

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/07/2019**

Amendment to: SB 2095

- 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>	\$0	\$0	\$0	\$21,502,263	\$0	\$21,502,263
<b>Expenditures</b>	\$0	\$0	\$(20,000)	\$21,855,845	\$(20,000)	\$21,855,845
<b>Appropriations</b>	\$0	\$0	\$0	\$21,855,845	\$0	\$21,855,845

- 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>	\$0	\$6,636,938	\$6,636,938
<b>Cities</b>	\$0	\$6,636,938	\$6,636,938
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

- 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).*

SB 2095 provides two fiscal impacts. 1st, by changing the process of expending funds, we save general fund administrative costs by efficiencies estimated at \$20,000. 2nd, the allowable grants language change has an estimated fiscal impact on the SDRF by \$353,582 and federal revenue by \$21.5 million.

- 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.*

By changing the process of expending funds to a reporting requirement rather than approval each quarter we create efficiencies for the agency and provide better service to political subdivisions. There would also be a general fund savings in administrative costs estimated at \$20,000, however, those savings could go up significantly depending on the number of disasters being administered.

The second fiscal impact of this bill is the language change in lines 9 through 14 which allows the agency to utilize the Pre-Disaster Mitigation (PDM) and the Flood Mitigation Assistance (FMA) grant programs through FEMA to their full extent. The fiscal impact would be approximately \$353,582 from the State Disaster Relief Fund (SDRF) for the 25% cost share on the administrative management costs of \$1,060,747. The actual grants, estimated at \$20,441,516, are cost shared by 25% by the political subdivisions receiving the grants.

It is important to note that a study by the National Institute of Building Sciences Multihazard Mitigation Council found that analyzing 23 years of federal mitigation grants, which specifically includes projects funded through the PDM and FMA programs, society will ultimately save \$6 in disaster recovery expenses for every \$1 invested in mitigation projects.

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.*

The federal revenue to our agency is estimated at \$21,502,263. This is comprised of \$20,441,516 in grants to counties and cities and \$1,060,747 in state management costs. The \$20,441,516 is split equally between counties

and cities for purposes of this fiscal note. The grant amounts will be awarded based upon approved projects. This total grant amount to the counties and cities is offset above by \$7,167,640 for the local 25% cost share.

The agency has federal authority of \$9,109,413 for these grants in the 2019-21 budget request. There is no SDRF authority in the 2019-21 biennial budget for PDM or FMA. If this bill is passed, SDRF authority of \$353,582 will need to be added as well as \$12,392,850 in federal authority.

- 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.*

As explained above, \$20,441,516 will be expended in grants to political subdivisions and \$1,060,747 will be for state management costs, mainly salary and some operating costs. Both the grants and state management costs would be paid through line 65 of the NDDES budget, "Disaster Costs".

The staff administering these programs would be our existing emergency specialist FTE's, approximately four. Their normal funding source is FEMA federal funds.

- 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.*

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**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 01/08/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/07/2019**

Bill/Resolution No.: SB 2095

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**Name:** Holly Gaugler

**Agency:** Adjutant General

**Telephone:** 701-333-2079

**Date Prepared:** 01/08/2019

**2019 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2095**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Missouri River Room, State Capitol

SB2095  
1/10/2019  
#30635

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Pam Dever
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### Explanation or reason for introduction of bill/resolution:

A bill relating to the process of expending funds from the disaster relief fund.

### Minutes:

Att #1 – Cody Schulz
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**Chairman Davison:** Call to order. Attendance was taken and all were present. We will open SB2095. Anyone in support of this bill?

**Cody Schulz, Director of Emergency Services and Homeland Security:** (1.45) (see att#1) I support SB2095. This was filed to address two processes in Century Code. The first issue and most important is changing language in Code to allow compliance to Federal law. We need \$355,000 additional to administer \$20.4 Million in Federal FEMA grant funds. (3.36) Secondly, this bill would amend the process by which DES can expend the funds from the State Disaster Relief Fund. Currently it required three steps. (4.29-7.00)

**Chairman Davison:** In adding administration part, the money you receive from the feds, we are just allocating back to us?

**Cody:** Yes; when we receive they allow some moneys, but there is a cost share to that. 75% is federal and 25% by state for administration cost for staff to administer grants.

**Chairman Davison:** Can the 25% be in kind?

**Cody:** It cannot. Dollar match on the administer side. (8.07)

**Chairman Davison:** You are getting 1.7% of 75% of the 3 funds to administrate?

**Cody:** Yes, that is how math breaks down. Up to 10% of the total grants that we get and then we cost share 25% of that 10%. The feds would allow 2.5% but we are doing things more efficiently than other states.

**Chairman Davison:** That is why we added expenses and administration. Why did you add administration?

**Cody:** That is why we added, Yes. This is new grant funding and not associated with presidentially declared disaster. We will need that authority.

**Sen. Erin Oban:** You mentioned language justifying removing going in front of the Emergency Commission and Budget section.

**Cody:** From the local perspective, they are receiving the state share of those grant funds up to three months.

**Sen. Erin Oban:** Do you know of anyone who has gone in front of the Emergency Commission or Budget section and not been approved?

**Cody:** No. We have been approved each time. (10.07)

**Sen. Shawn Vedaa:** I see it is a potential number; when do you know what the number will be? This is going to be a grant and you apply for them.

**Cody:** Yes, that is true. It is a yearly grant cycle. Goes on the federal fiscal year. We are just now being awarded our 2018 grants. It is a yearly process.

**Sen. Shawn Vedaa:** Potentially, you are looking at \$2.4 million which is for 2019?

**Cody:** That is the total biennium. 2019-2021.

**Sen. Shawn Vedaa:** What was the grant prior we received?

**Cody:** It is an existing program with a new funding stream from the federal government. We looked at prior years and calculated the percentage that North Dakota received of the total pot. We estimated the future funding year pot and used the same success rate to come up with these estimations.

**Sen. Shawn Vedaa:** If grant money not used can it grow. If all money is used, what do you do?

**Cody:** Do you mean the authority or the federal money coming in?

**Sen. Shawn Vedaa:** Federal money.

**Cody:** Political subdivisions will identify a need and will apply through the state. It then goes before a national panel and a competitive process for the grant money. We have only had who were granted money and the political sub did not use the money. That is one out of maybe 100 grant project. The money was returned. (13.08)

**Chairman Davison:** Can you help me with the math on how we saved \$20,000 by eliminating the budget section?

**Cody:** We calculated the amount of staff time to create the invoicing and process the grant payment to local political subs. We looked at how many payments we make over the

biennium and get a base hourly rate for our staff. We have to make each payments twice. It comes to \$20 K per biennium. (14.20) It is all staff time.

**Sen. Richard Marcellais:** What is the process with the tribal nations on this if they have a disaster on reservations?

**Cody:** This is primarily dealing with Pre-Disaster Mitigation Grant Program. This is a voluntary application. The second portion relates to disaster declarations throughout the state. There was a change in Federal in 2014 or 2015 that gave Tribal nations of option to apply through the state or through their own sovereign powers. We have had both ways done in North Dakota. (15.23)

**Chairman Davison:** Your reasoning for eliminating going before Emergency Commission and Budget section, is top save \$20,000. You can get money to political subdivisions faster.

**Cody:** Correct. It is a fiscal issue more for the smaller areas. Fargo, Bismarck, etc. can cash flow easier.

**Chairman Davison:** Any more in support? Any against this bill? Hearing none we are closed.

Adjourned. (17.52)



# 2019 SENATE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

SB2095  
1/17/2019  
# 30947

- ☐ Subcommittee  
☐ Conference Committee

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

Relating to the process of expending funds from the disaster relief fund.

### Minutes:

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**Chairman Davison:** Let's look at SB2095. We heard this last week. I was concerned with any time that someone asks to change things going past the budget or emergency commission for approval of spending dollars; throws a red flag in the process. (.37) We have that process set up for a reason. This deals with money that is legislative appropriated already. I visited with some senators, they said we have already funded this, then we do not have to go through budget or emergency commission to come back a second time to ask for dollars. (1.4) I wanted to clarify in my mind. Any discussion?

**Sen. Jay Elkin:** Are these funds federal or state appropriated?

**Chairman Davison:** They are state appropriated. Gave an example in university system. (2.2-3.10)

**Sen. Jay Elkin:** I understood these were federally appropriated through FEMA. I could we wrong when I visited with Cody Schulz.

**Sen. Erin Oban:** There is a 75%, 25% cost share between federal and state dollars, when I looked in my notes. (3.45)

**Chairman Davison:** What are the committee wishes?

**Vice Chair Meyer:** I move a DO PASS for SB2095.     **Sen. Shawn Vedaa:** I second.

**Chairman Davison:** Any discussion? Call the roll: **YES 7 NO 0 -0- absent**, bill passed  
**Sen. Jay Elkin will carry the bill.**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

SB2095  
1/18/2019  
# 31031

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Pam Dever

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

Relating to the process of expending funds from the disaster relief fund.

### Minutes:

**Chairman Davison:** Let's look at SB2095. We kicked that out yesterday. This one needed to go to Appropriations.

**Sen. Kristin Roers:** I move to reconsider SB2095.      **Sen. Jay Elkin:** I second.

**Chairman Davison:** We will do a **VOICE VOTE.**      **Voice vote passed.**

**Sen. Kristin Roers:** I move a DO PASS and REREFER TO APPROPRIATIONS.

**Vice Chair Meyer:** I second.

**Chairman Davison:** Clerk take the roll. YES 7   NO 0   -0- absent   PASSED and **rerefer**  
**Sen. Jay Elkin will carry.**

Date: 1/12/19  
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2095

Senate 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 Sen. Meyer Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Davison	/		Senator Marcellais	/	
Vice Chairman Meyer	/		Senator Oban	/	
Senator Elkin	/				
Senator Roers	/				
Senator Vedaa	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Elkin

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

4.8/19

0.53 2095

☐ Subcommittee

Recommendation: ☐ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☒ Reconsider    ☐

Sen. Boers

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No

passer

passer

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

Date: 1/18/19  
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2095

Senate 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 Sen. Roers Seconded By Sen. Meyer

Senators	Yes	No	Senators	Yes	No
Chairman Davison	/		Senator Marcellais	/	
Vice Chairman Meyer	/		Senator Oban	/	
Senator Elkin	/				
Senator Roers	/				
Senator Vedaa	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Elkin

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

**REPORT OF STANDING COMMITTEE**

**SB 2095: Government and Veterans Affairs Committee (Sen. Davison, Chairman)**  
recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2095 was rereferred to the  
**Appropriations Committee**.

**2019 SENATE APPROPRIATIONS**

**SB 2095**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Harvest Room, State Capitol

SB 2095  
1/25/2019  
JOB 31474

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature
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### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 37-17.1-27 of the North Dakota Century Code, relating to the process of expending funds from the disaster relief fund.

### Minutes:

- |  |
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| <ol style="list-style-type: none"><li>1. Testimony of Cody Schulz</li><li>2. Testimony of Mary Senger</li><li>3. Testimony of Amanda Schooling</li></ol> |
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**Chairman Holmberg:** called the Committee to order on SB 2095. All committee members were present. Levi Kinnischtzke, Legislative Council and Becky Deichert, OMB were also present.

**Cody Schulz, Deputy Director, Department of Emergency Services (DES) and Director, Division of Homeland Security** testified in favor of SB 2095 and provided Attachment # 1, stating that this bill was filed to address two processes in NDCC 37-17.1-27. #1. Changing the language in NDCC to align with federal law and grant programs. #2. Changes the process by which DES can expend funds from the state disaster relief fund (DRF). On behalf of the DES I ask that you concur with your Government and Veterans Affairs Committee and recommend a Do Pass for SB 2095.

**(5.26) Chairman Holmberg:** There is a section in SB 2055, that deals in the same general family, we have a subcommittee that will be working on that bill. That subcommittee is: Senator Hogue, Chair.; Senator Holmberg, Senator Robinson.

**Senator Hogue:** Are you aware how a couple of other states that have a biennium basis where the legislature doesn't meet every year, are you aware of how they handle these types of funds?

**Cody Schulz:** (6.35) I'm not aware of that in all cases. I do know some of my counterparts in other states have generally a biennial appropriation by which they're authorized to spend for disasters that have happened on or before their legislative sessions. Most of them have some sort of process similar to what we do.



**(7:20) Mary Senger, Emergency Manager for Burleigh County and Emmons County:** testified in favor of SB 2095 and provided Attachment # 2 which states disasters that have occurred in both Emmons and Burleigh Counties and the need for disaster relief funds for these areas. She am supporting a Do Pass on SB 2095.

**(9:40) Amanda Schooling, Director of Ward County Emergency Management:** testified in favor of SB 2095 and provided Attachment # 3 which states disasters that have occurred in Ward County and the need for disaster relief funds for her county. I ask that you concur with your Government and Veterans Affairs Committee and recommend a Do Pass for SB 2095.

**Chairman Holmberg:** Do you have specific examples of how Ward County was impacted by current law regarding the repayment of debt that you occurred?

**Amanda Schooling:** The biggest examples is our department actually works with all of our 57 townships to repair roads and stuff like that. In 2011, we had more roads under water than we didn't. It would take law enforcement 45 minutes to find access to a 911 call because all of our roads were under water. So for townships to spend more than \$20,000 is more than most of their budgets and most of their bills were in the hundreds of thousands so they would have to get a loan just again because of the reimbursement process so they would have to wait months and months in order to get this and owing more interest every money just to be able to pay for this. **(12.02)**

**Chairman Holmberg:** Does anyone else wish to testify? There was no one. The subcommittee is: Senator Hogue, Chair., Senator Holmberg and Senator Robinson.

**Senator Hogue:** I think it makes good sense to look at these two bills together with the same subcommittee.

**Chairman Holmberg:** closed the hearing on SB 2095.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Harvest Room, State Capitol

**SB 2095 & SB 2055**  
2/11/2019  
Job # 32528 & 32534

☒ Subcommittee  
☐ Conference Committee

Committee Clerk: Rose Laning
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### Explanation or reason for introduction of bill/resolution:

Relating to agency requests for budget section approval (SB 2055).

Relating to the process of expending funds from the disaster relief fund (SB 2095).

### Minutes:

No Attachments
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**(This bill having to do with agency requests is being heard at the same time as SB 2095 which involves the disaster relief fund. Both are being discussed together.)**

Legislative Council: Allen Knudson  
OMB: Becky Deichert

**Senator Hogue** called the sub-committee to order on SB 2055. **Senators Holmberg** and **Senator Robinson** were also present.

**Senator Hogue** said he is hearing the two bills at the same time because there is a relationship between them because they relate to some interim spending decisions that are made by various entities including the budget section and the emergency commission. He asked John Bjornson to come and explain the bill because he is involved in the budget section.

### **SB 2055** (Job # 32528)

#### **John Bjornson, Director, Legislative Council:**

I'm here in a neutral position but here at the request of the chairman to address some of the provisions of the bill.

This relates back to the veto lawsuit that we experienced at the end of the last legislative session. We were asked to prepare a bill that would address the court's decision. The court's decision was a mixed decision and with respect to the five vetoes that were challenged, the Legislative Assembly prevailed on four of the five. Then there was a separate issue of the authority of the budget section to approve transfer of funds with respect to the Water Commission and to also approve their expenditure of certain funds with respect to the Land Department and a computer project. The court came up with a split decision. Two of the justices indicated that the budget section approval authority granted in those two bills

amounted to a violation of a separation of powers doctrine. The chief justice dissented and said that it was not a violation of separation of powers and further indicated that he was not convinced the delegation to the budget section, if proper standards were in place, would violate the non-delegation of legislative authority doctrine. Where uninvited authority is the unlawful delegation of legislative powers, the chief justice was unwilling to conclude that it also violates the principals of separation of powers. And then the other two justices also weighed in and said the court shouldn't have even addressed the issue of separation of powers. They addressed it on a delegation issue which is essentially where the chief justice was so there were not four of the five justices that are required to declare an act unconstitutional. There were not four of the five in concurrence that this was an unconstitutional provision. Those were unconstitutional provisions with the respect to the separation of powers. So we drafted a bill for the member who is no longer here that would have established, by statute, the budget section which currently the budget section does not have a formal provision in the code. There are several references to it and as you see in the bill, there are many sections that reference the budget section but there is no formal creation of the budget section. We began by setting up the budget section and that is section 15 of the bill. We leave the membership as it is established now and then we set forth some duties of the budget section which basically is in place to provide flexibility in the management of state funds between regular sessions of the legislative assembly and to minimize the need for any expense of special sessions. It goes on to provide a list of eight factors that would be considered by the budget section when reviewing state agency requests. That goes to what the chief justice indicated – if there were standards in place. There were bills that were challenged, or portions of bills that were challenged; the water commission transfers and the land department computer project, and simply stated “upon approval of the budget section” these actions could occur. There were no standards or guidelines for the budget section to consider when reviewing those requests.

So what this bill does is put those eight standards or factors in place. If the budget section were to take any action to approve or review a request or all the requests that are in the other sections of the bill, they would have to look at those eight factors. The factor such as, does this comply with legislative intent. They are all listed in section 15. This, we believe, would be consistent with what the chief justice had in mind when he said that if standards were in place, he believes that it wouldn't have been a delegation issue. It's important to distinguish between a delegation issue which can be fixed with standards and a separation of powers issue. In some instances, we need to be careful that the legislative assembly doesn't go too far in exercising authority that would be executive in nature. We try to inform you if we see something that goes across that line. But with these statutory sections that are in place, there are reviews or approval of actions that follow in those standards we believe would comply with what the chief justice had in mind. That is the intent of the bill – to codify what the chief justice indicated would be an appropriate way for the budget section to exercise its authority.

**Senator Hogue:** The state supreme court made a ruling, but we know it takes four out of the five justices to invalidate as unconstitutional legislative actions. So that's sort of the basis for the counsels continued belief that we can do something short of amending the constitution that is within our legislative authority to continue to delegate some things to the budget section.

**John Bjornson:** That is correct. As long as those functions that you delegate are legislative functions and not executive functions.

**Senator Hogue:** So the bill actually formalizes the appointment of the budget section, something we had apparently been doing informally, but in section 15 which is the guidelines that you referenced in response to Chief Justice VandeWalle's dissent, why wouldn't we say "and also if the budget section action is within the appropriation that the full legislature made". That criteria stood out to me, as being critical.

**John Bjornson:** That certainly wouldn't hurt. I guess it was our assumption that if it's already in statute or if it's something in a bill that both houses passed, it would be a delegation from the full legislative assembly, but I certainly wouldn't discourage you from adding additional criteria. We somewhat based this on the legislative rules committee and their authority, but that would certainly be an appropriate amendment.

**Senator Holmberg:** One of the items that comes up from time to time is the budget section, if it's a large amount, or emergency commission being able to tell an agency that they can switch money between their various line items, but the budget section doesn't have the ability to increase an appropriation that the legislature has passed. The budget section does approve some monies that come in from outside sources. I don't think it hurts to put it there, but I don't think the budget section should be able to increase an appropriation of the legislature.

**John Bjornson:** We were somewhat baffled by two justices saying the emergency commission would be a more appropriate body to make these decisions than the budget section. That's an even smaller group of people making that decision.

**Senator Robinson:** I like the idea of legitimizing or the formality of establishing the budget section. We never increase budgets but by formalizing the existence of the budget section, perhaps there should be some language that would speak to the ability of the budget section to accept these grants that come in between sessions, during the interim – just to clarify the role and responsibility of the budget section so we have it in black and white.

**John Bjornson:** The idea of the budget section, at least in this bill, historically has been to grant some degree of flexibility to the executive branch of government because you meet once every two years. You also give many agencies a significant amount of flexibility through continuing appropriation authority and the ability to accept funds. For example, historically in the Governor's office budget, you give the governor broad authority to accept gifts, donations, federal monies and expend those funds with very little or no oversight. Should there be more oversight over that oversight of actually accepting those federal funds or other funds – am I correct?

**Senator Robinson:** Yes, I would agree with that but the very nature of the budget section allowing them to do that provides an opportunity for the legislature to review and critique what they did do with those dollars even though it might be months later when they report back at the next session. Maybe we need to tighten up the requirements and expectations of the legislative assembly.

**John Bjornson:** Now that you're starting to review some of the agency budgets, some of the staff have indicated that water commission would be granted flexibility subject to budget section review. When we had that discussion, there was a question of whether we can do

this. We are hoping that if this bill would pass, it would go one step in legitimizing that again. One of the things that occurred to us was if that authority was vetoed again post session, or if there were some judicial determination again that certain budget section review isn't appropriate, at some point you may want to consider if you want to grant that flexibility. They say they want flexibility, but we don't want any oversight. Maybe the time has come to include in this bill or somewhere else, that if due to executive or judicial action the authority of the budget section to review these decisions or these approved transfer of funds is eliminated, those provisions in other bills are repealed. It would be a contingent repeal on another portion of another bill to take away that flexibility. Sort of a counter move.

**Senator Hogue:** We just voted to give the governor continuing appropriation authority for dollars that come into his agency. We also voted not to have annual sessions. In light of those two votes, this SB 2055 is a good compromise. It's not what a fiercely sovereign executive agency would want, but it adjusts for the realities that we have; we're not going to meet annually. Sometimes we want to give that continuing appropriation authority and other times we want to forward look. I think SB 2055 represents good policy and is a reasonable reaction to the supreme court decision and to the vetoes.

**Senator Robinson:** Would you suggest we need any addition or refinement to the language or do you think the way the bill is drafted is sufficient?

**Senator Hogue:** I think it's sufficient. We may tweak the criteria as time goes by, but I think there will always be this tension between continuing appropriations that we give on an ad hoc basis and budget committee oversight. I think that will continue.

#### **SB 2095** (Job # 32534)

**Senator Hogue:** (Talking about the emergency commission) He asked John Bjornson for comments.

**Allen Knudson, Legislative Council:** This same section is being amended in SB 2055 as well. If you look at section 6 of SB 2055, under current law, the legislature appropriates the money to the adjutant general from the state disaster fund. Before they can spend it, they need to get emergency commission and budget section approval. That's been the process up until now. Once the legislature does make an appropriation, that it can hold or kind of keep strings attached to it, so the way 2055 amends it is to simply say that the adjutant general report to the budget section before it makes the expenditure on what the expenditures are going to be. In SB 2095, there expanding the use of the fund and then they report after they make the expenditures. That's the difference between the two sections.

**Senator Holmberg:** What does the language mean when you say 'they report'? It doesn't say they get approval; they just have to report because what you're saying is that the court was clear that the budget section should not be overruling the legislature which one could argue happened during the last interim.

**Cody Schulz, Deputy Director, Department of Emergency Services (DES) and Director, Division of Homeland Security:**

SB 2095 was an agency bill that we put forward to solve two problems. The one half was addressed in 2055 regarding process on the emergency commission budget section. The other piece, lines 9,10 and 11 specifically relate to aligning some language in Century Code with changes in federal law. In 2018, there was some changes to the Disaster Recovery Reform Act which amended the Stafford Act as it relates to which types of grants we do state cost shares with. I would respectfully request that if we do make any changes regarding lines 12,13 and 14, that we'd look at those other changes in a separate light. I'd be glad to answer any questions on either of the two issues that we're trying to address.

**Senator Hogue:** Lines 9-10 are addressing a separate policy concern than lines 11 and 14?

**Cody Schulz:** That is correct.

**Senator Holmberg:** If we utilize the language in 2055 to resolve the one issue, if we follow your suggestion, we're going to have to amend one of the bills. So do we amend this language in 2095 into 2055 and just have one bill? Or utilizing that section, we'd have two separate bills? We can do either one.

**Senator Hogue:** Yes, we have to decide whether we're comfortable with the reporting versus reporting after they made the expenditure.

**Cody Schulz:** In an administrative perspective, the reporting is something we're absolutely willing to do in any form or fashion. The concern I would have in getting the approval or the report before the expenditure, is it could, depending on how the language in 2055, I would ask for some clarity in what "before" meant. How would we administratively accomplish that? Would we do monthly reports, quarterly reports? By which, if we are submitting it before making those expenditures, there may be a delay in getting the money out to the local political subs.

**Senator Holmberg:** One of the issues that has constantly come up in this area is a contractor does work – for some disaster, or whatever, the bill will be paid, but if we have to wait until the budget section approves, the contractor is on the hook for two, three, four months waiting to get paid even though the legislature has appropriated the money for that very purpose.

**Senator Robinson:** I can recall instances in the past few years where we've been in this situation. The reporting after the work is all done? Does it take some of the meaning out of the reporting? It's almost a rubber stamp. Would some legislators have a problem?

**Senator Holmberg:** But that is what happens in a lot of situations in the state budgeting. You pay the bills and there's either an audit or a report to the legislature.

**Senator Robinson:** Those who are concerned about that issue is that the only course the legislature would have is to do something the next time around.

**Cody Schulz:** Given some discussion with our legal counsel and looking at the language of 2055, the question came up again, we are talking about appropriated funds that were previously appropriated. We did not have an answer that if we are submitting these to the

appropriation committees, do they have the authority to renege on those funds within the current session or is it simply a recording function as its written right now. Simply, the before the fact reporting versus an after the fact reporting.

**Senator Robinson:** I was disappointed in the actions this past year when we caused your agency to jump through and delay. There are some legislators who are sensitive to these issues.

**Senator Hogue:** 2055 contains a reporting – before you expend, you report. There is no ability for the budget section to delay that. It's just a reporting requirement as we just passed in 2055. Are we OK with that?

**Senator Holmberg:** Notification doesn't mean then under that interpretation of what's written there. It doesn't mean that you have to wait a week before the budget section meets. You have the bill that is going to be audited anyway that someone has performed a function, the state owes them the money and you notify the budget section or however that is done through the chairman of the budget section, etc. and then you go ahead and expend the money.

**Senator Hogue:** It sounds like we're still comfortable with what Mr. Knudsen has pointed out to us. You notify in advance but no withholding of any spending authority.

**Senator Robinson:** Go with two bills or everything into one?

**Cody Schulz:** I need lines 9, 10, and 11.

**John Bjornson:** Just put it in the similar language in both the reporting into 2095 so there isn't a conflict between 2055 and 2095 with respect to the budget section and the reporting function. That way it's not left to the code reviser to try and figure out how to resolve that conflict. So if that language was the same and then the other language they need, with respect to the other portion be left as is in 2095, we can reconcile those in codification.

**Senator Hogue:** You're saying to transplant the language in 2055 into 2095?

**John Bjornson:** That is correct.

**(Vote #1)**

**Senator Robinson:** Moved to move the language of 2055 into 2095.

**Senator Holmberg:** Seconded the motion.

**Voice vote consensus.**

**Kelvin Hullet, Bank of North Dakota:** In section 19 of SB 2055, there are two sections of session law that are repealed. In particular, with the BND, is section 10 of chapter 19 of the 2017 session laws. The last legislative session, we made a series of actions with the Western Area Water Supply (WAWS) including consolidating their notes with the BND and also bringing in \$25M general fund loan into that note, so we have about an \$88M note with WAWS. As part of that, we had worked with the legislature to put in place a secondary repayment source, so the first repayment source is the industrial sales and revenues from that. The secondary repayment source, if they happen to run short is the ability to go to the

legislative council and the Industrial Commission and let them know that the WAWS is going to be short and they can direct the State Water Commission to make up the rest of that payment either to the bank or if we ever bond, from the Resources Trust Fund. When section 19 was put in and repealed those session laws, it repealed our secondary repayment source and we would like to bring that repayment source back in.

**Senator Hogue:** How did that get into this bill? It doesn't seem related.

**John Bjornson:** section 9.

**Allen Knudson:** There was another section that the Industrial Commission was to evaluate the WAWS for this interim and come up with a plan to refinance. It's two options. This legislature would deal with that issue again because this was just a section of session law that was taken out.

**Kelvin Hullet:** To clarify – there were various sections in that bill and one was for the Industrial Commission to conduct a study of the WAWS to determine if the assets could be leased or sold. The conclusion was that they could not lease or sell those assets. Based on that there were two pathways in the law of which we took pathway B which basically says that there is not going to be any lease or sale of the assets and therefore we move forward with longer term financing related to WAWS. That section did expire. We did not intend for the secondary repayment source to expire as part of that. We anticipated that to be an ongoing obligation of the Water Commission.

**Senator Hogue:** Has this subject been broached with the Water Commission budget?

**Kelvin Hullet:** We've worked very closely with the State Water Commission on this issue and they're very aware of the secondary repayment source in their obligation.

**Senator Robinson:** This issue hasn't been discussed in the SB 2020 subcommittee with the Water Commission this session.

**Kelvin Hullet:** This was just a continuing obligation. We've discussed it with staff.

**Senator Hogue:** There are all kinds of things in this bill that are jumping out. I think this needs some study. This is not what I'd characterize within this subcommittee's realm. I see this as being in the Water Commission's authority.

**Allen Knudson:** That was one of the reasons we put it in was because it was in session laws and it depended on the Industrial Commission review. So that's the reason we took it out feeling that this session could decide whether that should continue potentially in the Water Commission bill.

**Senator Holmberg:** That's a bill has a lot of issues too.

**Senator Hogue:** We've been focused on budget section authority, interim authority and this is relating to the security of the BND in the event the initial collateral fails or defaults. I think this should go to the Water Commission.



**Senator Holmberg:** And then amend this to take out section 19 and then when the Industrial Commission budget comes over, if it's still something that has not had some kind of resolution, I'm sure you will be back to remind us.

**(Vote #2)**

**Senator Holmberg:** moved to approve SB 2095 as amended.

**Senator Robinson:** Seconded the motion.

**A Roll Call Vote was taken: Yes: 3 No: 0 Absent: 0.**  
**Motion carried.**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Harvest Room, State Capitol

SB 2095  
2/13/2019  
JOB # 32703

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Alice Delzer
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### Explanation or reason for introduction of bill/resolution:

A BILL for an Act RE: expending funds from the disaster relief fund (Do Pass as Amended)

### Minutes:

1. Proposed Amendment # 19.8059.01001
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**Chairman Holmberg:** opened the hearing on SB 2095. All committee members were present. Chris Kadrmas, Legislative Council and Stephanie Gullickson, OMB.

**Senator Hogue:** Stated this bill is a companion bill to SB 2055. he submitted Attachment # 1. Proposed Amendment # 19.8059.01001 and explained the amendment.

**Senator Hogue:** Moved the amendment. 2<sup>nd</sup> by Senator Robinson. A voice vote was done, it carried.

**Senator Hogue:** Moved a Do Pass as Amended. 2<sup>nd</sup> by Senator Robinson.

**Chairman Holmberg:** Call the roll on a Moved a Do Pass as Amended on SB 2095.

**A Roll Call vote was taken. Yea: 14; Nay: 0; Absent: 0. Senator Hogue will carry the bill.**

The hearing was closed on SB 2095.

8/18/19

PROPOSED AMENDMENTS TO SENATE BILL NO. 2095

Page 1, line 12, remove "Agencies appropriated funding from the state disaster relief"

Page 1, remove line 13

Page 1, line 14, remove "the appropriation."

Page 1, after line 14, insert "Before any expenditure is made from the fund, the agency authorized to make the expenditure shall provide information on the purpose and payee of the expenditure to the appropriations committees of the house of representatives and senate or, if the legislative assembly is not in session, to the budget section."

Renumber accordingly

Date: 2-11-19Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**  
BILL/RESOLUTION NO. 2095

Senate Appropriations 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    ☒ move language of 2055 into 2095

Motion Made By Robinson Seconded By Holmberg

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

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

Absent \_\_\_\_\_

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

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

*Voice Vote  
Carried*

Date: 2-11-2019Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2095**

Senate Appropriations

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

Holmberg

Seconded By

Robinson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	<input checked="" type="checkbox"/>		Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson	<input checked="" type="checkbox"/>	
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue	<input checked="" type="checkbox"/>				

Total (Yes) 3 No 0Absent 0

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

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

Date: 2-13-2019Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2095**

Senate Appropriations

Committee

☐ SubcommitteeAmendment LC# or Description: 19.8059.01001

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

Hogue

Seconded By

Robinson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

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

Absent \_\_\_\_\_

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

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

*Voice Vote  
Carried*

Date: 2-13-2019Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2095**

Senate Appropriations

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 Hogue Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0Absent 0Floor Assignment Hogue

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

**REPORT OF STANDING COMMITTEE**

**SB 2095: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2095 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "Agencies appropriated funding from the state disaster relief"

Page 1, remove line 13

Page 1, line 14, remove "the appropriation."

Page 1, after line 14, insert "Before any expenditure is made from the fund, the agency authorized to make the expenditure shall provide information on the purpose and payee of the expenditure to the appropriations committees of the house of representatives and senate or, if the legislative assembly is not in session, to the budget section."

Renumber accordingly



**2019 HOUSE APPROPRIATIONS**

**SB 2095**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Roughrider Room, State Capitol

SB 2095  
3/4/2019  
33142

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Risa Bergquist
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### Explanation or reason for introduction of bill/resolution:

**A BILL for an Act to amend and reenact section 37-17.1-27 of the North Dakota Century Code, relating to the process of expending funds from the disaster relief fund.**

### Minutes:

Attachment 1
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**Chairman Delzer:** Called the meeting to order and the title was read.

**Cody Schulz, Deputy Director, Department of Emergency Services: (see attachment 1)** I am testifying in support of SB 2095, much of this bill is covered in SB 2055, one additional change that is in this bill is lines 9-11 in the bill 2095. What we are hoping to address is some changes in century code to align with the new federal law in grant programs. In 2018 congress passed and the president signed a disaster recovery reform act, that new law made some significant changes to some FEMA grant funding provided to states. Some of the mitigation grant programs, up to 6% of the national total, is now being cut out and being made available through a nationally competitive process, Predisaster Mitigation Grant program. This bill amends century code to adjust the requirement, it be changed to read "*federal emergency management agency disaster response recovery and mitigation grants*". That would align with the changes in the federal law and it would cover both the presidential declared disasters and this new cut out for hazard mitigation grants.

**2:10 Chairman Delzer:** Even without this you could still come in and ask for emergency commission authority to borrow?

**Mr. Schulz:** It is my understanding we would have that authority. That grant program will be set up on a yearly basis.

**Chairman Delzer:** What you are asking for in the budget is the estimated amount of what these grants are going to be?

**Mr. Schulz:** There's currently a competitive program, how we calculated that is we used our current success rate as a % on the total national pot and applied that to what we believe the nation pot of money is going to be in the upcoming biennium.

**Chairman Delzer:** How many of these do we have to worry about FEMA approving and then coming back and disapproving them?

**Mr. Schulz:** We are doing whatever we can to make sure that we stay in compliance so that we don't have to worry about that happening.

**Chairman Delzer:** What's the history of who covers those if that happens?

**Mr. Schulz:** The local political sub division would cover the refund of those in nearly all cases if it was something that they were not compliant with.

**Chairman Delzer:** In your budget bill you are requesting 3 million and you are also requesting carryover of what you haven't spent of the 8 million?

**Mr. Schulz:** That is correct, the carryover is because of the timing of these projects and when they are going to be completed, the 3 million is for future payments of disaster relief fund money as state match and the administration.

**Chairman Delzer:** I personally like when we know what the money is being used for before we put that money out.

**Mr. Schulz:** I believe we would have to give you an itemized accounting of even payment we paid, even appropriated funds.

**Chairman Delzer:** It would be after the fact and after there is anything we can do about it.

**Mr. Schulz:** We certainly could show our estimates as it relates to the grants and the type of grant.

**Chairman Delzer:** If this bill was to not be sent forward, you would want the line of the federal emergency management to be added into 2055?

**Mr. Schulz:** Yes, we would ask for that so it would cover our ability to apply and administer the new grant program.

**Chairman Delzer:** Further questions? Seeing none. Further testimony for 2095 and opposition? Seeing none we will close the hearing for 2095.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Roughrider Room, State Capitol

SB 2095  
3/4/2019  
33153

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Risa Bergquist
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### Explanation or reason for introduction of bill/resolution:

**A BILL for an Act to amend and reenact section 37-17.1-27 of the North Dakota Century Code, relating to the process of expending funds from the disaster relief fund.**

### Minutes:

Attachment 1-2
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**Chairman Delzer:** Reopened the hearing for SB 2095

**1:40-2:20 Justin Messner, Disaster Recovery Chief, ND Department of services:** I brought in testimony for Jerry Bergquist who wasn't able to be here due to weather conditions. **(see attachment 1)**

**2:30-5:00Amanda Schooling, Ward county Emergency Management: (see attachment 2)** I am here to testify in favor of SB 2095, in 2011 Minot suffered the worst flood in our history, the hazard mitigation funds we have been able to bring in millions to help support our community to help support our community for flooding. Just federal funds alone, not including our local share, was over 22.2 million dollars as locals we put in 25%.

**Chairman Delzer:** These are beforehand grants and you have to come up with 25%, how is the process going to work when they come in and approve or disapprove what you've done after you've received the grant? Do you feel there will be enough guideline so you won't be using the grants incorrectly and have to pay them back?

**Mrs. Schooling:** I think so, as long as the cost benefit is there, meaning every dollar we spend we save a dollar for future mitigation, there was one project that they felt wasn't good enough or had enough supporting documentation, so we cut that off right away.

**Chairman Delzer:** If for some reason they come back and denied one that are you prepared to pay for that yourself?

**Mrs. Schooling:** We have to be if we apply for the grant, so we are aware of that before we request the money.

**6:45 Representative Sanford:** How detailed is the audit process and how long does it typically take to get it completed?

**Mrs. Schooling:** The audit process isn't long at all it's the application process that takes the longest. The two township ones, the smaller amounts took me about 3 years to apply for. We know before they reward the grant if everything is in line.

**Representative Sanford:** How long after the process is complete does it take before they audit?

**Mrs. Schooling:** Usually 6 weeks to a few months.

**Mr. Messner:** Record for these grants is 3 years, if they come back after 3 years' statute limitations is passed except for fraudulent activities.

**Chairman Delzer:** What would be considered fraudulent?

**Mr. Messner:** If a county did not go through the proper process, they didn't go out and get open bids, they just went out and hired the first contracted that they wanted, in those instances when they were audited it was considered fraudulent because they had stated that they had.

**Chairman Delzer:** How is this effected on the mitigation?

**Mr. Messner:** For the environmental, there's two phases; we have to go through an entire scoping process before we can get a project funded.

**Chairman Delzer:** What about the rocks? They used field rocks and they said they weren't environmentally acceptable.

**Mr. Messner:** You're talking about Dickey County? That was twofold, first FEMA had come up and we had completed the project based on what was provided to us by the county. Looked like it had been completed correctly, then the agency was contracted by the local home owner who's field the rock had been taken out of. The rock was taken without his knowledge, there had been no contract to the state preservation office, which should be done before any rock is removed. In the end they gone to court and determined that the contractor was at fault. He didn't go through the proper process and he didn't even pay for it so based on that the money for that project was taken back by FEMA.

**Chairman Delzer:** They had paid it and they are asking for it back?

**Mr. Messner:** They had paid everything out and it was still within its 3 years, because of the lawsuit they had to pay it back because they were on the application.

**Chairman Delzer:** Amanda, what about mitigation? Are you aware of mitigation cost on some of these projects?

**Mrs. Schooling:** I have been in charge since 2011 flood, we have had more mitigation projects then I would care to have. We have worked with the environmental as well as the mitigation.

**Chairman Delzer:** What about when a job is done and then years later they come back and say we owe to Ducks Unlimited money.

**Mrs. Schooling:** We have had that, because wet lands, if you go into wet lands you have to purchase wet lands from through an organization that has that. Unfortunately, the only place in North Dakota is Duck Unlimited. The township did go through the proper procedure and purchase the wet lands, unfortunately it's very expensive, more expensive then FEMA would like.

**Chairman Delzer:** This was way after the fact that they received the bill.

**Mrs. Schooling:** Usually FEMA could come in and say this need to be done prior to, I am not sure how else this would happen.

**Chairman Delzer:** Questions by the committee? Hearing nothing else we will close this hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Roughrider Room, State Capitol

SB 2095  
3/14/2019  
33744

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Risa Bergquist

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

**A BILL for an Act to amend and reenact section 37-17.1-27 of the North Dakota Century Code, relating to the process of expending funds from the disaster relief fund.**

### Minutes:

**Chairman Delzer:** SB 2095 is basically in SB 2055 so I think we could recommend a Do Not Pass. It's a bill allows department of emergency services to access some federal money through mitigation grants, recovery and disaster response. It also takes out the emergency commission and the budget section from having to approve what is appropriated in the adjutant general's budget. Anything above that will still have to go through that process.

**1:40 Representative Monson:** I had in my notes that we need to add lines 9-11 to SB 2055?

**Chairman Delzer:** I do have an amendment to do that. I also have a set of amendments to make it so that newly appointed members of the budget section will be able to be part of the budget section hearings in the December meeting.

**Representative Monson: Do Not Pass**

**Representative Meier: Second**

**Chairman Delzer:** Discussion on the motion for a Do Not Pass? If we have problems getting SB 2055 out of committee this may need to be reconsidered.

**A Roll Call vote was taken. Yea: 19 Nay: 0 Absent: 2**

**Motion Carries, Representative Meier will carry the bill.**

**Chairman Delzer:** if that we will close this meeting.

Date: 3/14/2019  
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2095**

House Appropriations 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 Representative Monson Seconded By Representative Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	A				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	A	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 19 No 0

Absent 2

Floor Assignment Representative Meier

**Motion Carries**



**REPORT OF STANDING COMMITTEE**

**SB 2095, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)**  
recommends **DO NOT PASS** (19 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2095 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**SB 2095**

SB 2095  
1/10/19  
Aut #1  
pgs 1

Testimony – SB 2095  
Senate Government and Veterans Affairs Committee  
January 10, 2019  
By Cody Schulz  
Deputy Director, Department of Emergency Services  
Director, Division of Homeland Security

Chairman Davison and members of the Senate Government and Veterans Affairs Committee, my name is Cody Schulz. I am the Deputy Director of the Department of Emergency Services (DES) and Director of the Homeland Security Division. I offer this testimony in support of SB 2095.

This bill was filed to address two processes in NDCC 37-17.1-27. The first, and most important issue addressed is changing the language in NDCC to align with federal law and grant programs. In 2018, Congress passed and the President signed the Disaster Recovery Reform Act (DRRA). The DRRA made significant changes to Federal Emergency Management Agency (FEMA) grant funding provided to states. Some mitigation funding, up to 6% of the national total, which was previously linked to presidentially declared disasters will now be set aside and made available through a nationally competitive process. This bill amends NDCC to adjust the requirement that DRF funding be associated with "presidential declared disasters," and amends it with "federal emergency management agency disaster response, recovery, and mitigation grants" to align with federal law and process.

The portion of the fiscal note attached to this bill related to grant funding indicates that the agency will need authority from the state disaster relief fund of \$353,582 for the 2019-2021 biennium. This additional authority represents what it will cost to administer a potential additional \$20.4 million in FEMA grant funds to local political subdivisions, and equates to an administrative cost of approximately 1.7%. Also, please note that the federal funds are distributed through a competitive application process. Political subdivisions may voluntarily apply and federal funding available may vary from year to year.

Secondly, this bill changes the process by which DES can expend funds from the state disaster relief fund (DRF). Currently the process requires three steps.

1. Funds are appropriated by the Legislature
2. Expenditures are approved by the Emergency Commission
3. Expenditures are approved by the Budget Section

SB 2095 eliminates the requirement to seek approval from the Emergency Commission and Budget Section for funding that has been previously appropriated, and replaces that requirement with a quarterly reporting requirement. This state funding is the state share for federal disaster recovery and mitigation grants to local political subdivisions and funding to administer the federal grant programs. Because 44 CFR part 206.200 requires the state to distribute the federal funds "as soon as practicable," we are currently making

SB 2095  
1-10-19  
att #1  
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each payment twice. The federal share upon FEMA approval and the state share upon Emergency Commission and Budget Section Approval.

The current process can delay grant payments to local political subdivisions by up to three months and causes increased administrative effort for DES as well as the local political subdivisions receiving funding. We believe that the language in this bill balances the need for efficiency with transparency of expenditures of appropriated funds.

The portion of the fiscal note related to the process section of this bill estimates potential general fund savings of approximately \$20,000 per biennium.

On behalf of the Department of Emergency Services, I recommend SB 2095 receive a Do Pass.

Thank you for your time; I will do my best to answer any questions you may have.

SB 2095  
1-25-19

#1  
p1

Testimony – SB 2095  
Senate Appropriations Committee  
January 25, 2019  
By Cody Schulz  
Deputy Director, Department of Emergency Services  
Director, Division of Homeland Security

Chairman Holmberg and members of the Senate Appropriations Committee, my name is Cody Schulz. I am the Deputy Director of the Department of Emergency Services (DES) and Director of the Homeland Security Division. I offer this testimony in support of SB 2095.

This bill was filed to address two processes in NDCC 37-17.1-27. The first, and most important issue addressed is changing the language in NDCC to align with federal law and grant programs. In 2018, Congress passed and the President signed the Disaster Recovery Reform Act (DRRA). The DRRA made significant changes to Federal Emergency Management Agency (FEMA) grant funding provided to states. Some mitigation funding, up to 6% of the national total, which was previously linked to presidentially declared disasters will now be set aside and made available through a nationally competitive process – the Pre-Disaster Mitigation grant program. This bill amends NDCC to adjust the requirement that DRF funding be associated with “presidentially declared disasters,” and amends it with “federal emergency management agency disaster response, recovery, and mitigation grants” to align with federal law and process.

The portion of the fiscal note attached to this bill related to grant funding indicates that the agency will need authority from the state disaster relief fund of \$353,582 for the 2019-2021 biennium. This additional authority represents what it will cost to administer a potential additional \$20.4 million in FEMA grant funds to local political subdivisions, and equates to an administrative cost of approximately 1.7%. Also, please note that the federal funds are distributed through a competitive application process. Political subdivisions may voluntarily apply and federal funding available may vary from year to year.

Secondly, this bill changes the process by which DES can expend funds from the state disaster relief fund (DRF). Currently the process requires three steps.

1. Funds are appropriated by the Legislature
2. Expenditures are approved by the Emergency Commission
3. Expenditures are approved by the Budget Section

SB 2095 eliminates the requirement to seek approval from the Emergency Commission and Budget Section for funding that has been previously appropriated, and replaces that requirement with a quarterly reporting requirement. This state funding is the state share for federal disaster recovery and mitigation grants to local political subdivisions and funding to administer the federal grant programs. Because 44 CFR part 206.200 requires

SB 2095  
1-25-19  
# 1  
p2

the state to distribute the federal funds "as soon as practicable," we are currently making each payment twice. The federal share upon FEMA approval and the state share upon Emergency Commission and Budget Section Approval.

The current process can delay grant payments to local political subdivisions by up to three months and causes increased administrative effort for DES as well as the local political subdivisions receiving funding. We believe that the language in this bill balances the need for efficiency with transparency of expenditures of appropriated funds.

The portion of the fiscal note related to the process section of this bill estimates potential general fund savings of approximately \$20,000 per biennium.

On behalf of the Department of Emergency Services, I ask that you concur with your Government and Veterans Affairs Committee and recommend a Do Pass for SB 2095.

Thank you for your time; I will do my best to answer any questions you may have.

SB 2095  
1-25-19  
#2  
P1

Testimony – SB 2095  
Senate Appropriations Committee  
January 25, 2019  
By Mary H. Senger  
Emergency Manager, Burleigh County and Emmons County

Chairman Holmberg and members of the Senate Appropriations Committee, my name is Mary Senger. I am the Emergency Manager for Burleigh County and Emmons County and offer this testimony in support of SB 2095.

In 2009, Emmons County suffered the worst disaster in their history. It was a “perfect storm”: record amounts of snowfall, 2” of rain in February, and unseasonably warm temperatures caused rapid snow melt resulting in overland flooding. More than \$1.5 million in damages were documented. Smaller jurisdictions have limited employees to assist with response, recovery and ongoing paperwork while maintaining “regular” duties. Large projects were being closed out 6 years later due to severity and availability of contractors.

Burleigh County experienced our worst flood in 2011 since 1952 and after the construction of the Garrison Dam. May 23rd is the day the flood began. June 2nd the Missouri River was above the 16’ flood stage where it remained until August 18th. Over 700 homes were evacuated, levees were constructed, and it is estimated that Bismarck and Burleigh County utilized more than 10 million sandbags. FEMA reimbursement to the County was over \$8 million.

During my 28 years in Emergency Management, we seem to be experiencing disasters that are more severe with longer durations. A potential three-month delay in dedicated grant payments could impact counties, small and large. Services have been performed and vendors were paid. Employees are already overloaded with the FEMA paperwork to document and track project status, expenses and reimbursements. Reimbursement through the ND Department of Emergency Services is provided by “projects”; not all projects can be completed at the same time due to the nature and/or severity, and, sometimes, the availability of contractors.

I’m supporting a “Do Pass” for SB 2095 and remain available for questions.

SB 2095  
1-25-19

# 3

P 1

Testimony – SB 2095  
Senate Appropriations Committee  
January 25, 2019  
By Amanda Schooling  
Director of Ward County Emergency Management

Chairman Holmberg and members of the Senate Appropriations Committee, my name is Amanda Schooling. I am the Director of Ward County Emergency Management. I offer this testimony in support of SB 2095.

With the number of grants we have received from the Federal Government to recover from the 2011 flood event, we agree that we as a state need to change the language in North Dakota Century Code to align with federal law and grant programs. We need your support to amend the North Dakota Century Code to adjust the requirement that Disaster Recovery Funding be associated with “presidential declared disasters,” and to amend it with “federal emergency management agency disaster response, recovery, and mitigation grants” to align with federal law and process. This would allow more opportunities for all Counties and the State as a whole to apply for additional grant funds to mitigate against future disasters and make our communities more resilient.

The current bill requires approval from the Emergency Commission and Budget Section for funding that forces Townships, City’s, and County’s to wait for funding that has been previously appropriated. This bill would expedite the process to which the North Dakota Department of Emergency Services can provide reimbursements more efficiently and effectively to ensure the local governing body does not have to continuously go into debt waiting for funds that have already been appropriated.

On behalf of Ward County Emergency Management, I ask that you concur with your Government and Veterans Affairs Committee and recommend a Do Pass for SB 2095.

Thank you for your time, and please let me know if you have any questions.

P 1



19.8059.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Hogue  
February 11, 2019

2-13-19 SB 2095  
#1  
P1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2095

Page 1, line 12, remove "Agencies appropriated funding from the state disaster relief"

Page 1, remove line 13

Page 1, line 14, remove "the appropriation."

Page 1, after line 14, insert: "Before any expenditure is made from the fund, the agency authorized to make the expenditure shall provide information on the purpose and payee of the expenditure to the appropriation committees of the house of representatives and senate or to the budget section if the legislative assembly is not in session."

Renumber accordingly

SB 2095  
3/4/19  
AH1

Testimony – SB 2095  
House Appropriations Committee  
March 4, 2019  
By Cody Schulz  
Deputy Director, Department of Emergency Services  
Director, Division of Homeland Security

Chairman Delzer and members of the House Appropriations Committee, my name is Cody Schulz. I am the Deputy Director of the Department of Emergency Services (DES) and Director of the Homeland Security Division. I offer this testimony in support of SB 2095.

This bill addresses two processes in NDCC 37-17.1-27. The first, and most important issue addressed is changing the language in NDCC to align with federal law and grant programs. In 2018, Congress passed and the President signed the Disaster Recovery Reform Act (DRRA). The DRRA made significant changes to Federal Emergency Management Agency (FEMA) grant funding provided to states. Some mitigation funding, up to 6% of the national total, which was previously linked to presidentially declared disasters will now be set aside and made available through a nationally competitive process – the Pre-Disaster Mitigation grant program. This bill amends NDCC to adjust the requirement that DRF funding be associated with “presidentially declared disasters,” and amends it with “federal emergency management agency disaster response, recovery, and mitigation grants” to align with federal law and process.

A few examples of the types of mitigation projects that these grants fund are:

1. Minot Water Treatment Plant Flood Protection Project
  - a. Cost = \$29,667,412
  - b. Project addresses the infiltration of the City of Minot’s Water Treatment Plant following the 2011 flood when the entire service area (over 100,000 residents) was placed on a boil order for 6-8 weeks
  - c. Project consists of the installation of a  $\frac{3}{4}$  mile long concrete floodwall that connects into earthen levees. It will protect the entire service areas water supply to the flood of record plus 5.8’ of freeboard.
2. Fargo Broadway Interceptor Sewer System
  - a. Cost = \$23,255,747
  - b. Consists of the installation of 5 miles of wastewater force main that connects from historic downtown Fargo to the Wastewater Treatment Plant on the northern edge of the City limits. This new force main will collect and carry almost 5 times as much rain/snowmelt to the City’s wastewater treatment plant, preventing overflows into public/private property, and preventing overflows that empty directly into the Red River of the North.

The portion of the fiscal note attached to this bill related to grant funding indicates that the agency will need authority from the state disaster relief fund of \$353,582 for the 2019-

SB 2095

3/4/19

AH 1

2021 biennium. This additional authority represents what it will cost to administer a potential additional \$20.4 million in FEMA grant funds to local political subdivisions, and equates to an administrative cost of approximately 1.7%. Also, please note that the federal funds are distributed through a competitive application process. Political subdivisions may voluntarily apply and federal funding available may vary from year to year.

Secondly, this bill adjusts the process by which DES can expend funds from the state disaster relief fund (DRF). Currently the process requires three steps.

1. Funds are appropriated by the Legislature
2. Expenditures are approved by the Emergency Commission
3. Expenditures are approved by the Budget Section

SB 2095 was amended in the Senate Appropriations Committee to perfectly align with the language in SB 2055. The new language simplifies the process by eliminating the Emergency Commission approval requirement and adjusts the Budget Section approval process to require agencies to submit reports prior to making an expenditure. Specifically, the bill requires that, "Before any expenditure is made from the fund, the agency authorized to make the expenditure shall provide information on the purpose and payee of the expenditure to the appropriations committees of the house of representatives and senate or, if the legislative assembly is not in session, to the budget section."

I believe that this new language will fix the two issues we currently face – delayed payments to political subdivisions and making two payments for each project. The current process can delay grant payments to local political subdivisions by up to three months, waiting for the quarterly Emergency Commission and Budget Section meetings. It also causes increased administrative effort for DES as well as the local political subdivisions receiving funding.

Also, because federal regulations (44 CFR part 206.200) requires the state to distribute the federal funds "as soon as practicable," we are currently making each payment twice. The federal share upon FEMA approval and the state share upon Emergency Commission and Budget Section Approval. We believe that the language in this bill balances the need for efficiency with transparency of expenditures of appropriated funds.

The portion of the fiscal note related to the process section of this bill estimates potential general fund savings of approximately \$20,000 per biennium.

On behalf of the Department of Emergency Services, I ask that you recommend a Do Pass for SB 2095.

Thank you for your time; I will do my best to answer any questions you may have.

SB 2095

3/4/19

AH 1 A

Testimony – SB 2095  
House Appropriations Committee  
March 4, 2019

By Jerry Bergquist, Stutsman County Emergency Manager

Mr. Chairman and members of the Committee, my name is Jerry Bergquist. I am the Emergency Manager for Stutsman County. I offer this testimony in support of SB 2095.

The Federal Emergency Management Agency's (FEMA) Pre-Disaster Mitigation (PDM) and Flood Mitigation Assistance (FMA) programs provide federal funding to eligible counties and cities so they can complete multi-hazard mitigation plans and construct eligible mitigation projects that will prevent damages from hazards such as floods, tornadoes, and severe summer and winter weather. If the ND Department of Emergency Services (NDDDES) cannot afford to administer these programs on behalf of the State, then access to this federal funding is no longer available to local governments and is essentially given away to other states for their use instead. If the state does not have access to these mitigation programs, then whenever a potential project is identified, a local jurisdiction is left with two options, 1) The entire burden of completing that mitigation project will be placed solely on the local tax payers, or 2) The jurisdiction cannot afford to complete the project at all and will continue to be left at risk.

Additionally, NDDDES not only provides local jurisdictions with access to these funds, they help complete the applications and cost effectiveness studies to ensure the project can be funded by FEMA. NDDDES also aids local jurisdictions while these projects are being completed to ensure they are done properly. Most communities would not have the expertise to take on these types of projects without the assistance of an engineering firm, which can be very expensive, especially if there are no ways to get those expenses reimbursed. But, if NDDDES can assist with the process at the local level, it makes these programs even more beneficial for local jurisdictions to engage in.

Some examples of hazard mitigation projects that recently received hazard mitigation funding include:

- Stutsman County, on behalf of the City of Jamestown, received FEMA PDM funding to purchase and install a permanent backup generator for the City's main lift station which provides wastewater services to all 15,427 residents within the city limits of Jamestown. The City has had power outages in the past which have led to backups into public and private properties, and this project will prevent those damages from happening in the future.
- Stutsman County, on behalf of Central Valley Health District received FEMA PDM funding to purchase and install a permanent backup generator at their facility in Jamestown. The Health District provides public health services to Stutsman and Logan Counties, as well as regional emergency preparedness and environmental

SB 2095  
3/4/19 AH/A

health services to an additional 6 counties. These regional services are provided to approximately 53,755 ND residents.

Other completed hazard mitigation funded projects from the past include:

- Building dike structures on the James River in Jamestown to prevent residential flooding.
- Moving the marina building at the Jamestown Dam reservoir to a higher elevation to eliminate building flooding.
- Burying utility company power lines to eliminate downed power lines due to ice storms.
- Constructing a river bank stabilization project to protect the roadways to a Jamestown City Park.

In addition, Stutsman County is currently working with NDDDES to apply for a single permanent generator for the both the Stutsman County Law Enforcement Center (LEC) and Courthouse. These facilities house many city, county and state agencies including, Jamestown Police Department, Stutsman County Sheriff's Office, the 9-1-1 Communications Center, Bureau of Criminal Investigation, District Court, and most Stutsman County offices. The LEC also serves as the offices of the North Dakota State Highway Patrol covering an 18-county area with a population of approximately 250,471.

Because of the total dollar value of these projects, if it were not for the opportunity to apply for federal funds and the ability of NDDDES to assist with the process, many of these projects would most likely never see completion.

It is for that reason that I recommend a "Do Pass" for SB 2095. I can answer any questions you may have.

SB 2095  
3/4/19  
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Testimony – SB 2095  
House Appropriations Committee  
March 4, 2019  
By Amanda Schooling  
Director of Ward County Emergency Management

Chairman Delzer and members of the House Appropriations Committee, my name is Amanda Schooling. I am the Director of Ward County Emergency Management, as well as the President for North Dakota Emergency Management Association. I offer this testimony in support of SB 2095.

With the number of grants we have received from the Federal Government to recover from the 2011 flood event, we agree that we as a state need to change the language in North Dakota Century Code to align with federal law and grant programs. We need your support to amend the North Dakota Century Code to adjust the requirement that Disaster Recovery Funding be associated with “presidential declared disasters,” and to amend it with “federal emergency management agency disaster response, recovery, and mitigation grants” to align with federal law and process. This would allow more opportunities for all Counties and the State as a whole to apply for additional grant funds to mitigate against future disasters and make our communities more resilient.

These grants have been critical for the resilience of our whole community. In the last seven in a half years, we have applied for, and received funds of \$22,200,000 for the Minot flood water treatment plant to protect Minot's water source, \$1,109,111 for home acquisitions to reduce the risk for future flooding for homeowners in Ward County, an additional \$960,164 for home acquisition for the Rice Lake areas within Ward County to reduce the risk for future flooding for homeowners, \$171,151 for the City of Burlington to add nine additional outdoor warning sirens to their growing community, \$18,225 for Sondre Township for a drainage project to ensure the citizens would have access to their homes during flooding events, \$12,667 for Ree Township for a drainage project to ensure the citizens would have access to their homes during flooding events, and we also have grant applications in for the Cities of Berthold, Burlington, Des Lacs, and Kenmare for backup generators for backup power at critical infrastructure, and Kirkelie Township for Bank Stabilization to ensure citizens will remain having access to their homes.

Without these funds, we would never have been able to even consider these projects due to the costs. To ensure we can be more resilient, and reduce the risks of flood effects, we to be able to apply for as much funding as we can.

On behalf of Ward County Emergency Management, I ask that you recommend a Do Pass for SB 2095.

Thank you for your time, and please let me know if you have any questions.