



# North Dakota Legislative Council

Prepared for the Government Services Committee  
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## STUDY OF THE FEASIBILITY AND DESIRABILITY OF CREATING A STATUTORY BUILDING COMMITTEE

The Legislative Management assigned the 2023-24 interim Government Services Committee a study of the feasibility and desirability of creating a statutory committee to assist in the design and oversight of the remodel or construction of state-owned buildings. The Government Services Committee, at its October 4, 2023, meeting, approved a motion to request authority from the Legislative Management Chairman to expand its study of construction and infrastructure procurement to include a review of potential changes to the Office of Management and Budget (OMB) and legislative oversight of construction projects.

### BACKGROUND

#### Capitol Grounds and Facilities History

The original Capitol, constructed in 1884, was destroyed by a fire in December 1930. The current Capitol was completed in 1934 and includes the 294-foot long legislative wing. In 1981, construction on the judicial wing of the Capitol was completed. The judicial wing is 300 feet long and contains 168,400 square feet. The Capitol grounds include 132 acres. The Facility Management Division of OMB is responsible for the overall daily operations and preservation of the State Capitol complex and surrounding 132-acre grounds. In addition, the division is responsible for providing space management services for most state agencies. All new construction, historical preservation and restoration, and extraordinary repairs are prioritized and forecasted for a 10-year period. Other major buildings on the Capitol grounds are:

- **Liberty Memorial Building** - In 1924, construction of the Liberty Memorial Building was completed. The building houses the State Library, is the oldest facility on the Capitol grounds, and underwent a complete renovation in 1982.
- **State Office Building** - In 1951, the Legislative Assembly approved House Bill No. 605 to authorize the Board of Administration to sell the south 15 acres on the west side of US Highway 83 of the Capitol grounds to the Board of Education for the construction of a new building to house Bismarck Junior College. In 1955, construction of the State Office Building was completed. Bismarck Junior College quickly outgrew the building and, in 1959, the Legislative Assembly authorized the purchase of the building.
- **Governor's residence** - In 1960, a new Governor's residence was constructed on the Capitol grounds to replace the original Governor's residence located on Fourth Street. The second Governor's residence was demolished in 2018 after the construction of a third Governor's residence, located on the Capitol grounds just north of where the second Governor's residence was located.
- **Department of Transportation (DOT) building** - In 1968, the DOT building was completed, which primarily houses DOT and contains 125,000 square feet.
- **Heritage Center** - In 1981, the State Historical Society moved into a newly constructed Heritage Center, which contained 130,000 square feet. In 2014, construction of a 97,000-square-foot expansion was completed.

#### Office of Management and Budget

North Dakota Century Code Section 54-21-18 provides the Director of OMB must control, manage, and maintain the State Office Building. The building must be considered a part of the Capitol relating to the custody, maintenance, and control of the Capitol and grounds. Except as otherwise provided by law, the Director of OMB has charge and control of the executive mansion, the Capitol, and the park and public grounds connected to these buildings. The Director may adopt rules to promote the health, safety, and general welfare, to prohibit disturbances and disorderly assemblies, to keep the peace, and to regulate nuisances on the Capitol grounds and in any of the buildings located on the Capitol grounds. The rules may include regulation of public assemblies and accessibility to the buildings and grounds, obstructions, fees, insurance, forms, indemnification by users, and waiver of insurance and indemnity requirements by the Director.

### Capitol Grounds Planning Commission

Section 48-10-01 establishes the Capitol Grounds Planning Commission, which consists of the Lieutenant Governor as the Chairman and eight members selected biennially as follows:

- The Governor must appoint two citizens, one licensed architect, and one representative from the State Historical Society;
- The President of the Senate must appoint two senators; and
- The Speaker of the House of Representatives must appoint two representatives.

Section 48-10-02 requires the Capitol Grounds Planning Commission to administer the Capitol building fund. The Capitol building fund was established at the time of statehood by the Enabling Act of 1889. Section 12 of the Enabling Act provided 50 sections of land to North Dakota upon statehood to be used for the purpose of financing construction of public buildings for legislative, executive, and judicial use. The Capitol building fund is made up of the land, proceeds from the sale of the land, and any investment income from the proceeds. Section 12 of the Enabling Act was amended by Congress in 1957 to expand the fund's use for construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvements of public buildings at the Capitol.

Section 2 of Senate Bill No. 388 (1967) (contained in Section 48-10-02) provided all money, properties, and income from the fund, unless otherwise appropriated, are dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing. The Capitol Grounds Planning Commission is to take steps to accumulate and conserve the money and property in the Capitol building fund for such purpose.

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

House Bill No. 1117 (1979) amended Section 48-10-02 to provide the Board of University and School Lands invest and manage the fund on behalf of the Capitol Grounds Planning Commission. The bill further amended Section 48-10-02 to provide a continuing appropriation to the Capitol Grounds Planning Commission from the interest and income from the Capitol building fund not to exceed 50 percent of the unencumbered balance. Expenditures made under the continuing appropriation may be made, after consideration of the Capitol grounds master plan, for projects or planning but may not exceed \$50,000 per biennium. The bill provided expenditures may be made only upon approval by two-thirds of the total membership of the commission. The Legislative Assembly increased the continuing appropriation limit to:

- \$100,000 with Senate Bill No. 2090 (2007);
- \$175,000 with House Bill No. 1015 (2013); and
- \$250,000 with Senate Bill No. 2015 (2019).

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

Section 48-10-03 provides the commission develop and modify long-term plans for the development of the Capitol grounds and requires the commission to approve or disapprove the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the Capitol grounds. The commission is allowed to accept or reject gifts for exterior placement on the Capitol grounds or for the improvement of the exterior construction of any building or facility on the Capitol grounds, including landscaping and improvements to the Capitol grounds. The section provides the commission a continuing appropriation for any gifts of money accepted, which must be deposited in the Capitol building fund. No construction or placement of an item on the Capitol grounds may be undertaken without the approval of the commission, unless the construction or placement is authorized by the Legislative Assembly. If the Legislative Assembly authorizes the construction or placement of an item on the Capitol

grounds, the commission must approve the site, basic style, and exterior construction of the item within a reasonable period of time.

The commission is required to advise the Director of OMB and the Legislative Council on matters relating to the physical and aesthetic features of the interior of all buildings on the Capitol grounds. The commission must be called in and must meet whenever major interior changes, including new construction, remodeling, or renovation of any kind, are proposed or considered for the buildings or facilities on the Capitol grounds. The commission must be consulted before the purchase or installation of furniture or fixtures in public areas of the Capitol and other buildings on the Capitol grounds.

The 2023 Legislative Assembly appropriated \$5.65 million from the Capitol building fund as follows:

- \$800,000 for a building automation project;
- \$250,000 for extraordinary repairs;
- \$100,000 for a building consolidation study;
- \$100,000 for Governor's residence security improvements;
- \$250,000 to remodel the Brynhild Haugland Room;
- \$150,000 for accessibility improvements; and
- \$4 million to replace Capitol building windows.

The Capitol building fund is estimated to have a 2023-25 biennium ending balance of \$5 million.

### **Capital Project Steering and Oversight Committees**

The Legislative Assembly, in House Bill No. 1004 (2023), appropriated \$55.12 million from the federal State Fiscal Recovery Fund to the Department of Health and Human Services (DHHS) for a new laboratory building shared with the Department of Environmental Quality. Section 12 of the bill directs DHHS to establish a steering committee to oversee the design and construction of the project. The committee must include representation from DHHS, the Department of Environmental Quality, OMB, the Governor's office, and the Legislative Assembly. The Legislative Assembly representation must include one member of the Senate appointed by the Senate Majority Leader, one member of the House appointed by the House Majority Leader, and one member of the minority party from either the Senate or the House appointed by the minority leaders of the Senate and the House.

The Legislative Assembly, in House Bill No. 1015 (2023), appropriated \$131.2 million from the strategic investment and improvements fund to the Department of Corrections and Rehabilitation (DOCR) for a new Heart River Correctional Center (HRCC) facility. The Legislative Assembly also provided legislative intent that the 2025 Legislative Assembly appropriate an additional \$30 million to complete the project. Section 6 of the bill directs DOCR to establish an HRCC facility steering committee to oversee the design and construction of the new HRCC facility. The committee must include one member of the Senate appointed by the Senate Majority Leader, one member of the House appointed by the House Majority Leader, and one member of the minority party from either the Senate or the House appointed by the minority leaders of the Senate and the House.

The Legislative Assembly, in Senate Bill No. 2304 (2015), appropriated \$5 million, including \$4 million from the Capitol building fund and \$1 million from private donations, to OMB to design and construct a new Governor's residence. Section 1 of the bill directed OMB to procure architect and engineering professional services for the design of the new residence. The bill also provided for a Governor's residence project selection committee, which included the majority and minority leaders of the House or their designees and the majority and minority leaders of the Senate or their designees, and required the selected architect to provide at least three preliminary designs to be presented at a public meeting of the Capitol Grounds Planning Commission.

The Legislative Assembly, in House Bill No. 1015 (2007), transferred \$41,000,000 from the general fund to the State Penitentiary land fund to address correctional facility needs. Section 10 of the bill directed the Legislative Management to appoint a correctional facility review committee to address the immediate and future needs of the State Penitentiary. The committee was to include six members of the Legislative Assembly selected by the Legislative Management, including three members of the House, two of whom must represent the majority party and one of whom must represent the minority party; and three members of the Senate, two of whom must represent the majority party and one of whom must represent the minority party. The committee was authorized to engage consultant and architectural services, subject to Legislative Management approval, for the development of correctional facility concepts. In developing the concepts, the committee was to seek the input of DOCR. The

committee forwarded three concepts, along with a recommendation for one of the three concepts, to the Emergency Commission for the commission's consideration and authorization. The Legislative Assembly, in Senate Bill No. 2030 (2009), then appropriated \$64,000,000, including \$19,465,804 from the general fund and \$44,534,196 from the State Penitentiary land fund, to DOCR to complete the State Penitentiary renovation and expansion project.