  
31931

- Subcommittee  
 Conference Committee

Committee Clerk Signature Carmen Hart

## Explanation or reason for introduction of bill/resolution:

Relating to the operating fund balances of state agencies, departments, and institutions; relating to accounts of occupational and professional boards, associations, and commissions, and to provide an effective date.

## Minutes:

**Rep. B. Koppelman** opened the subcommittee on 1523. Others present were Rep. C. Johnson, Rep. Schneider, Rep. Karls, and Mark Hardy from the ND Board of Pharmacy.

**Rep. B. Koppelman** presented four scenarios which the committee discussed in detail and tweaked to take to the legislative council to create a conglomerated amendment to present to full committee. Mr. Hardy also was in agreement with their discussed points and changes.

The meeting was adjourned.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1523  
2/8/2019  
32479

- Subcommittee  
 Conference Committee

Committee Clerk Signature Carmen Hart

### Explanation or reason for introduction of bill/resolution:

Relating to the operating fund balances of state agencies, departments, and institutions; relating to accounts of occupational and professional boards, associations, and commissions, and to provide an effective date

### Minutes:

Attachment 1

**Chairman Kasper** opened the meeting on HB 1523.

**Rep. B. Koppelman:** He reviewed what happened at the last subcommittee meeting. Then he went over the Christmas tree version of the bill. Attachment 1. In a nutshell everybody has to have their own set of rules. The agencies would have to use the lawmaking process. Any boards or commissions could use the lawmaking or the rule making process to set their own set of rules and be completely exempted from the bill. If boards don't do one of those things, then they are in violation, and the money goes back to their members. If an agency doesn't do one of those things and is in violation, that money goes to the legacy fund. (7:54)

**Rep. Rohr:** I think this now lends itself to some more accountability in the state agencies and money that should go back to the taxpayers.

**Rep. B. Koppelman moved to adopt the amendment.**

**Rep. Rohr seconded the motion.**

**Rep. Laning:** I don't like this bill. The boards are collecting money from their members, and if the members are sleeping that much to let them build that much, that is the members' problem. I don't know that it should be a state issue.

**Rep. B. Koppelman:** These are governor appointed people who have to have a certain qualification, and that board is the bureaucracy that oversees the industry. It is regulators. It is not fellow association members.

**Voice vote. Motion carries.**

**Rep. Schauer made a motion for a DO PASS AS AMENDED.**

**Rep. Rohr seconded the motion.**

**Chairman Kasper:** This has been a tough deal. I think the subcommittee came forward with a pretty good compromise. These boards hold the key to a lot of professions. If you don't pay your dues and be under the subject overview of the board, you could be out of a job. I will support the bill as amended.

**A roll call vote was taken. 9-3, 2 absent.**

**Rep. B. Koppelman will carry the bill.**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1523

Page 1, line 3, replace "section" with "sections 4.1-44-03, 4.1-52-11, 4.1-72-07, and"

Page 1, line 4, after the first "to" insert "funds and"

Page 1, line 4, after "of" insert "agriculture commodity groups,"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 4.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-44-03. Agricultural commodity assessments funds - Investment income allocation - Purposes and uses.**

1. Notwithstanding any other provision of law, the state treasurer shall invest in accordance with section 21-10-07 all available moneys in:
  - a. The potato fund;
  - b. The oilseed fund;
  - c. The dry bean fund;
  - d. The dry pea and lentil fund;
  - e. The barley fund;
  - f. The soybean fund;
  - g. The corn fund;
  - h. The honey fund;
  - i. The turkey fund;
  - j. The milk marketing fund;
  - k. The dairy promotion commission fund;
  - l. The state wheat commission fund;
  - m. The ethanol fund; and
  - n. The North Dakota beef commission fund.
2. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer shall establish rules, in cooperation with the agricultural commodity organizations, to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural

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commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

- 3. The funds identified in subsection 1 are not subject to the fund balance limitations provided in section 54-44-12 and section 4 of this Act. The governing body or entity that administers each fund shall establish policies regarding the permitted uses of the fund and an appropriate fund reserve balance.

**SECTION 2. AMENDMENT.** Section 4.1-52-11 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-52-11. Seed department fund - Continuing appropriation.**

- 1. The seed commissioner shall forward all moneys received under the chapters over which the commissioner has authority to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the seed department to carry out its statutory and regulatory obligations. The seed department fund is not subject to the fund balance limitations provided in section 54-44-12 and section 4 of this Act.
- 2. The seed commissioner shall approve all expenditures made pursuant to the chapters over which the commissioner has authority and shall document the expenditures at the time and in the manner required by the office of management and budget.
- 3. The seed commissioner shall provide a report to the house and senate appropriations committees of the legislative assembly, at the time and in the manner directed by the chairmen of the committees. The report must contain a summary of the department's activities during the current biennium and a statement of revenues and expenditures for the ensuing biennium.
- 4. At the direction of the seed commission, the state treasurer shall invest all available moneys in the seed department fund. The state treasurer shall credit twenty percent of the investment income to the general fund and the remaining eighty percent of the investment income to the seed department fund.

**SECTION 3. AMENDMENT.** Section 4.1-72-07 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-72-07. Collection of fees - Continuing appropriation.**

The North Dakota stockmen's association shall forward all moneys received under this title to the state treasurer for deposit in a special fund known as the North Dakota stockmen's association fund. All moneys in the North Dakota stockmen's association fund, together with all income earned on the moneys in the fund, are appropriated on a continuing basis to the North Dakota stockmen's association to carry out its statutory directives. The North Dakota stockmen's association fund is not subject to the fund balance limitations provided in section 54-44-12 and section 4 of this Act."

Page 1, line 11, replace "fiscal year" with "biennium"

OK  
3 of 3  
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Page 1, line 13, after "to" insert "one-half of"

Page 1, line 13, replace "annual" with "biennial"

Page 1, line 16, replace "annual" with "biennial"

Page 1, line 17, replace "three" with "two"

Page 1, line 17, replace "fiscal years" with "bienniums"

Page 1, line 18, replace "Any" with "A fund categorized as an enterprise or internal service fund, as reported in the most recent state comprehensive annual financial report, and any"

Page 1, line 19, replace "statutory or contractual requirements" with "the following"

Page 1, line 20, after "section" insert:"

1. Funds held due to a constitutional or statutory provision;
2. Funds obligated for future projects and expenses; and
3. Funds held due to a contractual requirement or due to pending litigation"

Page 2, line 2, remove " - Transfer"

Page 2, line 13, remove "transfer the excess amount of funds from the"

Page 2, line 14, replace "account to the state treasurer for deposit in the legacy fund" with "reduce the fees charged by the entity by fifty percent until the balance of the account is below two hundred fifty thousand dollars or an amount equal to the annual expenses of the entity"

Page 2, line 18, replace "statutory or contractual requirements" with "the following"

Page 2, line 19, after "section" insert:"

1. Funds held due to a constitutional or statutory provision;
2. Funds held pursuant to the provisions of an administrative rule adopted under chapter 28-32;
3. Funds obligated for future projects and expenses; and
4. Funds held due to a contractual requirement or due to pending litigation"

Renumber accordingly



Date: 2-8-19  
 Roll Call Vote #: 7

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1523**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.1050.02006

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. B. Koppelman seconded By Rep. Rohr

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman Jim Kasper      |     |    | Rep. Pamela Anderson |     |    |
| Vice Chair Vicky Steiner |     |    | Rep. Mary Schneider  |     |    |
| Rep. Jeff Hoverson       |     |    |                      |     |    |
| Rep. Craig Johnson       |     |    |                      |     |    |
| Rep. Daniel Johnston     |     |    |                      |     |    |
| Rep. Karen Karls         |     |    |                      |     |    |
| Rep. Ben Koppelman       |     |    |                      |     |    |
| Rep. Vernon Laning       |     |    |                      |     |    |
| Rep. Scott Louser        |     |    |                      |     |    |
| Rep. Karen Rohr          |     |    |                      |     |    |
| Rep. Austen Schauer      |     |    |                      |     |    |
| Rep. Steve Vetter        |     |    |                      |     |    |
|                          |     |    |                      |     |    |
|                          |     |    |                      |     |    |

*voice  
 vote  
 motion  
 carries*

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

Absent \_\_\_\_\_

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

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

Date: 2-8-19  
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1523**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Schauer Seconded By Rep. Rohr

| Representatives          | Yes | No | Representatives      | Yes | No |
|--------------------------|-----|----|----------------------|-----|----|
| Chairman Jim Kasper      | X   |    | Rep. Pamela Anderson |     | X  |
| Vice Chair Vicky Steiner | X   |    | Rep. Mary Schneider  |     | X  |
| Rep. Jeff Hoverson       | A   |    |                      |     |    |
| Rep. Craig Johnson       | X   |    |                      |     |    |
| Rep. Daniel Johnston     | A   |    |                      |     |    |
| Rep. Karen Karls         | X   |    |                      |     |    |
| Rep. Ben Koppelman       | X   |    |                      |     |    |
| Rep. Vernon Laning       |     | X  |                      |     |    |
| Rep. Scott Louser        | X   |    |                      |     |    |
| Rep. Karen Rohr          | X   |    |                      |     |    |
| Rep. Austen Schauer      | X   |    |                      |     |    |
| Rep. Steve Vetter        | X   |    |                      |     |    |
|                          |     |    |                      |     |    |
|                          |     |    |                      |     |    |

Total (Yes) 9 No 3

Absent 2

Floor Assignment Rep. B. Koppelman

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

**REPORT OF STANDING COMMITTEE**

**HB 1523: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1523 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "section" with "sections 4.1-44-03, 4.1-52-11, 4.1-72-07, and"

Page 1, line 4, after the first "to" insert "funds and"

Page 1, line 4, after "of" insert "agriculture commodity groups,"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 4.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-44-03. Agricultural commodity assessments funds - Investment income allocation - Purposes and uses.**

1. Notwithstanding any other provision of law, the state treasurer shall invest in accordance with section 21-10-07 all available moneys in:
  - a. The potato fund;
  - b. The oilseed fund;
  - c. The dry bean fund;
  - d. The dry pea and lentil fund;
  - e. The barley fund;
  - f. The soybean fund;
  - g. The corn fund;
  - h. The honey fund;
  - i. The turkey fund;
  - j. The milk marketing fund;
  - k. The dairy promotion commission fund;
  - l. The state wheat commission fund;
  - m. The ethanol fund; and
  - n. The North Dakota beef commission fund.
2. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer shall establish rules, in cooperation with the agricultural commodity organizations, to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty

percent of the investment income derived from each fund to the respective fund.

3. The funds identified in subsection 1 are not subject to the fund balance limitations provided in section 54-44-12 and section 4 of this Act. The governing body or entity that administers each fund shall establish policies regarding the permitted uses of the fund and an appropriate fund reserve balance.

**SECTION 2. AMENDMENT.** Section 4.1-52-11 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-52-11. Seed department fund - Continuing appropriation.**

1. The seed commissioner shall forward all moneys received under the chapters over which the commissioner has authority to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the seed department to carry out its statutory and regulatory obligations. The seed department fund is not subject to the fund balance limitations provided in section 54-44-12 and section 4 of this Act.
2. The seed commissioner shall approve all expenditures made pursuant to the chapters over which the commissioner has authority and shall document the expenditures at the time and in the manner required by the office of management and budget.
3. The seed commissioner shall provide a report to the house and senate appropriations committees of the legislative assembly, at the time and in the manner directed by the chairmen of the committees. The report must contain a summary of the department's activities during the current biennium and a statement of revenues and expenditures for the ensuing biennium.
4. At the direction of the seed commission, the state treasurer shall invest all available moneys in the seed department fund. The state treasurer shall credit twenty percent of the investment income to the general fund and the remaining eighty percent of the investment income to the seed department fund.

**SECTION 3. AMENDMENT.** Section 4.1-72-07 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-72-07. Collection of fees - Continuing appropriation.**

The North Dakota stockmen's association shall forward all moneys received under this title to the state treasurer for deposit in a special fund known as the North Dakota stockmen's association fund. All moneys in the North Dakota stockmen's association fund, together with all income earned on the moneys in the fund, are appropriated on a continuing basis to the North Dakota stockmen's association to carry out its statutory directives. The North Dakota stockmen's association fund is not subject to the fund balance limitations provided in section 54-44-12 and section 4 of this Act."

Page 1, line 11, replace "fiscal year" with "biennium"

Page 1, line 13, after "to" insert "one-half of"

Page 1, line 13, replace "annual" with "biennial"

Page 1, line 16, replace "annual" with "biennial"

Page 1, line 17, replace "three" with "two"

Page 1, line 17, replace "fiscal years" with "bienniums"

Page 1, line 18, replace "Any" with "A fund categorized as an enterprise or internal service fund, as reported in the most recent state comprehensive annual financial report, and any"

Page 1, line 19, replace "statutory or contractual requirements" with "the following"

Page 1, line 20, after "section" insert:"

1. Funds held due to a constitutional or statutory provision;
2. Funds obligated for future projects and expenses; and
3. Funds held due to a contractual requirement or due to pending litigation"

Page 2, line 2, remove " **- Transfer**"

Page 2, line 13, remove "transfer the excess amount of funds from the"

Page 2, line 14, replace "account to the state treasurer for deposit in the legacy fund" with "reduce the fees charged by the entity by fifty percent until the balance of the account is below two hundred fifty thousand dollars or an amount equal to the annual expenses of the entity"

Page 2, line 18, replace "statutory or contractual requirements" with "the following"

Page 2, line 19, after "section" insert:"

1. Funds held due to a constitutional or statutory provision;
2. Funds held pursuant to the provisions of an administrative rule adopted under chapter 28-32;
3. Funds obligated for future projects and expenses; and
4. Funds held due to a contractual requirement or due to pending litigation"

Renumber accordingly

**2017 TESTIMONY**

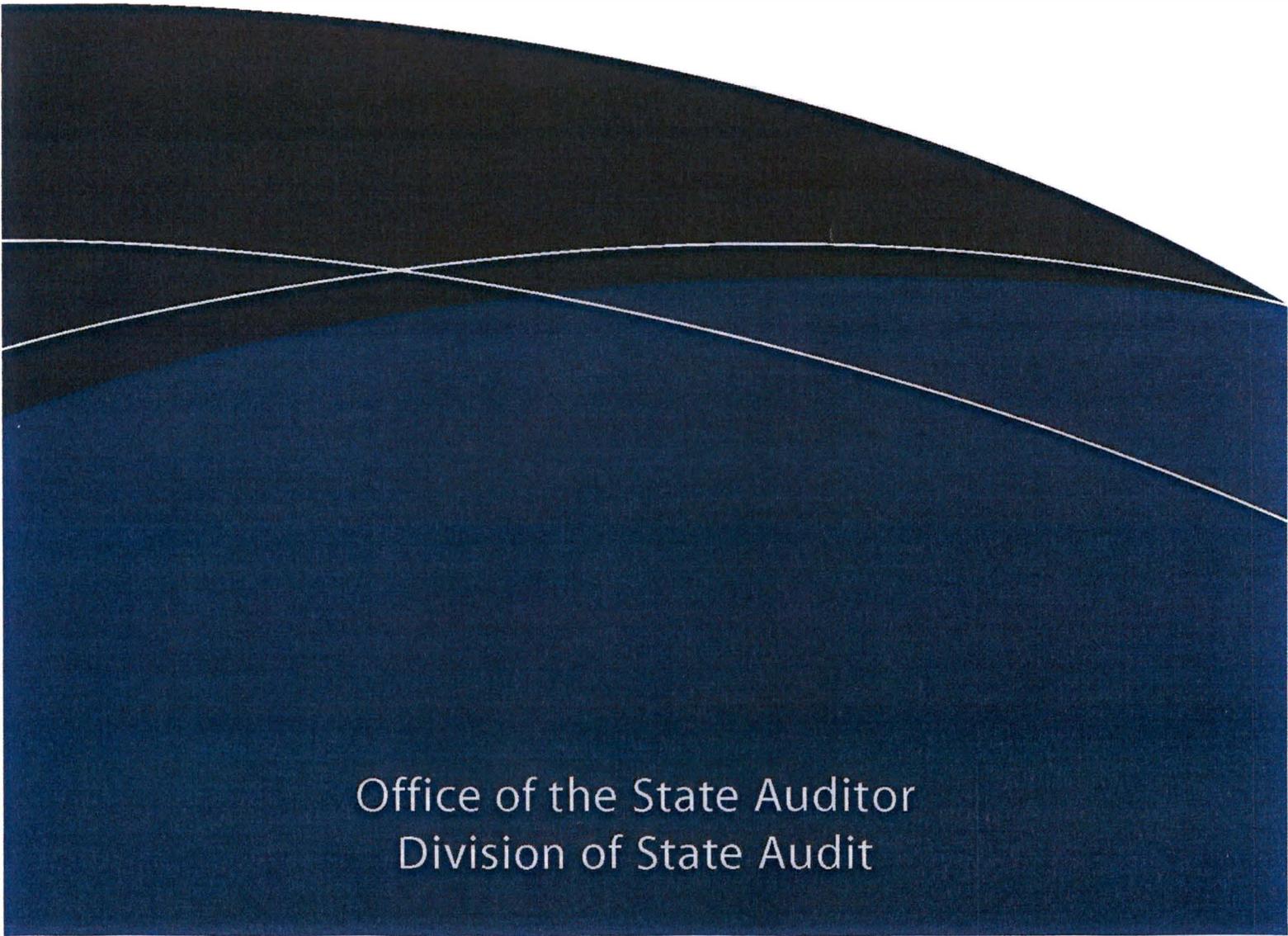
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# State of North Dakota Special Funds **Performance Audit Report**

December 18, 2018

Joshua C. Gallion  
State Auditor



Office of the State Auditor  
Division of State Audit

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# Office of the State Auditor

## State Special Funds Report Highlights

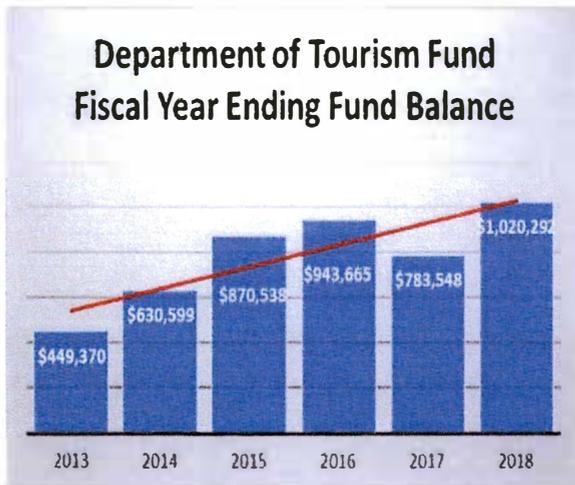
### **For selected special funds, are general fund resources being used to supplant special fund resources?**

No state law or fiscal policy prevents a state agency from using general fund appropriations before spending its special funds except for the Center for Distance Education. As a result, we identified approximately \$97 million in general fund resources were expended in fiscal year 2018 when state agencies had special funds available (See page 2).

Montana and Tennessee are examples of states with formally established spending prioritization policies codified into state law or fiscal policy, respectively.

### **Are selected special funds' fund balance levels justifiable?**

For a limited number of special funds, state laws establish minimum fund balance levels or caps on amounts which can be carried over at the end of a fiscal year or biennium. No state laws or fiscal policies were identified that provide guidance on appropriate fund balance (reserve) levels for the special funds included in our audit scope. As a result, certain special funds continue to grow, and reserve levels varied significantly. Without laws or fiscal policies to provide guidance, we were not able to determine if fund balance levels were justifiable (See page 4).



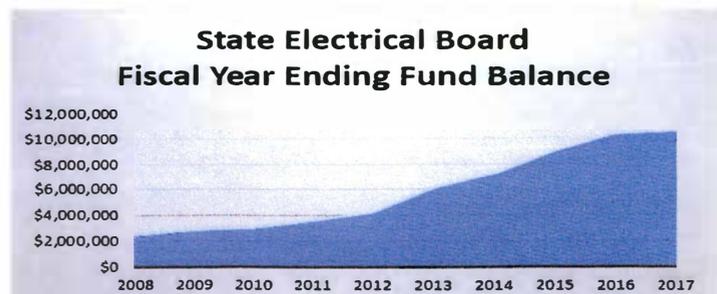
Source: ConnectND Financials

The Department of Tourism Fund is an example of a special fund with a growing fund balance level that also had resources available when general fund resources were expended. We estimated the Department of Tourism Fund's reserve level to be 30 years based on the fund's fiscal year 2018 average monthly expenditures.

Other states' local governments were identified with established reserve policies for special funds. Further, some of North Dakota's occupational and professional boards, commodity groups, and agencies established their own formal reserve policies or targets for their special funds while most special funds reviewed lacked established formal reserve policies or targets.

### **Compliance Finding**

We also concluded the State Electrical Board is in noncompliance with state law regarding the fees charged for inspections based on the growth of their fund balance (See page 9).



Source: State Electrical Board's audited financial statements, years ended June 30, 2008 - 2017

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**LEGISLATIVE AUDIT AND FISCAL REVIEW  
COMMITTEE MEMBERS**

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Representative Chet Pollert – Vice Chairman**

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Marvin E. Nelson  
Wayne A. Trottier**

**Senators**

**Dwight Cook  
Judy Lee  
Richard Marcellais**

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Director  
Office of Management and Budget  
Various state agencies.**

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## *Transmittal Letter*

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December 18, 2018

Members of the North Dakota Legislative Assembly

Honorable Doug Burgum  
Governor

Joe Morrissette, CPA  
Director, Office of Management and Budget

This report contains the results of a performance audit of special funds. The audit was conducted pursuant to North Dakota Century Code 54-10-01 subsection 4, which allows the State Auditor to conduct performance audits of state agencies as the State Auditor determines necessary.

The objectives of this audit were as follows:

1. For selected special funds, are general fund resources being used to supplant special fund resources?
2. Are selected special funds' fund balance levels justifiable?

This report presents our conclusions, finding, recommendation, and the response from the State Electrical Board.

Respectfully Submitted,

/S/

Joshua C. Gallion  
State Auditor

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## ***Introduction***

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The state uses special funds to account for certain resources which are legally or administratively restricted for specific purposes. The use of a special fund must be authorized by state law in accordance with North Dakota Century Code (NDCC) section 54-06-07:

“All fees, which are not otherwise by the laws of this state directed to be deposited in a special fund or disbursed for a special purpose, received or charged by any elective or appointive officer or deputy state officer for any act or service rendered in the officer’s official capacity must be accounted for and paid over by the officer monthly to the state treasurer and must be credited to the general fund of the state.”

For example, the State Auditor’s Operating Fund is a special fund authorized by state law. State law requires the State Auditor to charge political subdivisions for audits and any other services rendered and direct those fees to be deposited in the State Auditor’s Operating Fund. State law also requires the expenses relating to political subdivision audits be paid from this fund, within the limits of legislative appropriation.

## ***Objectives for this Audit***

---

The objectives of this performance audit were to respond to the following questions:

1. For selected special funds, are general fund resources being used to supplant special fund resources?
2. Are selected special funds’ fund balance levels justifiable?

### ***Objective 1, General Fund Supplanting***

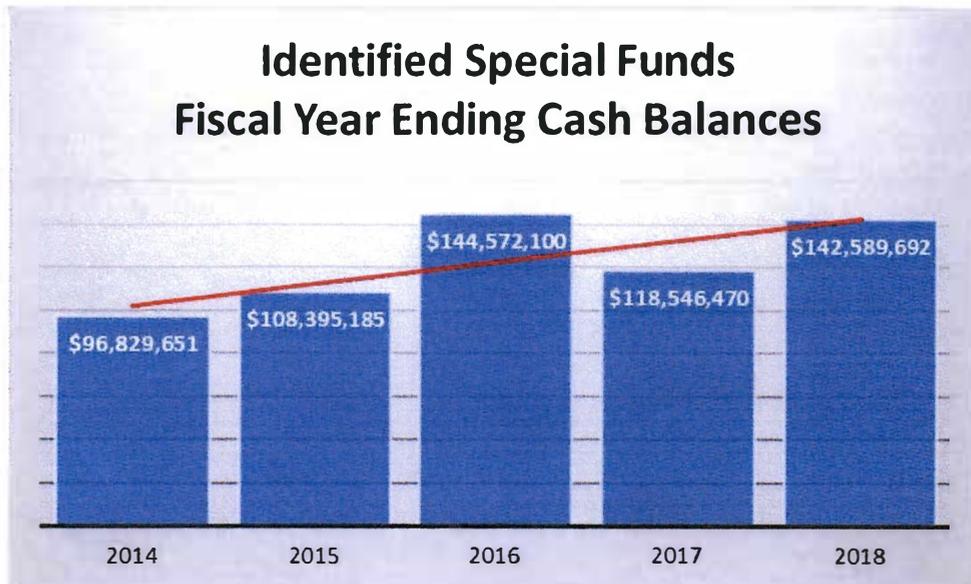
For the purpose of this audit, general fund supplanting occurs when general fund resources are expended when special fund resources were available. We identified approximately \$97 million in general fund resources were expended in fiscal year 2018 when special funds were available (17 out of 26 selected special funds).

State agencies provided various reasons for spending general funds first, including:

1. Spending general funds and special funds as budgeted. Support for this assertion was sometimes evident in the Internet Budget Analysis and Reporting System (IBARS).
2. Special funds were being saved for significant future expenditures, such as software or other capital expenditures.
3. Special funds were being saved to deal with future budget cutbacks.
4. There is nothing in state law preventing them from expending general fund appropriations before expending special funds.
5. Special funds are typically spent down in the second year of the biennium.

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We also identified, in total, special funds with resources available have grown by approximately \$44.7 million or 47 percent since the end of fiscal year 2014. The following graph illustrates the total fiscal year ending cash balances of the identified special funds over the last five years.



Source: ConnectND Financials

The State of North Dakota does not have a law or fiscal policy to prevent a state agency from using general fund appropriations before spending its special funds except for the Center for Distance Education. The Center for Distance Education is required to spend its special funds before using its general fund appropriation. [NDCC section 15-19-06]. Prior to 2007, the Veterans' Home was also required to expend federal and other funds before its general fund appropriations could be spent. [2007 North Dakota Session Laws chapter 307 amended NDCC section 37-15-14].

The Office of Management and Budget discloses the following in the state's Comprehensive Annual Financial Report (CAFR):

"When both general purpose and restricted funds are available for use, it is the State's policy to use restricted resources first."

However, no such spending prioritization policy has been formally established.

The Legislative Council and Office of Management and Budget confirmed no other requirements or guidance exists related to the order in which general fund resources and special fund resources are required to be spent.

According to *Statement No. 34 of the Governmental Accounting Standards Board (GASB)*, governments should disclose (if applicable), the government's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net assets are available. *Statement No. 54 of the Governmental Accounting Standards Board* relates to governments establishing a policy to address the spending order for unrestricted fund balance (committed, assigned, or unassigned amounts) when an

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expenditure is incurred for purposes for which amounts in any of those unrestricted fund balance classifications could be used.

While other states make similar disclosures without formally established policies, below are two examples of states with formally established policies.

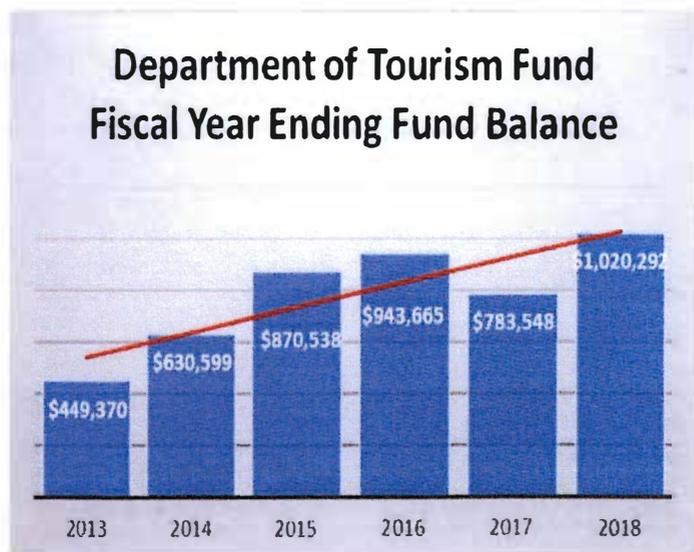
- Montana’s spending prioritization policy is codified in state law. Montana Code Annotated section 17-2-108, states, in part, “An office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated non-general fund money whenever possible before using general fund appropriations.” However, certain entities are provided exemptions. See Appendix B for the full text of Montana Code Annotated section 17-2-108.
- Tennessee’s spending prioritization policy is outlined in a policy statement of the Department of Finance and Administration issued in accordance with the authority granted under the Tennessee Code Annotated. The Finance and Administration Policy states, “When both restricted and unrestricted resources are available for use and allowable, restricted resources are generally used first and then unrestricted as necessary. Of the unrestricted resources, the state considers that committed amounts would be reduced first, followed by assigned amounts and then unassigned amounts.”

A list of the selected special funds for this objective, along with fiscal year ending cash balances, can be found in Appendix A of this report.

### **Objective 2, Special Fund Balances**

The second objective for this performance audit was to answer the question, “Are selected special funds’ fund balance levels justifiable?” We found certain special funds continue to grow, and reserve levels varied significantly. However, without laws or fiscal policies providing guidance on appropriate fund balance (reserve) levels, we were not able to determine if fund balance levels were justifiable.

The Department of Tourism Fund is an example of a special fund with a growing fund balance level. We estimated the Department of Tourism Fund’s reserve level to be 30 years based on the fund’s fiscal year ending fund balance in relation to the fund’s fiscal year 2018 average monthly expenditures. The fund was also identified in the first objective as having resources available in fiscal year 2018 when general fund resources were expended. The graph illustrates the growth of the Department of Tourism Fund’s fiscal year ending fund balance since the end of fiscal year 2013. As of December 18, 2018, the Department of Tourism Fund’s fund balance was \$1,050,430.



Source: ConnectND Financials

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For a limited number of special funds, state laws establish minimum fund balance levels or caps on amounts which can be carried over at the end of a fiscal year or biennium. For example,

- The North Dakota Game and Fish Department shall spend money in the Game and Fish Fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below \$15 million, unless otherwise authorized by the Budget Section [NDCC 20.1-02-16.1].
- The North Dakota Insurance Department is required to have the Office of Management and Budget transfer any fund balance remaining in the Insurance Regulatory Trust Fund that exceeds \$1 million to the general fund after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for [NDCC 26.1-01-07.1].
- Secretary of State shall transfer any unobligated balance remaining in the General Services Operating Fund exceeding \$75,000 to the general fund [NDCC 54-09-08].
- Workforce Safety and Insurance (WSI) is required to maintain adequate financial reserves plus net position of at least 120 percent to a maximum of 140 percent of the actuarial established discounted reserve. Should WSI's available net position be outside of these levels, the statute allows WSI two years to come into compliance. However, statute restricts WSI from granting a dividend credit of greater than 50 percent of the prior year's premium [NDCC 65-04-02].

However, no state laws or fiscal policies were identified that provide guidance on appropriate fund balance (reserve) levels for the special funds included in our audit scope.

The Government Finance Officers Association (GFOA) recommends that governments establish a formal policy on the level of unrestricted fund balance that should be maintained in the general fund for financial reporting and budgetary purposes. The policy should be set by the appropriate policy body and define a framework and process for how the government would increase or decrease the level of unrestricted general fund balance over a specific time period.

We identified other state's local governments which established reserve policies for special funds. Further, some of North Dakota's occupational and professional boards, commodity groups, and agencies established formal reserve policies or targets for their special funds. These reserve policies typically defined and set goals to help maintain a prudent level of financial resources to protect against reducing service levels or raising taxes and fees because of temporary revenue shortfalls or unpredicted one-time expenditures. However, most special funds included in our audit scope lacked established reserve policies or targets.

The GFOA also recommends, at a minimum, that state and local governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures. The GFOA also indicates a government's unique situation often may require a level of unrestricted fund balance in the general fund significantly in excess of this recommended minimum level. When establishing a policy governing the level of unrestricted fund balance in the general fund, the GFOA recommends governments consider a variety of factors, including the predictability of its revenue and the volatility of its expenditures; perceived exposure to significant one-time outlays; and the availability of resources in other funds.

Certain selected special funds are self-supporting funds that do not have resources available in other funds. Examples of self-supporting funds include commodity groups and occupational and professional boards that do not receive general fund appropriations. According to the GFOA, it

could be justifiable for a self-supporting fund to have more fund balance in reserve than an agency's operating fund where general funds have been appropriated.

The Civic Federation, which is an independent, non-partisan government research organization that provides analysis and recommendations on government finance issues for the Chicago region and the State of Illinois, considers reserve levels to be excessive if the fund balance ratio of unreserved general and special revenue balances to operating expenditures is higher than 50 percent.

### **State Agency Special Funds:**

Forty-seven state agency special funds met our criteria for this objective defined on page 10. Commodity group and occupational and professional board special funds will be discussed in the following sections of this report. The estimated number of months in reserve for the selected agency special funds ranged from 6.1 months (Agriculture Department Fund) to 356.8 months (Department of Tourism Fund). One selected special fund (State Infrastructure Bank) had no fiscal year 2018 expenditures to calculate the number of months in reserve. The State Highway Fund had the largest fund balance amount, which was approximately \$540 million (17.8 months in reserve). It should be noted that the:

- State Infrastructure Bank is in the process of being closed out by the Department of Transportation with the remaining balance eventually being transferred to the State Highway Fund.
- State Highway Fund has carryover authority from the legislature in the amount of \$503,115,558 relating to enhanced state highway investments until June 30, 2021.

The fiscal year 2018 ending fund balances and fund expenditures used to determine the number of months in reserve were obtained from the legal balances on the state's accounting system. The ending fund balance amounts and the number of months in reserve do not reflect commitments as of June 30, 2018, or other information which could affect the reserve calculation. Below are a few examples of items which could skew the ending fund balance levels and number of months in reserve:

- Aeronautics Commission Fund's fiscal year 2018 ending fund balance was approximately \$5.7 million. However, information provided by the Aeronautics Commission listed \$4.4 million in outstanding grant obligations to airports at June 30, 2018.
- Attorney General Refund Fund's fiscal year 2018 ending fund balance was approximately \$8.7 million. However, the 65<sup>th</sup> Legislative Assembly provided the Attorney General an exemption to NDCC requirements which would have resulted in a portion of the fund balance at the end of last biennium (June 30, 2017) being transferred to the general fund.
- Environmental and Rangeland Protection Fund's fiscal year 2018 ending fund balance was approximately \$6.7 million. Multiple state agencies expend money from this fund capped by legislative appropriations.
- Career and Technical Education Fund balance level is the result of a \$2,477,000 transfer from the Foundation Aid Stabilization Fund appropriated by the 65<sup>th</sup> Legislative Assembly for providing grants to school districts and area centers for career and technical education programs.

The Game and Fish Department was the only agency to establish a formal target or policy for its special fund. By law, the Game and Fish Department Fund cannot be reduced below \$15 million, unless authorized by the Budget Section. The Department's policy is to keep an amount equal to

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25 percent to 50 percent of its biennial appropriation in reserve funds and will pursue either program cutbacks, increased income (i.e. through license fee increases), or a combination of the two, as alternatives to drawing reserve funds to a dangerously low level. According to the Department's policy, based on its 2017-19 biennial appropriation of approximately \$84 million, reserve funds should be between \$21 million and \$42 million. The Game and Fish Department Fund's fiscal year 2018 ending fund balance was approximately \$32.7 million.

See Appendix C for a complete list of the agency special funds included in our audit scope for this objective, along with additional information related to the ending fund balance levels.

**Commodity Groups:**

Ten commodity group special funds met our establishing criteria for this objective defined on page 10. The estimated number of months in reserve ranged from 6.1 months (Oilseed Council) to 26.6 months (Ethanol Council). The Soybean Council had the largest fund balance amount, which was approximately \$10 million (10.7 months in reserve). One factor commodity groups face in setting an appropriate reserve level relates to fluctuations in production, which can significantly reduce their revenues. The following commodity groups had established formal targets or policies.

- Barley Council's policy is to maintain a reserve level based on the formula (8-year rolling average of U.S. Department of Agriculture (USDA) – National Agricultural Statistics Service (NASS) production X 0.90 X \$0.02) X 1.5). The Council uses the factor of 0.90 to indicate the percentage of the NASS production that would be sold in North Dakota thus subject to the \$0.02 per bushel assessment. The Council uses the factor 1.5 because they strive to maintain account balances approximately equivalent to 1.5 years of the rolling average of estimated revenue. As of June 30, 2018, the Council had approximately 44 percent more in reserve than the policy dictated.
- Beef Commission's policy is to maintain a fund balance estimated to be equal to a 6-month operating budget in addition to any long-term liabilities the Commission has previously incurred. As of June 30, 2018, the Commission had a fund balance estimated to be equal to less than a 6-month operating budget after factoring in approximately \$722,000 in outstanding research contract obligations to be paid over the next 3 years.

See Appendix C for a complete list of the commodity group special funds included in our audit scope for this objective.

**Occupational and Professional Boards:**

Ten occupational and professional boards included in Title 43 of the North Dakota Century Code met our establishing criteria for this objective defined on page 10. The estimated number of months in reserve ranged from 7 months (State Board of Accountancy) to 49.7 months (State Board of Registration for Professional Engineers and Land Surveyors). The State Electrical Board had the largest fund balance amount (or equivalent), which was approximately \$10.6 million (31 months in reserve). Five of the 10 occupational and professional boards reviewed had established some form of reserve policy or target.

When establishing an appropriate target reserve level, several factors need to be considered. For example, a common threat facing occupational and professional boards is the potential for litigation related to disciplining a licensee. Another factor could be the frequency of license

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renewals (annual vs. biennial). The following occupational and professional boards have a formal reserve policy or target:

- The State Board of Accountancy's target reserve level is 60 percent of expenses. As of June 30, 2017, the Board had 59.4 percent of expenses in reserve.
- The State Board of Dental Examiners' policy regarding reserves is to maintain 1.5 times annual expenses (biennial license renewals). As of June 30, 2017, the Board had less than 1.5 times annual expenses in reserve.
- The State Board of Registration for Professional Engineers and Land Surveyors' (PELS) Resolution for Operating Reserve creates an office operations reserve fund in an amount equal to one year of operating expenses and in addition to the Legal Fund based on the previous years' actual operating expenses. As of June 30, 2016, the Board had 3.8 years of operating expenses in reserve, which exceeded the reserve amount established by the Board, and \$200,000 in the Legal Fund. However, the Board has since increased the Legal Fund to \$1 million due to six pending legal cases.
- The State Board of Pharmacy has set a contingency fund goal at 100 percent of the annual budget to allow for unforeseen expenditures, such as litigation or defense of North Dakota's pharmacy laws. As of June 30, 2016, the Board had less than the amount designated for the next year's anticipated operating costs in reserve.
- The Real Estate Commission's policy is to maintain one year of operating expenses in reserve. In addition, the Commission is required by law to maintain a minimum of \$60,000 in a Real Estate Education, Research, and Recovery Fund [NDCC 4-23.2-02]. As of June 30, 2017, the Commission had more than two years of operating expenses in reserve and \$93,597 in the Real Estate Education, Research, and Recovery Fund.

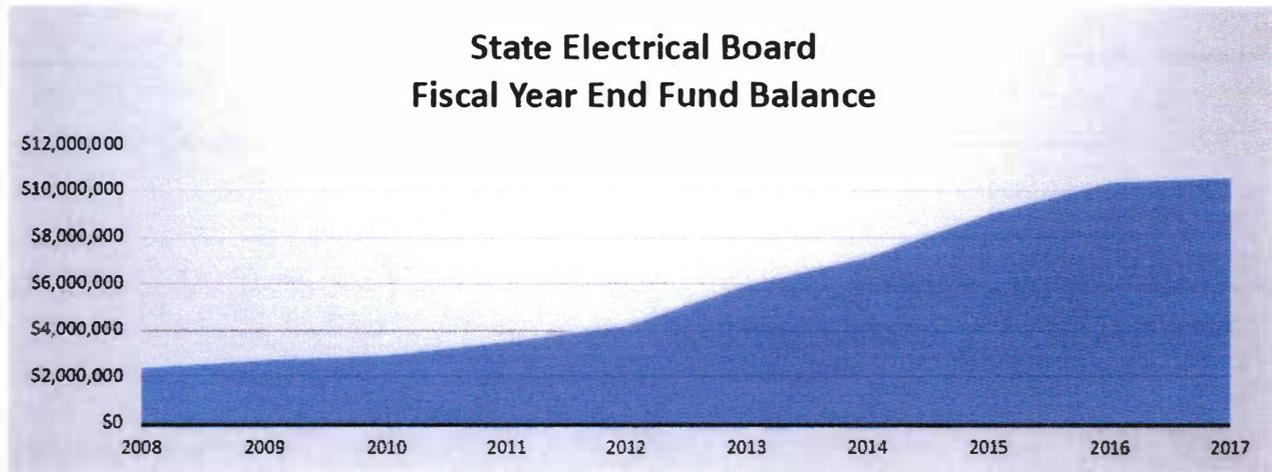
See Appendix C for a complete list of the occupational and professional boards included in our audit scope for this objective.

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## Compliance Finding

North Dakota Century Code section 43-09-22 states, "The [State Electrical Board] may charge the master electrician responsible for the installation a fee to cover the cost of inspection." We concluded the State Electrical Board accumulated excess fund balance as a result of charging amounts in excess of the cost of inspections.

The State Electrical Board's total fund balance has grown to \$10.6 million for the year ended June 30, 2017, which equates to approximately 31 months in reserves based on the average monthly expenditures for fiscal year 2017. The following chart illustrates how the State Electrical Board's total fund balance has grown from the end of fiscal year 2008 to the end of fiscal year 2017.



Source: State Electrical Board's audited financial statements for the years ended June 30, 2008, through 2017

The State Electrical Board's excess charges resulted from the fee structure not being updated timely during the increased economic activity related to the Bakken oil development.

### Recommendation

The State Auditor recommends the State Electrical Board ensure fees charged do not exceed the costs of inspections. Further, the State Electrical Board should work with the Legislature to determine what should be done with its excess fund balance.

### Management's Response

The State Electrical Board policy is to carry approximately 18-24 months reserve and does agree with these findings. The board has already started to work on adjusting the inspection fee structure and processes to timely address needed changes. Currently, the board is working with the legislature (SB 2056) to address any excess fund balance.

# ***Purpose, Scope and Methodology***

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## ***Purpose and Authority of the Audit***

The State Auditor selected this performance audit of special funds under authority granted in North Dakota Century Code 54-10-01 subsection 4.

Performance audits are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific performance requirements, measures, or defined business practices. Performance audits provide objective analysis so management and those charged with governance and oversight can use the information to improve performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The purpose of this report is to communicate our findings, conclusions, and recommendations based on our review of selected special funds.

## ***Scope and Methodology***

The Office of the State Auditor conducted this audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require the audit be planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on our audit objectives. The evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Objective 1:** For selected special funds, are general fund resources being used to supplant special fund resources?

The scope of the first objective was limited to special funds accounted for on the state's ConnectND Financials Module where general fund resources appeared to be used for similar expenditures. Special funds assigned to the North Dakota University System and those with cash balances less than \$250,000 as of May 31, 2018, were excluded. In addition, distribution, fiduciary, trust, and reserve funds were excluded. The audit period for the first objective was from July 1, 2016, to June 30, 2018. A list of the selected special funds for the first objective can be found in Appendix A.

**Objective 2:** Are selected special funds' fund balance levels justifiable?

The scope of the second objective included special funds accounted for in the state's ConnectND Financials Module and certain occupational and professional boards included in Title 43 of the North Dakota Century Code. Special funds assigned to the North Dakota University System and occupational and professional boards with annual receipts less than \$200,000 were excluded. Special funds with ending fund balances less than \$250,000 or with reserve levels less than six months were also excluded. Special fund reserve levels were calculated by dividing the fiscal year 2018 ending fund balance by the fiscal year 2018 average monthly expenditures. In addition, distribution, fiduciary, trust, and reserve funds were excluded. The audit period for the second objective was July 1, 2017, to June 30, 2018; except for occupational and professional boards. For occupational and professional boards, the audit period was the fiscal year of the most recently submitted audited financial statements to the Office of the State Auditor. A list of the selected special funds for the second objective can be found in Appendix C.

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Methodologies included:

- Researching North Dakota Century Code and Session Laws for laws related to the spending order of resources and fund balance levels.
- Reviewing the Office of Management and Budget's *Fiscal and Administrative Policy* and the state's *Comprehensive Annual Financial Report* for policies or other guidance related to the spending order of resources and fund balance levels.
- Interviewing management of the Office of Management and Budget and Legislative Council about any known laws or policies related to the spending order of resources or fund balance levels.
- Researching best practices related to spending order of resources or fund balance levels.
- Analyzing the state's ConnectND financials data to identify special funds where it appeared general fund resources were used for similar expenditures.
- Analyzing the state's ConnectND financials data and occupational and professional board financial statements to calculate the number of months in reserve.
- Interviewing management of those agencies assigned selected special funds about the uses of general fund resources and special fund resources or the number of months in reserve.

## ***Appendix A – List of Selected Special Funds Objective 1***

The following tables list the 26 selected special funds for the first objective, “For selected special funds, are general fund resources being used to supplant special fund resources?” The agency listed represents the primary agency expending resources from the fund. The fiscal year ending cash balances for each of the funds are provided for the last five fiscal years for informational purposes.

| <b>Identified Special Funds with Resources Available When General Funds Were Expended</b> |   |   |              |               |              |              |
|---|---|---|--------------|---------------|--------------|--------------|
| <b>Agency</b>   | <b>Fund Name</b>  | <b>Fiscal Year Ending Cash Balances</b> |              |               |              |              |
|   |   | <b>2014</b>                             | <b>2015</b>  | <b>2016</b>   | <b>2017</b>  | <b>2018</b>  |
| Commission on Legal Counsel for Indigents   | Indigent Defense Administration Fund                        | \$2,170,770                             | \$467,596    | \$472,026     | \$1,048,250  | \$1,523,613  |
| Department of Agriculture   | Agriculture Department Operating Fund                       | \$561,600                               | \$406,117    | \$839,939     | \$945,840    | \$1,345,377  |
| Department of Commerce  | Department of Tourism                                       | \$635,655                               | \$885,336    | \$949,255     | \$1,050,476  | \$1,023,511  |
| *Department of Corrections and Rehabilitation   | Penitentiary Land Replacement Fund                          | \$2,009,795                             | \$665,485    | \$649,292     | \$343,830    | \$331,561    |
| Department of Corrections and Rehabilitation  | Department of Corrections and Rehabilitation Operating Fund | \$5,136,492                             | \$4,855,076  | \$6,064,364   | \$6,233,276  | \$4,535,897  |
| Department of Health  | Department of Health Operating Fund                         | \$4,912,221                             | \$6,029,339  | \$6,091,544   | \$4,896,829  | \$3,263,242  |
| Department of Human Services  | Human Services Department Fund                              | \$48,885,791                            | \$66,440,327 | \$100,926,913 | \$67,482,409 | \$95,513,551 |
| Department of Parks and Recreation  | State Park Fund   | \$3,423,757                             | \$2,259,779  | \$2,587,172   | \$5,454,379  | \$6,346,542  |
| Information Technology Department   | Educational Technology Council Fund                         | \$752,363                               | \$645,442    | \$640,229     | \$1,676,715  | \$967,584    |

\* A portion of the Penitentiary Land Replacement Fund could have been potentially used to reduce fiscal year 2018 general fund expenditures related to allowable maintenance items, if such funds had been budgeted and appropriated.

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| Identified Special Funds with Resources Available When General Funds Were Expended in Fiscal Year 2018 |                                   |                                  |             |             |             |             |
|--|-----------------------------------|----------------------------------|-------------|-------------|-------------|-------------|
| Agency   | Fund Name                         | Fiscal Year Ending Cash Balances |             |             |             |             |
|  |                                   | 2014                             | 2015        | 2016        | 2017        | 2018        |
| Office of the Adjutant General   | Radio Communications Fund         | \$465,199                        | \$576,264   | \$474,848   | \$800,900   | \$406,415   |
| Office of the Adjutant General   | State Hazardous Chemicals Fund    | \$348,499                        | \$424,381   | \$513,792   | \$540,689   | \$603,490   |
| Office of the Adjutant General   | Veterans Cemetery Fund            | \$332,843                        | \$368,151   | \$439,327   | \$336,525   | \$458,542   |
| Office of the Attorney General   | Attorney General Refund Fund      | \$9,040,960                      | \$8,617,187 | \$7,126,585 | \$8,565,673 | \$8,699,333 |
| Office of the Attorney General   | Attorney General's Operating Fund | \$14,094,311                     | \$9,816,457 | \$7,700,581 | \$8,795,486 | \$8,484,326 |
| School for the Deaf  | School for the Deaf Fund          | \$1,482,703                      | \$1,709,804 | \$2,095,868 | \$2,742,332 | \$3,044,694 |
| Vision Services/School for the Blind   | School for the Blind Fund         | \$583,708                        | \$793,133   | \$1,183,397 | \$1,476,006 | \$1,582,279 |
| Veterans' Home   | Soldiers Home Fund                | \$1,992,984                      | \$3,435,312 | \$5,816,966 | \$6,156,855 | \$4,459,735 |

Source: ConnectND Financials

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| <b>Concluded General Funds Were Not Being Used to Supplant Special Fund Resources in Fiscal Year 2018</b> |  |   |             |              |              |              |
|---|--|---|-------------|--------------|--------------|--------------|
| <b>Agency</b>   | <b>Fund Name</b>                                 | <b>Fiscal Year Ending Cash Balances</b> |             |              |              |              |
|   |  | <b>2014</b>                             | <b>2015</b> | <b>2016</b>  | <b>2017</b>  | <b>2018</b>  |
| Aeronautics Commission  | Aeronautics Commission Special Fund              | \$10,229,866                            | \$7,623,004 | \$7,676,761  | \$7,144,834  | \$5,823,536  |
| Department of Agriculture   | Environment and Rangeland Protection Fund        | \$5,548,619                             | \$3,628,369 | \$6,308,349  | \$4,592,748  | \$7,169,118  |
| Department of Career and Technical Education  | Career School Fee Fund                           | \$297,036                               | \$220,101   | \$192,145    | \$147,130    | \$2,584,438  |
| Department of Commerce  | Ag Products Utilization Fund                     | \$3,275,686                             | \$3,341,990 | \$2,970,336  | \$2,200,381  | \$1,868,089  |
| Department of Commerce  | Internship Fund                                  | \$1,121,727                             | \$337,538   | \$939,480    | \$667,178    | \$1,340,313  |
| Department of Commerce  | Community Service Fund                           | \$9,035,106                             | \$9,050,760 | \$10,823,918 | \$10,556,343 | \$11,836,997 |
| Highway Patrol  | Motor Carrier Electronic Permit Transaction Fund | \$916,593                               | \$3,975,925 | \$6,022,001  | \$7,785,697  | \$8,493,945  |
| Industrial Commission   | Industrial Commission Fund                       | \$285,909                               | \$922,364   | \$6,660,811  | \$1,719,321  | \$1,680,046  |
| Information Technology Department   | Electronic Health Information Exchange Fund      | \$6,602,512                             | \$4,648,279 | \$3,353,449  | \$2,410,220  | \$1,434,193  |

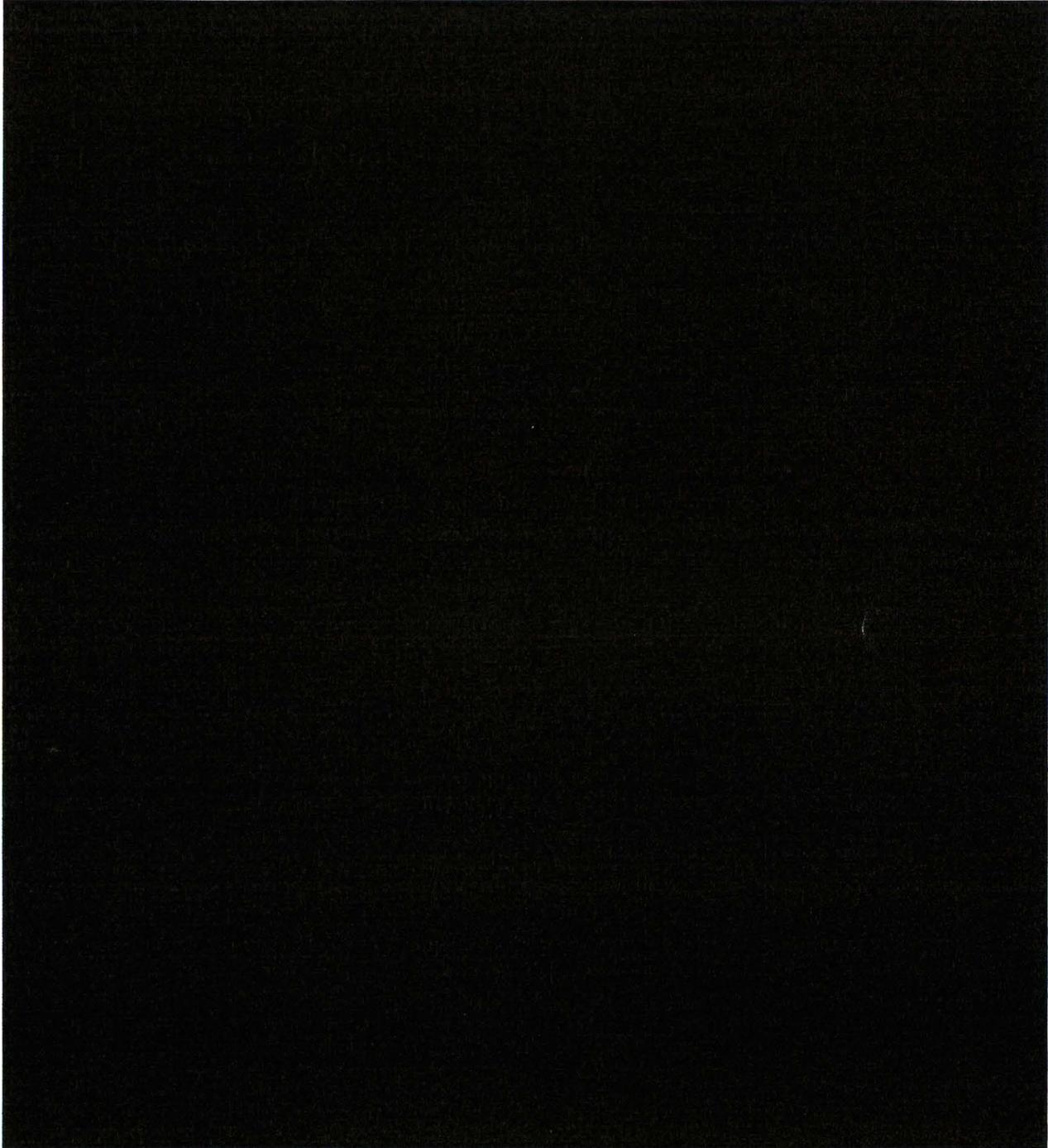
Source: ConnectND Financials

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## *Appendix B – Montana Spending Priority*

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## Appendix C – List of Selected Special Funds Objective 2

The following tables list the selected special funds for the second objective, “Are selected special funds’ fund balance levels justifiable?”

### **Agency Special Funds**

Forty-seven agency special funds were selected for this objective. Commodity group and occupational and professional board special funds will be discussed in the following tables of this appendix. The agency listed represents the primary agency expending resources from the fund while the average monthly expenditures are based on the fund’s total expenditures. Additional information obtained during the audit is provided below each fund as applicable.

| <b>Agency</b>  | <b>Fund Name</b>                                | <b>Fiscal Year 2018<br/>Ending Fund<br/>Balance</b> | <b>Fiscal Year 2018<br/>Average Monthly<br/>Expenditures</b> |
|--|---|---|--|
| Aeronautics Commission   | Aeronautics<br>Commission<br>Special Fund       | \$5,759,271   | \$366,722  |
| Approximately \$4.4 million in outstanding grant obligations at June 30, 2018.   |   |   |  |
| Commission on Legal Counsel for Indigents  | Indigent Defense<br>Administration<br>Fund      | \$1,502,775   | \$34,393   |
| Agency typically spends down its special funds in the second year of the biennium.   |   |   |  |
| Department of Agriculture  | Federal<br>Environmental<br>Law Impact Fund     | \$1,547,697   | \$13,390   |
| This fund was created by the legislative assembly to review federal environmental legislation and regulations detrimentally impacting or potentially detrimentally impacting the state’s agricultural, energy, or oil production sectors. This fund is used as determined necessary upon conferring with the Attorney General. |   |   |  |
| Department of Agriculture  | Environment and<br>Rangeland<br>Protection Fund | \$6,741,215   | \$301,803  |
| The legislature capped the Department’s use of the fund for the biennium at \$6.4 million.   |   |   |  |
| Department of Agriculture  | Agriculture<br>Department<br>Operating Fund     | \$1,200,136   | \$197,332  |
| Department of Career and Technical Education   | Career School<br>Fee Fund                       | \$2,582,765   | \$4,998  |
| Ending fund balance is the result of a \$2,477,000 transfer from the Foundation Aid Stabilization Fund appropriated by the 65 <sup>th</sup> Legislative Assembly for providing grants to school districts and area centers for career and technical education programs.  |   |   |  |
| Department of Commerce   | Department of<br>Tourism                        | \$1,020,292   | \$2,860  |

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| Agency   | Fund Name   | Fiscal Year 2018<br>Ending Fund<br>Balance | Fiscal Year 2018<br>Average Monthly<br>Expenditures |
|--|---|--|---|
| Department of Commerce   | Ag Products Utilization Fund                                | \$1,868,075                                | \$87,007  |
| Approximately \$466,495 in outstanding grant obligations at June 30, 2018.   |   |  |   |
| Department of Corrections and Rehabilitation   | Department of Corrections and Rehabilitation Operating Fund | \$10,269,215                               | \$589,193   |
| Ending fund balance consists of \$4.5 million in cash while the remainder consists of approximately \$5 million in accounts receivable and large allowance for uncollectible accounts.   |   |  |   |
| Department of Human Services   | Children's Trust Fund                                       | \$721,123                                  | \$21,225  |
| Department of Human Services   | Human Services Department Fund                              | \$96,038,303                               | \$3,317,365   |
| Certain amounts which make up the ending fund balance are restricted for specific purposes. Overall, while the Department of Human Services indicated various adjustments are planned to be completed by the end of the biennium, the fund balance at the end of the last three bienniums has grown. |   |  |   |
| Department of Parks and Recreation   | Snow Mobile Fund  | \$645,437                                  | \$20,645  |
| Department of Parks and Recreation   | Off-Highway Vehicle Fund                                    | \$795,525                                  | \$28,634  |
| Department of Parks and Recreation   | State Park Fund   | \$6,098,800                                | \$390,915   |
| Department of Transportation   | Special Road Fund   | \$2,058,623                                | \$30,497  |
| State law requires unobligated funds at June 30th of each odd-numbered year be held for an additional two years after which the funds revert to the State Highway Fund.  |   |  |   |
| Department of Transportation   | Dealer Enforcement Fund                                     | \$251,232                                  | \$8,038   |
| Department of Transportation   | Highway Fund  | \$540,319,811                              | \$30,420,753  |
| Legislature has provided carryover authority of \$503,115,558 related to enhanced state highway investments until June 30, 2021.   |   |  |   |
| Department of Transportation   | Motorcycle Safety Fund                                      | \$450,467                                  | \$38,179  |
| Department of Transportation   | State Infrastructure Bank                                   | \$3,205,203                                | \$0   |
| The multistate infrastructure has disbanded. The Department of Transportation indicated they are working with the federal government to close out the fund and to allow them to transfer the remaining balance into the State Highway Fund.  |   |  |   |
| Game and Fish Department   | Game and Fish Fund  | \$32,775,223                               | \$1,627,694   |
| The ending fund balance level is in line with the Department's reserve policy.   |   |  |   |

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| Agency  | Fund Name  | Fiscal Year 2018<br>Ending Fund<br>Balance | Fiscal Year 2018<br>Average Monthly<br>Expenditures |
|---|--|--|---|
| Game and Fish Department  | Private Land<br>Habitat and<br>Access<br>Improvement<br>Fund | \$1,421,698                                | \$184,939   |
| Highway Patrol  | Motor Carrier<br>Electronic Permit<br>Transaction Fund       | \$8,392,848                                | \$73,373  |
| The 65 <sup>th</sup> Legislative Assembly expanded the use of this fund by appropriating \$1,369,165 for the purpose of defraying various expenses associated with the issuance of permits and other nonenforcement motor carrier and administrative activities. Otherwise, the Highway Patrol has been limited by North Dakota Century Code 39-12-02 regarding allowable uses of the fund. |  |  |   |
| Historical Society  | Concession Fund  | \$1,016,527                                | \$81,358  |
| Historical Society  | Historical Gift and<br>Bequest Fund                          | \$327,451                                  | \$36,078  |
| Industrial Commission   | Carbon Dioxide<br>Storage Facility<br>Administration<br>Fund | \$264,756                                  | \$1,497   |
| The purpose of the fund is for the regulation of carbon dioxide storage facilities. Thus far, none have been constructed in North Dakota. The ending fund balance appears to be the remainder of a general fund transfer from the 2011 Session Laws. This fund will continue to have limited expenditures until the first application is received.  |  |  |   |
| Industrial Commission   | Lignite Research<br>Fund                                     | \$25,709,553                               | \$294,458   |
| Approximately \$12.4 million in outstanding project commitments as of June 30, 2018, with a \$15 million project (Project Tundra) proposal expected to be submitted in the Fall 2018.   |  |  |   |
| Industrial Commission   | Renewable<br>Energy<br>Development<br>Fund                   | \$6,282,949                                | \$84,094  |
| Approximately \$2.5 million in outstanding project commitments as of June 30, 2018.   |  |  |   |
| Industrial Commission   | Geologic Data<br>Preservation Fund                           | \$287,431                                  | \$4,566   |
| Industrial Commission   | Oil and Gas<br>Research Fund                                 | \$12,662,923                               | \$322,240   |
| Approximately \$8.4 million in outstanding project commitments as of June 30, 2018.   |  |  |   |
| Industrial Commission   | Oil and Gas<br>Reservoir Data<br>Fund                        | \$648,661                                  | \$17,413  |
| The Industrial Commission indicated \$650,000 has been committed to a project through February 2020.  |  |  |   |

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| Agency   | Fund Name  | Fiscal Year 2018<br>Ending Fund<br>Balance | Fiscal Year 2018<br>Average Monthly<br>Expenditures |
|--|--|--|---|
| Information Technology Department  | Statewide Interoperable Radio Network Fund               | \$4,401,801                                | \$37,507  |
| This fund is newly created to provide funding associated with the purchase, installation, operation, and maintenance of a statewide interoperable radio network and the project is in the process of being completed.  |  |  |   |
| Information Technology Department  | Educational Technology Council Fund                      | \$955,249                                  | \$16,608  |
| Information Technology Department  | Electronic Health Information Exchange Fund              | \$1,458,677                                | \$155,810   |
| The 61 <sup>st</sup> Legislative Assembly provided \$8 million from the Bank of North Dakota's profits in the 2009 Session Laws. It appears this allotment is being spent down over time.  |  |  |   |
| Judicial Branch  | Court Facilities Improvement and Maintenance Fund        | \$1,290,533                                | \$43,951  |
| Approximately \$767,235 in outstanding grant obligations as of June 30, 2018.  |  |  |   |
| North Dakota Racing Commission   | Breeders' Fund   | \$1,092,197                                | \$23,971  |
| North Dakota Racing Commission   | Racing Promotion Fund                                    | \$307,415                                  | \$49,260  |
| North Dakota State Fair  | State Fair Operating Fund                                | \$6,666,821                                | \$634,646   |
| The State Fair Association's fiscal year end is September 30 <sup>th</sup> compared to the state's fiscal year end of June 30 <sup>th</sup> . In addition, the State Fair is held in July. Thus, the identified reserves at June 30 <sup>th</sup> will be used to cover costs associated with the upcoming fair, which includes guarantee payments for performers. |  |  |   |
| Office of the Adjutant General   | Veterans Cemetery Fund                                   | \$436,776                                  | \$30,403  |
| Two capital improvement projects estimated at \$152,432 to be completed in fiscal year 2019.   |  |  |   |
| Office of the Adjutant General   | State Hazardous Chemicals Preparedness and Response Fund | \$602,441                                  | \$46,998  |
| Request for Information (RFI) was submitted prior to June 30, 2018 related to a planned \$350,000 software project.  |  |  |   |

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| Agency  | Fund Name   | Fiscal Year 2018<br>Ending Fund<br>Balance | Fiscal Year 2018<br>Average Monthly<br>Expenditures |
|---|---|--|---|
| Office of the Attorney General  | Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund | \$436,850                                  | \$3,830   |
| Office of the Attorney General  | Attorney General Refund Fund  | \$8,668,693                                | \$159,492   |
| The 65 <sup>th</sup> Legislative Assembly provided the Attorney General an exemption to NDCC requirements which would have resulted in a portion of the fund balance at the end of last biennium (June 30, 2017) being transferred to the general fund.           |   |  |   |
| Office of the Attorney General  | Twenty-Four Seven Sobriety Program Fund   | \$1,755,998                                | \$83,086  |
| Office of the Attorney General  | Multijurisdictional Drug Task Force Grant Fund  | \$274,245                                  | \$25,507  |
| Approximately \$200,126 in outstanding grant obligations as of June 30, 2018.   |   |  |   |
| Office of the Secretary of State  | Election Fund   | \$996,547                                  | \$29,985  |
| This fund was created to set aside the state matching funds related to the federal funds received from the Help America Vote Act of 2002. According to a representative of the audited entity, these funds will be depleted sometime during the 2019-21 biennium. |   |  |   |
| School for the Deaf   | School for the Deaf Fund  | \$2,995,710                                | \$62,461  |
| Securities Department   | Investor Education and Technology Fund  | \$930,552                                  | \$3,568   |
| Vision Services/School for the Blind  | School for the Blind Fund   | \$1,569,823                                | \$46,303  |

Source: ConnectND Financials

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### Commodity Groups

Ten commodity groups were selected for this objective.

| Commodity Group            | Fiscal Year 2018 Ending Fund Balance | Fiscal Year 2018 Average Monthly Expenditures |
|----------------------------|--------------------------------------|---|
| Barley Council             | \$1,640,782                          | \$64,303                                      |
| Beef Commission            | \$1,706,832                          | \$188,944                                     |
| Corn Council               | \$4,981,302                          | \$209,067                                     |
| Dry Bean Council           | \$1,144,082                          | \$74,666                                      |
| Dry Pea and Lentil Council | \$1,196,872                          | \$136,106                                     |
| Ethanol Council            | \$344,309                            | \$12,967                                      |
| Oilseed Council            | \$657,330                            | \$108,110                                     |
| Potato Council             | \$301,079                            | \$43,534                                      |
| Soybean Council            | \$10,066,283                         | \$942,604                                     |
| Wheat Commission           | \$6,331,053                          | \$340,564                                     |

Source: ConnectND Financials

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**Occupational and Professional Boards**

Ten occupational and professional boards included in Title 43 of the North Dakota Century Code were selected for this objective. The amounts provided in the table are based on the most recently submitted audited financial statements to the Office of the State Auditor as of December 18, 2018. Total fund balance and total expenditures were used whenever available. Unrestricted net position and total expenses were substituted as needed.

| <b>Occupational and Professional Board</b>                                  | <b>Financial Statement Date</b> | <b>Fund Balance</b> | <b>Average Monthly Expenditures</b> |
|---|---------------------------------|---------------------|-------------------------------------|
| Firefighter's Association   | December 31, 2017               | \$1,493,338         | \$109,576                           |
| Peace Officers Standards and Training Board                                 | December 31, 2016               | \$311,985           | \$20,646                            |
| Real Estate Commission *  | June 30, 2017                   | \$892,013           | \$28,581                            |
| State Board of Accountancy  | June 30, 2017                   | \$311,336           | \$43,653                            |
| State Board of Cosmetology  | June 30, 2016                   | \$464,672           | \$24,735                            |
| State Board of Dental Examiners   | June 30, 2017                   | \$314,311           | \$19,613                            |
| State Board of Medical Examiners  | December 31, 2016               | \$1,819,918         | \$67,164                            |
| State Board of Pharmacy   | June 30, 2016                   | \$689,373           | \$53,558                            |
| State Board of Registration for Professional Engineers and Land Surveyors * | June 30, 2016                   | \$2,332,086         | \$42,916                            |
| State Electrical Board  | June 30, 2017                   | \$10,663,515        | \$344,347                           |

Source: Most recent audit reports

\*As of the financial statement date, the fund balances for the State Board of Registration for Professional Engineers and Land Surveyors includes \$200,000 restricted for legal proceedings and the Real Estate Commission includes \$93,597 restricted in the Real Estate Education, Research, and Recovery Fund.

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Mark J. Hardy, PharmD, R.Ph.  
Executive Director

**House Bill No 1523 – Fund Balances of State Agencies / Boards**  
Government & Veterans Affairs Committee – Fort Union Room  
8:00 AM - Friday – January 25, 2019

Chairman Kasper, members of the House Government & Veterans Affairs Committee, for the record I am Mark J. Hardy, PharmD, Executive Director of the North Dakota State Board of Pharmacy.

I appreciate the opportunity to discuss with you our concerns on House Bill 1523 today.

As I understand it, the reason for this bill relates back to a state auditor's report that outlined some very large balances that were being held in the various special fund balances of the state. Many may be concerned with issues identified in that audit report and thus this legislative action to try to address some of these funds.

However, I am here to speak on behalf of the State Board of Pharmacy. After reviewing this legislation, the Board of Pharmacy is very concerned with the provisions in this Bill that transfers excess funds over an average year of expenses in lieu of statutory language. This would create a great burden for the Board of Pharmacy in our ability to serve the function, you as the legislature, have given us. We operate strictly on funds collected through our licensing fees and services, most of which are included in statute NDCC 43-15.

Specific to the Board of Pharmacy, the legislature has given the Board great responsibility in regulating, and licensing all pharmaceutical services to the citizens of North Dakota. As you would expect the Board of Pharmacy regulates and licenses: Pharmacies, Pharmacists, Pharmacy Technicians, Intern Pharmacists. The legislature has also tasked the Board of Pharmacy with the regulation, licensing and enforcement of the laws drug supply chain of pharmaceuticals and durable medical equipment. This includes manufacturers, wholesalers shipping products into our state, along with many other business types that affect public health. We have also been tasked with the enforcement of portions of the Food, Drug, Cosmetic Act and Controlled Substances Act. The Board of Pharmacy also operates the **P**rescription **D**rug **M**onitoring **P**rogram [PDMP], a data base which is used and maintained to prevent the misuse of controlled substances in the State of North Dakota. Use of the PDMP is free to all those who utilize it. In an attempt to curb controlled substance diversion, the Board also operates programs for controlled substance *take-back or drug disposal sites*, free to the public in over 130 pharmacies across our state. The Board also maintains the Drug Repository Program, which allows pharmaceuticals to be re-dispensed to patients nearly free of charge. The Board of Pharmacy is involved in and has sponsored many programs with public service announcements for the education and betterment of the citizens in North Dakota.

All these duties carry an extreme amount of risk. Unfortunately the reality of today's world is companies are very quick to litigate any decision made by the regulatory authorities in an attempt to mitigate compliance with laws and rules.

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I would like to draw your attention to one example that highlights the issues this bill could create for the Board of Pharmacy. In 2017, the ND Legislature, passed Senate Bill 2301 and Senate Bill 2258 relative to the abusive practices that Pharmacy Benefit Managers [PBMs] were displaying across the market place in North Dakota and to further reaffirm a patient's right when obtaining pharmacy services. These two pieces of legislation were nearly unanimously passed by both the House and the Senate and were signed by the Governor. However, just a few weeks before the implementation of the bills, the Pharmaceutical Care Management Association [PCMA] which is a PBM trade group, sued the State of North Dakota to attempt to put a preliminary injunction on the laws in respect to ERISA Insurance plans and Medicare Part D plans putting our state in a defensive position. This required locating outside counsel to mount a competent defense against the high powered specialized legal attack from PCMA in regards to the State's sovereignty to govern in these specialized areas.

After consultation with the Attorney General's Office, and many legislators, the Board of Pharmacy stepped up to provide legal defense of these laws. The law firm we acquired has since been able to successfully defend the laws, defeating the injunction and largely winning the decision in the district court. We are now in the process of finalizing arguments in the 8<sup>th</sup> District Court of Appeals. This litigation has cost the Board of Pharmacy \$685,232.77 to date, which represents over a year of our average total budgeted expenses.

I hope this illustrates that with the provisions of HB1523 the Board of Pharmacy would have been totally hamstrung to be able to defend the state on issues such as this. The Board financially supports the Prescription Drug Monitoring Program, at no charge to all the healthcare professionals and law enforcement who routinely use this service. The maintenance of their programs is always ongoing and ever changing. Their program contains a very large amount of patient data, so this puts the Board in a precarious situation of risk with this information, as well as the guarding of that very information. I would contend the financial autonomy the Board of Pharmacy has provided a strong asset to the State.

The provision in the bill that we would come to the Legislature asking for a statutory fund is a very difficult proposition. It is extremely difficult to determine a number that would be the right amount to have in reserves when we have no clear method to determine when costs will be incurred on a legal matter or need to defend the laws of the state. The Board strives to be exceptionally prudent with our resources. We make sure not to over extend and operate very conservatively with the knowledge that if we run into a need, the Board is properly prepared financially to defend our laws and decisions for the citizens of North Dakota. If our funds are growing we look to extend programs to positively impact the public health of our patients.

Generally, when a Board's operating fund balance is getting larger than the legislature is comfortable with, the legislature should look at the fees charged by that Board / Agency and look at legislation to adjust accordingly. A one size fits all approach like this bill would implement does not seem appropriate.

The Board of Pharmacy respectfully asks for Do NOT Pass vote on HB1523 as it is presented.

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**TESTIMONY IN OPPOSITION TO HB 1523**

**PRESENTED BY JAMES SCHMIDT**

**EXECUTIVE DIRECTOR, NORTH DAKOTA STATE ELECTRICAL BOARD**

Mr. Chairman, Members of the Committee:

North Dakota State Electrical Board is a special fund (self-funded from license and inspection fees) state agency that does not take money from the state's general fund. The board has to run the agency like a private business to raise its own revenue to cover its expenses. In recent years the construction business has been fantastic so we have accumulated what we feel are extra funds. The state auditor's office has told us we have excessive funds which they defined as more than 6 months reserve. The majority of our revenue comes from wiring certificate fees which a contractor pays on the dollar value of the job -- a percentage of the project contract amount. These fees are collected at the end of each project. So during the construction of the project the board is taking revenue out of its own pocket to continue operating. The board's policy is to have 24 months reserve to carry us through lean times when construction is down and during long duration of larger projects.

Wiring certificate fees are adjusted by administrative rule which the board will do an administrative rule change to lower fees after this legislative session. Wiring certificate fees were last adjusted from a minimum fee of \$15 set in 1987 raising it to \$25 in April 1, 2005 and have remained there for the last 14 years.

The other revenue source is license fees which were last raised in 1990, (29 years ago) to; apprentices \$10, journeyman \$25 and master \$50. Prior to the adjustment of licenses in 1990, in 1967, licenses were adjusted to; apprentice \$5, journeyman \$15 and master \$40.

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During the recent of the oil boom, from 2012-2015, our reserves grew rapidly because of the construction growth that nobody could foresee. We thought the slow-down of the oil related work and construction in 2016/2017 would be where we would actually see a reduction in revenue as we had to reduce the inspector staff by 2. Indicators of that slow-down in work were contractors stating a lack of work etc. The board anticipated the 2016/2017 seasons would reduce our funds but it did not so again the board is looking to adjust the fees by administrative rule after this legislative session. So far in 2018-19 we do see an increase in construction activity and we did add one inspector last fall.

The board currently has 31 months of reserves and we are working to reduce that to 24 months of reserves. However, we do not believe one year of reserves is sufficient to withstand the lean times that will inevitably come. Like many of the businesses in the state, the electrical board is dependent on commodity prices – when oil and farm prices are high, people are building; when they are low, the building slows down, as does our work.

We therefore urge a do not pass vote on HB 1523 in its current form or amend this bill to exclude self-funded agencies such as ours or extend the reserve amount to what a self-funded agency needs to remain solvent.

We thank the Committee for hearing our concerns and I would be happy to answer any questions the committee may have.

## House Bill 1523

Government and Veterans Affairs Committee

January 25, 2019

Tammy Dolan, Vice Chancellor for Administrative Affairs

701.328.4116 | [tammy.dolan@ndus.edu](mailto:tammy.dolan@ndus.edu)

Chair Kasper and Committee Members: My name is Tammy Dolan, and I am here today to present the NDUS' concerns with HB1523. The bill requires the transfer of special fund balances in excess of \$250,000 or the institution's average annual expenses, whichever is higher, be transferred to the Legacy Fund.

Institutions maintain reserves, which would be reflected within year-end fund balances, for a variety of reasons. Reserves are needed to protect against sudden shortfalls in revenue, such as unforeseen enrollment declines or reductions in state appropriations. Funds can be used to cover unanticipated significant expenses like legal fees, costs from major disasters, or increases in utility costs. Planning for new academic programs or major equipment purchases may necessitate saving funds year over year to cover costs. The Composite Financial Index (CFI) calculation is utilized by the Higher Learning Commission during the accreditation process. CFI is a compilation of four core ratios, and net assets is a key component of the measurement. Finally, strong bond ratings are necessary for institutions to finance capital projects, such as dining halls and residence halls, paid through revenue bonds.

Audited financial statement amounts often contain accruals for liabilities that will be paid with cash in the following year and receivables consisting of cash that will be received in the following year. These amounts, if transferred to the Legacy Fund, would not be available to pay necessary expenses when required. It will be challenging for campuses to budget for the fall semester and upcoming year. Transfer amounts would not be known until the audit is completed, which is usually in November of the following fiscal year. This uncertainty will pose budgeting challenges for long-term planning.

Undesignated asset balances are comprised of a multitude of revenue sources, including tuition and fees paid by students. Self-supporting campus operations such as dining halls and residence halls

also maintain undesignated reserves for planned improvements or expenses in the following years. If this bill were approved as written, students could be inadvertently funding the Legacy Fund.

The critical nature of strong reserves to ongoing institution operations, as previously described, led the State Board of Higher Education (SBHE) to establish a policy requiring every institution to maintain an undesignated reserve of between 5-7% of the previous year's revenue, on top of reserves designated for specific purposes. Transferring funds from established reserves could negatively impact accreditation, bonding, and the overall financial stability of the NDUS institutions. For these reasons, I request that the bill be amended to exclude the state institutions of higher education.

Thank you for the opportunity to testify on this important issue. I will gladly stand for any questions.

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House Government and Veterans Affairs Committee

January 25, 2019

Testimony in opposition to HB 1523

By: Bonnie Storbakken, Executive Secretary for the North Dakota Board of Medicine

Good morning Mr. Chairman and members of the House Government and Veterans Affairs Committee. My name is Bonnie Storbakken. I am the Executive Secretary for the North Dakota Board of Medicine. I am here today to testify in opposition to HB 1523.

As a bit of background, the Board of Medicine is the licensing and regulatory body for Physicians, Physician Assistants, Genetic Counselors and Fluoroscopy Technicians. Our Board currently has 4752 licensees. The Board employs four staff including myself to conduct the business of the Board. Most of the Board's funding comes from license fees. The Board of Medicine does not receive any funding from the State's general fund.

Within the duties of our Board, we are tasked with both licensing and disciplining those licensees who violate the medical practices act. In doing so, our Board incurs legal fees. These fees can be unpredictable and may be extensive in certain circumstances.

Our Board is audited annually by Brady Martz and Associates and this audit is shared with the state. Currently our Board has a reserve of a little over two years of funding. Our Board has been and continues to fully fund the North Dakota Professional Health Program (NDPHP) which this body put into law on August 1, 2013. (NDCC Chapter 43-17.3). Our Board has a policy in place that states at least one year of operating expenses is held in reserve to handle any unanticipated litigation fees the Board may incur. Because licensing fees generated by the Board vary and the fact that the Board is fully funding another entity, having a reserve is a good conservative plan. I would recommend that our Board be exempt from the requirements of this bill or in the least be allowed a minimum of three years of reserves. It is unclear what would happen if our reserves were transferred and we incurred legal fees beyond the funds we had available to us. Our Board should not be put in a place to have to ask the state for financial help.

I would also like to point out that it appears that this Bill as it applies to our Board may have constitutional issues. North Dakota Constitution Article X Section 12 specifically exempts our Board from having to deposit the fee income into the General fund. If we are exempt from the General Fund, it appears the Legislative Body would not have access to our funds for transfer into the Legacy fund.

I would request that this Bill not be passed as written. We would recommend that this Committee strike the underlined section on page two beginning on line 10. If this is not acceptable to the Committee, we would request that the North Dakota Board of Medicine be exempt from the requirements of this Bill. In the event this committee chooses to pass this bill without exempting our Board we would request that the North Dakota Board of Medicine be

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allowed to hold in reserves a minimum of at least three years of its annual budget to prevent the need to come to the state to seek financial assistance for unexpected expense.

House Government and Veterans Affairs Committee

HB 1523

January 25, 2019

Testimony of JoDee S. Wiedmeier, Executive Director  
North Dakota Board of Podiatric Medicine

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Chairman Kasper and members of the House Government and Veterans Affairs Committee, my name is JoDee Wiedmeier, Executive Director of the North Dakota Board of Podiatric Medicine. By statute, the Board is responsible for the licensing and regulation of the practice of podiatry in North Dakota. On behalf of the board, which is composed of four podiatrists, one physician, and one public member from throughout the state, I speak in opposition to HB 1523.

This bill has two sections; Section 1 relates to state agencies, departments and institutions and Section 2 relates to occupational and professional boards. In summary, this bill, as it relates to this board, would require all 'unobligated' and 'undesignated' funds of the board at the end of the fiscal year to be deposited into the state's legacy fund. The board would be allowed to retain one year of operating expenses which would be determined by averaging the previous three fiscal years as reported in the financial statements.

First, it should be noted that the board is funded solely by the application and licensure fees collected by the board from its licensees. The board does not receive any separate funding from the state. As set forth in the statute (NDCC 54-44-12) a board may open an account at a bank of its choosing, deposit the fees it receives, and pay its authorized expenses from this account. It further specifically states on Page 2, Line 8 – 10, that all money in this account is appropriated for the use of the occupational and professional board. This differs from a state agency or institution which is funded through the state's budget. An agency would receive general taxpayer money, and if the appropriated funds are not used, it may be appropriate to return those funds back to the state fund. However, the occupational and professional boards are funded differently and should not be included in this bill. If it is deemed necessary that any

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additional money accrued by the board should be 'returned' somewhere, it should be returned to the board's licensees, not to the state. However, the board is not advocating this position, merely noting that it would be a more appropriate.

Although the podiatry board is a small board, regulating about 40 licensed podiatrists in the state including three residents, our duty to the state and to the public is no less important. The board had been consistently operating in the red until it was allowed to increase its fees in 2015. Our gross revenue for the past few years has now hovered right around \$28,000.00. Our expenses, however, have varied greatly in the last several years from as low as \$17,000.00 one year to almost \$30,000.00 in another. With such a small budget, even somewhat minor things can be big in terms of financial impact. Such things like the legislative session, administrative rule amendments, website updates, and software purchases, all which don't necessarily happen yearly, can have a large impact the board's bottom line. This bill will not allow the board to "save" funds from one year to the next in order to accommodate those more 'expensive' years.

The biggest unknown expenditure from year to year is the amount the board will have to expend for investigation and prosecution of complaints received by the board. The board does not know how many complaints will be received or the extent of the financial impact of those complaints. Some complaints may be readily dismissed without much in way of cost; others however, can require expansive and expensive investigation, legal fees, hiring of experts, hearings and appeals. If the board is required to turn over all of its excess funds yearly to the state's legacy fund, it will not be able to be financially responsible by maintaining a reserve fund of its own. This is a very real concern for this board due, in part, to its history.

The podiatry board was faced with a financial crisis when it came to the legislature in 2001 looking for a way to pay its expenses. The board had been in a grueling legal battle with a podiatrist. I was not with the board at the time, so I am not able to speak to the specifics, but there had been complaints, an extensive investigative process, hearings, appeals and even a trip to the state Supreme Court. In the end, the board prevailed and the podiatrist was sanctioned. However, the case basically bankrupted the board. In order to keep the board functioning, it came before the legislature asking for a \$50,000.00 loan. From my

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understanding, a situation such as this had not been seen before and the legislature wasn't quite sure how to handle it. In the end, NDCC 43-05-16.8 was enacted which allowed the board to obtain a loan for litigation expenses incurred while the board was performing its duties and allowed it to temporarily raise licensure renewal fees for podiatrists above the statutory limits until the loan was paid off.

The board, over the last couple of years, has finally been able to start setting aside some excess funds to work toward accumulating a viable reserve fund in order to make sure it does not find itself in that situation again. By passing HB 1523, it would remove the ability of the board to have its own reserve fund that could be accessed when needed and may put it and other boards in the same financial crisis.

If this bill would pass, the board is further concerned with how the average yearly expenses will be determined. Page 2, Line 17, states that this information will be obtained by the audited financial statements; however, due to the fact that the board's annual revenue is below \$200,000.00, the board is only required to file an annual report with the state auditor. This annual report is very structured and does not provide a way for the board to indicate if funds (above the average yearly operating expenses) are 'designated' for a certain future purpose.

In summary, the board feels that Section 2 relating to occupational and professional boards should be removed from this bill due to the way the board is funded. It puts the board in a detrimental financial position due to the extreme fluctuations that can occur in yearly expenses depending largely on complaints received by the public which cannot be foreseen or anticipated, and further does not provide a way for the board to have its own reserve fund.

Thank you for your consideration.

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Representatives B. Koppelman, Delzer, Dockter, Kading, Kasper, K Koppelman, Marschall, M. Ruby, Schobinger and Sentors O Larsen, Unruh

For the record my name is Clark Coleman I am a producer from Bismarck ND and I serve on the North Dakota Oilseed Council.

I am here today to testify in opposition to HB 1523.

The ND oilseed council consists of a part time office position and 14 volunteer board members which are elected from their ND peers and 3 appointees from the Governor's Office to represent the grower's interests and make wise decisions to benefit each respective crop.

The North Dakota Oilseed Council has reported to a joint session of the House and Senate Agriculture Committees regarding our financials and program efforts for the current biennium and plans for the upcoming biennium. These reports have included our audit report from the State Auditor's Office, annual reports, written updates and time for questions from the Agriculture Committee members.

The check off dollars from our commodities, sunflower, canola, flax, and safflower are spent in the following areas, production research, crop protection, domestic promotion, foreign market development and grower information. These dollars are not general tax fund dollars but are collected specifically for programs related to the crop they are assessed on. There is no "one size fits all" approach. Each commodity is as unique as the products they are in existence to promote, market, research and educate consumers and producers about. Our producers would not approve of their promotion assessments being used to subsidize the Legacy Fund and unfortunately that could also lead to producers electing to refund their oilseed assessment which would be detrimental to our industry. It is these "unintended consequences" that cause us to oppose this bill. Let us continue to do the best job we can at promoting our commodities for the benefit of our North Dakota Oilseed Producers.

The North Dakota Oilseed Council does not support HB 1532. We respectfully <sup>ask</sup> that HB 1532 <sup>do not</sup> pass.

Thank you for the opportunity to speak with you today.

constitution. The proceeds of such tax shall be used to indemnify the owners of growing crops against damages by hail, provided that lands used exclusively for public roads, rights of way of common carriers, mining, manufacturing or pasturage may be exempt from such tax.

**Section 8.** The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

**Section 9.** The legislative assembly may provide for the levy of a tax upon lands within the state for the purpose of creating a fund to insure the owners of growing crops against losses by hail. The legislative assembly may classify lands within the state, and divide the state into districts on such basis as shall seem just and necessary, and may vary the tax rates in such districts in accordance with the risk, in order to secure an equitable distribution of the burden of the tax among the owners of such lands.

**Section 10.**

1. Upon the adoption of this amendment to the Constitution of the State of North Dakota there shall be annually levied by the state of North Dakota one mill upon all of the taxable property within the state of North Dakota which, when collected, shall be covered into the state treasury of the state of North Dakota and placed to the credit of the North Dakota state medical center at the university of North Dakota; said fund shall be expended as the legislature shall direct for the development and maintenance necessary to the efficient operation of the said North Dakota state medical center.
2. This amendment shall be self-executing, but legislation may be enacted to facilitate its operation.

**Section 11.** Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

**Section 12.**

1. All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the Bank of North Dakota, and required for the payment of losses, duly approved, payable from the state hail insurance fund, state bonding fund, and state fire and tornado fund, and required for the payment of compensation to injured employees or death claims, duly approved, payable from the workmen's compensation fund, and required for authorized investments made by the board of university and school lands, and required for the financial operations of the state mill and elevator association, and required for the payment of interest and principal of bonds and other fixed obligations of the state, and required for payments required by law to be paid to beneficiaries of the teachers' insurance and retirement fund, and required for refunds made under the provisions of the Retail Sales Tax Act, and the State Income Tax Law, and the State Gasoline Tax Law, and the Estate and Succession Tax Law, and the income of any state institution

derived from permanent trust funds, and the funds allocated under the law to the state highway department and the various counties for the construction, reconstruction, and maintenance of public roads.

This constitutional amendment shall not be construed to apply to fees and moneys received in connection with the licensing and organization of physicians and surgeons, pharmacists, dentists, osteopaths, optometrists, embalmers, barbers, lawyers, veterinarians, nurses, chiropractors, accountants, architects, hairdressers, chiropodists, and other similarly organized, licensed trades and professions; and this constitutional amendment shall not be construed to amend or repeal existing laws or Acts amendatory thereof concerning such fees and moneys.

2. No bills, claims, accounts, or demands against the state or any county or other political subdivision shall be audited, allowed, or paid until a full itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same, and then only upon warrant drawn upon the treasurer of such funds by the proper officer or officers.
3. This amendment shall become effective on July 1, 1939.

**Section 13.** The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgage upon real estate in amounts not to exceed sixty-five percent of its value; or upon real and personal property of state-owned utilities, enterprises, or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon property of state-owned utilities, enterprises, or industries in excess of ten million dollars.

No further indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities.

**Section 14.**

1. Notwithstanding any other provision in the constitution, and for the purpose of promoting the economic growth of the state, the development of its natural resources, and the prosperity and welfare of its people, the state may issue bonds and use the proceeds thereof to make loans to privately or cooperatively owned enterprises to plan, construct, acquire, equip, improve, and extend facilities for converting natural resources into power and generating and transmitting such power, and to acquire real and personal property and water and mineral rights needed for such facilities.
2. The state may issue general obligation bonds for this purpose to an amount which, with all outstanding general obligation bonds, less the amount of all money on hand and taxes in process of collection which are appropriated for their payment, will not exceed five percent of the full and true value of all of the taxable property in the state, to be ascertained by the last assessment made for state and county purposes: but nothing herein shall increase or diminish the limitations established by other provisions of the constitution on the amount of bonds therein authorized to be issued.
3. The state may also issue revenue bonds for the purpose of providing part or all of the funds required for any project undertaken under subsection 1, payable solely from sums realized from payments of principal and interest on money loaned for such

**Testimony of  
Deana Wiese, Executive Director  
North Dakota Ethanol Council  
In Opposition to HB 1523  
January 25, 2019**

Chairman Kasper and Members of the Committee,

My name is Deana Wiese and I am the executive director of the North Dakota Ethanol Council (NDEC). I am here today to oppose HB 1523, which would require state agencies, including NDEC, to deposit unobligated and undesignated fund balances over their annual expenses into the Legacy Fund.

The North Dakota Ethanol Council was established in 2009 by the North Dakota State Legislature to fund research, education programs, promotion and market development efforts. The Council is made up of representatives from the five North Dakota ethanol plants. Each plant contributes three one-hundredths of one cent per gallon produced, which is submitted in quarterly payments to the North Dakota Ethanol Council.

The North Dakota Ethanol Council opposes this bill for several reasons. First, it encourages random spending as to ensure assessment dollars go towards industry promotion, rather than strategic spending to ensure valuable projects. Second, a reserve is needed as NDEC receives assessments from only five contributors, and a refund provision is included in statute. NDEC's annual revenue has ranged from \$110,000 to \$212,000, and the assessment from each of the five plants ranges from \$20,000-\$50,000 annually. Should one, or more, of the plants decide to refund its assessment or experience a production decrease for any reason, NDEC's operating revenue would be cut significantly. NDEC is not working to build its reserve, but instead uses the savings for special projects and unplanned expenditures. For example, NDEC recently initiated a multi-year radio promotion effort that was not anticipated in its annual budget and workplan.

NDEC has an Operating Reserve Policy in place stating:

*The North Dakota Ethanol Council has a goal to maintain a fund balance estimated to be equal to a 12-month operating budget in addition to any long-term liabilities the council has previously incurred.*

For these reasons, we encourage a Do Not Pass recommendation on HB 1523. I'd be happy to answer any questions.

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HOUSE GOVERNMENT & VETERANS AFFAIRS COMMITTEE  
FRIDAY 8:00 AM, JANUARY 25, 2019  
FORT UNION ROOM, STATE CAPITOL

TESTIMONY PRESENTED BY RITA SOMMERS, EXECUTIVE DIRECTOR  
NORTH DAKOTA BOARD OF DENTAL EXAMINERS  
**HB 1523 - OPPOSITION**  
RELATING TO STATE AGENCY FUND BALANCES

Good morning Chairman Kasper and members of the Committee, I am Rita Sommers, Executive Director of the North Dakota Board of Dental Examiners (NDBDE) and am here to speak in opposition to HB 1523 and propose an amendment. HB 1523 interferes with the regulation of the dental profession by removing board's economic preparedness for litigation during disciplinary actions.

An unpleasant reality of an occupational board's duty in their mandate to protect the public is that differences of opinions between a Board and licensees in errant or devious behavior sometimes require litigation and its associated legal expenses. Such circumstances can, upon occasion, result in extended legal actions that prove to be expensive, with boards bearing costs related to resolving such matters. Although litigation has proven to be a powerful tool to motivate adherence to laws and rules, funds necessary to protect the public via legal encounters must be available under these circumstances. Such is the case with many if not all occupational and professional boards.

Implementing a sound, workable budget requires closely monitoring all revenue sources (licensing fees) and expenditures *with the ability to respond to any major variances from projections*. HB 1523 sets the threshold for the balance of funds held by the Board of Dental Examiners so low that it is conceivable that one

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egregious legal battle could easily damage the financial integrity of the board or prevent the board's ability to carry out its mandate to carry disciplinary actions to completion. It has been the NDBDE long standing policy to maintain sound financial management by reserving 1.5 times its average annual revenue in certificates of deposit and liquid assets to facilitate resilience needed to meet potential unforeseen financial needs related to disciplinary actions. These guarded funds are designated and reserved for unanticipated litigation or short falls. In the opinion of the NDBDE, failing to maintain reserves designated for litigation would be fiscally irresponsible.

HB 1523 attempts a "one size fits all" approach in determining funds held by occupational and professional boards. It is short sighted to financially handcuff occupational boards and leave them incapable of managing expenses required for prolonged, expensive legal disciplinary actions. HB 1523 would compromise the ability of the Board to protect the public.

The Board encountered a disciplinary action about 10 years ago, in which it prevailed, but which resulted in substantial legal fees. Unable to settle the complaint by mutual agreement with the licensee, it became necessary to incur costs related to added board hearings, legal expenses related to a hearing by an administrative judge in addition to legal costs related to district court and ND Supreme Court hearings. Two years ago, contentious and simultaneous disciplinary actions from a corporate practice pertaining to three licensees occurred. Fortunately this time, the Board, working through its legal representation, was

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successful in averting a prolonged legal action, instead reaching a settlement agreement with the group. However, had this not been the case, treble legal costs would likely have been incurred which would have potentially diminish accumulated reserves significantly. It is for this reason the Board's financial policy is to maintain sufficient reserves to manage unforeseen expenses related to disciplinary actions. Boards should be permitted to cover operating expenses while maintaining reserves that protect the board from unintended consequences of HB 1523.

There is no doubt that other boards have had similar events. Similar legislation has happened throughout the country, the impetus for similar legislation based on budgetary shortfalls. The purpose of this bill - to sweep unobligated and undesignated balances of board's operating funds into the legacy fund is merely a tax on occupational licensees which hinders if not restricts public boards in their disciplinary decisions and actions. In addition, removing funds held for this purpose has potential to result in the necessity of substantially increase licensing fees to maintain financial solvency of a Board following litigation. Elevation of licensing fees would be counterproductive to the idea of attracting professionals to reside and work in North Dakota.

The importance of licensing boards' role in dealing with complaints and litigation cannot be overstated. This bill will deflect the focus of resolution of any complaint to whether or not Boards have the purse strings to enforce compliance with statutes and jeopardize Boards' ability to impose warranted disciplinary action placing the public at further risk of harm.

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HB 1523 interferes with the regulation of the dental profession by removing the Boards economic preparedness for litigation during disciplinary actions. I urge you to vote no on HB 1523.

Attached to this testimony for your consideration is a proposed amendment.

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HOUSE GOVERNMENT & VETERANS AFFAIRS COMMITTEE  
FRIDAY 8:00 AM, JANUARY 25, 2019  
FORT UNION ROOM, STATE CAPITOL

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1523**

Page 2, line 12, replace "two hundred fifty thousand" with "one million"

Renumber accordingly

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Testimony in Opposition to HB 1523  
House Government and Veterans Affairs

Chairman Kasper and Members of the Committee,

My name is Bonnie Staiger and I represent the ND State Board of Architecture and Landscape Architecture. For the past 22 years, our firm (the Staiger Consulting Group) has served as the Executive Director Team and provided central office functions for this board. I apologize for being unable to testify in person but I have a concurrent hearing.

I am proud to report that this board has always operated modestly and prudently to keep expenses down, licensing fees low, encourage mobility, and avoid any undue or bureaucratic regulation. For the past 2 biennia the board has reduced licensing fees as a result of the influx of reciprocal licenses for out-of-state practitioners during increased opportunities brought by oil activity. We anticipate those numbers will drop as that activity has stabilized.

We oppose the new language proposed in Section 2 (NDCC 54-44-12) because it could put this board in a position of being unable to keep reserves to fund litigation during an enforcement lawsuit.

As a result, we request a Do Not Pass recommendation on HB 1523. Thank you.



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NDSPLS ADMINISTRATIVE OFFICE  
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Bismarck, ND 58507  
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E-mail: [info@ndspls.org](mailto:info@ndspls.org)  
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Date: January 25, 2019

## Chairman Kasper, Members of the Government and Veterans Affairs Committee.

NDSPLS is made up of over 340 members, of which some 122 are Registered Professional Land Surveyors, who live and practice in the State of North Dakota. There are approximately 500 Registered Land Surveyors who are licensed to practice in ND. **We are licensed and regulated by the North Dakota State Board of Registration for Professional Engineers and Professional Land Surveyors.** Our Mission and objective is: to unite all of the Professional Land Surveyors in the State of North Dakota; to elevate the standards of the surveying profession; to establish basic minimum standards and requirements for surveys; to assist in promoting legislative and educational programs to improve the professional status of the Land Surveyor; to work in cooperation with local, county, state, federal and tribal governments in our field of endeavor; to uphold a rigid code of ethics; to strive to improve our relations with our clients and the public by doing our work with precision and integrity; and to maintain a good relationship between Land Surveyors and Engineers.

### **The North Dakota Society of Professional Land Surveyors is OPPOSED to House Bill 1523.**

NDSPLS is very concerned about this bill. Statute 43-19.1-18 states the following with regards to registration fees: "the board shall establish registration fees for professional engineers, land surveyors, engineer interns, and land surveyor interns in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter." Our position is that our registration fees – the fees that we have paid - are intended for the sole purpose of the administration of the profession and the enforcement of compliance with regards to the practice of land surveying and engineering. Furthermore, the proposed cap on the amount of funds that the Board can retain is simply insufficient in the event of litigation. The proposed bill offers no contingency should funds become necessary on account of an enforcement issue. We believe this to be very concerning from the standpoint of public protection.

NDSPLS's registered members have continually paid their registration fees with the understanding that these fees were to be used for the administration of the Board. Furthermore, the Board of Professional Engineers and Professional Land Surveyors has always been managed with the utmost and highest level of fiscal responsibility. The Society completely supports the Board of Registration.

### **Therefore, NDSPLS urges a DO NOT PASS on House Bill 1523.**

Respectfully submitted,

Aaron Hummert, PLS  
Co-Chair of the Legislative Committee  
North Dakota Society of Professional Land Surveyors

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# North Dakota Stockmen's Association

## Testimony to the House Government and Veterans Affairs Committee on HB 1523

Jan. 25, 2019

Good morning, Chairman Kasper and members of the House Government and Veterans Affairs Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association, an 89-year-old beef cattle trade organization representing 3,000 cattle-ranching families in our state.

The Stockmen's Association opposes HB 1523 with concerns about what it might mean for beef checkoff dollars contributed by North Dakota's ranchers and pooled together for the sole purposes of promotion, education and research to support the state's cattle industry. The North Dakota Beef Commission, which administers those funds on behalf of the state's cattle producers, would often have ending fund balances within the trigger point of this bill because of multi-year commitments for major research and other projects, and would be forced to turn over producers' dollars to the Legacy Fund where it would lose its identity and be spent for projects outside its intended mission and outside what federal law dictates.

Should funds collected under a federal order with a specific purpose, like the beef checkoff program, be allowed to be used in a state for any purpose other than those specifically defined in the enabling Federal Act & Order, it would jeopardize the "qualified" status of the state commodity group entrusted with the collection and use of those funds. If a "qualified" state beef commission like North Dakota's was found responsible for this misuse, even if it was because of action of the state legislature, the national organization responsible for the beef checkoff – in beef's case, the Cattlemen's Beef Board – would be required to revoke the qualified status and the full national dollar that the Beef Commission has been collecting since 1986 would be diverted entirely to the Cattlemen's Beef Board. The 50 cents of each national dollar that has been available for programs

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that the Beef Commission determines would instead be added to the Legacy Fund and no longer be available. This would account for half of the Beef Commission's current budget.

Additionally, HB 1523 would also raise a question about jurisdiction over this entire situation, as the federal dollar overseen by the Beef Commission currently must be used in accordance with the Federal Act & Order. While state law outlines the purposes and functions of the Beef Commission, federal law is what dictates everything related to the assessment, collection, use and oversight of the federal dollar the Beef Commission is entrusted with. There is no doubt that the Cattlemen's Beef Board, which answers ultimately to the U.S. Department of Agriculture, would not approve of funds collected from beef producers for the purpose of conducting beef promotion, research and education programs to be used by the State of North Dakota through the Legacy Fund. The legal ramifications of this for beef could be devastating.

These unintended consequences must be considered seriously.

It is also our understanding that the soybean and dairy industries would be similarly affected, as their checkoffs are structured similarly.

North Dakota cattle producers count on the dollars they invest in the checkoff to be used for the intended purpose – to help build beef demand. This bill would divert those dollars for a different purpose, and the industry would suffer serious consequences because of it.

For these reasons, we oppose HB 1523.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1523

Page 1, line 3, replace "section" with "sections 4.1-44-03 and"

Page 1, line 4, after the first "to" insert "funds and"

Page 1, line 4, after "of" insert "agriculture commodity groups,"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 4.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-44-03. Agricultural commodity assessments funds - Investment income allocation - Purposes and uses.**

1. Notwithstanding any other provision of law, the state treasurer shall invest in accordance with section 21-10-07 all available moneys in:
  - a. The potato fund;
  - b. The oilseed fund;
  - c. The dry bean fund;
  - d. The dry pea and lentil fund;
  - e. The barley fund;
  - f. The soybean fund;
  - g. The corn fund;
  - h. The honey fund;
  - i. The turkey fund;
  - j. The milk marketing fund;
  - k. The dairy promotion commission fund;
  - l. The state wheat commission fund;
  - m. The ethanol fund; and
  - n. The North Dakota beef commission fund.
2. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer shall establish rules, in cooperation with the agricultural commodity organizations, to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural

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commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

3. The funds identified in subsection 1 of this section are not subject to the fund balance limitations provided in section 54-44-12 and section 2 of this Act. The governing body or entity that administers each fund shall establish policies regarding the permitted uses of the fund and an appropriate fund reserve balance."

Renumber accordingly

**Testimony in Opposition to House Bill No. 1523**  
**Joe Morrisette, Director**  
**Office of Management and Budget**  
**January 25, 2019**

# 15  
AB 1523  
1-25-19

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Joe Morrisette, Director of the Office of Management and Budget. I am here to offer neutral testimony regarding House Bill No. 1523. The bill would require transfer to the Legacy fund of any operating fund balance of an executive branch agency or institution if the balance exceeds \$250,000 or the average annual expenses of the agency or institution. This bill would also apply to account balances maintained by occupational or professional licensing boards. I have the following concerns regarding how this bill could impact state agencies and institutions, which I have discussed with the bill sponsor.

First, I have concerns with the use of the end of the fiscal year as the measurement point for fund balances. Our budgeting and appropriations process occurs on a biennial basis. Agency spending decisions are often based on the biennial timeline, not the annual timeline referred to in this bill. For example, special fund revenues are often variable and subject to fluctuations based on business activity. Because of this uncertainty, an agency may spend conservatively during the first fiscal year, putting off any large discretionary expenditures from the special fund until the second year when there is a clearer picture of the revenues and expenditures for the biennium. This could result in a large balance as of the end of the first fiscal year that will be spent in the second fiscal year.

Also of concern is the fact that for some agencies revenues are based on a seasonal timeline that does not coincide with the fiscal year cutoff in this bill. Agencies such as the Parks and Recreation Department have revenues and fund balances that would likely be at a high point when the fiscal year fund balance test would be applied.

If the bill referred to an end of biennium rather than end of fiscal year balance, some of these concerns would be addressed.

Second, I have concerns with the fund balance limitation itself for some funds. This could be problematic for OMB and our Central Services Division, as well as other enterprise fund activities in other agencies. These types of enterprise activities operate much like a private business. For example, our Central Duplicating operates entirely on the revenue it generates by providing services to other state agencies. It receives no other revenues and no general fund appropriation. Their fund balance provides a cash

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flow cushion to allow them to pay for ongoing operating expenses and salaries through fluctuations in revenue. However, their fund is also used to accumulate money for equipment replacements. The timing of an equipment replacement could result in a fund balance that temporarily exceeds the three-year average referred to in this bill as moneys are accumulated prior to a major purchase that did not take place in the prior three years.

Finally, I want to point out that in the case of state agencies, all special funds are subject to review through the existing budget and appropriation process. For every agency with a fund from which they receive an appropriation, the fund is reviewed and analyzed through the executive and legislative budget process. As part of the executive budget documents, special fund statements are provided to legislative appropriations committees for all special funds from which appropriations are made. The statement shows estimated revenues and expenses for both the current biennium and the upcoming biennium, as well as estimated beginning and ending balances. When balances seem excessive, legislative appropriations are adjusted. For special funds with continuing appropriations, the budget information includes a similar statement that covers four full bienniums.

Mr. Chairman and committee members, this concludes my testimony. I encourage you to consider amendments to House Bill 1523 to address these areas of concern. I would be happy to answer any questions.

#1  
HB 1523  
2-8-19

Introduced by

Representatives B. Koppelman, Delzer, Devlin, Dockter, Kading, Kasper, K. Koppelman,  
Marschall, M. Ruby, Schobinger

Senators O. Larsen, Unruh

1 A BILL for an Act to create and enact a new section to chapter 54-27 of the North Dakota  
2 Century Code, relating to the operating fund balances of state agencies, departments, and  
3 institutions; to amend and reenact ~~section~~sections 4.1-44-03, 4.1-52-11, 4.1-72-07, and  
4 54-44-12 of the North Dakota Century Code, relating to funds and accounts of agriculture  
5 commodity groups, occupational and professional boards, associations, and commissions, and  
6 to provide an effective date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 4.1-44-03 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **4.1-44-03. Agricultural commodity assessments funds - Investment income**  
11 **allocation - Purposes and uses.**

- 12 1. Notwithstanding any other provision of law, the state treasurer shall invest in  
13 accordance with section 21-10-07 all available moneys in:
  - 14 a. The potato fund;
  - 15 b. The oilseed fund;
  - 16 c. The dry bean fund;
  - 17 d. The dry pea and lentil fund;
  - 18 e. The barley fund;
  - 19 f. The soybean fund;
  - 20 g. The corn fund;
  - 21 h. The honey fund;
  - 22 i. The turkey fund;
  - 23 j. The milk marketing fund;

- 1 k. The dairy promotion commission fund;
  - 2 l. The state wheat commission fund;
  - 3 m. The ethanol fund; and
  - 4 n. The North Dakota beef commission fund.
- 5 2. The investment of moneys must be made in cooperation with the governing body of
  - 6 the respective agricultural commodity entity. The state treasurer shall establish rules,
  - 7 in cooperation with the agricultural commodity organizations, to be followed regarding
  - 8 the investment of moneys in each fund. The state treasurer shall credit twenty percent
  - 9 of the investment income derived from each fund to the general fund in the state
  - 10 treasury as payment for accounting, printing, data processing, legal, and other
  - 11 services when provided without cost by the state to the agricultural commodity entity.
  - 12 The state treasurer shall credit eighty percent of the investment income derived from
  - 13 each fund to the respective fund.
  - 14 3. The funds identified in subsection 1 are not subject to the fund balance limitations
  - 15 provided in section 54-44-12 and section 4 of this Act. The governing body or entity
  - 16 that administers each fund shall establish policies regarding the permitted uses of the
  - 17 fund and an appropriate fund reserve balance.

18 **SECTION 2. AMENDMENT.** Section 4.1-52-11 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **4.1-52-11. Seed department fund - Continuing appropriation.**

- 21 1. The seed commissioner shall forward all moneys received under the chapters over
- 22 which the commissioner has authority to the state treasurer for deposit in a special
- 23 fund known as the seed department fund. All moneys in the seed department fund are
- 24 appropriated on a continuing basis to the seed department to carry out its statutory
- 25 and regulatory obligations. The seed department fund is not subject to the fund
- 26 balance limitations provided in section 54-44-12 and section 4 of this Act.
- 27 2. The seed commissioner shall approve all expenditures made pursuant to the chapters
- 28 over which the commissioner has authority and shall document the expenditures at the
- 29 time and in the manner required by the office of management and budget.
- 30 3. The seed commissioner shall provide a report to the house and senate appropriations
- 31 committees of the legislative assembly, at the time and in the manner directed by the

1 chairmen of the committees. The report must contain a summary of the department's  
2 activities during the current biennium and a statement of revenues and expenditures  
3 for the ensuing biennium.

- 4 4. At the direction of the seed commission, the state treasurer shall invest all available  
5 moneys in the seed department fund. The state treasurer shall credit twenty percent of  
6 the investment income to the general fund and the remaining eighty percent of the  
7 investment income to the seed department fund.

8 **SECTION 3. AMENDMENT.** Section 4.1-72-07 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **4.1-72-07. Collection of fees - Continuing appropriation.**

11 The North Dakota stockmen's association shall forward all moneys received under this title  
12 to the state treasurer for deposit in a special fund known as the North Dakota stockmen's  
13 association fund. All moneys in the North Dakota stockmen's association fund, together with all  
14 income earned on the moneys in the fund, are appropriated on a continuing basis to the North  
15 Dakota stockmen's association to carry out its statutory directives. The North Dakota  
16 stockmen's association fund is not subject to the fund balance limitations provided in section  
17 54-44-12 and section 4 of this Act.

18 **SECTION 4.** A new section to chapter 54-27 of the North Dakota Century Code is created  
19 and enacted as follows:

20 **Operating fund balances of state agencies, departments, and institutions -**  
21 **Limitation - Transfer.**

22 If, at the end of any fiscal year biennium, the unobligated and undesignated balance of the  
23 operating fund of an executive branch state agency, department, or institution exceeds the  
24 higher of two hundred fifty thousand dollars or an amount equal to one-half of the  
25 annual biennial expenses of the agency, department, or institution, the director of the office of  
26 management and budget shall transfer the excess amount of funds from the operating fund to  
27 the legacy fund. For purposes of this section, an agency, department, or institution's  
28 annual biennial expenses are the average expenses of the agency, department, or institution for  
29 the threetwo previous fiscal years bienniums as reported in the agency, department, or  
30 institution's audited annual financial statements. Any A fund categorized as an enterprise or  
31 internal service fund, as reported in the most recent state comprehensive annual financial

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1 report, and any balance held in a fund due to ~~statutory or contractual requirements~~the following  
2 is not subject to the limitations provided in this section:

- 3 1. Funds held due to a constitutional or statutory provision;  
4 2. Funds obligated for future projects and expenses; and  
5 3. Funds held due to a contractual requirement or due to pending litigation.

6 **SECTION 5. AMENDMENT.** Section 54-44-12 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-44-12. Deposit and disbursement of funds of occupational and professional**  
9 **boards - Appropriation - Limitation - Transfer.**

10 All occupational and professional boards, associations, and commissions created by law  
11 shall deposit all fees and other moneys received in any bank selected by the majority vote of  
12 the governing body of the board, association, or commission. Checks may be drawn against the  
13 bank account, opened pursuant to this section, for the authorized expenditures of the board,  
14 association, or commission on the signature or signatures of the person or persons authorized  
15 to so act by the governing body. All moneys in accounts opened pursuant to this section are  
16 hereby appropriated for the use of the occupational or professional board, association, or  
17 commission opening the account. If, at the end of any fiscal year, the unobligated and  
18 undesignated balance of an account of an occupational or professional board, association, or  
19 commission exceeds the higher of two hundred fifty thousand dollars or an amount equal to the  
20 annual expenses of the entity, the entity shall ~~transfer the excess amount of funds from the~~  
21 ~~account to the state treasurer for deposit in the legacy fund~~reduce the fees charged by the  
22 entity by fifty percent until the balance of the account is below two hundred fifty thousand dollars  
23 or an amount equal to the annual expenses of the entity. For purposes of this section, an  
24 occupational or professional board, association, or commission's annual expenses are the  
25 average expenses of the board, association, or commission for the three previous fiscal years  
26 as reported in the board, association, or commission's audited annual financial statements. Any  
27 balance held in an account due to ~~statutory or contractual requirements~~the following is not  
28 subject to the limitations provided in this section:

- 29 1. Funds held due to a constitutional or statutory provision;  
30 2. Funds held pursuant to the provisions of an administrative rule adopted under chapter  
31 28-32;

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- 1 3. Funds obligated for future projects and expenses; and
- 2 4. Funds held due to a contractual requirement or due to pending litigation.
- 3 **SECTION 6. EFFECTIVE DATE.** This Act becomes effective August 1, 2021.