

## **CHAPTER 54-44 OFFICE OF MANAGEMENT AND BUDGET**

### **54-44-01. Responsibility of the office of management and budget.**

The office of management and budget is to be a central authority, vested with the control and supervision of the fiscal administration of the executive branch of the government, and is directly responsible to the governor. The office of the state auditor has the primary responsibility of conducting a true independent postaudit of all the executive departments and agencies. The responsibility of collecting additional taxes is consolidated and vested in the office of the state tax commissioner.

This chapter must be liberally construed in a manner which will implement this section.

### **54-44-02. State office of management and budget.**

There is an office of management and budget vested with the duties, powers, and responsibilities necessary to supervise and administer the fiscal transactions of the various state departments, agencies, boards, and commissions.

### **54-44-03. Director of the office of management and budget.**

There must be a director of the office of management and budget who must be appointed by and serve at the will of the governor. The salary of the director must be set by the governor within the limits of the amount appropriated for salaries by the legislative assembly, and the director and other employees of the office must be reimbursed for expenses incurred in carrying out the duties of their office at the same rate and in the same manner as other state officials. The director is empowered to adopt rules, not inconsistent with law or rules established by the governor, for the administration of the office of management and budget, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining thereto. The director is empowered to set up such divisions or other internal organization within the office that the director determines necessary in order to efficiently carry out the duties, powers, and responsibilities of the office.

### **54-44-04. Powers and duties of the director of the office of management and budget.**

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

1. Shall examine the budget affecting the legislative and judicial branches of the state government, but only for the purpose of determining the sufficiency of funds to meet the contemplated expenditures of these branches of state government or their officers or agencies.
2. Shall keep the general accounts, reflecting for each fund the resources and balance, together with current revenues and expenditures, and shall provide for an accrual accounting system.
3. Shall, acting as director of the office of the budget, process all claims for submittal to the office of management and budget, which may conduct the preaudit of all claims from the executive branch of the government before payment and the director shall conduct the current audit of all revenues, which must include the supervision of the collection of all moneys due the state.
4. Except as otherwise provided by law, shall prepare warrants for payment of all claims.
5. May, in anticipation of federal revenues to be received within fifteen days, prepare warrants to be signed by the state auditor in payment of duly authorized vouchers even though funds at such time do not exist to honor the warrants. Warrants so issued are payable by the state treasurer out of any funds in the treasurer's hands other than sinking funds or funds dedicated by the Constitution of North Dakota for other purposes.
6. Is vested with the duties, powers, and responsibilities involved in the development and installation of financial records and procedures for all state departments and agencies.

7. Shall coordinate the development of accounting and financial related systems.
8. Shall create an accounting manual and provide sufficient training of current and potential users concerning the functions and use of a statewide accounting and reporting system.
9. Shall provide for the maintaining of accounting records which will identify the revenues and expenditures of the state in accordance with the requirements of the state's central accounting system.
10. Shall provide for expenditures from general and special fund appropriations to be made in accordance with the requirements of the state's central accounting system.
11. May provide for federal fund receipts and disbursements to be deposited and disbursed from a state federal fund in accordance with the requirements of the state's central accounting system.
12. Shall conduct such interval audits of accounts in the several departments of the state as the director deems necessary.
13. Shall issue current reports to administrative officials concerning the status of revenue, expenditures, and appropriation accounts, and shall make periodic financial reports to the governor, administrative officials, the legislative assembly, and the public.
14. Shall prepare on an annual basis comprehensive financial statements of the state of North Dakota.
15. Shall, when requested, give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or to the administration of the office of management and budget.
16. Shall submit to the governor at the close of each business day, or at such times as the governor may request, a report showing the current condition of each fund and appropriation.
17. Shall keep an account between the state and state treasurer, and charge the state treasurer therein with the balance in the treasury when the treasurer came into office, and with all moneys received by the state treasurer, and credit the treasurer with all warrants drawn on and paid by the treasurer.
18. Is vested with the duties, powers, and responsibilities involved in the operation of a centralized purchasing service.
19. Shall maintain and operate such supply rooms as may be found desirable to supply the several departments with office supplies and other commonly used commodities; however, this subsection may not be construed as authorizing the establishment of a warehousing system.
20. Shall distribute federal and state surplus property pursuant to sections 54-44-04.5 and 54-44-04.6.
21. Shall establish and operate a central duplicating service and central mechanical or electronic data processing facilities.
22. Shall perform such other duties as are or may be prescribed by law.
23. Shall account for and monitor all funds received by the state from any tobacco settlement dollars described in section 54-27-25 and all associated settlements and related funds and shall report to the budget section of the legislative management on the status of such funds, settlements, offsets, and net resulting revenues and any other related information the budget section requires.
24. Shall prepare and submit to the legislative council by October 1, 2010, a report including the location, expenses, and square footage requirements of all facilities occupied by each state agency. The report must include recommendations for relocation of any entity to achieve improvements in service to the public along with optimal efficiencies in usage of space and cost. The report must include recommendations within the master plan for construction of buildings on the capitol grounds.
25. Shall prepare and submit a quarterly report to the legislative management of each executive branch agency that gives any full-time state employee salary increases between April 1, 2021, and June 30, 2023, which cumulatively are fifteen percent or more over the employee's base salary as of March 31, 2021. The report must include

the name of each employee receiving the increase and any relevant salary information.

**54-44-04.1. The director of the office of management and budget shall have authority to withhold or deduct certain amounts from employees' compensation.**

The director of the office of management and budget, in addition to other deductions or withholdings authorized or permitted by law, is authorized to withhold or deduct from the employees' monetary compensation such amounts as may be determined by the employer and employees to participate in tax-favored or tax-sheltered annuity programs which are authorized by the federal Internal Revenue Code.

**54-44-04.2. Unemployment compensation assessments to departments and institutions.**

Beginning July 1, 1979, all departments and institutions of the state of North Dakota shall pay to the office of management and budget one percent of the first six thousand dollars of each employee's earnings. Such assessments must be paid to the office of management and budget in accordance with guidelines established by the office of the budget, from the general fund and special funds appropriated for salaries and wages to the individual departments and institutions. The moneys received from such assessments must be deposited by the office of management and budget into a fund for the purpose of paying unemployment compensation claims. The director of the office of management and budget may decrease or suspend the assessments provided for in this section upon determination that the funds deposited pursuant to this section are sufficient to offset anticipated obligations.

**54-44-04.3. Appropriation of unemployment compensation assessments.**

Repealed by S.L. 1989, ch. 116, § 7.

**54-44-04.4. Payment of unemployment compensation claims.**

The office of management and budget shall quarterly reimburse job service North Dakota for the amount of actual claims paid by job service North Dakota to eligible recipients previously employed by state departments and institutions. Each department and institution shall verify and certify the validity of each unemployment claim prior to the reimbursement of funds to job service North Dakota.

**54-44-04.5. Federal surplus property - Office of management and budget responsible for distribution - Powers and duties of director.**

1. The office of management and budget is responsible for the fair and equitable distribution, through donation, of all federal surplus property transferred to the state in accordance with the Federal Property and Administrative Services Act of 1949, as amended [63 Stat. 378; 40 U.S.C. 484(j)], hereinafter referred to as the federal Act.
2. The director of the office of management and budget, or the director's designee:
  - a. May receive, investigate, and make recommendations on applications for federal surplus property available under the federal Act.
  - b. May acquire any federal surplus property transferred to the state under the federal Act.
  - c. May distribute any federal surplus property pursuant to the federal Act to:
    - (1) Any public agency for use in carrying out or promoting for the residents of a given political subdivision one or more public purposes; or
    - (2) Nonprofit educational institutions, public health institutions, or organizations which are exempt from taxation under section 501 of the federal Internal Revenue Code, for purposes of education or public health or research for those purposes.
  - d. May store the federal surplus property.
  - e. Shall develop, submit, and implement a state plan of operation for distribution of federal surplus property and comply with the federal Act and rules and regulations

- adopted thereunder. Provided, the director may continue the state plan of operation developed by the department of public instruction.
- f. May cooperate and enter into agreements with other surplus property agencies and federal agencies to screen and acquire surplus property and exchange property, facilities, personnel, and services.
  - g. May provide information and assistance for acquiring federal surplus property to entities listed in subdivision c.
  - h. May assess and collect service charges from participating recipients to cover direct and reasonable cost of services under this section. The service charges must be deposited with the state treasurer in a surplus property special fund and used pursuant to the federal Act. The state treasurer shall credit all interest earned to the fund if the director requests the state treasurer to invest portions of the fund.
  - i. Adopt rules and take other action necessary to distribute federal surplus property pursuant to the federal Act.
3. The director of the office of management and budget or the director's designee may purchase available federal property under applicable federal property management regulations for distribution according to this section.

**54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.**

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. Political subdivisions may provide their surplus property to the office of management and budget for disposition according to subsections 3, 4, and 5.
3. Surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
4. If not disposed of under subsection 3, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars. The office of management and budget may establish a program for the recycling and disposal of surplus property determined to be unsalable and may assess and collect service charges from the department, agency, institution, or political subdivision from which the property was received to cover direct and reasonable costs of this service.
5. All proceeds received from the transfer, sale, recycling, or disposal of surplus property must be deposited with the state treasurer for deposit in the surplus property operating fund. For each piece of property sold for less than three thousand dollars, all proceeds must be retained in the surplus property operating fund unless the office of management and budget determines the sale proceeds are subject to special requirements for distribution. For each piece of property sold for three thousand dollars or more, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased. At the end of each biennium, the office of management and budget shall transfer all funds in the surplus property operating fund that exceed the amount needed for operating the surplus property function for one year to the general fund.

**54-44-04.7. Responsibility to administer unassigned statutory functions of state government.**

The office of management and budget shall administer all statutory functions assigned to the executive branch of state government but not statutorily placed with any specific state entity.

**54-44-04.8. Purchase of state motor vehicles.**

Repealed by S.L. 1991, ch. 611, § 1.

**54-44-04.9. Financial reporting.**

To ensure that sufficient information is provided to the office of management and budget for preparing an annual comprehensive financial statement and to ensure that the statewide accounting system and budget system are compatible, the person in charge of any department, agency, board, commission, college, university, or institution shall report all revenues and expenditures through the use of the statewide accounting system. The revenues and expenditures referred to in this section include all funds, including funds not appropriated.

Notwithstanding any other provision of law, if any statutory provision provides for maintenance of a special fund in the state treasury the office of management and budget may require that it not be maintained as a separate fund in the state treasury but that it be maintained as a separate account for accounting purposes.

Any department, agency, board, commission, college, university, or institution that is not presently using the statewide payroll system shall provide the director with current salary information for all permanent and part-time employees when required to do so, in the format designed by the director.

**54-44-05. Warrants - Numbered - Show funds on which drawn - Not drawn unless authorized.**

Warrants drawn by the office of management and budget and signed by the state auditor on the state treasurer must be numbered consecutively in the order in which they are drawn. Every warrant must be drawn upon the fund out of which it is payable. A warrant may not be drawn by the office of management and budget and signed by the state auditor unless authorized by law, and unless there are funds in the treasury applicable to the payment thereof to meet the same. In case of an emergency, and in anticipation of taxes already levied and in the process of collection, the office of management and budget may prepare warrants to be signed by the state auditor in payment of duly authorized vouchers even though funds at such time do not exist to honor the warrants. Warrants so issued shall be payable by the state treasurer out of any funds in the state treasurer's possession other than sinking funds or funds dedicated by the Constitution of North Dakota for other purposes.

**54-44-06. Duties as to school fund.**

Repealed by S.L. 2015, ch. 49, § 36.

**54-44-07. Office to set up account against person who fails to render account.**

Whenever any person has received moneys or has moneys or other personal property which belongs to the state by escheat or otherwise, or has been entrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to and make settlement with the office of management and budget within the time prescribed by law, or when no particular time is specified, fails to render such account and make such settlement, or fails, within twenty days after request by the office of management and budget to pay into the state treasury any money belonging to the state, the office of management and budget shall state an account with such person, charging interest at the rate of twelve percent per annum from the time of the failure. A copy of such account is prima facie evidence in any suit of the things therein stated. If the office of management and budget, for want of information, cannot state an account, that fact may be alleged and the amount of money or other property which is due or which belongs to the state may be stated generally.

**54-44-08. Director to institute suits in name of state.**

The director of the office of management and budget shall institute suit in the name of the state against:

1. Officials for all official delinquencies in relation to the assessment, collection, and payment of the revenue.
2. Persons who by any means have become possessed of public moneys or property and who fail or neglect to pay for or deliver the same.
3. All persons indebted to the state.

**54-44-09. Supplies for institutions under control of the office of management and budget.**

Repealed by S.L. 1999, ch. 474, § 18.

**54-44-10. Legislative inspection of books of office of management and budget.**

Whenever required the office of management and budget shall submit its books, accounts, and vouchers to the inspection of the legislative assembly, or any committee thereof authorized to request such documents.

**54-44-11. Office's operating funds creation - Continuing appropriation. (Retroactive application - [See note](#))**

1. The office of management and budget shall establish a state purchasing operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. Funds in the state purchasing operating fund are appropriated on a continuing basis and may be spent by the office of management and budget for the procurement and maintenance of an inventory of equipment and supplies as provided in this subsection. The director of the office of management and budget shall transfer any unobligated balance in the fund, in excess of one hundred twenty-five thousand dollars, to the state general fund at the end of each fiscal year.
2. The office of management and budget shall establish a state printing operating fund to be used for the procurement and maintenance of an inventory of printing equipment and supplies for the state departments and agencies.
3. The office of management and budget shall establish a state personnel training and development operating fund to be used for the coordination of employee training and career development data, supplies, equipment, and services and for providing or arranging necessary training and development programs to state departments and agencies. Funds in the state personnel training and development operating fund are appropriated on a continuing basis to the office of management and budget and may be spent for the purposes identified in this subsection. Any surplus in this fund in excess of one hundred thousand dollars on June thirtieth of each year must be transferred to the state general fund.
4. Each office, agency, or institution provided with printing or personnel training services, unless exempted by law, shall pay to the office of management and budget a proportionate share of the cost of such service as determined by the director of the office of management and budget, based on actual costs and actual usage. The amounts paid to the office of management and budget by the various offices, agencies, and institutions must be deposited in the appropriate operating fund and must be expended in accordance with legislative appropriations.
5. The office of management and budget shall establish a facility management operating fund to be used for the salary and operating expenses of the division of facility management. Rental fees collected pursuant to section 54-21-19 must be deposited in the fund. The director of the office of management and budget shall transfer any unobligated balance in the fund to the general fund at the end of each fiscal year.

**54-44-12. Deposit and disbursement of funds of occupational and professional boards - Appropriation.**

All occupational and professional boards, associations, and commissions created by law shall deposit all fees and other moneys received in any bank selected by the majority vote of the governing body of the board, association, or commission. Checks may be drawn against the bank account, opened pursuant to this section, for the authorized expenditures of the board, association, or commission on the signature or signatures of the person or persons authorized to so act by the governing body. All moneys in accounts opened pursuant to this section are hereby appropriated for the use of the occupational or professional board, association, or commission opening the account.

**54-44-13. Failure of political subdivisions to repay natural disaster overpayments - Office of management and budget authorized to withhold funds.**

Whenever an overpayment made to any state political subdivision under the Disaster Relief Act of 1970 [Pub. L. 91-606; 84 Stat. 1744], and all acts amendatory and supplemental thereto, is not repaid by the following July first, the state office of management and budget shall:

1. Upon certification from the governor's natural disaster representative that a political subdivision is delinquent in repaying such overpayment, withhold all funds, grants-in-aid, tax shares, and other similar moneys due the subdivision from the state until the subdivision repays either the federal or state government.
2. Cease to withhold funds when the governor's natural disaster representative certifies that the subdivision has repaid the overpayment.

**54-44-14. Director may sell, lease, exchange, or transfer title or use to all or part of the san haven properties.**

The director of the office of management and budget, with the approval of the governor, is authorized to sell, lease, exchange, or transfer title or use of any part or all of the san haven facilities and properties, located in sections nineteen, twenty-nine, and thirty, township one hundred sixty-two north, range seventy-two west, located in Rolette County, North Dakota, to the federal government or any public or private agency, organization, or business enterprise or any worthy undertaking, under the following provisions:

1. The transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
2. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
3. Any funds realized by any transaction must be deposited in the state's general fund.

**54-44-15. Reimbursement from institutions of higher education for state's share of default costs.**

1. If the state is required to pay a fee to the United States secretary of education to offset the secretary's default costs relating to an institution of higher education located in North Dakota with a cohort default rate exceeding twenty percent for the most recent fiscal year for which rates are calculated, the director of the office of management and budget, or the director's designee, shall:
  - a. Provide notice by certified mail to each institution of higher education in this state that participates in the federal family education loan program or the federal direct student loan program, under title IV of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1245; 20 U.S.C. 1070 et seq.] of any assessment necessary to reimburse the state for the institution's proportionate share of any fee charged to the state by the secretary of education under the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1230; 20 U.S.C. 1001 et seq.].
  - b. The amount of reimbursement due from any institution must be based upon a fee structure approved by the United States secretary of education which has been provided to the director of the office of management and budget by the student loan guarantee agency. The student loan guarantee agency shall submit the fee structure to the director of the office of management and budget prior to

implementation. The fee charged must be determined based upon the fee structure established by the student loan guarantee agency and must be based on the institution's cohort default rate and the state's risk of loss as provided by section 4201 of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66; 107 Stat. 370; 20 U.S.C. 1078(n)].

2. The student loan guarantee agency may adopt rules to implement this section. The rules may provide for a process and standards to exempt an institution from reimbursement or allow an adjustment of the required reimbursement if the institution demonstrates that exceptional mitigating circumstances contributed to the cohort default rate. Prior to implementing any exemption process and standards, the student loan guarantee agency shall obtain comments on the exemption process and standards from the director of the office of management and budget. Chapter 28-32 does not apply to rules adopted under this section.
3. If any institution fails to reimburse the office of management and budget within sixty days of receiving an assessment under subsection 1, the amount of the assessment plus interest on the assessment at the rate of nine percent from the date of receipt of the assessment and reasonable collection costs, including attorney's fees, constitutes a lien against all assets of the institution. The lien has priority over all other liens and encumbrances acquired after the date the institution was notified of the required reimbursement by the office of management and budget. The state may enforce any lien created under this subsection against real property in the manner provided in chapter 35-22, against personal property in the manner provided in chapter 32-20, or against the owner of any institution by garnishment in the manner provided in chapter 32-09.1, except that the restrictions of subsection 1 of section 32-09.1-03 do not apply to a garnishment commenced to collect an assessment established under this section.

#### **54-44-16. Oil and gas tax revenue put options.**

Upon request of the director of the office of management and budget and upon approval by the industrial commission, the state investment board may purchase oil put options for the office of management and budget. The purchase of put options must be designed to offset reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. Put options may be purchased only at such times that the purchase assures that oil tax revenues plus the revenues from the sale of put options will be in excess of the oil tax revenues estimated for that level of production by the most recently adjourned legislative assembly. The office of management and budget shall report any purchases of put options to the budget section of the legislative management.

#### **54-44-17. State property and institution alternative use grant program.**

State institutions may work with local communities and stakeholders to develop proposed property or institution alternative use plans, including partnerships with private industry and not-for-profit organizations, to be reviewed by the office of management and budget. In accordance with the provisions of the community and institution approved plan, the office of management and budget shall introduce any statutory and constitutional changes necessary to implement the plan and request funding for the grant under this section for consideration by the legislative assembly. Subject to approval of all necessary statutory and constitutional changes and necessary legislative appropriations, the office of management and budget shall provide a grant up to the present value of the total estimated savings to the state for the next ten years resulting from converting the property or institution to an alternative use. The office of management and budget shall consider the estimated cost to the state of continuing to provide the service of the institution or property to state residents when calculating the estimated savings to the state. The office of management and budget shall use the rate of interest earned on state funds deposited at the Bank of North Dakota for calculating the present value of the estimated savings to the state. The grant is to assist the institution and community in the transition to an alternative use.