

VETOED MEASURES

CHAPTER 613

SENATE BILL NO. 2278

(Senator Klein)

(Representative Nottestad)

RATE STABILITY PLANS

AN ACT to create and enact five new sections to chapter 49-05 of the North Dakota Century Code, relating to public utility rate stability plans.

VETO

March 30, 2005

The Honorable Jack Dalrymple
President
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Dalrymple:

I hereby veto SB 2278 and return it to the Senate for reconsideration.

SB 2278 would allow investor owned utilities to collect higher electric rates from North Dakota consumers to pay for a power plant during construction before the plant provides any power to consumers. This is a significant benefit to the utility company as it recoups its costs and collects a return on investment during the construction period that could range from six to eight years. Because SB 2278 provides this benefit to a company even for plants that are built outside of North Dakota, I have vetoed this bill.

I believe that this legislation should have been amended to apply specifically to plants built within North Dakota. This amendment was offered in committee, but it was not adopted. When new plants are built in North Dakota, our state receives huge benefits in quality jobs, new wealth and low cost power. Also, new plants in North Dakota are vital to help develop more transmission for the growth of wind energy. Without the amendment, this bill works against the best interests of our state by providing an incentive for plants built in another state.

Proponents of this bill argue that being allowed to charge consumers for a plant during construction, referred to as the rate stabilization method, may ultimately result in lower costs to the consumer compared to the conventional approach. But in those cases in which a company can actually show that consumers will benefit from the rate stabilization treatment, the PSC already has the authority to provide it under existing law.

Further, consumers may not benefit from rate stabilization treatment. Power plants may take from six to eight years to build. It may take an individual or business consumer many years to recoup those increased payments and for those who move from a particular service area or the elderly, for example, there may never be a corresponding benefit.

If North Dakota is going to enact a law to limit the discretion of the Public Service Commission in making its determination as to the best rate treatment, which this bill does, there must be a clear benefit to the North Dakota citizens in return.

In exchange for the economic incentive provided to the utility company, North Dakotans should receive the economic benefit gained from increased employment and new wealth provided by new plants, transmission or energy related facilities. I cannot sign this legislation, which does not contain these assurances for North Dakota consumers and which, in fact, may be counterproductive to North Dakota's effort to develop energy resources within our state.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Rate stability plan for phasein of electric rate increases. Notwithstanding any other provisions of this title, a public utility planning the construction of an energy conversion facility, a major capital addition to an existing energy conversion facility in which the public utility has an ownership interest, a new transmission facility, a new renewable energy facility, or a new power purchase that is expected to have a material impact on rates, referred to collectively as an electric resource addition, may apply to the commission for a rate stability plan providing for the phasein of rate increases before the commercial operation of the electric resource addition. The commission may order that expenses associated with investigating the application made by the public utility for a rate stability plan be paid by the public utility in accordance with section 49-02-02. A rate stability plan approved by the commission may provide for the following:

1. Rate increases to be incrementally phased in before commercial operation of the electric resource addition; and
2. Any other conditions that benefit the public interest and may be imposed by the commission consistent with its findings in section 2 of this Act.

SECTION 2. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Approval of rate stability plan. The commission may approve a rate stability plan as provided in section 1 of this Act if:

1. The public utility applies for a rate stability plan before commencement of construction or purchase of an electric resource addition;

2. The public utility files with its application a full cost-of-service analysis as required for a general rate increase, including a projection of costs and revenues to the date of the anticipated commercial operation of the electric resource addition;
3. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
4. The commission finds that the rate stability plan serves the public need for adequate, efficient, and reasonable service; rate stability; financial stability of the public utility; reasonable capital costs; just and reasonable rates; a fair rate of return; and other considerations that benefit the public interest.

SECTION 3. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Annual review of rate stability plan. A rate stability plan approved by the commission involving an electric resource addition is subject to annual review until commercial operation of the resource addition. The public utility shall file annually an abbreviated cost-of-service analysis showing revenues, costs, and revenue requirements and a report of the progress of the construction showing accumulative construction costs and updated cost projections to complete the construction.

SECTION 4. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Filing of general rate case before commercial operation. Before commercial operation of the electric resource addition, a public utility shall make a general rate case filing with a full cost-of-service analysis, including the electric resource addition, in accordance with section 49-05-05. The commission shall adjust the public utility's rates to be charged by the public utility commencing with commercial operation of the electric resource addition in accordance with section 49-05-05.

SECTION 5. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Rate applications upon nonapproval of rate stability plan. If the commission does not approve a rate stability plan submitted pursuant to section 1 of this Act, nothing precludes a public utility from requesting a change in rates as otherwise authorized under this chapter.

Disapproved March 30, 2005

Filed March 30, 2005

CHAPTER 614**SENATE BILL NO. 2023**

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

CAPITAL IMPROVEMENTS

AN ACT to provide an appropriation for capital projects of various state departments; to provide an appropriation for state facility energy improvement capital projects of various state departments and institutions; to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects; to provide a statement of legislative intent; to provide for a legislative council study; to provide an appropriation; and to amend and reenact section 48-01.1-09 of the North Dakota Century Code, relating to the use of a construction manager.

VETO

April 26, 2005

The Honorable Jack Dalrymple
President of the Senate
Senate Chambers
State Capitol
Bismarck, ND 58505

Re: Item Veto of SB 2023

Dear President Dalrymple:

I have signed SB 2023, but disapprove and veto Section 6 of the bill.

Section 6 would have appropriated funds to study the archival storage requirements of the North Dakota Heritage Center, as an alternative to actually funding a facility for expanded storage.

The funding of the expanded storage facility at the Heritage Center was authorized in Section 1 of this bill, making a study unnecessary.

Sincerely,

John Hoeven
Governor

Disapproved April 26, 2005
Filed May 4, 2005

NOTE: For the full text of Senate Bill No. 2023, including section 6, see chapter 51.

CHAPTER 615

SENATE BILL NO. 2174

(Senators Krebsbach, J. Lee)
(Representatives Hawken, Rennerfeldt)

ESCROW ACCOUNT EXCESS AMOUNTS

AN ACT to amend and reenact subsection 2 of section 47-10.2-01 of the North Dakota Century Code, relating to escrow account excess amounts.

VETO

April 26, 2005

The Honorable Jack Dalrymple
President
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Dalrymple:

I have vetoed SB 2174 and return it unsigned.

Current law provides that companies that service secondary mortgages may require an escrow account to be maintained in an amount equal to "three hundred dollars **plus** the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year." [Emphasis added]. Section 47-10.2-01, North Dakota Century Code. Any amount in excess of this stated amount must be returned to the borrower upon demand, and failure to do so may result in a penalty of five hundred dollars, actual damages, costs and attorneys fees. Section 47-10.2-04, North Dakota Century Code.

Current law thus provides a "cushion" of three hundred dollars that may be held in escrow **in addition** to the amount necessary to make the annual payments of taxes, special assessments and insurance.

From the minutes and testimony presented in support of SB 2174, the intent of this legislation is to change the cushion that may be held in such escrow accounts from a flat dollar amount of three hundred dollars to one-twelfth, or one month's share, of the total annual payments for taxes, special assessments and insurance.

However, SB 2174 does not accomplish this intent. It states in its entirety that "any amount in an escrow account in excess of one-twelfth of the estimated total annual payments from the account" is defined as an "excess amount". It does not state that this is **in addition to** the amount required to make the total annual payments for taxes, special assessments and insurance.

Thus, what was meant to be the cushion is now the total amount that may be held in such escrow accounts. Clearly, this would defeat the purpose of an escrow account, which is to accumulate the amount needed to pay annual taxes, special assessments and insurance.

Because SB 2174 does not accomplish its intended purpose, and would create confusion in the marketplace, I have vetoed the legislation.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Excess amount" means any amount received in an escrow account during a calendar year in excess of ~~three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year~~ one-twelfth of the estimated total annual payments from the account.

Disapproved April 26, 2005
Filed April 26, 2005

CHAPTER 616**HOUSE BILL NO. 1015**

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

OFFICE OF MANAGEMENT AND BUDGET

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 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 create and enact two new sections to House Bill No. 1286, as approved by the fifty-ninth legislative assembly, and a new section to Senate Bill No. 2012, as approved by the fifty-ninth legislative assembly, relating to open records requests and to interpretation of provisions relating to refunds of certain fuels taxes paid by native Americans; to amend and reenact sections 4-01-21, 15.1-02-02, 15.1-06-06, 26.1-01-09, 27-02-02, 27-05-03, 49-01-05, 54-03-20, 54-09-05, 54-10-10, 54-11-13, 54-12-11, 54-44.1-06, 54-44.1-06.1, 57-01-04, and 57-40.6-02 of the North Dakota Century Code and section 5 of House Bill No. 1518, section 12 of Senate Bill No. 2015, and section 20 of House Bill No. 1043, as approved by the fifty-ninth legislative assembly, relating to salaries of elected officials, school calendars, lodging reimbursement for members of the legislative assembly, preparation of the budget data, voter approval of imposition of fees for emergency services communication systems, the state wheat commission levy, a legislative council study of the department of corrections and rehabilitation, and the effective date of streamlined sales tax agreement complying amendments; to repeal section 9 of Senate Bill No. 2015, as approved by the fifty-ninth legislative assembly, relating to composite schedules for teacher salaries; to provide for a legislative council study; to provide legislative intent; and to declare an emergency.

VETO

May 4, 2005

The Honorable Matt Klein
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

RE: Item veto of Sections 22 and 23 in HB 1015

Dear Speaker Klein:

I have signed HB 1015, but veto Sections 22 and 23 of the bill.

Providing a budget and recommended appropriations to fund that budget on a biennial basis is a constitutional duty of the executive branch of government. The legislature can neither add to nor diminish that constitutional duty. This bill attempts to tell the executive branch what it must include in its budget.

If enacted into law, Section 22 would require the executive budget to include recommendations as to expenditures in future biennia. Essentially, this provision would require that the executive budget include appropriation recommendations for the next three biennia, which is neither reasonable nor practical.

While we are willing to, and, in fact, do engage in a process of projecting future expenditures with the legislature during the legislative session, it is not appropriate for the legislature to direct the budget recommendations.

Section 22 also interferes with the constitutional obligation of the executive branch to recommend appropriation legislation, in essence, to recommend its executive budget.

It requires that the appropriation bills submitted by the executive be the legislatively approved budget from the prior biennium. Any executive recommendations, more or less, could only be submitted subsequently as amendments to the legislative budget.

Section 23 contains similar restrictions with regard to the executive branch recommendations for capital projects within the capital construction bill and, for the same reasons, is flawed.

For the reasons stated, I have signed HB 1015, but have vetoed Sections 22 and 23 of the bill.

Sincerely,

John Hoeven
Governor

Disapproved May 4, 2005
Filed May 4, 2005

NOTE: For the full text of House Bill No. 1015, including sections 22 and 23, see chapter 15.

CHAPTER 617**HOUSE BILL NO. 1301**

(Representatives Monson, Carlson, Glassheim, Skarphol)

BUDGET DATA BONDING INFORMATION

AN ACT to create and enact subsection 10 to section 54-44.1-06 of the North Dakota Century Code, relating to requiring bonding information in the budget data contents; and to amend and reenact section 54-44.1-08 of the North Dakota Century Code, relating to budget reports to the legislative assembly.

VETO

May 4, 2005

The Honorable Matt Klein
Speaker
ND House of Representatives
State Capitol
Bismarck, ND 58505

RE: HB 1301

Dear Mr. Speaker:

I hereby veto HB 1301 and return it unsigned.

If enacted into law, HB 1301 would require that a detailed report of outstanding bonds and bonding authorizations be included in the executive budget recommendation.

This same information is already provided to the legislature in the Comprehensive Annual Financial Report issued by the Office of Management and Budget. Adding it to the executive budget recommendation is duplicative and not part of the budget recommendation. This makes the executive budget recommendation more difficult to use and understand.

Because the requirement is redundant, I veto HB 1301.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 10 to section 54-44.1-06 of the North Dakota Century Code is created and enacted as follows:

10. A detailed report on outstanding bonds and on all authorizations for issuing bonds by state agencies and institutions included in the executive budget, including the proposed purposes, amounts to finance, anticipated proceeds, anticipated repayment terms, the responsibility of the state to repay the bonds, and sources of funds for repayments.

SECTION 2. AMENDMENT. Section 54-44.1-08 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-08. Budget report - Contents - When submitted to legislative assembly. The official budget report must be transmitted by the governor to all holdover legislators and legislators-elect not later than three days after the commencement of the session of the legislative assembly. Such report is not a third-class item under section 46-02-05. The budget director shall provide for the duplication or other satisfactory reproduction or printing of the official budget report, so as to ensure delivery of same as provided in this section. Such reports must contain the budget and revenue proposals recommended by the governor and the information required in subsections 1, 2, 3, 5, ~~and 6,~~ and 10 of section 54-44.1-06 and all other data and information as the governor shall decide. The budget director shall make available any and all information regarding budget data to the governor, the legislative assembly and its designees, legislators, and to the governor-elect as may be requested. The governor may present any additional budget information in any manner to the legislative assembly as the governor may desire.

Disapproved May 4, 2005

Filed May 4, 2005

CHAPTER 618**SENATE BILL NO. 2012**

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

DEPARTMENT OF TRANSPORTATION

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to create and enact a new section to chapter 24-01, section 24-02-40.1, a new section to chapter 24-08, and section 57-43.1-03.2 of the North Dakota Century Code, relating to the highway performance classification plan, grant or revenue anticipation financing by the department of transportation, naming of the liberty memorial bridge, and refunds of certain fuels taxes paid by native Americans; to amend and reenact sections 24-01-03, 24-01-51, 39-04-19, 57-40.3-10, 57-43.1-02, and 57-43.2-02 of the North Dakota Century Code, relating to highway and bridge maintenance, haying of no-mow areas, motor vehicle registration fees, motor vehicle excise tax revenue, and motor vehicle fuels and special fuels tax rates; to repeal section 39-04-39.5 of the North Dakota Century Code, relating to allocation of motor vehicle registration fees; and to provide an effective date; and to provide a contingent expiration date.

VETO

May 4, 2005

The Honorable Jack Dalrymple
President of the Senate
Senate Chambers
State Capitol
Bismarck, ND 58505

RE: Item Veto of Section 11 in SB 2012

Dear President Dalrymple:

I have signed SB 2012, the appropriation bill for the Department of Transportation, but disapprove and veto Section 11 of the bill.

Section 11 diverts motor vehicle excise taxes from the general fund to another fund before we have determined the revenue needs for future biennia.

This is particularly important because the legislature did not provide access to reserve funds in the budget stabilization fund should the \$10 million ending fund balance be inadequate to meet the state's revenue needs.

This diversion of funds increases the risk of an allotment, or could force the calling of a special session of the legislature to deal with future revenue requirements.

For these reasons, I disapprove and veto Section 11 of SB 2012.

Sincerely,

John Hoeven
Governor

Disapproved May 4, 2005
Filed May 4, 2005

NOTE: For the full text of Senate Bill No. 2012, including section 11, see chapter 40.