

## **CHAPTER 54-16 EMERGENCY COMMISSION**

### **54-16-00.1. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Emergency" means either 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.
2. "State officer" means an elected or appointed officer, board, commission, director, or employee of the state having the authority to transfer or expend any money appropriated by the legislative assembly.

### **54-16-01. Emergency commission - Members - Organization - Quorum - Meetings.**

The emergency commission consists of the governor, the majority leaders of the senate and house of representatives of the legislative assembly, the secretary of state, and the chairmen of the senate and house of representatives appropriations committees. If the chairman of an appropriations committee ceases to be a member of the legislative assembly, the vice chairman of that committee succeeds to that position on the commission. An appropriations committee vice chairman may serve in the place of the appropriations committee chairman as a member of the commission at the request of the appropriate appropriations committee chairman, if the appropriations committee chairman is unable to attend a commission meeting. If a majority leader ceases to be a member of the legislative assembly, the respective house's assistant majority leader succeeds to that position on the commission. A majority leader's assistant majority leader may serve as a member of the commission in the place of the majority leader at the request of the majority leader if that majority leader is serving on the commission in another capacity or is unable to attend a commission meeting. Four members of the commission constitute a quorum. The governor is the chairman and the secretary of state is the secretary of the commission. The commission shall meet at the call of the chairman.

### **54-16-02. Proceedings not valid unless entered in minutes.**

The proceedings of the emergency commission are not valid unless entered in the commission's minutes.

### **54-16-03. Unlawful to expend more than appropriated - May secure approval from commission for use of other funds - Deficit void - Submission of petition to emergency commission.**

1. A state officer may not expend, or agree or contract to expend, any amount in excess of the sum appropriated for that expenditure, and may not expend an amount appropriated for any specific purpose or fund or for any other purpose without prior approval in the form of a transfer approval or expenditure authorization as provided in this chapter.
2. When an emergency exists, a state officer may submit to the secretary of the emergency commission an itemized petition requesting approval to:
  - a. Transfer money and spending authority between funds or line items pursuant to section 54-16-04;
  - b. Accept and expend federal funds pursuant to section 54-16-04.1;
  - c. Accept and expend state contingency funds pursuant to section 54-16-09;
  - d. Accept and expend other funds pursuant to section 54-16-04.2; or
  - e. Recommend full-time equivalent positions pursuant to section 54-16-04.3.
3. The secretary of the emergency commission shall provide a copy of each petition submitted under this section to the office of management and budget. The office of management and budget may provide an analysis and prioritization of emergency requests to the emergency commission.
4. Any petition to the emergency commission by a state officer must be considered by the emergency commission. A petition under this section must be approved or

recommended by the emergency commission before submission for consideration by the budget section.

5. Any debt or deficit created by a state officer in violation of this section is void.

**54-16-03.1. Submission of petition to emergency commission.**

Repealed by S.L. 2021, ch. 400, § 2.

**54-16-04. May order transfer of moneys between funds - Line item transfers - Order may draw from state treasury.**

The emergency commission, upon the advice of the office of management and budget, may order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated for the same institution or board or the same state enterprise, may order a transfer of spending authority from the state contingencies appropriation, or, in an extremity, may authorize money to be drawn from the state treasury to meet the emergency until the legislative assembly can make an appropriation available. The following transfers, if authorized by the emergency commission, require the approval of the budget section of the legislative management:

1. A transfer of moneys or spending authority which would eliminate or make impossible the accomplishment of a program or objective funded by the legislative assembly.
2. A transfer exceeding fifty thousand dollars from one fund or line item to another fund or line item, unless the transfer is necessary to comply with a court order or to avoid:
  - a. An imminent threat to the safety of people or property due to a natural disaster or war crisis; or
  - b. An imminent financial loss to the state.

**54-16-04.1. May authorize acceptance and disbursement of federal funds.**

1. The emergency commission, upon the advice and counsel of the office of management and budget, may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject.
2. The emergency commission may authorize passthrough federal funds from one state agency to another state agency.
3. The emergency commission, with approval of the budget section of the legislative management if the amount under consideration exceeds fifty thousand dollars but does not exceed three million dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session.
4. The emergency commission, with approval of the budget section of the legislative management if the amount under consideration exceeds three million dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session. The budget section may approve a request under this subsection in the form received from the emergency commission or may amend and approve a request. A request amended and approved by the budget section is deemed to be approved by the emergency commission. Any request considered by the budget section must comply with section 54-35-02.9.
5. Any federal funds made available to this state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session, upon the approval for acceptance by the emergency commission and the budget section of the legislative management, must be deposited into a special fund until the legislative assembly appropriates the funds.
6. a. Approval by the budget section of the legislative management is not required for the acceptance of federal funds if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state.

- b. Budget section approval is required under this section before the expenditure of any funds accepted under these conditions.
7. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly.
8. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter.
9. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.
10. The aggregate amount of requests to expend funds that may be approved each biennium under this section may not exceed fifty million dollars. Any request received under this section which, if approved, would result in more than fifty million dollars of funds being approved for expenditure under this section during the biennium may be approved only by the legislative assembly during a regular legislative session or during a special legislative session called by the governor.
11. Any request received under this section to expend funds received through a federal act that makes available more than fifty million dollars to the state may be approved only by the legislative assembly during a regular legislative session or a special legislative session called by the governor.
12. Subsections 10 and 11 do not apply to federal highway administration emergency relief funding received by the state or to disaster or emergency recovery funding received by the state pursuant to section 37-17.1-23.

**54-16-04.2. Commission may authorize acceptance and expenditure of moneys.**

1. Upon a finding that an emergency exists, the emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative management if the amount under consideration exceeds fifty thousand dollars but does not exceed three million dollars, may authorize a state officer to receive and expend moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program.
2. Upon a finding that an emergency exists, the emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative management if the amount under consideration exceeds three million dollars, may authorize a state officer to receive and expend moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program. The budget section may approve a request under this subsection in the form received from the emergency commission or may amend and approve a request. A request amended and approved by the budget section is deemed to be approved by the emergency commission. Any request considered by the budget section must comply with section 54-35-02.9.
3. A state officer receiving authorization to expend money under this section may expend the money from the date the money becomes available until June thirtieth following the next regular legislative session. Approval by the budget section of the legislative management is not required for the acceptance of moneys under this section if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. Budget section approval is required before the expenditure of any funds accepted under these conditions.
4. The aggregate amount of requests to expend funds which may be approved each biennium under this section may not exceed five million dollars. Any request received under this section which, if approved, would result in more than five million dollars being approved for expenditures under this section during the biennium may be

approved only by the legislative assembly during a regular legislative session or during a special legislative session called by the governor.

**54-16-04.3. Commission may recommend full-time equivalent positions - Budget section approval.**

On the advice of the office of management and budget and upon the recommendation of the emergency commission, the budget section of the legislative management may authorize a state officer to employ full-time equivalent positions in addition to those authorized by the legislative assembly. The authority to employ a full-time equivalent position under this section is effective only for the remainder of the biennium during which the authority is granted by the budget section.

**54-16-05. Penalty for expending more than appropriated.**

Any state officer who violates section 54-16-03 is guilty of a class B misdemeanor.

**54-16-06. Report to emergency commission and legislative audit and fiscal review committee by board or officer when expenditure authorized.**

Repealed by S.L. 1977, ch. 483, § 2.

**54-16-07. Failure to make report - False report - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

**54-16-08. State contingencies appropriation.**

The legislative assembly may appropriate moneys to the office of management and budget for state contingencies as provided in this chapter. Any state agency, board, commission, or officer authorized by the emergency commission to spend moneys from the state contingencies appropriation must return any unspent moneys of the appropriation within the biennium that it was authorized.

**54-16-09. Transfer of spending authority from state contingencies appropriation.**

The emergency commission, upon the advice of the office of management and budget, may order a transfer of spending authority from the state contingencies appropriation, which must be deducted from the state contingencies line item in the appropriation to the office of management and budget and added to the appropriate line item in the appropriation of the state officer who requested the transfer. The emergency commission, with approval of the budget section of the legislative management if the amount under consideration exceeds fifty thousand dollars, shall certify, by an approved motion recorded in its minutes, that the material, services, or purposes for which the authority was transferred are necessary and proper expenditures and, if an appropriation for that purpose was made by the legislative assembly, that the appropriation for that purpose is insufficient. Approval by the budget section of the legislative management is not required if the transfer is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state.

**54-16-10. Departmental emergency funds - Penalty.**

Repealed by S.L. 2003, ch. 670, § 10.

**54-16-11. Departmental emergency fund consideration.**

Repealed by S.L. 2003, ch. 670, § 10.

**54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies.**

Upon presentation of a petition establishing that an emergency exists and the necessity for increased appropriation authority, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and

revenue receipts for the information technology department, central duplicating, surplus property, or roughrider industries division of the department of corrections and rehabilitation.

**54-16-12. Board of higher education land acquisition approval.**

The emergency commission may approve the acquisition of property near one of the state institutions of higher education, and if requested and found necessary may make funds available from the state contingencies appropriation to the board of higher education for the purpose of acquiring the property if the emergency commission finds that:

1. The property is needed for expansion in the foreseeable future;
2. The property in all probability will not again be offered for sale at a similar price in the foreseeable future; and
3. The legislative assembly has not previously rejected a similar request and the time during which the purchase must be consummated does not permit obtaining a legislative appropriation.

Determination that an emergency exists is not a condition precedent to the approval of a purchase or a grant of funds from the state contingencies appropriation under this section.

**54-16-13. Authority to borrow funds for a disaster - Continuing appropriation.**

Any board, agency, commission, or officer of the state, subject to the approval of the emergency commission, may borrow moneys from the Bank of North Dakota for the purpose of responding to a disaster within the state as declared by the governor pursuant to chapter 37-17.1. The amount of moneys borrowed is limited to the amount of any estimated federal reimbursement for repair, recovery, or response relating to a disaster within the state, unless the state contingencies appropriation is inadequate to pay the estimated state share of the costs, then moneys may be borrowed up to one hundred percent of the costs incurred by the agency. Any interest payments on the funds borrowed must be paid from funds available to the agency from the state contingencies appropriation as authorized by the emergency commission or other funds as authorized by the emergency commission. Any moneys borrowed from the Bank of North Dakota pursuant to this section are hereby appropriated and may be spent by the board, agency, commission, or officer of this state for the repair, recovery, or response relating to a disaster within the state. If it appears to the borrower that at the end of the biennium the amount available to repay the amount borrowed plus interest is insufficient to totally repay the Bank of North Dakota, the borrower shall request from the legislative assembly a deficiency appropriation sufficient for the repayment of the amount borrowed plus interest.