

## **CHAPTER 54-44.1 OFFICE OF THE BUDGET**

### **54-44.1-01. Definition.**

As used in this chapter, unless the context otherwise requires, the term "budget unit" means a department, institution, board, commission, agency, or other unit of government for which separate or distinct appropriations are made.

### **54-44.1-02. Office of the budget - Director - Employees - Powers.**

The office of the budget is hereby established in the office of management and budget, for the purpose of promoting economy and efficiency in the fiscal management of the state government. The director of the office of management and budget is ex officio director of the budget.

The director of the budget shall appoint a budget analyst who must hold a baccalaureate degree from a recognized institution of higher learning and the appointment must be based upon the qualifications of eligible persons. The position of budget analyst is not a classified position and the budget analyst shall serve at the pleasure of the director of the budget. The budget director shall employ such other professional, technical, and clerical personnel as the director deems necessary to carry out the duties prescribed in this chapter and shall fix the salary of all employees within the office of the budget within the limits of the legislative appropriations. All personnel within the office of the budget must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

### **54-44.1-03. Powers and duties of the director of the budget.**

The director of the budget, or such subordinate officer as the director of the budget shall designate, shall:

1. Be vested with the duties, powers, and responsibilities involved in securing budget estimates and work programs from the several departments and agencies of the state government.
2. Be vested with the duties, powers, and responsibilities involved in the preparation of revenue and fixed expense estimates.
3. Develop financial policies and plans as the basis for budget recommendations to the legislative assembly, and prepare detailed documents in accordance with such financial policies and plans for presentation to the legislative assembly.
4. Coordinate the fiscal affairs and procedures of the state to assure the carrying out of the financial plans and policies approved by the legislative assembly.
5. Exercise continual control over the execution of the budget affecting the departments, institutions, and agencies of the executive branch of the state government involving approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and control of the rate of expenditures through a system of semiannual, quarterly, or monthly allotments.
6. Investigate, examine, and make exhaustive studies:
  - a. Of the structure and operation of the entire executive branch of government and of every office, institution, and agency thereof.
  - b. Of all the functions, duties, and services of all executive branch offices, departments, institutions, industries, boards, bureaus, and commissions.
  - c. Of all the books, records, and methods of accounting of each office or agency of the executive branch to ascertain and determine whether their policies, practices, and systems of accounting are sound, necessary, practical, and efficient.
7. Develop a long-term capital improvements budget for consideration by the legislative assembly.
8. Have the authority to procure from the various officers, departments, agencies, and employees such information as may be necessary for the preparation and execution of the budget.

9. Provide such assistance as the legislative assembly may request and be available to assist its appropriations committees with any needed information or material and make its records and information available at all times to the legislative assembly and its committees and designees.
10. Perform all other necessary duties to carry out the provisions of this chapter and of chapter 54-14.

**54-44.1-04. Budget estimates of budget units filed with the office of the budget - Deadline.**

The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates of financial requirements for budget units under the control of the state board of higher education must be made using the same forms, supporting information, and documentation as other budget units. Any request for a new full-time or part-time permanent position included in a budget unit's estimate of its financial requirements for the next two fiscal years must include documentation justifying the need for the position. The documentation must describe the circumstances resulting in the need for the position and identify the number of hours the position will be involved in specific types of activities and the anticipated outcomes of the activities. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**54-44.1-05. Federal aid budget requests - Filed with the office of the budget.**

Every agency of the state government when making requests for budgets to be submitted to the federal government for funds, equipment, material, or services shall have such request or budget filed in the office of the budget before submitting it to the proper federal authority. When such federal authority has approved the request or budget, in whole or in part, the agency of the state government shall resubmit it to the office of the budget for recording before any allotment or encumbrance of the federal funds can be made.

**54-44.1-06. Preparation of the budget data - Contents.**

The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

- Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.
2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
  3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
  4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget. The detailed comparative statements of budget units under the control of the state board of higher education must include the same information presented for other budget units.
  5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
  6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
  7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.
  8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state

- agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. The number of permanent full-time employee positions and permanent part-time employee positions authorized for each budget unit for the previous biennium and the current biennium and proposed for the next biennium.
  10. Any other information as the director of the budget determines desirable or as is required by law.

**54-44.1-06.1. Contents of capital construction bill.**

The office of management and budget shall continue to prepare capital construction budgets and a capital construction bill. All future capital construction bills may only include projects involving bonding. All other capital projects funded with general fund moneys or special funds must be included in the appropriate agency's appropriation bill.

**54-44.1-07. Presentation of budget data - How presented to the legislative assembly.**

The director of the budget or the director's designee shall present the budget data information in section 54-44.1-06, except the drafts of acts required by subsection 7 of that section, and make available sufficient copies thereof to the legislative assembly at the organizational session. The drafts of acts required by subsection 7 of section 54-44.1-06 must be submitted to the legislative council within seven days after the day of adjournment of the organizational session. The budget data must be completed and made available to the legislative assembly in such form as may be prescribed by the legislative council. The legislative council shall set the time and place at which such budget data is to be presented.

**54-44.1-08. Budget report - Contents - When submitted to legislative assembly.**

The official budget report must be transmitted by the governor to all holdover legislators and legislators-elect not later than three days after the commencement of the session of the legislative assembly. Such report is not a third-class item under section 46-02-05. The budget director shall provide for the duplication or other satisfactory reproduction or printing of the official budget report, so as to ensure delivery of same as provided in this section. Such reports must contain the budget and revenue proposals recommended by the governor and the information required in subsections 1, 2, 3, 5, and 6 of section 54-44.1-06 and all other data and information as the governor shall decide. The budget director shall make available any and all information regarding budget data to the governor, the legislative assembly and its designees, legislators, and to the governor-elect as may be requested. The governor may present any additional budget information in any manner to the legislative assembly as the governor may desire.

**54-44.1-09. All expenditures must be appropriated.**

All expenditures of the state and of its budget units of moneys drawn from the state treasury must be made under authority of biennial appropriations acts, which must be based upon a budget as provided by law, and no money may be drawn from the treasury, except by appropriation made by law as required by section 12 of article X of the Constitution of North Dakota.

**54-44.1-09.1. Insurance recoveries appropriated.**

Any payment to a state budget unit for a loss under chapter 26.1-22 or for any loss covered by any property and casualty insurance is hereby appropriated to that budget unit to be used solely for the repair, rebuilding, or replacement of the destroyed or damaged building, property, or equipment. Insurance proceeds may be used for purposes other than the repair, rebuilding, or replacement of the destroyed property with the approval of the emergency commission or as appropriated by the legislative assembly.

**54-44.1-10. Payments made pursuant to law only.**

No payment may be made and no obligation may be incurred against any appropriation unless such payment or obligation has been authorized as provided by law. Every official authorizing payments in violation of this chapter is subject to the penalties and provisions of chapter 12.1-23.

**54-44.1-11. (Effective through July 31, 2017) Office of management and budget to cancel unexpended appropriations - When they may continue.**

Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

**(Effective after July 31, 2017) Office of management and budget to cancel unexpended appropriations - When they may continue.** The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

#### **54-44.1-12. Control over rate of expenditures.**

1. The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of state government, with the exception of the legislative and judicial branches. Execution means the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of allotments. The allotment must be made by specific fund and all departments and agencies that receive moneys from that fund must be allotted on a uniform percentage basis, except that appropriations to the department of public instruction for state school aid, transportation aid, and special education aid may only be allotted to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund as follows:
  - a. The first two and one-half percent allotment from the general fund must be offset with a transfer from the foundation aid stabilization fund.
  - b. Any general fund allotment in excess of two and one-half percent that is necessary, after all moneys available in the budget stabilization fund have been transferred to the general fund under section 54-27.2-03, may be offset with a transfer from the foundation aid stabilization fund.
2. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director shall find one or more of the following circumstances to exist:
  - a. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
  - b. The payment or the obligation incurred is not authorized by law.
  - c. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, including:
    - (1) Statements of legislative intent expressed in enacted appropriation measures or other measures enacted by the legislative assembly; and
    - (2) Statements of purpose of amendment explaining amendments to enacted appropriation measures, as recorded in the journals of the legislative assembly.
  - d. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

#### **54-44.1-12.1. Implementation of legislative intent - Legislative objection to execution of budget - Effect of objection.**

1. The budget section of the legislative management may object to any allotment made under section 54-44.1-12, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the budget section determines that the allotment or expenditure or the failure to make an allotment or expenditure is contrary to legislative intent as recorded in any reliable legislative records. The budget section shall file that objection in certified form with the legislative council. The filed objection must contain a concise statement of the budget section's reasons for the objection.
2. The legislative council shall attach to each objection a certification of the time and date of the filing of the objection and, as soon as possible, shall transmit a copy of the objection and the certification to the director of the budget and the affected budget unit. The legislative council shall maintain a permanent register of all objections under this section.
3. Within fourteen days after the filing of an objection, the affected budget unit shall respond in writing to the budget section. After receipt of that response, the budget section may withdraw or modify its objection.

4. After the filing of an objection, the burden of persuasion is upon the budget unit in any action for judicial review of whether the allotment or expenditure or the failure to make an allotment or expenditure is contrary to law. If the budget unit fails to meet its burden of persuasion, the court shall render judgment against the budget unit for court costs. These court costs must include reasonable attorney's fees and must be payable from the appropriation of the budget unit.

**54-44.1-13. Budget requests for legislative and judicial branches.**

The budget requests and expenditures for the legislative and judicial branches of this state are not subject to the provisions of this chapter and such budget requests must be submitted directly to the legislative assembly with informational copies of such budgets provided to the director of the budget not later than November fifteenth in each even-numbered year preceding a session of the legislative assembly.

**54-44.1-13.1. Apportionment of reductions in spending authority caused by an initiative or referendum action.**

If as a result of any action taken pursuant to article III of the Constitution of North Dakota the moneys available in the state general fund or in any special fund in the state treasury are or will be reduced or eliminated, the director of the budget shall reduce the moneys available to all departments, agencies, and institutions for which moneys have been appropriated or are otherwise available from the affected fund for the current biennial period. The director of the budget shall reduce affected budgets by a percentage sufficient to cover the estimated losses caused by the initiative or referendum action, subject to the approval of the budget section of the legislative management. Notwithstanding the provisions of section 54-44.1-13, the authority to make reductions pursuant to this section applies equally to all entities of the executive, legislative, and judicial branches.

**54-44.1-14. Biennial report to legislative assembly.**

The director of the budget or such member of that office as the director of the budget designates may prepare and transmit to the governor and, upon approval by the governor, may transmit to the members of the legislative assembly at least sixty days prior to the commencement of an ensuing legislative session a report which must contain definite and specific proposals and recommendations to accomplish the following purposes:

1. To simplify the governmental structure of the state so as to render it more economical and efficient.
2. To eliminate all obsolete and unnecessary offices, departments, institutions, boards, bureaus, and commissions of the state.
3. To consolidate the functions, services, and activities of state offices and agencies thereof so as to eliminate duplication of service and expense wherever it exists.
4. To correlate the functions and services of the several offices and agencies of the state government.
5. To eliminate obsolete methods, unnecessary functions and services carried on by the state government and to render those functions and services which are determined to be absolutely essential and more economical and efficient.

**54-44.1-15. Indirect cost recoveries from federal programs and special funds.**

The office of management and budget shall develop a statewide central service indirect cost allocation plan according to federal cost allocation principles. Any state agency receiving federal funds shall seek reimbursement from the federal programs for indirect costs appropriately allocated to the agency in the plan. Any recoveries of central service indirect costs must be deposited in the state general fund at least once annually by the agency as determined by the office of management and budget. The office of management and budget may exclude an agency or agencies from the requirements of this section.

The office of management and budget may bill special fund agencies for central service indirect costs as determined in the cost allocation plan in the ratio that the agency's special

funds are to its total budget. Appropriation authority to cover the billings must be included in the budgets of the special fund agencies.

**54-44.1-16. Office of the budget and information technology department - New building construction cost-benefit analyses.**

The office of the budget shall complete a cost-benefit analysis for each new building construction project included in budget requests submitted by state agencies, departments, and institutions. The analysis must review options for co-locating with other state agencies, departments, or institutions and consider information on related technology costs and savings. The office of the budget shall obtain the assistance of the information technology department, and that department shall review the technology costs and savings involved in the proposed building and provide the analysis to the office of the budget. The office of the budget shall report on the cost-benefit analyses for building projects included in the governor's budget recommendation to the legislative assembly at the same time as the governor's budget and revenue proposals are presented.

**54-44.1-17. Bank of North Dakota transfers to the general fund - Restoration.**

Notwithstanding section 54-27.2-02 and subject to the availability of funds in the general fund, at the end of the biennium the director of the budget shall return to the Bank of North Dakota any funds transferred from the Bank to the general fund in response to a projected shortfall of general fund revenues pursuant to a contingent authorization by the legislative assembly. The amount returned to the Bank as required by this section must be the amount of the contingent transfer or the unobligated balance of the general fund at the end of the biennium, whichever is less. For purposes of this section "at the end of the biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

**54-44.1-18. Searchable database of expenditures.**

1. The director of the budget shall develop and make publicly available an aggregate and searchable budget database website that includes the following information for the biennium:
  - a. Each budget unit making expenditures.
  - b. The amount of funds expended.
  - c. The source of the funds expended.
  - d. The budget program of the expenditure.
  - e. Any other information determined relevant by the director of the budget.
2. The director of the budget shall include the name and city of the recipient of each expenditure in the budget database website after the director has completed implementation of a business intelligence component to the state's financial reporting system.
3. The director of the budget may not include in the database any information that is confidential or exempt under state or federal law.
4. The director of the budget may update the budget database website as new data becomes available. Each state agency shall provide to the director of the budget any data required to be included in the budget database website no later than thirty days after the data becomes available to the agency.
5. By January first of each even-numbered year, the director of the budget shall add data for the previous biennium to the budget database website. The director of the budget shall ensure that all data added to the budget database website remains accessible to the public for a minimum of ten years.
6. The budget database website may not redirect users to any other government website, unless the website has information from all budget units and each category of information required can be searched electronically by field in a single search.
7. The governing body of each political subdivision may submit the annual budget adopted by the governing body to the director of the budget. The director of the budget shall include on the office of management and budget website any information



submitted by a participating governing body of a political subdivision. The official who submits the annual budget to the director of the budget may not submit any information that is confidential under state or federal law. In lieu of submitting the annual budget adopted by the governing body to the director, any participating governing body may provide to the director a publicly accessible internet link on which the annual budget adopted by the participating governing body is available.