

# **VETOED MEASURES**

## **CHAPTER 548**

### **SENATE BILL NO. 2048**

(Legislative Council)

(North Dakota/South Dakota Commission)

### **ND - SD JOINT AUTHORITY EXERCISE**

AN ACT to amend and reenact section 54-40-01 of the North Dakota Century Code, relating to the exercise of joint authority by North Dakota and South Dakota.

VETO

March 10, 1997

The Honorable Rosemarie Myrdal  
President of the Senate  
Senate Chamber  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2048

Dear President Myrdal:

I am returning unsigned and hereby veto Senate Bill 2048.

I fully support the concept of cooperative agreements between North Dakota and South Dakota. Advancing technology and the movement to return responsibility from the federal government to the states are among the reasons this legislation is important. Requiring ratification of such agreements by the full Legislative Assembly, however, could significantly delay implementation of time-sensitive agreements.

For that reason, I am returning this legislation with the suggestion that a mechanism be developed that would shorten the time frame for legislative oversight.

I sincerely appreciate the hard work that has gone into this important legislation. I am anxious, therefore, that a workable alternative be developed that accomplishes our mutual goals for cooperation with our sister state.

Sincerely,

Edward T. Schafer  
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

<sup>1</sup> **SECTION 1. AMENDMENT.** Section 54-40-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-40-01. Agreement - Exercise of joint powers - Bonds.**

1. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term "governmental unit" as used in this section includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.
2. Two or more counties or cities, or any combination of counties or cities, whether or not they have in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, for the purpose of acquiring equipment or constructing roads, bridges, and road and bridge improvements.
3. An agency, department, or institution of this state may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized by law to perform. Any agreement entered under this subsection must be submitted to the legislative assembly for approval or rejection at the next regular or special session after the agreement is entered and may not become effective until approved by the legislative assembly.
4. Counties or cities, or any combination of counties or cities, may jointly issue bonds in the same manner and for the purposes provided for in chapter 21-03.

Disapproved March 10, 1997  
Filed April 8, 1997

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<sup>1</sup> Section 54-40-01 was also amended by section 33 of House Bill No. 1015, chapter 15.

## CHAPTER 549

### SENATE BILL NO. 2316

(Senators G. Nelson, Mathern)  
(Representatives Dorso, Boucher)

### SPECIAL SESSION VETO CONSIDERATION

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to the convening of a special session of the legislative assembly to consider vetoed legislation; and to declare an emergency.

#### VETO

March 11, 1997

The Honorable Rosemarie Myrdal  
President of the Senate  
Senate Chamber  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2316

Dear President Myrdal:

I hereby return Senate Bill 2316, which requires the Governor to call a special session of the Legislative Assembly if he or she vetoes a bill after the Legislature has adjourned. I respectfully veto this bill and ask members of the Assembly to carefully consider several concerns I have regarding this legislation.

First, I am concerned about the constitutional implications of SB 2316. Article V of the North Dakota Constitution, pertaining to the executive branch of government, provides that the Governor may call a special session of the Legislative Assembly. The article provides no legal authority for any other branch of government to prohibit the exercise of that power, to require the exercise of that power, or to condition the exercise of that power. In addition, the Constitution assigns the Governor authority to veto legislation and provides 15 days after adjournment to sign or veto a bill. Again, the Constitution does not provide any means by which that authority can be encumbered, prohibited, or conditioned. SB 2316 would force a governor to call a special session as a condition of exercising the veto. I believe this to be an unconstitutional infringement on the Governor's authority.

Second, I believe SB 2316 may prove impractical. For example, consider the case in which a governor line item vetoes an appropriation of \$78,000 that is part of a larger bill approved in the closing days of a legislative session. Under SB 2316 the Governor would be forced to call a special session to deal with this one issue, a special session that would cost the taxpayers a minimum of \$96,000. Another concern is the timing demands a special session would impose upon legislators. The bill requires the special session to be called within 45 days of adjournment, but does not specify when the special session would be held. This could potentially lead to a situation where the Legislature is still reviewing legislation into the summer.

Finally, I believe sufficient authority already exists under NDCC 54-03-02 to deal with a truly emergency situation. The Legislature can call itself back into session to deal with a delayed veto, so long as the Legislature has not exceeded the 80 day limitation in the Constitution. To date, no Legislature has breached the 80 day deadline in our state's history.

While for the reasons stated I must respectfully veto SB 2316, I do recognize the legitimate concerns members of the Legislative Assembly have with vetoes that occur after the Legislature adjourns. That concern will not go unnoticed. Be assured that I, like governors before me and those who will follow, will exercise the veto power judiciously and with great caution.

Sincerely,

Edward T. Schafer  
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

**Governor to call special session to consider vetoed legislation.** If, after adjournment sine die or adjournment subject to reconvening under section 54-03-02 of the legislative assembly, the governor vetoes any bill passed by the legislative assembly, the governor, within forty-five days of that adjournment, shall call a special session of the legislative assembly for the sole purpose of reconsidering the vetoed legislation.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Disapproved March 11, 1997  
Filed April 14, 1997

## CHAPTER 550

### SENATE BILL NO. 2201

(Senators Lee, Watne)

### NOTARY PUBLIC BONDS

AN ACT to amend and reenact sections 44-06-03 and 44-06-03.1 of the North Dakota Century Code, relating to bonds of notaries public.

VETO

March 13, 1997

The Honorable Rosemarie Myrdal  
President of the Senate  
Senate Chamber  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2201

Dear President Myrdal:

I hereby return unsigned and veto Senate Bill 2201, requiring a notary public to purchase a bond from a bonding company and eliminating the option of obtaining a personal surety against a potential claim.

About six percent of notary publics in North Dakota currently use personal sureties. In many instances, particularly in rural areas where bonding companies are not always present and doing business, personal sureties are a practical alternative to a bonding requirement. I am also concerned that if no alternative to a bond exists, the cost of notary bonds may increase.

As I am unaware that the current law has created any problems for North Dakota notaries, I respectfully veto SB 2201.

Sincerely,

Edward T. Schafer  
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 44-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-03. Oath and bond of notary public - Approval of bond.** Each notary public, before entering upon the duties of the office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of seven thousand five hundred dollars conditioned for the faithful discharge of the duties of the office. ~~Such~~ The bond ~~may~~ must be furnished by a ~~surety or~~ bonding company authorized

to do business in this state ~~or by one or more sureties, and is subject to approval by the secretary of state.~~

**SECTION 2. AMENDMENT.** Section 44-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**44-06-03.1. Notice by surety to secretary of state of claim against bond.** If a ~~surety or~~ bonding company giving a bond under section 44-06-03 receives a claim against that bond with respect to a notary public, that ~~surety or~~ bonding company shall notify the secretary of state of the outcome of ~~said~~ the claim.

Disapproved March 13, 1997  
Filed April 8, 1997

## **CHAPTER 551**

### **HOUSE BILL NO. 1110**

(Government and Veterans Affairs Committee)  
(At the request of the State Auditor)

### **STATE AUDITOR AUDITS**

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to audits of public and nonprofit entities by the state auditor.

VETO

March 14, 1997

The Honorable Mike Timm  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1110

Dear Speaker Timm:

I am returning and respectfully veto House Bill 1110. HB 1110 is designed to allow the state auditor to provide audit services to any public or nonprofit entity that receives state or federal financial assistance when such an organization is encountered in the course of an audit of a political subdivision and the governing body of the organization requests services be provided. I have several concerns with this legislation.

First, I believe the bill to be overly broad. By allowing the state auditor to audit ANY nonprofit entity that receives state or federal money, the bill appears to provide authority beyond the scope of the problem the bill was purportedly designed to address. For example, assuming state or federal dollars in some form are involved, a local chamber of commerce or even a statewide organization like the Greater North Dakota Association or North Dakota Farmers Union could contract for audit services with the state auditor.

Second, by permitting the state auditor to compete with the private accounting community, HB 1110 injects government into an area traditionally served by the private sector. None of us wants government to compete with our own businesses unless a compelling public reason exists for government to do so. I do not believe such a reason exists in this instance.

Third, HB 1110 expands state government at a time when we are trying to trim the cost and size of government. Again, unless we can demonstrate that the service provided is somehow essential to the efficient and effective operation of government, I believe we should avoid expanding into this arena.

If the state auditor, in the course of performing the audit of a political subdivision, comes upon a nonprofit entity in need of audit services that are not otherwise cost-effectively available, a mechanism should exist to provide those services, and only those services, when requested. Let us design the mechanism that accomplishes that goal without unduly expanding the authority of the state auditor to audit all nonprofits in the state.

For these reasons, I respectfully veto House Bill 1110.

Sincerely,

Edward T. Schafer  
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 54-10-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-10-14. Political subdivisions and other entities - Audits - Fees - Alternative audits and reports.** The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firemen's relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Area vocational and technology centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.



18. West river water supply district.

19. Southwest water authority.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. Fees for the audit performed by the state auditor must be paid to the state treasurer by the political subdivision audited. The fees must be deposited in the state auditor operating account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

The state auditor ~~may~~ in lieu of conducting an audit every two years may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor may also make such additional examination or audit as deemed necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision ~~may~~, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit reports to determine if the reports are in the required form and have the required content, and if the audit meets generally accepted government auditing standards. The state auditor may also periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the reports are in the required form and have the required content, and the reports and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections ~~shall result~~ shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Any other public or nonprofit entity, whose audit is not otherwise required to be performed under this section or section 54-10-01, which receives state or federal financial assistance, at the option of its governing body, may be audited by the state auditor if the state auditor agrees to perform the audit. The public or nonprofit entity shall pay the state auditor a fee equal to the fair value of the audit, and the fee must be deposited in the state auditor operating account.

The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account.

Disapproved March 14, 1997

Filed March 26, 1997

## CHAPTER 552

### HOUSE BILL NO. 1147

(Representatives Soukup, Kretschmar, Monson)  
(Senators Mathern, Nalewaja, Robinson)

## SCHOOL NOTIFICATION OF JUVENILE OFFENSES

AN ACT to create and enact a new section to chapter 15-47 and a new section to chapter 27-20 of the North Dakota Century Code, relating to school personnel notification of juvenile offenses; and to amend and reenact subsection 4 of section 27-20-51 of the North Dakota Century Code, relating to school personnel receipt of juvenile orders of disposition.

VETO

April 3, 1997

The Honorable Mike Timm  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1147

Dear Speaker Timm:

I am returning to you unsigned and hereby veto HB 1147. I have several concerns about the bill and its potential impact on children in our state.

First, the bill is mandatory and requires all law enforcement officials to notify a school administrator about a North Dakota student accused of possessing or using marijuana, accused of activity that would be a felony, or other offenses against North Dakota. Present law allows a school administrator, principal, or guidance counselor to have information if the juvenile was "adjudicated" of an offense that would have been a felony if committed by an adult. But, this bill goes further. It does not require "adjudication," which is a finding of guilt. It requires notification of a petition being filed against a child, which is only the accusation of wrong doing.

Second, this bill undermines the underlying principle of our justice system which is that individuals are presumed innocent until proven guilty by the state. I believe we need to carefully protect this basic principle. In this case, we must balance school safety with the stigma attached to being accused of wrong doing prior to a finding of guilt. This bill allows school officials to distribute information about possible wrong doing to others without such a finding. I believe the bill goes too far.

Third, in 1995 the Legislative Assembly passed tough juvenile laws as part of the Governor's Juvenile Task Force. These laws now require juveniles to be treated as adults for serious felony acts and affords the public information about those charges and dispositions. Therefore, many of the felonies with which a juvenile will be charged will be treated in adult court.

For these reasons, I respectfully veto HB 1147.

Sincerely,

Edward T. Schafer  
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

**Juvenile offenses - Notification of school officials.**

1. A law enforcement officer shall notify a juvenile's principal and school administrator upon filing a petition with the juvenile court alleging that the juvenile committed:
  - a. An offense against a person which would constitute a felony were it committed by an adult;
  - b. An offense involving the use, possession, purchase, or trafficking of marijuana, narcotic drugs, or other controlled substances; or
  - c. An offense involving the use or possession of a dangerous weapon.
2. A juvenile's principal or school administrator may share any information received under this section and section 27-20-51 with the juvenile's teachers if the principal or administrator deems it necessary to ensure the safety or well-being of the juvenile or other persons attending, employed by, or otherwise involved with the juvenile's school or school district. Any information shared under this section or subsection 4 of section 27-20-51 must be treated as confidential information. The superintendent of public instruction shall provide forms and adopt rules under chapter 28-32 for the sharing of information under this section.

<sup>2</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 27-20-51 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- ~~4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, Unless otherwise ordered by a court, the juvenile court shall forward the order of disposition to the juvenile's school principal, or chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order if:~~
  - a. The juvenile court deems it necessary to ensure the safety or well-being of the juvenile or other persons attending, employed by,

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<sup>2</sup> Section 27-20-51 was also amended by section 6 of Senate Bill No. 2153, chapter 124.

or otherwise involved with the juvenile's school or school district;  
and

- b. (1) The offense would constitute a felony were it committed by an adult;
- (2) The offense was committed on school property;
- (3) The offense involved a crime against a person;
- (4) The offense was related to the use, possession, purchase, or trafficking of marijuana, narcotic drugs, or other controlled substances;
- (5) The offense involved the use or possession of a dangerous weapon; or
- (6) School attendance is a condition of probation or parole.

**SECTION 3.** A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

**Notification of school officials.** If a juvenile is alleged to have committed an offense specified in subsection 1 of section 1 of this Act, and the court determines the juvenile did not commit the offense, the court shall notify the juvenile's principal and school administrator of that determination.

Disapproved April 3, 1997  
Filed April 10, 1997

## CHAPTER 553

### SENATE BILL NO. 2385

(Senators Wanzek, Solberg, Tomac)  
(Representatives Brown, DeKrey, Nichols)

## NONPROFIT ORGANIZATION AGRICULTURAL PROPERTY ACQUISITION

AN ACT to amend and reenact subsection 1 of section 10-06.1-10 of the North Dakota Century Code, relating to the acquisition of farmland or ranchland by nonprofit organizations.

VETO

April 3, 1997

The Honorable Rosemarie Myrdal  
President of the Senate  
Senate Chamber  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2385

Dear President Myrdal:

I respectfully return unsigned and hereby veto SB 2385. This bill prohibits any non-profit corporation from acquiring more than 16,000 acres of land in North Dakota. Today, the law requires all non-profit corporations as well as the US Fish and Wildlife service to receive approval from the governor for all land acquisitions. During the last four years, this acquisition process has worked well. I have approved several purchases including most recently the acquisition of the Davis Ranch by The Nature Conservancy. I have also rejected numerous proposals in the past 4 years. In reviewing these acquisitions, I have carefully weighed numerous concerns, including the economic impact to the local tax base, the long-term economics of removing land from the private sector, access, and the availability of the land for other buyers. I will continue to carefully review them in the future.

The issue that the bill seeks to address is a valid public policy concern. How much land should be owned by non-profit corporations in this state? How does the ownership of such land affect our tax base, the economic vitality of the local area, and the state as whole? These are concerns that I have expressed on numerous occasions, and they are questions we as a state need to answer.

I believe that this issue needs careful consideration and planning for it has far reaching impacts on the environment and economy of our state, particularly our rural areas. As part of our recent discussions on the Garrison project, I have initiated this process. We are in the early stages of discussions with all the interest groups, including the Farm Bureau, Farmers Union, National Wildlife Federation, Water Coalition, and others. We are taking an inventory of public and private ownership, including the number of acres of land owned by non-profit corporations

across North Dakota. One of our main objectives in this process is to develop agreement regarding "how much is enough" for entities such as The Nature Conservancy, North Dakota Wetlands Trust, US Fish & Wildlife and others to own in North Dakota. This effort can be a constructive, positive process that will address the concerns of this bill and accommodate the needs and interests of all, including the proponents of SB 2385.

I support the intent of SB 2385 and have indicated to the sponsors of the bill that the issue is one we need to address. This bill, however, is premature.

Sincerely,

Edward T. Schafer  
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 1 of section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization ~~created or authorized under Public Law No. 99-294 [100 Stat. 418]~~ may acquire no more than twelve sixteen thousand acres [~~4856-228~~ 6400 hectares] of land ~~from interest derived from state, federal, and private sources held in its trust fund in this state.~~

Disapproved April 3, 1997  
Filed April 8, 1997

## CHAPTER 554

### HOUSE BILL NO. 1191

(Representatives Skarphol, Oban, Carlson, Freier)  
(Senator Robinson)

### ADMINISTRATIVE RULE CALL UP FOR REVIEW

AN ACT to create and enact section 28-32-03.4 of the North Dakota Century Code, relating to authority of the committee on administrative rules to call up existing administrative rules for review; to amend and reenact subsection 1 of section 28-32-03.3 of the North Dakota Century Code, relating to authority of the committee on administrative rules to void or object to administrative rules; and to provide an effective date.

VETO

April 4, 1997

The Honorable Mike Timm  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1191

Dear Speaker Timm:

I respectfully return unsigned and hereby veto HB 1191. This bill expands the authority given in the 1995 session to the Administrative Rules Committee. Currently the Committee may void any part of a rule within ninety days after it is published in the administrative code. HB 1191 expands that authority to any rule upon 30 days notice to the agency which issued the rule. Under HB 1191, the committee may call up a rule regardless of how long it has been in place, and void all or any part of an administrative rule. I am troubled by the bill and its direction.

Administrative rules serve a very important function. They represent the Legislature's delegation of its authority to the agency and serve as the means by which air quality standards are set, water quality is maintained, child support obligations are determined, and a host of other complex issues are managed. Rules are carefully reviewed by the agency, the Attorney General, the Legislative Council, the public, and the Administrative Rules Committee before they become effective. I urge us to be cautious in striking down rules that are developed under the stringent requirements of chapter 28-32 NDCC.

Specifically, these are my concerns.

First, the bill is unnecessary. The Legislature itself, by enacting a law, has the authority to change any administrative rule it chooses. The Legislature rightfully retains that authority. An agency also may change a rule through Chapter 28-32 of the North Dakota Century Code. And the Administrative Rules Committee also has



limited authority to void all or part of a rule within ninety days of the rule being published. But, I do not believe we need to extend that authority beyond the initial ninety days to allow the committee to strike down a rule at any time thereafter.

Second, I have constitutional concerns based upon separation of powers principles. The bill intrudes into essentially an executive branch arena. Our Constitution creates three branches of government that are equal---and does not contemplate one branch being more powerful than another. Power is dispersed by design. In the case of Verry v. Trenbeath, 148 N.W. 2d567 (N.D. 1967) the Supreme Court explained this principle and said,

"..The Legislative branch deliberates upon and decides the policies and principles to be adopted for the future and enacts them into law. The executive branch administers the law so enacted."

Our constitution provides an implied exclusion of each branch from the exercise of the functions of the others, as demonstrated by the Court in the case of City of Carrington v. Foster County, 155 N.W. 2d377 (N.D. 1969).

In that structure, the Legislature as a whole has delegated authority to administrative agencies. But this bill allows that authority to be substituted to a legislative committee. I am concerned that we continue to add more and more responsibilities to legislative committees, interim committees, and legislators themselves as we slowly migrate towards a full-time legislature, which is not consistent with the wishes of the voters, nor the Constitution.

Further, the bill raises serious constitutional questions concerning delegation of legislative authority. Article IV, Section 13 of the Constitution says that, "No law may be enacted except by a bill passed by both houses". HB 1191 appears to run contrary to that provision. The Administrative Rules Committee would have the authority to void any rule or part of a rule, which would change the entire meaning of the rule. So, the practical effect is to give one committee of the Legislative Assembly the authority to substitute its judgment for the judgment of the whole legislature, or that of the agency. As a result, one committee is given authority to make law, rather than both houses of the Legislature.

These constitutional concerns for this process were recognized when the Administrative Rules Committee was given its authority in the 1995 session, as demonstrated by Section 5, Chapter 310 of the 1995 Session Laws, which declares,

**"Section 4 of this Act is suspended from operation and becomes effective retroactive to August 1, 1995, upon a ruling by the North Dakota Supreme Court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of this Act is unconstitutional."**

We are continuing to build upon this house of sand in section 4 of the bill, which again recognizes potential constitutional infirmity and declares,

**"Section 2 of this Act is suspended from operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota Supreme Court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session Laws and amended by section 1 of this Act is unconstitutional."**

The bill sets up a complex scheme of legislation which is the result of constitutional concerns, and then prepares for that possibility by suspending operation of part of the bill until the Supreme Court finds another section of the law unconstitutional.

Finally, I am concerned about the practical problems the bill may create. We could cause great mischief if we allow the bill to stand. Consider these examples. Imagine the impact to the investor, in a multi-million dollar facility if he has no confidence in the regulatory climate in which he is expected to do business. Investors in Pro Gold, or Premium Beef want to have stability in the regulations under which they do business. Likewise, our people would not approve of environmental regulations which are administrative rules, being struck down by a legislative committee that has little expertise in highly technical fields such as air quality standards. Furthermore, imagine the chaos we might face if the committee found all child support rules "arbitrary or capricious", and changed the method or manner in which child support obligations were determined. These are but a few examples that I see as being dangerous and the potential ramification of allowing HB 1191 to become law. I signed the bill giving the committee limited authority for this activity in 1995, and did so with some reservation. In this session, I also signed HB 1030 that gives the committee an additional meeting in which to accomplish its work. I hesitate to expand that authority further, and believe it will be a serious mistake to do so.

For these reasons, I have vetoed HB 1191.

Sincerely,

Edward T. Schafer  
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

<sup>3</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 28-32-03.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The legislative council's committee on administrative rules may find that all or any portion of a rule is void if that finding is made within ninety days after the rule is called up for review under section 28-32-03.4, within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that finding is made at the first meeting of the administrative rules committee following the regular session of the legislative assembly. The committee on administrative rules may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.

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<sup>3</sup> Section 28-32-03.3 was also amended by section 1 of House Bill No. 1030, chapter 279, and section 2 of House Bill No. 1030, chapter 279.

- c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
- d. A conflict with state law.
- e. Arbitrariness and capriciousness.
- f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.

**SECTION 2. AMENDMENT.** Subsection 1 of section 4 of chapter 310 of the 1995 Session Laws is amended and reenacted as follows:

1. The legislative council's committee on administrative rules may find, for any reason under this subsection, that all or any portion of a rule should be reviewed by the legislative assembly, and the committee may suspend the rule or portion of a rule under this subsection if the suspension is made within ninety days after the rule is called up for review under section 28-32-03.4, within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that suspension is made at the first meeting of the administrative rules committee following the regular session of the legislative assembly. A rule or a portion of a rule suspended under this subsection becomes permanently ineffective unless it is ratified by both houses of the legislative assembly during the next session of the legislative assembly, in which case it is effective as of the date of ratification by the second house of the legislative assembly. An agency seeking ratification of its rule shall introduce a bill for that purpose. The committee on administrative rules may suspend a rule or portion of a rule if the committee specifically finds that, with regard to the rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.
  - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
  - d. A conflict with state law.
  - e. Arbitrariness and capriciousness.
  - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.

**SECTION 3.** Section 28-32-03.4 of the North Dakota Century Code is created and enacted as follows:

**28-32-03.4. Administrative rules called up for review.** The committee on administrative rules may call an administrative rule up for review upon at least thirty days prior notice to the adopting agency of the time the committee will consider the rule. An administrative rule may be called up for review under this section only upon initiation of the question by the committee or the adopting agency on the grounds that the rule is obsolete, archaic, no longer effective, or adopted under statutory law that has been changed and the rule is no longer in harmony with statutory law. The committee shall notify the adopting agency of the reason the rule is called up for review and the adopting agency shall provide a written response to the committee's expressed concerns. A rule called up for review under this section is subject to the authority of the committee on administrative rules under section 28-32-03.3.

**SECTION 4. EFFECTIVE DATE.** Sections 1 and 3 of this Act are effective for administrative rules called up for review by the committee on administrative rules after July 31, 1997. Section 2 of this Act is suspended from operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session Laws and amended by section 1 of this Act is unconstitutional.

Disapproved April 4, 1997  
Filed April 10, 1997

## CHAPTER 555

### HOUSE BILL NO. 1026

(Appropriations Committee)  
(At the request of the Governor)

### WORKERS COMPENSATION BUREAU EQUIPMENT LINE ITEM

AN ACT to provide an appropriation for defraying the expenses of the workers compensation bureau and its divisions; to provide authorization to expend funds from the workers' compensation contingency line item; to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to a continuing appropriation for allocated loss adjustment expenses; and to amend and reenact section 65-06.1-04 of the North Dakota Century Code, relating to civil air patrol workers' compensation reimbursements.

VETO

April 10, 1997

The Honorable Mike Timm  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1026

Dear Speaker Timm:

I have signed and hereby return to you House Bill 1026. Pursuant to Article V, section 10, of the North Dakota Constitution, however, I hereby veto the appropriation in the amount of \$576,000 for "equipment" contained in section 1 of the bill.

After a careful review of compression problems and wage level concerns at the North Dakota Workers Compensation Bureau, I recommended a 10% increase in salaries and wages at the bureau in my executive budget. HB 1026 contains funding for an additional \$350,000 increase over and above my recommendation. I do not believe this 14% increase, more than double that provided employees in other agencies, can be justified, and I simply cannot support it.

I have maintained consistently during the legislative session that I believe singling out one state agency for preferential treatment is bad public policy. Compensation increases significantly out of line with those in other agencies eventually will place pressure on budgets throughout state government. And while I do not wish to delay the close of the session, neither can I approve a budget that spends more than I believe is necessary. By exercising the line item veto with respect to the \$576,000 included in the bill for equipment, I have restored the total Workers Compensation Bureau appropriation to a level consistent with my executive budget.

recommendation. Internal adjustments within these parameters can be made at the bureau for equipment purchases.

I believe the spending increases included in this bill are not consistent with our efforts to control the growing cost of state government and that the taxpayers of North Dakota will not look upon them with favor. For that reason, I respectfully return to you HB 1026.

Sincerely,

Edward T. Schafer  
Governor

Disapproved April 10, 1997  
Filed April 11, 1997

NOTE: For the full text of House Bill No. 1026, including the vetoed line item, see chapter 26.

## CHAPTER 556

### HOUSE BILL NO. 1015

(Appropriations Committee)  
(At the request of the Governor)

### INFORMATION SERVICES GENERAL FUND TRANSFER

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an appropriation for defraying the expenses of the department of human services and the state auditor; to provide for various transfers and financial transactions; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent relating to state employee compensation adjustments; to authorize transfer of various special funds to the general fund; to provide for mobile data terminals; to provide directives relating to 911 telephone services; to provide for program reductions if federal programs are terminated or reduced; to provide for a transfer from the North Dakota insurance reserve fund to the office of management and budget; to provide for a transfer from the information services division operating fund to the state general fund; to provide for legislative council studies of public employee health insurance benefits and telemedicine; to provide for a transfer from the budget stabilization fund to the Bank of North Dakota; to provide for transfers from the Bank of North Dakota to the state general fund; to provide for a transfer from the North Dakota mill and elevator association to the state general fund; to amend and reenact sections 26.1-23.1-05, 32-12.2-06, 54-27.2-02, and 54-40-01 of the North Dakota Century Code, relating to government self-insurance pool investments, the state risk management fund, the budget stabilization fund and the exercise of joint authority by North Dakota and South Dakota; to repeal section 5 of Senate Bill No. 2012 as approved by the 1997 legislative assembly, relating to street expenditures; to provide for application; to provide an expiration date; and to declare an emergency.

VETO

April 24, 1997

The Honorable Alvin Jaeger  
Secretary of State  
600 East Boulevard, 1st Floor  
Bismarck, ND 58505-0500

RE: House Bill 1015

Dear Al,

I have signed and hereby return to you House Bill 1015. Pursuant to Article V, section 10, of the North Dakota Constitution, however, I hereby veto section 15 of

the bill, which would transfer \$150,000 from the information services operating fund to the general fund.

After careful review, I believe the proposed transfer conflicts with Federal OMB Circular A-87. Federal rules require that whenever transfers out of internal service funds like that of the Information Services Division (ISD) are made, the federal government must be refunded its share of the transfer. A transfer from the ISD operating fund, which clearly includes federal dollars, would necessitate repayments to the federal government and subject the state to interest and penalty charges. For that reason, I respectfully veto section 15.

In vetoing section 15, I am cognizant of the law as determined by the North Dakota Supreme Court concerning the Governor's line item veto authority in State ex rel. Link v. Olson, 286 NW2d 262 (N.D. 1979). My intention is to fully comply with the law provided by our state's highest court.

Having vetoed section 15, I respectfully file HB 1015 with your office.

Sincerely,

Edward T. Schafer  
Governor

Disapproved April 24, 1997  
Filed April 24, 1997

NOTE: For the full text of House Bill No. 1015, including section 15, see chapter 15.



# MEASURES APPROVED OVER GOVERNOR'S VETO

## CHAPTER 557

### HOUSE BILL NO. 1137

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

### STATE RETIREMENT DATE AND BENEFITS

#### VETO

March 27, 1997

The Honorable Mike Timm  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1137

Dear Speaker Timm:

I am returning unsigned and hereby veto House Bill 1137.

Sections 2, 3, and 4 of House Bill 1137 provide adjustments in normal and disability retirement benefits and in postretirement and prior service retiree benefits. I believe these adjustments to be appropriate.

Section 1 of the bill, however, provides for a so-called "Rule of 85", permitting an employee to retire when his or her total of years of service credit and years of age equal eighty-five. I do not believe this reduction in our current "Rule of 88" is either necessary or desirable.

State, county, and local government employees work hard and deserve a generous and secure retirement. As we all live longer, however, continuing to lower the threshold age of retirement will at some point result in people receiving pensions for more years than they actually work to generate the benefits. I do not believe this to be appropriate public policy.

My executive budget proposes significant increases in salaries and benefits for state employees. I believe these increases, if adopted by the Legislative Assembly, create a total compensation package sufficient to meet our goal of attracting and retaining a qualified and motivated state government workforce.

I sincerely appreciate the hard work of the members of the North Dakota Public Employees Retirement System Benefits Committee in developing this legislation, and I look forward to working with the Legislative Assembly to develop a mechanism to

effectuate Sections 2, 3, and 4 of the bill. I am convinced, however, that our current "Rule of 88" should remain in place.

For this reason, I respectfully veto House Bill 1137.

Sincerely,

Edward T. Schafer  
Governor

NOTE: The Governor's veto of House Bill No. 1137 was not sustained. For the full text of House Bill No. 1137 as approved, see chapter 463.

## CHAPTER 558

### HOUSE BILL NO. 1440

(Representatives Skarphol, Boucher, Dalrymple)  
(Senators Grindberg, Lips, Robinson)

## WORKERS COMPENSATION BOARD OF DIRECTORS

### VETO

March 27, 1997

The Honorable Mike Timm  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, ND 58505

RE: House Bill 1440

Dear Speaker Timm:

I am returning unsigned and hereby veto House Bill 1440, creating a workers compensation board of directors to manage the workers compensation bureau and oversee the administration of North Dakota's workers compensation program.

Over the past four years, the director and staff of the North Dakota Workers Compensation Bureau, members of the Legislative Assembly, our state's employers and employees, and my staff, all working together, have made great strides in developing and implementing sound policy reforms that have significantly improved the services our workers compensation bureau provides. These reforms have led to better benefits for our workers, lower premiums for our employers, and a dramatic reduction in the bureau's unfunded liability. Last year the voters of North Dakota overwhelmingly ratified our efforts.

House Bill 1440 is aimed at preserving these remarkable results. And while I share the Legislative Assembly's concern for ensuring continued progress at the workers compensation bureau, I believe House Bill 1440 is the wrong vehicle for accomplishing that goal. I, therefore, respectfully veto this bill and ask members of the assembly to carefully consider my reasons for doing so.

First, I believe HB 1440 reduces accountability, an essential element in the operation of any government agency. By removing ultimate authority for management of the workers compensation bureau from the governor and placing it with an unelected board of directors similar to the Board of Higher Education, this legislation seriously weakens the focus of responsibility our workers and our employers demand.

This diffusion of accountability among members of a ten-person board of directors in large measure eliminates our existing "court of last resort" for employers and injured workers who, rightly or wrongly, believe themselves aggrieved by bureau procedures. My office currently manages 30 or more calls per month from individuals seeking the assistance they believe the governor can provide. To whom will these people turn for help in the future?

In addition, HB 1440 erodes traditional legislative and executive oversight of the bureau's budget. Section 5 of the bill permits the bureau, with the board's acquiescence, to transfer moneys between line items within the bureau's budget. The budget itself is developed without coordination with the governor's overall budget. This lack of coordination concerning salary levels, benefit packages, and technology programs can contribute to serious budgetary pressures being placed, not only on the premium payors who ultimately fund the bureau's budget, but also on other agencies who must compete with the workers compensation bureau for employees. All these pressures can lead to the prospect of increased taxes.

Be assured that I am as concerned as any of you that the progress we have made in our workers compensation program never be compromised. But, with the appropriate protections afforded by the independent audit created in Senate Bill 2074 already in place, I am unwilling, and I believe the people of North Dakota are unwilling, to sacrifice the accountability required of every government agency and its administration.

I, therefore, respectfully veto House Bill 1440.

Sincerely,

Edward T. Schafer  
Governor

NOTE: The Governor's veto of House Bill No. 1440 was not sustained. For the full text of House Bill No. 1440 as approved, see chapter 528.