

GOVERNMENT FINANCE COMMITTEE - SENATE BILL NO. 2290 STUDY

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 approved by the Legislative Assembly, Senate Bill No. 2290 required 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.

Committee members were Representatives Michael Howe (Chairman), Pamela Anderson, Jeff Delzer, Jared C. Hager, Gary Kreidt, Lisa Meier, Corey Mock, Dave Nehring, Gary Paur, Mike Schatz, Jim Schmidt, Steve Vetter, Don Vigesaa and Senators Brad Bekkedahl, Richard Marcellais, Ronald Sorvaag.

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 North Dakota Century Code 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. Currently, the Emergency Commission consists of the Governor, the Secretary of State, the chairmen of the Appropriations Committees, and the majority leaders of the House and Senate. 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. 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 1991 Legislative Assembly approved Senate Bill No. 2168 to provide 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. 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 also were 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

¹These 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).

²These 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).

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

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

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

⁶These 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.

COMMITTEE CONSIDERATIONS

Bill Drafts

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on an adjustment to the current limits. The bill draft would have increased the approval limit for federal funds by \$25 million, from \$50 million to \$75 million per biennium. The bill draft also would have increased the approval limit for state special funds by \$70 million, from \$5 million to \$75 million per biennium.

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The bill draft replaces the approval limit of \$50 million for federal funds with an amount based on 2 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The approval limit of \$5 million for state special funds is replaced with an amount based on 1 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The bill draft also includes other minor updates for clarity and consistency. Based on the 2021-23 biennium general fund budget of \$4,992,957,330, the approval limits under the provisions of this bill draft would be \$99,859,147 for federal funds and \$49,929,573 for special funds.

Recommendations

The committee recommends a bill draft [\[21.1085.01000\]](#) for consideration during a 2021 special or reconvened legislative session or during the 2023 regular legislative session relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The committee also recommends the Legislative Management consider temporarily increasing the state special fund approval limit by \$15 million, from \$5 million to \$20 million, for the remainder of the 2021-23 biennium during a 2021 special or reconvened legislative session.