

VETOED MEASURES

CHAPTER 505

HOUSE BILL NO. 1378

(Representative Marschall)

AN ACT to amend and reenact subsection 1 of section 54-03-02 of the North Dakota Century Code, relating to authority for the legislative assembly to conduct business in December of even-numbered years.

VETO

March 31, 2021

The Honorable Kim Koppelman
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND

Re: House Bill 1378

Dear Speaker Koppelman:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1378 and return it to the House.

Article IV of the North Dakota Constitution clearly states that members of the legislative assembly are to "meet in the seat of government in the month of December following the election of its members, thereof for organizational and orientation purposes."

At the conclusion of the organizational session, the legislative assembly "shall thereafter recess until twelve noon on the first Tuesday after the third day in January, or at such other time as may be prescribed by law but not later than the eleventh day in January."

House Bill 1378 attempts to circumvent the Constitution by allowing members of the legislative assembly to introduce, consider and vote on bills and resolutions in December of even-numbered years, as they would during the regular session that begins in January of odd-numbered years.

Introducing and acting on bills and resolutions is beyond the scope of the December "organizational and orientation purposes" as stated in the Constitution.

Currently, the North Dakota Century Code contains language that mirrors the Constitution, stating that after the December organizational session, the legislative assembly "shall thereafter recess" until January. House Bill 1378 attempts to sidestep the Constitution by replacing this explicitly mirrored language with conflicting direction that the assembly "then may recess" until January.

House Bill 1378 could have serious consequences. For example, because a newly elected governor and lieutenant governor, per the Constitution, are not sworn in until Dec. 15, House Bill 1378 could result in a new legislative assembly -including newly elected members - casting votes on new legislation in early December, to be acted upon by an outgoing governor just days before leaving office and before the new governor has an opportunity to consider the legislation.

Legislation worth considering in December should still be worth considering in January.

The existing process for convening a new legislative assembly as outlined in the North Dakota Constitution has served this state and its citizens well for decades and should remain intact.

For the reasons stated above, House Bill 1378 is vetoed.

Sincerely,

Doug Burgum

Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-03-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The legislative assembly shall meet at the seat of government in the month of December following the election of the members ~~thereof~~ of the legislative assembly for organizational and orientation purposes and ~~shall thereafter~~ may recess until the time provided in subsection 2. ~~The legislative assembly also may convene in December following the election of the members of the legislative assembly to consider and vote on bills and resolutions and conduct any other business the legislative assembly is authorized to conduct during a regular session.~~

Disapproved March 31, 2021

Filed May 3, 2021

CHAPTER 506

HOUSE BILL NO. 1298

(Representatives B. Koppelman, Meier, Paulson, Schauer, Skroch, Steiner, Vetter)
(Senators Clemens, Kannianen, Myrdal)

AN ACT to create and enact a new section to chapter 14-02.4 of the North Dakota Century Code, relating to participation in athletic events exclusively for males or females; and to provide for a legislative management study.

VETO

April 21, 2021

The Honorable Kim Koppelman
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND

Re: House Bill 1298

Dear Speaker Koppelman:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1298 and return it to the House.

North Dakota today has a level playing field and fairness in girls' sports. House Bill 1298 purports that this long fairness is in immediate danger. There is no evidence to suggest this is true.

North Dakota has fairness in girls' and boys' sports in large part because of the caring and thoughtful leadership of the North Dakota High School Activities Association (NDHSAA) Board and its members. We have every confidence they will continue to ensure a level playing field for the more than 27,000 students who participate in North Dakota high school sports.

To date there has not been a single recorded incident of a transgender girl attempting to play on a North Dakota girls' team. Further, the NDHSAA already has regulations in place for participation in sex-separated interscholastic contests by transgender students. These regulations require transgender girls to undergo testosterone suppression treatment for gender transition for a full calendar year before they are eligible to compete in girls' sports.

This bill's proposed blanket prohibitions do not extend to students attending tribal or privately funded schools, thereby creating the potential for an unlevel playing field.

The most responsive sports governance is the organization closest to the teams and athletes they govern. If a question should arise related to a transgender student and athletic competition, the NDHSAA, parents, child, their health care provider, their school and their coaches are in the best position to manage that unique situation, especially given the child's right to privacy.

This bill would unnecessarily inject the state into a local issue by creating a ban with myriad unforeseen consequences.

For the reasons stated above, House Bill 1298 is vetoed.

Sincerely,

Doug Burgum

Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-02.4 of the North Dakota Century Code is created and enacted as follows:

Athletic events exclusively for males or exclusively for females.

1. A public elementary or secondary school may not knowingly allow an individual of the opposite sex who is enrolled in a public elementary or secondary school to participate on a school-sponsored athletic team that is exclusively for females or exclusively for males.
2. For purposes of this section, sex means an individual's biological sex and is based solely on an individual's reproductive biology and genetics at birth.
3. This section may not be construed to prohibit a female from participating in a school-sponsored athletic team or event that is exclusively for males.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STUDENT ATHLETIC EVENTS. During the 2021-22 interim, the legislative management shall consider studying student athletic events that are exclusively for males or exclusively for females and the impact of a policy that prohibits participation in those events by individuals who are of the opposite sex. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly.

Disapproved April 21, 2021

Filed April 27, 2021

CHAPTER 507**SENATE BILL BILL NO. 2030**

(Legislative Management)
(Higher Education Committee)

AN ACT to provide an appropriation to the state board of higher education for the higher education challenge matching grant program; to create and enact paragraph 3 of subdivision b of subsection 1 of section 15-10-48 and paragraph 3 of subdivision b of subsection 1 of section 15-10-49 of the North Dakota Century Code, relating to institution eligibility for a matching grant for the advancement of academics; to amend and reenact subdivision c of subsection 1 of section 15-10-48 and section 15-18.2-05 of the North Dakota Century Code, relating to matching grants for the advancement of academics and state aid for institutions of higher education; to repeal subdivision d of subsection 1 of section 15-10-48 of the North Dakota Century Code, relating to the eligibility of the university of North Dakota school of medicine and health sciences to receive a matching grant for the advancement of academics; and to provide a penalty.

VETO

May 7, 2021

The Honorable Brent Sanford
President of the Senate
North Dakota Senate Chambers
Bismarck, North Dakota

Dear President Sanford:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed Senate Bill 2030 - the higher education challenge grant bill - and filed it with the Secretary of State. I also have vetoed Section 5 of SB 2030, relating to multimillion-dollar penalties directed toward our public higher education institutions and mandatory criminal charges against state employees.

Signing SB 2030 approves the appropriation of \$11,150,000 within Section 1 for the successful challenge grant program. This program provides \$1 of state match funding for every \$2 in private funding raised by our 11 publicly funded colleges and universities for student scholarships and the advancement of academics. This significant appropriation has the potential to generate over \$33 million for aspiring students and institutions over the next two years.

North Dakota has strong pro-life public policies, and our administration has a strong record of signing pro-life legislation into law.

Sections 2 and 4 of SB 2030 affirm existing pro-life state policy from 2011 which states, "An agency of the state may not fund, endorse, or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth." These sections also add clarity into law that unless institutions abide by the pro-life policies, they are ineligible to receive any challenge grant dollars.

The North Dakota legislature has made clear, and our administration agrees, that taxpayer funding should not go toward funding abortions. Challenge grant dollars have not, and cannot, be used for that purpose.

Section 3 clarifies that the allocation of challenge grants now includes a separate allocation for the UNO School of Medicine and Health Sciences.

Signing the bill enacts Sections 1, 2, 3 and 4 into law.

However, the penalty provision of SB 2030, in Section 5, which was amended into the challenge grant bill, is problematic for multiple reasons and has been vetoed.

Section 5 threatens a \$2,800,000 penalty on each of our institutions of higher education that is void of due process and egregious in its amount, threatens mandatory criminal charges for state employees, and may be in direct conflict with House Bill 1503.

Known as the campus free speech bill, HB 1503 reinforces and strengthens First Amendment rights on college campuses and was passed by a significant majority of the legislature and signed into law on April 19, 2021. With Section 5 of SB 2030 vetoed, institutions will not be forced to choose between protecting First Amendment rights and facing severe penalties. Further, the penalty in Section 5 is imposed without due process. The State Board of Higher Education is simply instructed to deduct the \$2.8 million without providing the institution with formal notice, an opportunity for hearing, or a determination by an objective fact finder.

The \$2.8 million fixed penalty also would disproportionately affect the university system's smaller institutions, representing an average of 15.3% of the total funding formula appropriation for the 2021-2023 biennium at nine of the system's 11 institutions.

Although Section 5 creates an appropriate and needed exception for the UND School of Medicine and Health Sciences, it fails to include the same needed exception for the NDSU College of Health Professionals, which includes North Dakota's only school of pharmacy.

Lastly, should a state employee signing a contract unknowingly run afoul of Section 5, the bill mandates that the state's attorney "shall prosecute" the individual for a criminal charge punishable by 30 days in jail and a \$1,500 fine. This overreach removes prosecutorial discretion. Not surprisingly, leaders of our higher education institutions have shared that their faculty, researchers and grant officers are unwilling to take such a personal risk, thereby jeopardizing hundreds of millions of dollars in research funding and putting jobs, careers and faculty recruitment at severe risk across our university system.

sections that preserve the challenge grant program and affirm North Dakota's pro-life policies.

Regards,

Doug Burgum
Governor

Disapproved May 7, 2021

Filed May 10, 2021

NOTE: For the full text of Senate Bill No. 2030, including section 5, see chapter 130.