



North Dakota Legislative Council

Prepared for the Government Administration Committee
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STUDIES OF SPACE NEEDS AND PROPERTY LEASED BY THE STATE - BACKGROUND MEMORANDUM

The Legislative Management assigned the 2021-22 interim Government Administration Committee to:

- Study space needs of the executive, judicial, and legislative branches and the Ethics Commission; and
- Study the amount, type, cost, and occupancy of property leased by the state or any state agency since January 1, 2018.

STUDY OF SPACE NEEDS

Pursuant to [Section 43 of House Bill No. 1015 \(2021\)](#), as directed by the Legislative Management, the 2021-22 interim Government Administration Committee shall study space needs of the executive, judicial, and legislative branches and the Ethics Commission. The study must include:

- A review of each branch's and the Ethics Commission's employee work location policies;
- An assessment of the space needs of each branch and the Ethics Commission to fulfill their constitutional and statutory responsibilities;
- An evaluation of state agency leases of space from private and other governmental entities in Bismarck, amounts being paid for these leases, and state agency rental payments being made to the Office of Management and Budget (OMB) from special and federal funds;
- Consideration of the feasibility and desirability of OMB charging rent to agencies receiving funding from the general fund; and
- The development of a space utilization plan for the Capitol complex.

The study also must include consideration of whether adequately sized committee rooms, appropriate accommodations under the federal Americans with Disabilities Act of 1990 (ADA), and flexible meeting areas are available.

STUDY OF PROPERTY LEASED BY THE STATE

Pursuant to [House Concurrent Resolution No. 3043 \(2021\)](#), the 2021-22 interim Government Administration Committee shall study the amount, type, cost, and percent occupancy of property leased by the state or any state agency since January 1, 2018. The study must include a determination of the individuals who own the property leased by the state or a state agency, including members of a corporation, partnership, or any other type of entity that owns property leased by the state or a state agency, whether any statewide elected or appointed official should be restricted from owning any property leased by the state or state agency under the direction of the state agency, and whether a legislator should be prohibited from voting on appropriation bills for agencies that lease property from the legislator.

House Concurrent Resolution No. 3043 provides the study is necessary because:

1. It is a legislative responsibility to be conscious of the state's budget;
2. Numerous state agencies lease private property as office space throughout the state; and
3. Potential conflicts of interest should be considered upon the funding of state agencies.

PREVIOUS STUDIES

The 2009-10 interim Government Services Committee studied the utilization of facilities on the State Capitol grounds, including an evaluation of facility needs by state agencies. The committee received information regarding the capacity of facilities on the Capitol grounds and space leased by state agencies in the Bismarck-

Mandan area. The committee also received information regarding the cost to house agencies on the Capitol grounds, the costs for agencies to lease space off the Capitol grounds, and the estimated costs to construct a new facility on the Capitol grounds. The committee made no recommendations regarding its study of the utilization of facilities on the Capitol grounds.

The 2013-14 interim Government Services Committee studied facility needs of state agencies in the Bismarck area, including an evaluation of current and projected facility needs of state agencies, facilities on the Capitol grounds, and facilities owned or leased by state agencies not located on the Capitol grounds. The committee received information regarding the Capitol Grounds Planning Commission, the Capitol building fund, and agency space needs. The committee recommended Senate Bill No. 2040 to provide an appropriation of \$300,000 from the Capitol building fund to OMB to develop a master plan in conjunction with the Capitol Grounds Planning Commission for all state agencies with a physical location in the Bismarck area. Senate Bill No. 2040 was not approved by the 2015 Legislative Assembly.

The 2019-20 interim Government Administration Committee studied the accessibility of the Capitol grounds as related to the ADA. The committee received information regarding the ADA, the State Capitol, and the Capitol Grounds Planning Commission. The committee recommended House Bill No. 1030 to provide an appropriation of \$750,000 from the Capitol building fund to OMB, of which \$460,950 would be for costs associated with the implementation of changes to the State Capitol for compliance with the ADA and \$289,050 for additional costs to improve accessibility of the State Capitol during the 2021-23 biennium. House Bill No. 1030 was not approved by the 2021 Legislative Assembly; however, Senate Bill No. 2146 was approved with an appropriation of \$750,000 from the Capitol building fund with the same allocations and intent.

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 2021 Legislative Assembly appropriated \$2.9 million from the Capitol building fund, including \$518,000 for a building automation project, \$500,000 for extraordinary repairs, \$350,000 for a building consolidation study, \$300,000 for special assessments, \$500,000 for interior and exterior signs, \$750,000 for accessibility improvements, and \$25,000 for accessibility compliance consulting services. The Legislative Assembly estimated the 2021-23 biennium ending balance in the fund will be \$1.8 million.

Other Facilities Leased by State Agencies in the Bismarck-Mandan Area

Several state-owned or state-leased facilities are located in the Bismarck-Mandan area. Examples of agencies owning facilities in the area include Workforce Safety and Insurance, the Department of Corrections and Rehabilitation, the Bank of North Dakota, the Department of Trust Lands, and the Game and Fish Department. Some agencies, such as Workforce Safety and Insurance, lease a portion of its facilities to other state agencies.

Americans with Disabilities Act

The Americans with Disabilities Act of 1990 is a civil rights law that prohibits discrimination against individuals with disabilities related to jobs, schools, transportation, and all public and private places open to the general public. The purpose of the law is to ensure individuals with disabilities have the same rights and opportunities as individuals without disabilities. The Act is divided into five titles that relate to different areas of public life:

- **Title I - Employment** - Related to helping individuals with disabilities access the same employment opportunities and benefits available to individuals without disabilities. This title is regulated and enforced by the United States Equal Employment Opportunity Commission.
- **Title II - Public Services: State and Local Government** - Prohibits discrimination on the basis of disability by public entities, such as state and local government agencies, and requires public entities to make their programs, services, and activities accessible to individuals with disabilities. This title includes provisions related to public transportation offered by state or local government. This title is regulated by the United States Department of Justice.
- **Title III - Public Accommodations and Services Operated by Private Entities** - Prohibits places of public accommodation from discriminating against individuals with disabilities, which includes privately owned, leased, or operated facilities like hotels, restaurants, retail merchants, doctor's offices, golf courses, private schools, day care centers, health clubs, sports stadiums, and movie theaters. This title requires public accommodations to remove barriers in existing buildings where it is easy to do so without much difficulty or expense. This title includes provisions related to public transportation offered by a private company. This title is regulated by the United States Department of Justice.
- **Title IV - Telecommunications** - Requires telephone and Internet companies to provide a nationwide system of interstate and intrastate telecommunications relay services which allows individuals with hearing or speech disabilities to communicate over the telephone and also requires closed captioning of federally funded public service announcements. This title is regulated by the Federal Communications Commission.
- **Title V - Miscellaneous Provisions** - Contains a variety of provisions relating to the ADA, including how the Act relates to other laws, state immunity, its impact on insurance providers and benefits, prohibition against retaliation and coercion, illegal use of drugs, and attorney's fees.

Since 1990, Congress has modified the ADA, most notably in 2008 and 2010.

STUDY PLAN

The following is a proposed study plan for the committee's consideration in its studies of space needs and property leased by the state:

1. Receive and review information from representatives of the executive, judicial, and legislative branches and the Ethics Commission regarding:
 - a. Work location policies;
 - b. The current utilization of the facilities on the State Capitol grounds; and
 - c. Future facilities plans.
2. Receive and review information from representatives of OMB regarding:
 - a. The Capitol complex master plan;
 - b. The proposal to charge rent to agencies receiving funding from the general fund;
 - c. Requirements of the ADA for the Capitol grounds; and
 - d. The accessibility of the Capitol, including committee hearing rooms.
3. Receive and review information regarding space and utilization of other state-owned buildings.
4. Receive and review information regarding facilities leased by state agencies, including lease costs, square footage, occupancy, and ownership of the facilities.
5. Determine space needs for state agencies and review options for alternative facilities or adding or eliminating space used by an agency.
6. Consider whether restrictions relating to the ownership of space rented by the state are appropriate.
7. Receive and review information from interested persons regarding the committee's studies of space needs and property leased by the state.
8. Develop recommendations and any bill drafts necessary to implement the recommendations.
9. Prepare a final report for submission to the Legislative Management.