

VETOED MEASURES

CHAPTER 485

HOUSE BILL NO. 1033

(Legislative Management)
(Government Finance Committee)

AN ACT to create and enact three new sections to chapter 54-27 of the North Dakota Century Code, relating to definitions for the legacy fund, the legacy fund principal balance, and a transfer of legacy fund earnings; and to repeal section 21-10-12 of the North Dakota Century Code, relating to a definition of legacy fund earnings.

VETO

April 15, 2015

The Honorable Wesley Belter
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Dear Speaker Belter:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1033 and returned it to the House of Representatives.

I have vetoed this legislation due to language found in sections 2 and 3 of the bill. Section 2 provides that Legacy Fund moneys that are available for expenditure "... may not be included in the draft appropriations acts under section 54-44.1-06." This language would infringe upon the executive authority of the Governor to submit proposed legislative initiatives to the Legislature. Article V, Section 7 of the North Dakota Constitution states: the "governor shall present information on the condition of the state, together with any recommended legislation, to every regular and special session of the legislative assembly." Section 54-44.1-06 of the North Dakota Century Code further asserts the Governor shall present, "recommendations of the Governor for appropriations for the next biennium." The primary function of the executive branch is to manage the affairs of the state, including the careful budgeting of resources. This includes making recommendations to the Legislature pursuant to Article V, Section 7 of the North Dakota Constitution that contain executive branch assessments of the amount and preferred allocation of resources needed to fulfill legislative policies. Section 2 would restrict the executive branch in carrying out its constitutional responsibilities and is therefore unconstitutional.

Section 3 of the bill would require that "any legacy fund earnings that are transferred to the general fund in accordance with section 26 of Article X of the Constitution of North Dakota must be transferred immediately by the state treasurer back to the legacy fund to become part of the principal of the fund." Requiring such a transfer

would clearly contradict the intent of the voters when they enacted section 26 of Article X of the North Dakota Constitution that was approved by voters on November 2, 2010, which provides that "The state investment board shall invest the principal of the North Dakota legacy fund. The state treasurer shall transfer earnings of the North Dakota legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium." It is the clear intent of the constitutional language that subsequent to the transfer of the earnings to the General Fund the Legislative Assembly shall determine how these general fund dollars are to be used as part of the normal appropriations process, including consideration of the Governor's recommendations. Any provision that establishes an "automatic" reversal of the earnings transfer from the Legacy Fund before it actually occurs is a clear conflict with the intent of voters when they voted to approve the procedures of the Legacy Fund. For these reasons, I have vetoed House Bill 1033.

Sincerely,

Jack Dalrymple
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

Definitions for the legacy fund.

For the purposes of section 26 of article X of the Constitution of North Dakota:

1. "At the end of each biennium" means after cancellation of unexpended appropriations pursuant to section 54-44.1-11.
2. "Earnings" means net income in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.
3. "Principal" means thirty percent of total revenue derived from taxes on oil and gas production and extraction deposited in the legacy fund, earnings of the fund accruing prior to July 1, 2017, and any funds transferred by the legislative assembly into the fund from any source.
4. "Total revenue derived from taxes on oil and gas production or extraction" means taxes collected from oil and gas production or extraction pursuant to chapters 57-51.1, 57-51.2, and 57-51.2, excluding the amounts allocated to the Three Affiliated Tribes.

SECTION 2. A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

Legacy fund expenditure limit determination - Draft appropriation act restriction.

The director of the office of management and budget shall determine, by December first of each even-numbered year and at other times as requested by the legislative management, the amount equal to fifteen percent of the principal balance of the legacy fund, which may be available for expenditure during a biennium in accordance with section 26 of article X of the Constitution of North Dakota. The determined limit on available funds must be included in the budget data presented to

the legislative assembly as provided for in section 54-44.1-07. The available funds may not be included in draft appropriations acts under section 54-44.1-06.

SECTION 3. A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

Transfer of legacy fund earnings - Intent.

Any legacy fund earnings that are transferred to the general fund in accordance with section 26 of article X of the Constitution of North Dakota must be transferred immediately by the state treasurer to the legacy fund to become part of the principal of the fund. It is the intent of the legislative assembly that the earnings of the legacy fund continue to accumulate as part of the principal of the fund until either oil and gas tax collections for a biennium decrease by at least twenty-five percent from the previous biennium or the earnings of the legacy fund for a biennium exceed thirty-three percent of the oil and gas tax collections for the same biennium. For purposes of this section, "oil and gas tax collections" means total revenue derived from taxes on oil and gas production or extraction pursuant to chapters 57-51, 57-51.1, and 57-51.2, excluding the amounts allocated to the Three Affiliated Tribes.

SECTION 4. REPEAL. Section 21-10-12 of the North Dakota Century Code is repealed.

Disapproved April 15, 2015
Filed April 16, 2015

CHAPTER 486**HOUSE BILL NO. 1003**

(Legislative Management)
(Government Finance Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to create and enact five new sections to chapter 15-10, chapters 15-62.4 and 15-62.5, and a new subsection to a new section to chapter 54-10 as created in section 5 of Senate Bill No. 2004, as approved by the sixty-fourth legislative assembly, of the North Dakota Century Code, relating to a unified workforce, vocational, and technical education program system, the workforce education advisory council, the required use of electronic mail, file server administration, database administration, application server, and hosting services, audits of higher education computer systems, annual reports regarding scholarships, the student financial assistance program, the scholars program, and higher education audits; to amend and reenact subdivision c of subsection 1 of section 15-10-17, sections 15-18.2-02, 15-18.2-03, 15-18.2-04, 15-18.2-05, 54-12-08, and 54-44.1-04, subsection 4 of section 54-44.1-06, and section 54-44.1-11 of the North Dakota Century Code, relating to university system office personnel, state aid to institutions, attorneys hired by the state board of higher education, budget requests submitted to the office of the budget, preparation of budget data, and the cancellation of unexpended appropriations; to repeal chapter 15-62.2 of the North Dakota Century Code, relating to the student financial assistance program and the scholars program; to provide for the transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to limit tuition rate increases; to reauthorize projects for North Dakota state university and Minot state university; to provide for budget section reports; to provide for reports to the sixty-fifth legislative assembly; to provide for legislative management reports and studies; to provide an appropriation to the attorney general; to provide contingent appropriations to the state board of higher education; to provide exemptions; to provide legislative intent; and to declare an emergency.

VETO

May 13, 2015

The Honorable Wesley Belter
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Dear Speaker Belter:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed section 7 of House Bill 1003.

The language in this section places undue restrictions on the authority of the State Board of Higher Education in fulfilling their constitutional duty to hire a new Chancellor of Higher Education, as well as other key personnel. It prohibits consideration of any negotiated severance package and deletes an existing portion of the Century Code that provides for fixing terms of officers, which strongly implies that any multi-year contract will not be allowable. This conflicts with Article VIII, Section 6(7)(a) of the North Dakota Constitution, which provides that the State Board of Education "shall... appoint for a term of not to exceed three years, a state commissioner of higher education." This is clear permissive language for multiyear contracts. The enactment of these new restrictions would likely discourage well qualified applicants from applying for key positions.

A separate issue arises with the words "at will," which would negate the employee classification system utilized by the State Board of Higher Education.

For these reasons, I have vetoed section 7 of House Bill 1003.

Sincerely,

Jack Dalrymple
Governor

Disapproved May 13, 2015
Filed May 14, 2015

NOTE: For the full text of House Bill No. 1003, including section 7, see chapter 3.

CHAPTER 487**SENATE BILL NO. 2003**

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

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to provide exemptions; to create and enact a new section to chapter 27-05 and two new sections to chapter 54-12 of the North Dakota Century Code, relating to the responsibility for expert witness expenses, attorney general opinions, and the criminal justice data information sharing system; to amend and reenact sections 53-12.1-09, 54-12-08, 54-12-11, and 54-27-25 of the North Dakota Century Code, relating to the salary of the attorney general, assistant and special assistant attorneys general, the lottery operating fund, and the tobacco settlement trust fund; to repeal section 54-59-21 of the North Dakota Century Code, relating to the criminal justice data information sharing system; to provide a report to the budget section; to provide for a legislative management study; and to declare an emergency.

VETO

May 13, 2015

The Honorable Drew Wrigley
President, ND Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2003

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 6 and Section 8 of Senate Bill 2003.

Section 6 requires a district court to pay the expenses incurred by an expert witness, including a witness from the state crime laboratory. The section also tends to encourage witnesses to testify via interactive video by exempting district courts from any costs associated with their testimony in this situation. Section 6 is vetoed because the district courts did not receive funding for this purpose from either the Executive Budget or through legislative appropriations. Additionally, the language was never presented to the appropriations committees in either the House or Senate when they considered the proposed budget for the judicial system.

Further, it is doubtful that witnesses would be able to take meaningful advantage of the cost-saving opportunity for interactive video testimony because North Dakota Supreme Court Administrative Rule 52(4)(B)(2) provides "A witness may not testify by reliable electronic means unless the defendant knowingly and voluntarily waives the right to have the witness testify in person."

It is also questionable whether it is appropriate for the district court to pay the costs of expert witnesses. In addition, section 6 contains an incorrect reference to North

Dakota Century Code section 44-04-04, which pertains to “Aliens convicted of felony or adjudged mentally ill.”

I have also vetoed Section 8 of this legislation. Managing the volume of work and available staff time required to respond to requests for Attorney General Opinions must remain a management decision made at the discretion of the Attorney General. The proposed timeline for producing opinions increases the likelihood that an excessive volume of requests could make it impossible to effectively prioritize the use of staff and resources.

For these reasons, I have vetoed section 6 and 8 of Senate Bill 2003.

Sincerely,

Jack Dalrymple
Governor

Disapproved May 13, 2015
Filed May 14, 2015

NOTE: For the full text of Senate Bill No. 2003, including sections 6 and 8, see chapter 37.

CHAPTER 488

SENATE BILL NO. 2015

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

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 to the department of transportation; to provide an appropriation to the state auditor; to provide an appropriation to the legislative assembly; to provide an appropriation to the legislative council; to provide an appropriation to the judicial branch; to provide contingent appropriations to the state board of higher education, department of transportation, and superintendent of public instruction; to create and enact a new section to chapter 44-04 and a new section to chapter 54-52.6 of the North Dakota Century Code, relating to open records requests submitted by members of the legislative assembly and the legislative council and the defined benefit retirement plan; to amend and reenact subdivision c of subsection 1 of section 15-10-17, section 48-08-04, subsections 3 and 4 of section 54-52-17, section 55-01-02.1, subsection 3 of section 57-38-01.7 as amended in section 1 of of House Bill No. 1462, as approved by the sixty-fourth legislative assembly, subdivision b of subsection 3 of section 57-51.1-03 as amended in section 5 of House Bill No. 1476, as approved by the sixty-fourth legislative assembly, and subsection 2 of section 61-16.1-09, of the North Dakota Century Code, and sections 1 and 2 of Senate Bill No. 2019, as approved by the sixty-fourth legislative assembly, relating to North Dakota university system personnel, the use of legislative meeting rooms, the defined benefit retirement plan, operation of the heritage center building, income tax credits for charitable contributions to private education institutions, eminent domain and water resource boards, and an appropriation to the parks and recreation department; to repeal section 54-44-06 of the North Dakota Century Code and section 5 of House Bill No. 1003, as approved by the sixty-fourth legislative assembly, relating to duties of the office of management and budget as to the school fund and contingent appropriations for higher education capital projects; to provide an exemption; to provide for various transfers and contingent transfers; to provide statements of legislative intent; to provide for legislative management studies and reports; to provide for budget section reports; to provide an effective date; and to declare an emergency.

VETO

May 13, 2015

The Honorable Drew Wrigley
President, ND Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2015

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 24 of Senate Bill 2015.

Section 24 is vetoed because the new language serves no constructive purpose and is an excessive requirement on the human resources management of the university system. Any new chancellor, when entering office for the first time, has the authority to remove vice-chancellors and hire replacements at their discretion, because the vice-chancellors are not "classified" employees. To require vice-chancellors to resign is likely detrimental to the effective operation of the university system during a period of transition and could have a negative effect on the education of our students. Therefore, section 24 of Senate Bill 2015 is vetoed.

I have also vetoed Section 33 which is an attempt to clarify the extent of quick take authority within the use of eminent domain by water resource districts. However, the language does just the opposite, resulting in greater confusion of this issue. There is no definition provided for the term "specific project" which leaves a wide range of possible interpretations. Quick take authority is a serious public policy decision that should be clearly and definitively prescribed by the legislative assembly. House Bill 1095, which was passed by the 64th legislative assembly, requires a study of the use of quick take authority by water resource districts. This study should provide the clear direction as to what policy changes, if any, are needed.

Sincerely,

Jack Dalrymple
Governor

Disapproved May 13, 2015
Filed May 15, 2015

NOTE: For the full text of Senate Bill No. 2015, including sections 24 and 33, see chapter 49.

CHAPTER 489**SENATE BILL NO. 2039**

(Legislative Management)
(Government Finance Committee)

AN ACT to create and enact a new section to chapter 15-10, a new section to chapter 15.1-27, and two new sections to chapter 15.1-36 of the North Dakota Century Code, relating to a scholarship endowment fund, uses of the foundation aid stabilization fund, a school construction assistance loan fund, and school construction loans; to amend and reenact section 15.1-36-01, subsection 1 of section 15.1-36-02, section 16.1-01-11, and subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to school construction approval and loans, bond elections, and the coal development trust fund; to provide a continuing appropriation; to provide for transfers; to provide for a contingent effective date; and to declare an emergency.

VETO

May 13, 2015

The Honorable Drew Wrigley
President, ND Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2039

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed subsection 1(c) of Section 6 of Senate Bill 2039.

This subsection would require that the income, including interest payments on loans from the coal development trust fund, as authorized in North Dakota Century Code 57-62-02, be made part of the School Construction Assistance Loan Fund. This language conflicts with the North Dakota Constitution, Article X, Section 21, which requires that "the interest earned on the moneys in said fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state." I have vetoed this section because the language clearly conflicts with the constitution.

Therefore, subsection 1(c) of section 6 of Senate Bill 2039 is vetoed.

Sincerely,

Jack Dalrymple
Governor

Disapproved May 13, 2015
Filed May 14, 2015

NOTE: For the full text of Senate Bill No. 2039, including section 6, see chapter 153.