North Dakota Legislative Council

Prepared for the Government Finance Committee
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SENATE BILL NO. 2290 STUDY - EMERGENCY COMMISSION - BACKGROUND MEMORANDUM

Pursuant to a letter (appendix), the Chairman of the Legislative Management directed the Government Finance Committee to study the provisions of Senate Bill No. 2290 (2021). The study must include a determination of the appropriateness of the bill's requirement for the Legislative Assembly to approve any Emergency Commission requests to expend funds after the aggregate amount of federal fund requests approved by the commission in a biennium has exceeded $50 million and after the aggregate amount of other funds requests approved by the commission in a biennium has exceeded $5 million. The committee is required to report its findings and recommendations to the Legislative Management by October 2021.

As introduced, Senate Bill No. 2290 amended North Dakota Century Code Sections 54-16-04.1 and 54-16-04.2 requiring the Budget Section to approve requests to receive and spend state special funds and federal funds during the interim if the request exceeded $5 million, an increase of $4.95 million from the existing limit of $50,000. Under the provisions of the bill, the Budget Section could approve individual requests of up to $100 million related to the expenditure of state special funds and federal funds. The bill also authorized the Budget Section to amend the spending requests, and any amended requests approved by the Budget Section would be deemed to be approved by the Emergency Commission.

The Senate amended Senate Bill No. 2290 to add an emergency clause and to clarify Budget Section approval for any requests to receive and spend state special funds and federal funds during the interim. With the amendment, Budget Section approval would be required for spending requests exceeding $50,000, the same as the existing limit. However, the Budget Section could amend the spending request if the request exceeded $5 million but was less then $100 million, and any amended requests approved by the Budget Section would be deemed to be approved by the Emergency Commission. The amendment retained the overall limit of $100 million for individual spending requests.

The House amended Senate Bill No. 2290 to limit Budget Section authority to approve individual spending requests to $1 million and to add an aggregate limit of $30 million of federal funds and $5 million of state special funds for Budget Section spending approvals during the biennium. The amendment also required the Legislative Assembly to approve any spending request for federal funds exceeding $50 million. Federal Highway Administration emergency relief funding and emergency recovery funding were exempt from the approval limits under the provisions of the amendment. The amendment retained the emergency clause.

As amended in Conference Committee and approved by the Legislative Assembly, Senate Bill No. 2290 requires the Budget Section to approve requests to receive and spend state special funds and federal funds during the interim if the request exceeds $50,000. If the request exceeds $50,000 but is less than $3 million, the spending request may not be amended by the Budget Section. Requests exceeding $3 million may be amended by the Budget Section, and any amended requests approved by the Budget Section are deemed to be approved by the Emergency Commission. The Budget Section may not approve more than $50 million of federal funds spending requests or more than $5 million of state special funds spending requests in aggregate during a biennium. The Legislative Assembly must approve any spending request for federal funds exceeding $50 million, but Federal Highway Administration emergency relief funding and emergency recovery funding are exempt from the approval limits. The bill included an emergency clause and became effective April 29, 2021.

EMERGENCY COMMISSION - BRIEF HISTORY

The Emergency Commission was created in 1915 when the Legislative Assembly appropriated $25,000 to establish a state contingencies funding pool to address state emergencies. As defined in Section 54-16-00.1, an emergency means a calamity or an unforeseen happening subsequent to the time the appropriation was made and which was clearly not within the contemplation of the Legislative Assembly and the Governor. Initially, the Emergency Commission consisted of the Governor, the Secretary of State, and the State Auditor. The Agriculture

Commissioner replaced the State Auditor in 1919. In 1949, the Legislative Assembly required the chairmen of the Appropriations Committees to approve Emergency Commission requests if the request from the state contingencies funding pool exceeded $10,000. The 1995 Legislative Assembly made the chairmen of the Appropriations Committees and the Chairman of Legislative Management members of the Emergency Commission. In 2005, the majority leaders replaced the Chairman of Legislative Management as members of the commission.

Until 1975, the Emergency Commission could approve any requests from the state contingencies funding pool up to the total amount appropriated by the Legislative Assembly; however, starting in 1975, Budget Section approval was required when the aggregate approvals from the state contingencies funding pool exceeded $500,000. Senate Bill Nos. 2032 and 2288 (1995) removed the requirement for Budget Section to approve spending from the state contingencies funding pool when the aggregate approvals exceeded $500,000. From 1995 to 1999, Budget Section approval was required to receive and spend any additional state special funds or federal funds during the interim. In Senate Bill No. 2015 (1999), the Legislative Assembly amended Section 54-16-04.1 and 54-16-04.2 requiring Budget Section approval to receive and spend state special funds or federal funds only if the request exceeded $50,000.

During the 1989-90 interim, the Legislative Audit and Fiscal Review Committee noted various state agency audit reports included a recommendation for state agencies to comply with Section 12 of Article X of the Constitution of North Dakota, which requires public money to be spent only pursuant to an appropriation made by the Legislative Assembly. As a result, the committee recommended the Legislative Assembly provide a special funds appropriation to the Emergency Commission for transfer to state agencies between legislative sessions when state agencies needed to spend unanticipated collections. The 1991 Legislative Assembly approved Senate Bill No. 2168 authorizing state agencies to receive and spend additional state special funds during the interim subject to Emergency Commission approval. The bill also included an appropriation of $10 million of special funds authority to create a special funds state contingencies funding pool, which the Emergency Commission could disburse to state agencies as needed. For the 1993-95 biennium, the state contingencies funding pool was $2.5 million, of which $500,000 was from the general fund and $2 million was from special funds. However, the Legislative Assembly amended Section 54-16-04.2 in Section 11 of Senate Bill No. 2015 (1995) to remove the provision that limited the approvals of the Emergency Commission for state special funds to the amount appropriated by the Legislative Assembly. Therefore, the appropriation of special funds authority for a special funds state contingencies funding pool was removed from the budget in the 1995-97 biennium, and the state contingencies funding pool consisted of $500,000 from the general fund only.

RECENT BUDGET SECTION SPENDING APPROVALS

Since the 2007-08 interim, the Budget Section approved the following requests, which were also approved by the Emergency Commission, for the acceptance and expenditure of additional state special funds and federal funds:

	Total Requests	State Special Funds	Federal Funds
2007-08 interim	33	$20,988,584	$70,454,427
2009-10 interim	39	$2,130,000[1]	$63,413,419[1]
2011-12 interim	28	$546,000[2]	$25,904,860[2]
2013-14 interim	24	$1,987,856[3]	$7,169,024[3]
2015-16 interim	17	$1,460,000[4]	$1,558,365[4]
2017-18 interim	11	$231,550[5]	$31,124,500[5]
2019-20 interim	62	$40,595,000[6]	$1,883,802,474[6]

[1]These amounts include $50,701,861 of federal American Recovery and Reinvestment Act (ARRA) funding, but exclude $131,418,750 related to federal disaster relief funding and $81,750,000 of emergency transportation funding ($6,750,000 of matching funds from the state highway fund and $75,500,000 of Federal Highway Administration emergency relief funds).

[2]These amounts include $7,000,000 of federal ARRA funding, but exclude $386,710,411 related to disaster relief funding ($33,610,411 from the state disaster relief fund and $353,100,000 of federal funds) and $387,100,000 of emergency transportation funding ($32,400,000 of matching funds from the state highway fund and $354,700,000 of Federal Highway Administration emergency relief funds).

[3]These amounts exclude $27,332,970 from the state disaster relief fund and $11,134,875 from federal funds related to disaster relief funding.

[4]These amounts exclude $32,307,427 from the state disaster relief fund related to disaster relief funding.

[5]These amounts exclude $4,512,468 from the state disaster relief fund related to disaster relief funding.

[6]These amounts include $1,772,634,147 of federal coronavirus relief funding, but exclude $494,915 from the state disaster relief fund related to disaster relief funding.

OPTIONS TO CONSIDER

As a part of the study of the provisions of Senate Bill No. 2290, the Government Finance Committee may consider the following options:

- **No changes** - The committee may consider recommending the provisions of Senate Bill No. 2290 remain without any changes.
- **Repeal the changes** - The committee may consider recommending the repeal of the changes to the Emergency Commission and Budget Section approval process as included in Senate Bill No. 2290.
- **Change the limits** - The committee may consider recommending increasing or decreasing the Emergency Commission and Budget Section approval limits for state special funds and federal funds spending requests during the biennium.
- **Provide state special funds and federal funds appropriation authority** - The committee may consider recommending the Legislative Assembly appropriate state special funds and federal funds authority to the Emergency Commission as a part of the state contingencies funding pool.
- **Other changes** - The committee may consider recommending other changes to address any potential concerns relating to the provisions of Senate Bill No. 2290.

STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Review the provisions of Senate Bill No. 2290 and any potential issues related to the Emergency Commission and Budget Section approval limits for spending requests during the interim.
2. Review the historical Emergency Commission and Budget Section approval limits for spending requests during the interim.
3. Receive information from the Office of Management and Budget regarding potential benefits and concerns with the approval limits for spending requests.
4. Receive information from interested persons regarding the study.
5. Develop recommendations and any bill drafts necessary to implement the recommendations.
6. Prepare a final report for submission to the Legislative Management.

ATTACH:1