

against the nation in defense of which our volunteer and conscripted men and boys offered up their lives to the end that our returned soldiers, their posterity and those who furnish the food and clothing to sustain them may not be placed in perpetual bondage to pay interest on those bonds and further swell such fortune.

Be it further resolved that copies of this resolution be forwarded to the President of the United States, and to the Senate and the House of Representatives of the United States.

And your memorialists will ever pray.

Filed March 7, 1933.

## VETOES

H. B. No. 32—(Swendseid.)

### DISMISSAL CIVIL ACTIONS. HOW AND WHEN

An Act to amend and re-enact Section 7597, Chapter 10, of the Code of Civil procedure of the Compiled Laws of North Dakota for the year 1913 providing for and relating to when and how civil actions may be dismissed.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 32, being an Act to amend and re-enact Section 7597, Chapter 10, of the Code of Civil Procedure of the Compiled Laws of North Dakota for the year 1913, without my approval, for the reason that the present law on this matter, in my judgment, is sufficient and of greater value to litigants than the proposed measure.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 7597, Chapter 10, of the Code of Civil Procedure of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 7597. DISMISSAL OF CIVIL ACTIONS. HOW AND WHEN.] Civil action may be dismissed without a final determination of its merits in the following cases:

1. By the plaintiff, at any time before trial, if a provisional remedy has not been allowed, or counterclaim made, or affirmative relief demanded in the answer; provided, that an action on the same cause of action against any defendant shall not be dismissed more

than once without the written consent of the defendant or an order of the court on notice and cause shown.

2. By either party, with the written consent of the other; or by the court, upon the application of either party, after notice to the other, and sufficient cause shown, at any time before the trial.

3. By the court, when upon the trial and before the final submission of the case, the plaintiff abandons it, or fails to substantiate or establish his claim, or cause of action, or right to recover; and, provided, however, that when at the close of the plaintiff's testimony, or at the close of the trial any party to the action moves the court to dismiss the action, and the adverse party objects thereto such motion shall be denied and the court shall submit to the jury such issue or issues, as provided for by Section 7643 to the 1913 Compiled Laws of North Dakota of the 1925 Supplement, relating to directed verdicts and denial thereof when a party objects thereto, and the party shall have all the rights provided by said Section 7643 of the Supplement to the Compiled Laws of North Dakota.

4. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

5. By the court, on the application of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

6. The dismissal mentioned in the first and second subdivisions of this section may be made by an entry in the Clerk's register, by the plaintiff or his attorney, and a written notice of such dismissal and entry served on the adverse party, and judgment may thereupon be entered accordingly; provided, that in the cases mentioned in the said first subdivision, and in cases in which the parties to the action consent in writing to the dismissal of such action, the judgment of dismissal may be entered by the Clerk on motion of either party without any notice to the opposite party, and without an order from the court or judge.

7. In every case, other than those mentioned in this section the judgment in the action shall be rendered on the merits.

8. All other modes of dismissing an action, except as provided in this chapter, by nonsuit or otherwise, are hereby abolished.

## S. B. No. 163—(Committee on Appropriations.)

**EXPENSE OF AUDITS, ETC.—N. D. MILL AND ELEVATOR  
ASSOCIATION; BANK OF NORTH DAKOTA; STATE HAIL  
INSURANCE FUND AND WORKMEN'S COMPENSATION  
BUREAU**

**An Act to provide for the apportionment of the expense of auditing and examining the affairs of the North Dakota Mill and Elevator Association for the State Mill and Elevator at Grand Forks, Bank of North Dakota, including the farm loan department, the State Hail Insurance Fund, and the Workmen's Compensation Bureau of the State of North Dakota by the State Board of Auditors pursuant to the initiated measure approved November 2, 1920, and Chapter 143 of the Session Laws of 1923, and providing a fund for the payment of such expense.**

V E T O

March 10, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 163, being an act to provide for the apportionment of the expense of auditing and examining the affairs of the North Dakota Mill and Elevator Association for the State Mill and Elevator at Grand Forks, Bank of North Dakota, including farm loan department, the State Hail Insurance Fund, and the Workmen's Compensation Bureau of the State of North Dakota by the State Board of Auditors pursuant to the initiated measure approved November 2, 1920, and Chapter 143 of the Session Laws of 1923, and providing a fund for the payment of such expense, without my approval, for the reason that the present method of providing for the cost of auditing of the various industries mentioned in this Act is provided for under present statutes.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. To provide funds for meeting the expense of the audits and examinations of industrial and business institutions of the State of North Dakota by the State Board of Auditors, as provided by the initiated measure approved November 2, 1920, and Chapter 143 of Session Laws 1923, the following named institutions shall, on or before July 15, 1933, pay to the State Treasurer of the State of North Dakota an auditing fee for services heretofore rendered for the auditing of their respective affairs, to be credited to the account of the State Board of Auditors in the following amounts respectively:

North Dakota Mill and Elevator Association for the	
State Mill and Elevator at Grand Forks . . . . .	\$4,000.00
Bank of North Dakota, including Farm Loan Depart-	
ment . . . . .	6,000.00

State Hail Insurance Fund ..... 2,000.00

Workmen's Compensation Bureau ..... 1,500.00

And such funds shall be used by the State Board of Auditors as a revolving fund from which to pay the expense of auditing such departments hereafter.

§ 2. Provided further that on or before July 15, 1934, and on or before July 15th of each year thereafter, each of the aforesaid departments shall pay to the State Treasurer, to be credited to the account of the State Board of Auditors as aforesaid, an annual auditing fee not exceeding for any department the amount heretofore specified therefor, such annual fee to be determined by the State Board of Auditors, which shall equal as nearly as possible the amount of the actual expense for the auditing of the said department for the previous fiscal year.

§ 3. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 4. If any part hereof shall be unconstitutional, the determination thereof shall not affect the remainder thereof.

S. B. No. 124—(Committee on Banks and Banking.)

**REMOVAL DIRECTOR BUILDING AND LOAN ASSOCIATION**

An Act to amend and re-enact Section 17, of Chapter 94, of the Session Laws of 1931, relating to building and loan associations of the State of North Dakota.

V E T O

March 10, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 124, being an Act to amend and re-enact Section 17, of Chapter 94, of the Session Laws of 1931, relating to building and loan associations of the State of North Dakota, without my approval, for the reason that this measure, if enacted into law, would, in my judgment, be against the best interests of the State of North Dakota. Certainly what this State needs is more fearless, independent, acting directors rather than a law to enable three-fourths of a board of directors to remove a director who did not happen to concur in their opinions.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 17, of Chapter 94 of the Session Laws of 1931, be and it is hereby amended and re-enacted to read as follows:

§ 17. REMOVAL FROM OFFICE.] No director shall be removed from office except by a vote of three-fourths of the board of directors, or by a vote of the shareholders holding two-thirds of the outstanding capital shares, at a general meeting held after previous notice given in the manner provided in this Act. Meetings of the shareholders for this purpose may be called by a majority vote of the directors, or by shareholders holding not less than twenty-five per cent of the outstanding capital shares.

H. B. No. 139—(Carlson.)

CIGARETTE AND SNUFF TAX

An Act to amend and re-enact Section 5 of Chapter 105, Session Laws of 1931, relating to the sale of cigarettes, cigarette papers and wrappers and papers used and prepared for the making of cigarettes, and snuff, providing for a stamp tax thereon, regulating the manner of sale thereof, and providing penalties for violation hereof, and declaring an emergency.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 139, being an Act to amend and re-enact Section 5 of Chapter 105, Session Laws of 1931, relating to the sale of snuff, without my approval, for the reason that the tax on this article is already provided for in Senate Bill No. 315.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 5 of Chapter 105, Session Laws of 1931, is hereby amended and re-enacted to read as follows:

§ 5. From and after the taking effect of this Act, there is hereby levied and assessed and shall be collected and paid to the State Treasurer upon all cigarettes, cigarette papers or wrappers and tubes, and snuff sold in North Dakota to consumers, the following taxes to be paid prior to the time of sale and delivery thereof to the consumer:

Class A. On cigarettes weighing not more than three pounds per thousand, one and one-half mills on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, two mills on each such cigarette.

Class C. On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes made up in packages, books, or sets; on each such package, book or set containing not more than fifty papers, one-half cent; containing more than fifty

papers but not more than one hundred papers, one cent; containing more than one hundred papers, one cent for each fifty papers or major fractional part thereof.

Class D. On tubes, one cent for each fifty tubes or major fractional part thereof.

Class E. On snuff, two cents on each one and one-fourth ounces or major fraction thereof.

All cigarettes sold in this State under the provisions of this Act shall be put up in packages containing 5, 8, 10, 12, 15, 16, 20, 24, 40, 50, 80, or 100 cigarettes each. All snuff sold in this state under the provisions of this Act shall be put up in packages containing not more than twelve ounces thereof each. Immediately upon receipt by the licensee, each package of cigarettes or snuff and each package, book or set of papers or of tubes, shall have securely affixed thereto, in such manner as to seal the opening of the package, and be destroyed by the opening thereof, a suitable stamp denoting the tax thereon, and said stamp shall be properly cancelled prior to sale or removal for consumption, under such regulations as the State Treasurer shall prescribe. Provided that cigarettes or snuff sold to a consumer in cartons, rolls or other containers having more than one package or box therein, shall have affixed thereto in the manner herein provided, stamps in the amount by this Act required to be placed upon the several packages, boxes or receptacles, therein contained. Each package of snuff or cigarettes and each package, or book or set of papers or of tubes displayed, exhibited, stored or possessed in original cartons or containers or otherwise, within or upon the premises from which sale thereof may be made to the consumers shall be conclusively presumed to be intended for sale to consumers and to be displayed, exhibited, stored or possessed for such purpose; and each such package of snuff or cigarettes and each such package, book or set of papers or of tubes, at the time the same is so displayed, exhibited, stored or possessed upon such premises, shall have securely affixed thereto a suitable stamp, or stamps, denoting the tax thereon, which stamps shall be cancelled at the time and in the manner hereinbefore required; and the possession of any such package of snuff, cigarettes, package, book or set of cigarette papers or of tubes, within or upon any such premises, except cigarettes in unbroken containers of at least 2,000 cigarettes, shall be prima facie evidence of a sale made in violation of this Act; provided, however, that such presumption and the requirements as to stamps shall not apply to wholesale dealers selling to retail dealers for re-sale by the latter to consumers. The premises from which such sale to consumers may be made shall be deemed to include basements, rooms and store rooms within and upon or adjacent and contiguous to the premises described in the permit of the person, firm or corporation owning or operating the premises described in the permit, when such

basement rooms or store rooms are in the possession of or used by such person, firm or corporation.

For any violation of any of the foregoing provisions of this section, the offender, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$300.00 and costs of prosecution, and shall be committed to the county jail until such fine and cost are paid, but not for a period exceeding six months, and all cigarettes, cigarette papers or wrappers, and papers made or prepared for the purpose of making cigarettes, and snuff in his possession or in his place of business shall be confiscated and forfeited to the State.

It shall be unlawful for any person not authorized hereby with intent to defraud the state, to make, alter, forge or counterfeit any license or stamp provided for in this Act or to have in his possession any forged, counterfeited, spurious or altered license or stamp, knowing the same to be forged, counterfeited, spurious or altered, and any person found guilty of any violation of this provision shall be fined not more than \$1,000.00 and shall be imprisoned in the State Penitentiary for a period of not more than three years.

§ 2. EMERGENCY.] Whereas, in the passage of Chapter 105, Session Laws of 1931, the provisions of Class E, as above set forth were inadvertently omitted from the Bill as finally enrolled and engrossed, and whereas, some dispute has arisen as to whether or not snuff is properly taxable under said Act, this measure is hereby declared to be an emergency measure, to be in full force and effect immediately upon its passage and approval.

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S. B. No. 267—(Fine and Burkhart.)

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**SALE OF CIGARS, CHERROOTS OR TOBACCO**

An Act regulating the sale of cigars, cheroots or tobacco in all forms used for smoking or chewing, except cigarettes or snuff; requiring dealers in such commodities to obtain license before making sale thereof; providing for the levy, assessment, collection and payment of a tax thereon; providing for the regulation of the sale thereof; and penalty for violation of this Act; and defining the duties of the Attorney General, State Auditor, and State Treasurer imposed under the provisions of this Act; and providing that any persons violating this Act shall be enjoined and that any building or premises made use of for purposes in violation of this Act shall be deemed a nuisance and abated by injunction.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 267, being an Act to regulate the sale of cigars and tobacco, without my approval, for the reason

that the taxing of these articles is prescribed in Senate Bill No. 315, and if I approved this measure it would make it a double tax.

Very respectfully,

WILLIAM LANGER,

Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. No person, firm or corporation shall sell cigars, cheroots or tobacco in any form for smoking or chewing within the State of North Dakota without first obtaining a license therefor. Every such license shall be granted and issued by the Attorney General, and shall expire on the 30th day of June following the date of issue unless sooner revoked; provided that licenses granted pursuant to the provisions of Chapter 106 of the Session Laws of 1927, for the sale of cigarettes and snuff shall be deemed sufficient to cover the sale of the cigars, cheroots, and tobacco upon which this Act places a tax; and provided further, that all the provisions of said Chapter 106 of the Session Laws of 1927, regarding licenses, the issuing and revocation of the same, and regulation of the Attorney General relative thereto, shall apply with equal force to all licenses issued for the sale of cigars, cheroots or tobacco in any form for smoking or chewing; it being the intent of this Act that one license shall be sufficient to cover the sales of cigarettes, snuff, cigars, cheroots and tobacco in any form upon which this Act and Chapter 106 of the Session Laws of 1927 places a tax.

§ 2. No license shall be issued until the applicant shall have paid to the Attorney General a license tax, which tax shall be the same as provided in Section 3 of Chapter 106 of the Session Laws of 1927 or Acts amendatory thereof, and all licenses issued pursuant to said Chapter or amendatory Acts shall be deemed sufficient under this Act. The Attorney General shall prescribe the form of such license to include cigarettes, cigars, cheroots, snuff and tobacco in any form for smoking or chewing as well as cigarette papers and tubes. Said license tax shall be payable at the time of making application therefor and on or before the first day of July annually thereafter.

§ 3. Any person, firm or corporation that shall sell cigars, cheroots or tobacco in any form for smoking or chewing, without first having paid the license tax and obtained a license so to do as required in Section 1 and 2 of this Act, or who shall sell to consumers or keep in his possession for sale to consumers any cigars, cheroots or tobacco, except cigarettes or snuff in any form for smoking or chewing, after having received written notice from the Attorney General of the revocation of his license, or who shall violate any regulations authorized by this Act shall be guilty of a misdemeanor, and upon conviction of such offense shall be fined not



less than fifty (\$50.00) dollars nor more than five hundred (\$500.00) dollars, or be confined in the county jail not more than ninety days.

§ 4. From and after the taking effect of this Act there is levied and assessed and there shall be collected and paid to the State treasurer upon all cigars or substitutes therefor (excepting cigarettes) and upon tobacco in any form for smoking, sold in North Dakota to consumers, a tax amounting to three (3) per cent of the wholesale price of such cigars, cheroots or substitutes therefor and upon tobacco in any form for smoking to be paid as follows:

If cigars are sold and delivered to the consumer in the package, box or container in which same are received from the jobber or manufacturer, each such package, box or container shall have securely affixed thereto a suitable stamp denoting the tax thereon.

If such cigars are not sold in the package, box or container in which they are received from the jobber or manufacturer before any portion of any such package, box or container is sold, same shall have securely attached thereto a suitable stamp denoting the tax thereon; and in each case, said stamp shall be properly cancelled prior to such sale of any such package, box or container, or any portion thereof, under such regulations as the State Treasurer may prescribe.

§ 5. From and after the taking effect of this Act, there is also levied and assessed and shall be collected and paid to the State Treasurer upon all tobacco in any form for chewing sold in North Dakota to consumers, a tax amounting to three (3) per cent of the wholesale price of such tobacco to be paid as follows:

Before being delivered to the consumer each package, box or container of tobacco for smoking or chewing, taxed under the provisions of this Act, shall have securely affixed thereto, a suitable stamp denoting the tax imposed thereon if sold in the package, box or container in which same is received from the manufacturer or jobber. If sold in lesser quantities the package, box or container shall have such stamp affixed before any portion thereof shall be sold, and such stamp shall be affixed and cancelled under such regulations as the State Treasurer may prescribe.

§ 6. Before being delivered to the retail purchaser or consumer, or offered, or exposed, or kept for sale either in, or outside of, opened cartons, box or other container holding more than one unit of cigars or tobacco in any form for smoking or chewing, there shall be securely affixed to each unit or container of each of such commodities, tax stamps of the property value as required by the provisions of Sections 4 and 5 of this Act. Said stamps shall be properly affixed and cancelled prior to such display or removal for sale or consumption under such regulations as the State Treasurer may prescribe.

§ 7. Whoever violates any of the provisions of the preceding Sections 4, 5, and 6 of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars \$(50.00) and more than five hundred dollars (\$500.00), and be committed to the county jail until such fine is paid, but not exceeding ninety days; and all cigars, or substitutes therefor, or tobacco in any form for smoking or chewing, in his possession or in his place of business shall be confiscated and forfeited to the State, and the Attorney General shall sell such confiscated property to a licensed dealer to the best advantage for the State. The proceeds from such sale shall be forthwith remitted to the State Treasurer as part of the income from the enforcement of this law.

§ 8. Any person, firm or corporation violating any of the provisions of this Act, or maintaining a place where cigars, cheroots, or tobacco in any form for smoking or chewing are sold or kept with the intent to sell the same in violation of this Act, shall be deemed guilty of keeping and maintaining a nuisance, and the buildings or place so used for the sale or keeping for sale of cigars, cheroots, or tobacco in any form for smoking or chewing in violation of the provisions of this Act, shall be deemed to be a nuisance and such person, firm or corporation shall be enjoined and such building or place abated as a nuisance, and the procedure for the actions to enjoin and abate such nuisance, or for contempt in violating an order of injunction, shall be, so far as applicable, the same as those now provided by the laws of this State for enjoining and abating intoxicating liquors.

§ 9. It shall be unlawful for any person, with intent to defraud the state, to make, alter, forge, or counterfeit any license or stamp provided for in this Act or have in possession any forged, counterfeited, spurious or altered license or stamp, knowing the same to be forged, counterfeited, spurious or altered, or to knowingly or willfully cheat, defraud or deprive the state of any tax or revenue imposed by this Act, and whoever is found guilty of any violation of the provisions of this Act, shall be fined not more than one thousand dollars (\$1,000.00) and be imprisoned in the state penitentiary not more than three (3) years.

§ 10. The State Auditor shall prepare and have suitable stamps for use on each kind of package described in Sections 4, 5, and 6 of this Act. Upon requisition from the State Treasurer, the State Auditor shall deliver to his order the stamps designated in such requisition, and shall charge the Treasurer of the State with the stamps thus delivered, and shall keep an accurate record of all stamps coming into and leaving his hands. The State Treasurer shall sell the stamps herein provided for only to dealers holding permits issued as provided in this Act.

The money received by the State Treasurer from the stamp

taxes herein imposed shall be credited by the State Treasurer to the State Equalization Fund of the school fund of the State, provided the State Treasurer may deduct one half per cent of such proceeds for the purpose of paying the costs of printing and distribution of stamps.

§ 11. In the enforcement of this Act, the Attorney General may call to his assistance any State's Attorney, or any peace officer. The Attorney General is hereby authorized to appoint such additional assistants as may be needed to carry out the provisions of this Act and the duties imposed herein.

§ 12. All persons, firms, corporations or associations of persons who shall sell, or otherwise dispose of cigars, cheroots or any substitutes therefor, or tobacco in any form for smoking or chewing to consumers thereof, shall preserve for one (1) year all invoices of cigars, cheroots or any substitutes therefor and all invoices of tobacco for smoking or chewing, in any form, bought by them, and shall permit the Attorney General or his authorized agents or representative to inspect and examine all such taxable merchandise, invoices, books, papers and memoranda as may be deemed necessary by the Attorney General or his duly authorized agent or representative, in ascertaining whether the tax herein required has been paid, or to determine the amount of such tax as may be due.

Within thirty (30) days after the taking of effect of this Act, and on the first day of each month thereafter, all persons, firms or corporations selling, or otherwise disposing of, cigars, cheroots or any substitute therefor, or of tobacco in any form for smoking or chewing, to consumers thereof, shall on such form as the Attorney General shall prescribe, report all purchases made within or without this state during the preceding month, showing the name of the vendor, or seller, the date of sale and the name and address of such vendor and the quantity of cigars, cheroots, and tobacco in any form for smoking or chewing purchased during the preceding month. Any person, firm or corporation violating the provisions of this Section shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00) or by imprisonment in the county jail not more than ninety (90) days.

§ 13. This Act is designated as a replacement tax measure and the object and purpose of this Act and the imposition of the tax herein provided for is hereby declared to be the raising of revenues for the purpose of defraying the expenses of the public schools of the State heretofore raised through the taxation of real estate and tangible personal property; the intent of the Legislature being to provide a means of relieving the burden of taxation heretofore imposed upon the taxable real estate and tangible personal property

of the State by a more general distribution of the burdens of taxation among the people of the State.

The income and receipts accruing through the taxation imposed by the provision of this Act are hereby directed to be deposited in the General Fund in the State Treasury to the credit of the State Equalization Fund for the common schools, and the State Treasurer is hereby authorized and directed to distribute such receipts in accordance with the provisions of law.

S. B. No. 44—(Committee on Appropriations.)

STATE CONTINGENCY FUND

An Act making an appropriation to provide a State Contingency Fund to be placed at the disposal of the State Emergency Commission to be used as provided by Chapters 26 and 152, Session Laws of 1915, the same being Sections 283C1 to 283C6, inclusive, and Section 283C10 of the Supplement to the 1913 Compiled Laws of North Dakota.

V E T O

March 17, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 44, being an Act making an appropriation to provide a State Contingency Fund to be placed at the disposal of the State Emergency Commission to be used as provided by Chapters 26 and 152, Session Laws of 1915, the same being Sections 283C1 to 283C6, inclusive, and Section 283C10 of the Supplement to the 1913 Compiled Laws of North Dakota, without my approval, for the reason that the appropriation for each Department has been very carefully considered, and that owing to the financial condition of the State, heads of each Department should stay within the appropriation for its Department, and therefore it is not necessary to appropriate \$40,000.00 for any contingency fund.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ I. APPROPRIATION.] There is hereby appropriated out of any moneys in the State Treasury, not otherwise appropriated, the sum of \$40,000.00 or so much thereof, as may be necessary for the biennium beginning July 1st, 1933, and ending June 30th, 1935, to provide funds for the State Emergency Commission and which fund shall be known as the State Contingency Fund and be for the purpose authorized under Chapters 26 and 152, Session Laws of 1915, the same being Sections 283C1 to 283C6, inclusive, and Section 283C10 of the Supplement to the 1913 Compiled Laws of North Dakota.

S. B. No. 242—(Greene, by Request.)

DISTRICT COURT DECISION COMPULSORY WITHIN THIRTY  
DAYS

An Act to amend and re-enact Section 7638 Compiled Laws 1913 to provide that all motions or applications in any action, special proceeding or other matter in the district courts of the state must be decided and the decision therein reduced to writing and filed with the Clerk of the District Court within thirty days after the same shall have been submitted to the court for decision; and upon the trial of any question or issue of fact by the court, except in actions for the foreclosure of mortgages upon property real or personal or contracts in any manner affecting the title to such property. The decision of the court thereon must be given in writing and filed within sixty days after the cause has been submitted for decision.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE :

I herewith return Senate Bill No. 242, being an Act providing that all motions or applications in any action, special proceeding or other matter in the District Courts must be decided within thirty days, without my approval, for the reason that at the present Session of the Legislature a great deal of additional work has been placed upon the District Court Judges of this State, and it would be a serious inconvenience to them, and in my judgment would be against good, sound public policy to compel them to render decisions within the thirty days specified in this measure.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. That Section 7638 Compiled Laws 1913, be amended and re-enacted to read as follows :

§ 7638. DECISION COMPULSORY WITHIN THIRTY DAYS.] All motions or applications in any action, special proceeding or other matter in the district court must be decided and such decision be reduced to writing and filed with the clerk within thirty days after the same shall have been submitted to the court for decision, unless prevented by the sickness of the judge whose duty it is to decide the same or by other unavoidable casualty, and upon the trial of any question or issue of fact by the court, except in cases brought for the foreclosure of mortgages upon property real or personal or contracts involving title to such properties, its decision thereon and conclusions of law upon such decision, and direction for entry of judgment in accordance with such conclusions must be given in writing and filed with the clerk within sixty days after the cause has been

submitted for decision, unless such decision is prevented for the reason hereinbefore stated, and judgment shall be entered by the clerk in accordance with such direction upon the application of the party entitled thereto and the filing of such decision and conclusions of law. Each judge of the district court shall not less than five nor more than fifteen days before each quarterly installment of his salary becomes due file in the office of the auditor of the state a certificate under his hand stating in effect that no motion, application or question or issue of fact submitted to him remains undecided contrary to the provisions of this section. And in case any such decision has been prevented by any of the causes enumerated in this section, or it appears that the case or cases in which decisions are not filed are brought for the foreclosure of mortgages upon real or personal property or contracts affecting title to such property, such certificate shall state the facts constituting the cause of such prevention, and the state auditor is hereby directed not to sign or issue any warrant for the payment of any quarterly installment of salary to any judge of the district court until after such judge shall have filed such certificate as herein provided.

§ 2. REPEAL.] All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

H. B. No. 52—Crockett.)

**ABSOLUTE EXEMPTIONS**

An Act to amend and re-enact Section 7730 of the Compiled Laws of North Dakota for 1913, defining absolute exemptions.

V E T O

March 17, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 52, being an Act to amend and re-enact Section 7730 of the Compiled Laws of North Dakota for 1913, defining absolute exemptions, without my approval, for the reason that in my judgment it is against good, sound public policy.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 7730 of the Compiled Laws of North Dakota for 1913, be and the same is hereby amended and re-enacted to read as follows:

§ 7730. ABSOLUTE EXEMPTIONS.] The property mentioned in this section is absolutely exempt from all such process, levy or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. The family bible and all school books used by the family and all other books used as a part of the family library not exceeding in value one hundred dollars.
5. All wearing apparel and clothing of the debtor and his family.
6. The provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year.
7. The homestead as created, defined and limited by law.
8. All crops and grain both threshed and unthreshed raised by the debtor on not to exceed 160 acres in one tract occupied by the debtor, either as owner or tenant, as his homestead as defined by law; provided, however, that the provisions of this law will in no way affect seed, farm labor, thresher, or landlord liens. Provided, however, that if the debtor takes advantage of subdivision 8 of this Act, he shall not avail himself of any additional or alternate exemptions.

H. B. No. 235—(Lillehaugen and Loftus.)

**DEFINING GAMING MACHINES FOR AMUSEMENT, TAX, ETC.**  
**An Act defining gaming machines for amusement, providing a tax therefor, obligating the owners or operators thereof, to file reports under oath, and remit for such tax, providing for the enforcement thereof, and providing a penalty for the violation thereof.**

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 235, being an Act defining gaming machines for amusement and providing a tax therefor, without my approval, for the reason that the collection of this proposed tax would be very difficult, and the cost of collection would exceed the amount which would be collected, and for the additional reason that it would simply be another nuisance tax with which the State has already been overburdened.

Very respectfully,  
 WILLIAM LANGER,  
 Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ I. GAMING MACHINES FOR AMUSEMENT DEFINED.] Any

machine or contrivance kept and maintained in any public place, and the operation of which machine is not contrary to the laws of this state, where the public is solicited or permitted to operate the same by the use of coins, or tokens inserted in said machine or contrivance, for the purpose of determining the skill of the operator, either in the score obtained, or for other purposes, shall be termed a gaming machine for amusement.

§ 2. AMOUNT OF TAX. HOW PAID.] Every person, firm, corporation or association who permits any such machine as described in Section 1 of this Act, to be operated in a public place, or who keeps and maintains the same in a public place, shall pay to the county treasurer of the county wherein said machine is operated, for the benefit of the common school fund of the State of North Dakota, a tax equal to 25 per cent of the value of the coins or tokens deposited therein.

§ 3. REPORTS. WHEN AND HOW MADE.] To make effective the provisions of this Act, the person, firm, corporation or association who either owns or maintains any such machine in any public place for the use of the public shall, before operating such machine or machines register the same with the county treasurer in the county in which the machine is to be operated, and on the last day of each and every month during which said machine is so maintained, file with the treasurer of the said county, duplicate statements under oath, showing the amount of the value of the coins or tokens, so deposited during said month, and said statements shall be accompanied by a remittance of said tax for said machine.

§ 4. DUTY OF SHERIFF.] It is hereby made the special duty of the sheriff of any county where said machines are operated, to enforce the provisions of this Act.

§ 5. PENALTY.] Any person, for himself, or for any firm, corporation, or association violating the provisions of this Act shall be guilty of a misdemeanor.

§ 6. EMERGENCY.] WHEREAS, there are now countless numbers of said gaming machines for amusement, being operated within the state upon which no tax is paid, aside from their intrinsic value, therefore an emergency exists and this Act shall be in full force and effect from and after the date of its passage and approval.



H. B. No. 326—(Aljets, Sundby and Gilbertson.)

**PURCHASE GASOLINE USED SOLELY FOR AGRICULTURAL PURPOSES**

An Act providing for and permitting the purchase of gasoline to be used solely for agricultural purposes without payment of gasoline tax on purchase thereof; licensing purchasers and sellers thereof; providing penalties; Repeal.

V E T O

March 10, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 326, being an Act "providing for and permitting the purchase of gasoline to be used solely for agricultural purposes without payment of gasoline tax on purchase thereof; licensing purchasers and sellers thereof; providing penalties; Repeal," without my approval, for the reason that under this Act purchasers of gasoline for non-agricultural use would be able to buy same tax exempt. The present system of making refunds has now been in force for two years and is proving satisfactory. Further, under the terms of this Act, it would be necessary for every farmer in the State of North Dakota desiring to purchase gasoline exempt from gas tax to be come licensed. I am unalterably opposed to any further licensing of any individual for any purpose.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. GASOLINE USED SOLELY FOR AGRICULTURAL PURPOSES PURCHASED WITHOUT PAYMENT OF TAX.] Any person, co-partnership, association or corporation may purchase gasoline for use solely for agricultural purposes, exempt from the tax thereon fixed by law, from any person, co-partnership, association or corporation from any dealer licensed hereunder to sell tax exempt gasoline for use solely for agricultural purposes only; upon complying with the provisions of this Act; gasoline used in any motor vehicle operated or intended to be operated, wholly or in part upon any highway in the state, shall not be deemed used for agricultural purposes.

§ 2. LICENSE SECURED BY PURCHASER.] Such user of gasoline solely for agricultural purposes, shall be permitted to purchase such gasoline for use for such agricultural purposes, only upon being licensed so to do by the state auditor. The state auditor upon application duly made by such user of gasoline for agricultural purposes, shall issue to such application (applicant) upon the payment of a license fee of one (\$1.00) dollar, an annual license permitting such user to purchase gasoline for use for agricultural purposes only,

for the term of one year following date of issuance thereof. Such license shall be so issued only upon the filing of an application therefor with the state auditor, which application shall set forth the number of acres actually farmed with gasoline power by such applicant, the number and description of each piece of farm machinery operated by gasoline power, the horse power of each gasoline engine operated by the applicant, the make and year of manufacture and rated horse power of each automobile or gasoline truck owned or operated by said applicant, with a statement of the mileage each such automobile or truck shall have been operated to the date of such application, as shown by the speedometer thereon or other evidence of such mileage; the gallonage of gasoline estimated by the applicant as necessary for his use solely for such agricultural purposes, with a separate statement of such gallonage estimated as necessary to the operation of automobiles and trucks owned by him; all covering the period of one year following the date of such application.

§ 3. LICENSE. HOW PROCURED.] The state auditor shall issue to the applicant such license to purchase gasoline for agricultural purposes solely, only if satisfied that the same is to be used solely for such purposes, and such license shall set forth the amount which such licensee shall be permitted to purchase for such purposes free from gasoline tax, which amount shall not be more than that set forth in the application as required solely for agricultural purposes, and shall not be in excess of the amount deemed by the state auditor to be so required. Every such license issued shall contain the name and place of residence of the licensee and each such license shall state the total number of gallons of gasoline permitted to be purchased thereunder, and be given a serial number by the state auditor. Every such licensee, shall prior to being granted any further such annual license, file with the state auditor, a duplicate of each and every receipt, as hereinafter provided for, received by him from any dealer licensed hereunder from whom such gasoline has been purchased and covering all gasoline so purchased under such former license; together with a statement upon a form to be provided by the state auditor, of all gasoline purchased for other than solely agricultural purposes, and upon which such tax was paid by such licensee during the period covered by such former license held by him; which statement shall also show the date, amount of each such purchase upon which tax was paid by him and from whom such purchase was made giving the place of such purchase.

§ 4. DEALERS LICENSE. RECEIPTS FOR SALES. CLAIMS TO BE MADE AUDITOR.] Any person, co-partnership, association, or corporation selling gasoline in the State of North Dakota may, upon application to the state auditor for license, sell gasoline, tax exempt, for agricultural purposes solely, and upon the payment of a fee of five dollars \$(5.00) be issued an annual license therefor. Each such dealer in gasoline used solely for agricultural purposes, and sold as

tax exempt, shall secure a separate dealer's permit for each gasoline station or place of sale of such tax exempt gasoline, from which such tax exempt gasoline is sold by him; and each tank wagon or vehicle, selling such tax exempt gasoline shall be considered a separate place of sale. Provided, however, that no such tax free gasoline shall be sold or delivered by such licensed dealer therein, from any truck or vehicle, except the same have painted upon it in figures not less than four inches high and in contrasting color to the background thereof, the words, "Licensed to Deliver Tax Exempt Gasoline," and showing the number assigned such truck or vehicle by the state auditor, which number shall be assigned such dealer upon application therefor. Upon every sale or purchase of gasoline for solely agricultural use, and as tax exempt, receipts in triplicate shall be made out upon a form to be determined by the state auditor, which said receipts must show the name of the seller, the location of his place of business, the number of his license, the number of gallons sold, the date of sale, the postoffice address of the purchaser, the number of his license and shall be signed by such licensed purchaser. Two of such triplicate copies shall be retained by the licensed seller and one shall be delivered the licensed purchaser; the copy delivered the purchaser shall be printed upon pink tinted paper, one of the copies retained by the dealer upon blue tinted paper and the original upon white paper; the copy printed upon white paper properly made out and signed by the licensee to purchase such gas, tax free hereunder, may be delivered by such licensed dealer in such tax exempt gasoline, to any dealer importing gasoline into the state of North Dakota and originally liable for the payment of the gasoline tax thereon; and such original receipt, shall be acceptable by the state auditor in lieu of payment by such dealer importing gasoline into the State of North Dakota and liable for the tax thereon, of the tax upon the number of gallons of gasoline by such receipt shown to have been sold for agricultural purposes solely, to such licensed purchaser.

§ 5. THE STATE AUDITOR MAY CANCEL OR REFUSE LICENSE.] The use by any holder of a license issued hereunder, for any purpose other than solely agricultural use, shall forfeit such license, and the state auditor may in his discretion refuse to issue a further license to any applicant, either for a purchasers or sellers license hereunder, where proof has been made to the state auditor's satisfaction, that said applicant has knowingly failed to comply with the provisions hereof.

§ 6. FORM OF APPLICATIONS AND CLAIMS.] The applications and statements herein provided for, and the claims accompanying receipts transmitted by a dealer to the state auditor for credit upon gasoline tax, shall be upon forms to be prescribed or furnished by the state auditor, and shall be sworn to before a notary public or other official authorized to administer an oath. The license fees thus collected by the state auditor shall be remitted by the state auditor to

the state treasurer, who shall credit the same to the Gasoline License Fund. The money in his fund shall be available for the payment of clerkhire, supplies and all other expenses entailed by the state auditor in the administration and enforcement of this Act. The unexpended balance remaining in the said Gasoline License Fund shall be transferred by the state auditor as of June 30 of each year to the credit of the General Fund.

§ 7. CONSTRUCTION.] Nothing in this Act shall be construed as exempting any gasoline used as motor vehicle fuel in propelling any gasoline truck or engine to be operated, in whole or in part upon any public highway in the state, or gasoline used for purposes not solely agricultural, from payment of the tax upon gasoline provided by law. Upon gasoline used for purposes other than solely agricultural, and for which under existing laws a rebate of gas tax as provided, such rebate may be obtained in the manner as by law provided.

§ 8. ENFORCEMENT OF ACT: AUDITOR TO MAKE RULES AND REGULATIONS.] The state auditor shall have the power to formulate rules and regulations for the administration of this Act, and it is hereby made the duty of all states attorneys, justices and peace officers to enforce the provisions hereof.

§ 9. PENALTY.] Any person, co-partnership, association or corporation violating any of the provisions of this Act, shall upon conviction thereof be punished by imprisonment in the county jail not less than thirty days or more than one year, or by imprisonment in the penitentiary for one year, or by a fine of not less than one hundred (\$100.00) dollars or more than one thousand (\$1,000.00) dollars, or by both such fine and such jail or penitentiary imprisonment.

§ 10. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

S. B. No. 249—(Fredrickson and Greene.)

**EXEMPTION GRAIN WAREHOUSEMEN FROM SUIT FOR  
CONVERSION**

An Act to exempt grain warehousemen from suit for conversion of grain bought, unless the instrument creating said interests or liens is on file or of record, or written notice of the existence thereof is given to the warehousemen.

V E T O

March 10, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 249, being an Act to exempt grain warehousemen from suit for conversion of grain bought, unless the instrument creating said interests or liens is on file or of rec-

ord, or written notice of the existence thereof is given to the warehousemen, without my approval, for the reason that I believe it is against good, sound public policy.

Very respectfully,  
WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. No grain warehouseman shall be liable in any action for the conversion of grain bought, unless the instrument under which an interest or lien is claimed, is on file or of record in the office of the register of deeds of the county where the grain was grown prior to the alleged act of conversion or in case of an unfiled and unrecorded interest or lien, unless the owner or holder thereof prior to the alleged act of conversion, shall have notified the grain warehouseman in writing of the existence, nature and amount of such lien or interest, the name and address of the person against whom such lien is claimed and the description of the land or lands upon which said crops were grown, provided, however, this shall not apply to thrasher nor labor liens.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

S. B. No. 113—(Brostuen.)

#### SUSPENSION HIGHWAY CONSTRUCTION

An Act suspending and deferring the construction, building and improvement of all highways and highway projects in this state, except for necessary maintenance and repair and the completion of projects already begun and partially completed.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 113 without my approval for the following reasons:

While conservative action should be maintained with respect to highway construction, I deem it advisable to leave this matter in the hands of the Highway Commissioner to determine just what highway construction shall be indulged in, recognizing the passage of the bill as a recommendation from the Legislature to act in a conservative manner and as an injunction upon the Highway Commissioner to proceed with care.

Should funds be available with which to enter into contracts for highway construction within the period of time mentioned in the bill, the hands of the Highway Commissioner should not be tied if it is

possible to aid the unemployed of the State through highway construction.

The State is now spending thousands of dollars in relief work and in aid to the unemployed of the State, and if the State could match Federal Aid by furnishing forty-six per cent of the money to the Federal Fifty-four per cent, much good could be accomplished through money furnished by the United States Government. It is certain that for more than a year to come much additional money will necessarily be expended in aid to the unemployed, and employment should be given as far as possible and to the utmost financial ability of the State in highway construction that such unemployments may be greatly diminished.

I deem the action of the Legislature largely in the nature of a recommendation and injunction to the Highway Commissioner, respecting contracts, and that recommendation shall be consistently followed to the extent that absolute necessity demands.

Future unemployment conditions may absolutely demand highway construction in an emergency.

While I do not believe in favoring any particular class of our citizens, yet it is manifest that highway contractors in this State have in anticipation of future highway construction invested large sums of money in equipment, and a sudden cessation of highway construction would no doubt cause great injury to large numbers of our people.

Very respectfully,

WILLIAM LANGER,  
Governor.

L/F

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. That all construction, building and improvement of roads, highways and highway projects in this state are hereby suspended and deferred for a period of eighteen months from and after the passage and approval of this Act, except for necessary maintenance and repair and for the completion of roads and highway projects that have been started and partially completed and which in the discretion of the Highway Commissioner should be completed in order to prevent damage or the deterioration or ruin of the part that has already been partially completed.

§ 2. All contracts let for the construction, building or improvement of any road, highway or highway project, except for necessary maintenance and repair are hereby suspended and deferred for a period of eighteen months from and after the passage and approval of this Act, in accordance with the provisions of Section 1 hereof, provided however, where the contractor has his equipment and material on the grounds and where such suspension of work would cause great hardship, the Highway Commissioner, in his dis-

cretion, may authorize the completion or partial completion of such road, highway or highway project.

§ 3. To the extent of federal funds now available or in case the federal government should pass legislation giving one hundred per cent aid to the states for road construction, then the State Highway Commissioner, in his discretion, may resume or partially resume the work of building, constructing and improving state highways and state highway projects; or in case any county has voted bonds or has available funds, then the State Highway Commissioner, in his discretion, may permit the construction of roads, state highways or state highway projects, within said county to the extent of such available funds.

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H. B. No. 91—(Young, Spengler, Nelson of Dickey, and Holthusen.)

**REGULATION PURCHASE, ETC., HOG CHOLERA VIRUS**  
**An Act regulating the purchase, use, administering and handling of hog Cholera Virus, and providing penalties therefor.**

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 91, being an Act regulating the purchase, use, administration and handling of hog Cholera Virus, and providing penalties therefor, without my approval, for the reason that North Dakota now leads every other State in the United States in being hog cholera free, and further that experience has proven that the promiscuous use of hog Cholera Virus results in the increase rather than in the decrease of hog cholera.

Very respectfully,

WILLIAM LANGER,  
 Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. The purchase for use, or possession for use, of hog cholera virus, by any person not a licensed veterinarian or farmer, who is an owner or breeder of hogs, is hereby prohibited and made unlawful. Provided that such farmer, owner, or breeder of hogs, shall not administer such hog cholera virus except to hogs owned by him; provided further, that it shall be unlawful for any person to leave exposed, or scatter or place any hog cholera virus, or bottle or container thereof, in such manner as may result in the spread of hog cholera, or as may infect any animal not treated for such disease, or may contaminate any well, stream, or body of water, or any land, or premises, with such virus or disease germs.

§ 2. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed two hundred (\$200.00) dollars or imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment.

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S. B. No. 175—(Lynch and Magnuson.)

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**INSURANCE MEMBERS MUTUAL CYCLONE AND TORNADO  
INSURANCE COMPANIES**

**An Act to permit mutual cyclone and tornado insurance companies to insure its members against fire or lightning.**

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 175, being an Act to permit mutual cyclone and tornado insurance companies to insure its members against fire or lightning, without my approval for the reason that the law as proposed in said Act does not appear to be a wise and proper one in the interest of good public policy, for the reason that we now have a great many solvent fire and lightning County Mutual Insurance Companies in North Dakota which have been developed with a great deal of time and trouble and these are entitled to be protected from the larger companies.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. Any mutual insurance company organized under the provisions of Section 4950a1 of the 1925 Supplement to the Compiled Laws of North Dakota for the purpose of insuring its members against loss or damage by tornadoes, windstorms and cyclones only, which has insurance in effect amounting to five million dollars or over, may by amending its articles of incorporation and by-laws to conform to the provisions of law applicable to county mutual companies, insure its members against loss or damage by fire or lightning and issue combined policies for that purpose in any county in the state in which there is no county mutual operating.

§ 2. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect on and after its passage and approval.



H. B. No. 220—(Twichell, Swett, Homnes and Swendseid.)

**CONVICTION, JUDGMENT JUSTICE COURT**

An Act to amend and re-enact Section 9157 Compiled Laws of North Dakota, 1913, having to do with sentences in Justice Court.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 220, being an Act to amend and re-enact Section 9157 Compiled Laws of North Dakota, 1913, having to do with sentences in Justice Court, without my approval, for the reason that I believe it is against good, sound public policy.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ I. AMENDMENT.]. That Section 9157 Compiled Laws of North Dakota, 1913, be and the same is hereby amended and re-enacted to read as follows:

§ 9157. CONVICTION OF DEFENDANT. JUDGMENT.] When the defendant is convicted by the court or by a verdict of "guilty" or a verdict "for the state" which does not also find the defendant not guilty, the court shall render judgment that he be punished by a fine or by imprisonment in the county jail or by both fine and imprisonment, specifying the amount of the fine or time of imprisonment. A judgment of fine or of fine and imprisonment may also direct that the defendant be imprisoned until the same is fully satisfied. In a case in which the court has a discretion as to the extent of the punishment, it may, upon the suggestion of either party before rendering judgment, hear testimony as to circumstances proper to be considered in aggravation or mitigation of punishment.

H. B. No. 282—(Hanson of Benson and Cunningham.)

**WEIGHING, ETC., LIVESTOCK AT PACKING PLANTS**

An Act to provide for weighing, grading, feeding, docking and watering of livestock at packing plants, slaughtering houses and concentration points.

V E T O

March 17, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 282, being an Act to provide for weighing, grading, feeding, docking and watering of livestock

at packing plants, slaughtering houses and concentration points, without my approval, for the following reasons:

First, that it is not necessary under existing conditions to add this governmental expense, and in my judgment we should build up the packing plants in the State of North Dakota and employ North Dakota labor in the preparing of our livestock for the consumer.

Second, there is a home-owned packing plant at Grand Forks, owned by approximately one thousand North Dakota citizens, and in my opinion the enactment of this measure into a law would seriously injure this packing plant if it ever got in shape to expand. It is only a few years ago that the farmers in this State lost the Equity Packing Plant in Fargo, and I believe I would be untrue to the farmers of this State if I signed this measure, which will add an additional burden to this institution in Grand Forks, which the Bank of North Dakota has been aiding for the last eight years.

Third, I have approved House Bill No. 195, which, in my opinion, gives the necessary protection demanded for livestock producers.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. As used herein, the terms "packing plants" and "slaughtering houses" shall mean plants, houses, and places of business where livestock purchased or acquired at places within the State of North Dakota other than a public stockyards as the same is defined by Chapter 192, Laws 1919, are slaughtered. The term "livestock" shall mean cattle, hogs, and sheep. This Act shall apply only to packing plants and slaughtering houses handling livestock purchased and acquired as aforesaid, and paid for upon weights ascertained either at the packing plant or slaughtering house concentration point, or at a public place other than that at which the same were acquired. "Concentration point" shall mean any stockyards at which livestock are assembled by rail, or by rail and/ or other means of transportation, and at which livestock are bought and sold or are assembled for re-shipment to a packing plant or a public stockyards, or graded or weighed for the purpose of establishing a basis for sale or re-shipment.

§ 2. The Board of Railroad Commissioners shall appoint at packing plants, slaughtering houses, and concentration points, such weighers and graders as may be necessary for weighing and grading of livestock. Every such weigher and every such grader shall give to the state a bond in the sum of five thousand dollars, conditioned for the faithful discharge of his duties. No weighers or graders shall be maintained at any packing plant, slaughtering house, or concen-

tration point where the average daily number of livestock handled is less than 250 head. The Board of Railroad Commissioners shall prescribe and follow such reasonable regulations as it deems necessary for determining such daily average.

The shipper or his representative shall have the right to give his livestock such feed as they will consume during a two-hour period prior to weighing, feed to be furnished by the owner, proprietor, or operator of the packing plant, slaughtering house, or concentration point, at the expense of the shipper, and after such feeding the animals shall be given by such owner, proprietor, or operator, free access to water until their thirst is fully quenched. If, however, feeding is omitted, the actual scale weights shall apply as the sole basis for settlement with the shipper.

The weighers and graders shall weigh, dock and grade all livestock and shall keep a record thereof and of the time of arrival of livestock at such packing plants, slaughtering houses, and concentration points. Upon request the weigher and/ or grader shall furnish the interested parties a certificate setting forth the number of animals weighed or graded, or both, for whose account weighed or graded, the actual weight and grade of such animal or animals, and the dockage if any. Such certificate shall be prima facie evidence of the facts therein certified.

The Board of Railroad Commissioners shall establish such rules and regulations as it deems necessary for the weighing, docking, and grading of animals and for carrying out the provisions of this Act. In so far as this is applicable, the Board of Railroad Commissioners shall use the same standards as are used by the United States Bureau of Marketing.

§ 3. The Commission shall prescribe the fee necessary to cover the cost of such weighing, docking, and grading, to be assessed and collected in such manner as the Commission may prescribe. All moneys so collected shall be deposited in the state treasury and known as the "Livestock Weight and Grading Fund," and shall be paid out only on the order of the Commission and the State Auditor's warrant.

§ 4. No weigher, docker, or grader shall during his term of service be in any manner interested in the handling, shipping, producing, or sale of livestock, nor in the employment of any person or corporation engaged therein.

§ 5. All bonds required by this Act shall be filed with the Secretary of State. Suit may be brought thereon by any person injured by the misconduct of the principal.

§ 6. Any person not duly appointed and qualified who shall assume to act as such weigher, docker, or grader shall be guilty of a misdemeanor and punished by a fine of not less than fifty nor more than one hundred dollars.

§ 7. Any weigher, docker, or grader who shall knowingly or carelessly weigh, dock or grade any livestock improperly, or give any false certificate of weight or grade, or accept money or other consideration directly or indirectly for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall improperly influence or attempt to influence any such officer in the performance of his duties, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

§ 8. Any person or corporation who shall obstruct any state weigher, docker, or grader in the performance of his official duties by preventing his proper access to the scales, publicly or privately owned, used in the weighing of livestock or otherwise, shall forfeit to the state one hundred dollars for each such offence.

§ 9. This Act shall take effect and be in force from and after July 1, 1933.

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S. B. No. 132—(Porter.)

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#### MOTOR FUEL TAX

An Act to amend and re-enact Sections 2, 3, 4 and 5 of Chapter 166 of the Session Laws of the State of North Dakota for the year 1929 relating to taxes on motor fuel, its collection, report of sales, and distribution of revenue, the licensing and bonding of dealers, regulation of sales, revocation of licenses and providing a penalty.

V E T O

March 10, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 132, being an Act to amend and re-enact Sections 2, 3, 4 and 5 of Chapter 166 of the Session Laws of the State of North Dakota for the year 1929 relating to taxes on motor fuel, its collection, report of sales, and distribution of revenue, the licensing and bonding of dealers, regulation of sales, revocation of licenses and providing a penalty, without my approval, for the reason that practically every state in the Union has either a collection fee or shrinkage fee allowable to oil dealers, and that this law has for the last four years proven very satisfactory, practically making 100% return for gas tax in this state, and I see no reason why it should be changed at this time.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Sections 2, 3, 4 and 5 of Chapter 166 of the Session Laws of the State of North Dakota for the year 1929 be and the same hereby are amended and re-enacted to read as follows:

§ 2. That each and every dealer in motor vehicle fuel, as defined in this Act, who is now engaged, or who may hereafter engage in his own name, in the name of others, or in the name of his representative or agents, in this state, in the sale or use of motor vehicle fuel as herein defined, shall, not later than the 15th day of each calendar month render to the State Auditor, on forms described, prepared and furnished by the State Auditor, a sworn statement of the number of gallons of motor vehicle fuel sold or used by him or them during the preceding calendar month, which statement shall be sworn to by one of the principal officers, in case of domestic corporation, or by the resident general agent, or agents, or attorney-in-fact, or by a chief accountant or officer in case of a foreign corporation; by the managing agent or owner in case of a firm, association or individual; and shall contain a statement of the quantities of motor vehicle fuel sold or used within the state of North Dakota from his or their respective places of business, and if any of such motor vehicle fuel has been sold and delivered by said dealer to customers in the original package, whether in tank cars, barrels or other packages and in the same form and condition in which the same was imported, said statement shall show the amount of motor vehicle fuel so sold and the names and addresses of the persons, firm or corporations to whom the same was sold.

Said dealer shall pay a license of three cents per gallon on all motor vehicle fuel used and sold by him, other than such fuel sold by him or them, in the original packages as above specified, and shall have the option of paying said tax of three cents per gallon on all motor vehicle fuel sold by him or them, in the state, in the original packages in which the same was imported as above specified.

Whenever any sale is made by a dealer of motor vehicle fuel in the original packages in which the same was imported as above specified, such dealer shall deliver to the purchaser thereof an invoice of such motor vehicle fuel, stating the name and address of the purchaser, the quantity and kind of fuel sold, and whether or not said dealer assumes and agrees to pay the license tax on said fuel above specified, and such dealer shall transmit to the state auditor, at the same time he shall render the statement above specified, duplicate copies of all such invoices issued and delivered by him during the period covered by such statement.

§ 3. Every dealer paying such license tax or being liable for the payment therefor, shall be entitled to charge and collect the sum

of three cents per gallon, on such motor fuel sold by him, as a part of the selling price thereof.

§ 4. (a) It shall be unlawful for any dealer, as herein defined, to engage in business in this state as a dealer, unless such dealer is the holder of an unrevoked license issued by the State Auditor to engage in such business. To procure such license such dealer shall file with the state auditor a sworn application upon a form prescribed and to be furnished by the state auditor. Such application shall contain the name under which the applicant intends to transact business; the names and addresses of the several persons constituting the firm or partnership; and if a corporation, the corporate name, the state where and time when incorporated, the name of its officers and directors; and if a foreign corporation, the name of its resident agent, the location of its place or places of business, the date such business was established; and any other information the state auditor may require. Such application shall be signed and sworn to by the owner or owners of such business, if an individual, partnership or unincorporated association, and if a corporation, by the president and secretary thereof. At the time of applying for such license every applicant shall pay to the state auditor as a license fee, the sum of two dollars; which fee shall be transferred to the state treasury and there be credited to the general fund. Provided, however, that the State Auditor may require such applicant to file a suitable bond conditioned for the prompt filing of reports and payment of the tax designated herein.

(b) Upon the filing of such application and the payment of such fee, the state auditor shall issue to such applicant a license which shall authorize the holder thereof to engage in business in this state as a dealer, as defined herein, until the 30th day of June of each odd numbered year following the date of its issuance, unless such license shall be revoked within that period by the state auditor, as provided by law.

(c) If the holder of such license shall at any time, refuse or neglect, to file his or its monthly report and pay the full amount of the tax at the times, in the manner, and at the place such report is required to be filed and the tax required to be paid under the provisions hereof, the state auditor shall forthwith revoke such license and shall promptly notify the holder thereof, by notice sent by registered mail to the address of such holder, appearing in his records; provided, that his said report is filed and the tax paid within ten days after the same become due, and it be established under oath that such delay was due to accident or justifiable oversight, then the state auditor may continue in full force and effect such license.

(d) Before any dealer, whose license has been revoked, shall be entitled to apply for or obtain a license as provided in paragraph (a) hereof, such dealer shall pay to the state auditor any and all delinquent license tax, penalties and costs that remain unpaid by such

dealer, and shall file with the state auditor a surety bond, upon which said dealer shall be obligor, conditioned to secure the prompt filing of true reports and the full payment of any and all license tax that may thereafter accrue and become payable under the provisions of this Act. Such bond shall be in such amount as the state auditor shall determine, but not to exceed three times the amount of the state license tax on all gasoline sold by such dealer during the preceding month, and not less than \$500.00. Such bond shall run to the people of the state of North Dakota and shall be conditioned upon the prompt filing of true reports and payment of the full amount of the tax at the times, in the manner and at the place required under the provisions of this Act; provided, further, that in the event any such dealer shall fail to promptly file his or its monthly reports and pay the full amount of the tax thereon, as provided by law, after having filed a surety bond with the state auditor as herein provided, the state auditor may require said dealer to furnish such other and further bond as he shall deem necessary, conditioned at all times to secure the payment of any and all license tax due to the State of North Dakota under the provisions of this Act. Upon the failure to file such new and further bond, the state auditor shall forthwith revoke the license of such dealer, in manner provided by law.

(e) When any sale of motor vehicle fuel is made upon which a refund or repayment of the tax thereon, as hereinafter provided, may be made or claimed, the person, persons, firm or corporation making such sale shall deliver to purchaser thereof an invoice or ticket, which shall show thereon, among other things, the name of such person, persons, firm or corporation, the place of business, the date of sale, the place of delivery of such motor vehicle fuel, the name and address of the purchaser, the number of gallons of motor vehicle fuel sold, the price thereof, the amount of license tax charged. Such invoice or ticket shall be numbered and show thereon that it is the purchaser's invoice, and shall be signed by such person, persons, firm or corporation or its duly authorized agent. Such invoice or ticket shall also be signed by the purchaser of such motor vehicle fuel.

§ 5. That said license tax in respect to motor vehicle fuel sold or used in any calendar month, shall be paid at the same time the statement provided for in Section 2 hereof is rendered, to the state auditor, who shall receipt to the dealer therefor, and shall forthwith pay over all the money thus received to the state treasurer, except such money as shall have been expended by said state auditor for the purpose of making refunds as herein provided. The state treasurer shall promptly credit to the state highway commission two-thirds ( $\frac{2}{3}$ ) of said license tax. The money so credited, being two-thirds of said license tax, is hereby appropriated to be used by such commission for the construction, reconstruction, maintenance or repairs of highways or roads under the jurisdiction of said commission.

One-third of said license tax so received by the state treasurer, shall be deposited by him to a "County Highway Aid Fund." During the months of January, April, July and October of each year, the state treasurer, upon the warrant of the state auditor, shall apportion and disburse all of the moneys in such "County Highway Aid Fund" not previously disbursed, including interest received thereon, to the various counties in the State in the same proportion and the ratio as the motor vehicle registration fund collected in each county shall bear to the total motor vehicle registration fund collected in all the counties of the state during the entire preceding calendar year as shown by the certificate of the registrar of motor vehicles. Such moneys so received by the respective counties shall be set aside in a separate fund, under the jurisdiction and control of the board of county commissioners, and appropriated and employed solely by such counties in the construction, reconstruction, maintenance and repair of county highways, bridges and culverts thereon leading up to and connecting with federal aid and state aid highways. Provided, that in order to reimburse the state on account of the expenses of carrying the provisions of this Act into effect, the state auditor is hereby authorized and directed to credit to the general fund of the state, on the first day of July of each year, the sum of twenty-five thousand dollars out of the moneys collected as a license tax under the provisions of this Act.

§ 6. The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional, the decisions of the Court shall not affect or impair any of the remaining provisions of this Act. It is hereby declared, as of legislative intent, that this Act would have been adopted had such unconstitutional provisions not been included therein. Provided however that gasoline used solely for agricultural purposes by the consumer thereof without the payment of the tax therein by law provided.

§ 7. REPEAL.] All Acts and parts of Acts in conflict herewith, are hereby repealed.

H. B. No. 331—(Flannigan and Lynch.)

**EXPENSES N. D. AMERICAN LEGION BAND**

An Act making an appropriation of funds accumulated thru the administration of the provisions of Chapter 244 of the Session Laws of 1923, for the purpose of assisting in defraying the expenses of the North Dakota American Legion Band in attending the Chicago International Exposition and the National Convention of the American Legion to be held at Chicago in the year 1933; and the American Legion National Convention for 1934; and repealing acts in conflict herewith.

V E T O

March 17, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 331, being an Act making an



appropriation of funds accumulated thru the administration of the Provisions of Chapter 244 of the Session Laws of 1923, for the purpose of assisting in defraying the expenses of the North Dakota American Legion Band in attending the Chicago International Exposition and the National Convention of the American Legion to be held at Chicago in the year 1933; and the American Legion National Convention for 1934; and repealing acts in conflict herewith, without my approval, for the reason that in my opinion it is not right to appropriate money for the purpose of sending a Band to Chicago in these stringent financial times.

I fully realize that the desire to send the Legion Band to Chicago is prompted by a laudable and commendable public spirit. I believe our public spirited citizens will respond to a call for support for the enterprise and I am willing to donate to this end and to ask others to do likewise.

The returned Soldiers' Fund was raised by general taxation and whatever balance remains after fulfilling the purposes for which it was raised should be covered into the general fund.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any funds remaining in the hands of the Industrial Commission of the State of North Dakota and accumulated thru the administration of the provisions of Chapter 244 of the Session Laws of 1923, in the purchasing of soldier bonus claims at a discount and financing their payment thru loans made at a lesser sale of interest thru such discount taken; the sum of thirty-five hundred (\$3500.00) dollars, or so much thereof as is required, as aid in the payment of the expenses of the North Dakota American Legion Band in attending the Chicago International Exposition in connection with the exhibit of the State of North Dakota thereat: and at the same time attending the 1933 National Convention of the American Legion to be held in Chicago: and in attending the 1934 National Convention of the American Legion. This appropriation is made from the balance of such fund accumulated under the provisions of said Chapter 244 of the Session Laws of 1923, remaining after the publication and distribution of the history and record of the citizens of the State of North Dakota who rendered Military service on behalf of the State and assisted in the administration of the selective service act during the World War, as provided for by Chapter 287 of the Session Laws of 1927, which such publication and distribution is now completed.

§ 2. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

S. B. No. 167—(Committee on Appropriations.)

**APPROPRIATION FOR NORTH DAKOTA SOLDIERS' HOME**  
An Act making an appropriation for the North Dakota Soldiers' Home at Lisbon, North Dakota; providing for reports and deductions.

V E T O

March 17, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 167, being an Act making an appropriation for the North Dakota Soldiers' Home at Lisbon, North Dakota; providing for reports and deductions, without my approval, for the reason that the present income of this institution is sufficient to take care of its needs for the next two years, and because practically all the inmates receive pensions ranging from \$25.00 to \$75.00 per month from the Government.

Very respectfully,

WILLIAM LANGER,  
Governor.

WHEREAS, owing to the financial depression it seems that it will be impossible for the North Dakota Soldiers' Home to continue to take care of and provide for those members now in said home without some assistance, and

WHEREAS, The members of this Legislative Assembly deem it necessary that some provision should be made to assure the members of said home that they will not be without support and care during the next two years,

THEREFORE,

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated the sum of \$12,500.00 for the biennium beginning July 1, 1933, and ending June 30, 1935, or so much thereof as may be necessary, for the maintenance and support of the North Dakota Soldiers' Home located at Lisbon, North Dakota, said sum to be paid as follows: The sum of \$3,125.00 on July 1, 1933, and each succeeding six months thereafter the remainder in three equal payments.

§ 2. REPORTS AND CERTIFICATES. PAYMENTS.] The Superintendent in charge of said home shall make semi-annual reports to the State Auditor of the State of North Dakota, duly certified under oath, showing the amount of money remaining unexpended and estimating the amount of money which shall be required for the succeeding six months, and, if it shall appear from said report and estimate that the full amount appropriated for the succeeding six months

exceeds the amount of the estimate, then the amount to be paid shall be reduced to the amount of said estimate.

S. B. No. 319—(Bangert, by request.)

ALLOWANCE SUSTENANCE OFFICERS ON PUBLIC EXPENSE  
ACCOUNT

An Act specifying the amount to be allowed for personal sustenance of officers, agents, and employees of the State of North Dakota, or of any of its subdivisions, while upon public expense account; providing a penalty for violation thereof, and declaring an emergency.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 319, being an Act specifying the amount to be allowed for personal sustenance of officers, agents, and employees of the State of North Dakota, or of any of its subdivisions, while upon public expense account; providing a penalty for violation thereof, and declaring an emergency, without my approval, for the reason that the maximum amount provided for travel outside the State in the bill is not ample.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. EXPENSE ACCOUNT. UNLAWFUL WHEN.] That it shall be unlawful for any elective or appointive officer, employee, representative, or agent of the State of North Dakota or any of its subdivisions, agencies, bureaus, boards, or commissions to make claim upon any public fund whatsoever for the sum in excess of \$4.00 per day for personal sustenance while engaged in the discharge of a public duty and while upon a public expense account within the state, or in excess of \$6.00 per day for personal sustenance while so engaged without the state of North Dakota; provided, however, that in no event shall any such elective or appointive officer, employee, representative, or agent make claim for an amount in excess of that actually paid for expenses while engaged in the public service upon such public expense account.

§ 2. PENALTY.] Any person violating any of the provisions of this Act shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not less than \$50.00 or more than \$1,000.00, or by imprisonment in a county jail for not less than ninety days or more than one year, or by imprisonment in the state penitentiary for not more than five years, or by both such fine and imprisonment, in the discretion of the trial court.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.

S. B. No. 245—(Miklethun, Patten, Tinnes, Olson and Wog.)

**ENLARGEMENT PENITENTIARY POWER PLANT**

An Act authorizing the State Board of Administration to rebuild and enlarge the power plant at the State penitentiary; providing for the extension of the service of such plant and making an appropriation therefor.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 245, being an Act authorizing the State Board of Administration to rebuild and enlarge the power plant at the State Penitentiary, and providing for the extension of the service of such plant and making an appropriation therefor, without my approval, for the reason that the present law is adequate.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REBUILDING POWER PLANT.] The State Board of Administration is hereby authorized and empowered to rebuild and enlarge the power plant at the state penitentiary so as to provide sufficient and adequate electric current to operate the manufacturing industries that are now or hereafter may be established at the said penitentiary and for supplying electric current for the Bank of North Dakota building, Memorial Building and the State Capitol.

§ 2. DISTRIBUTION OF ELECTRIC CURRENT.] The State Board of Administration is hereby authorized and empowered to distribute electric current for light and power to the Bank of North Dakota building, the Memorial Building, and to the State Capitol.

§ 3. APPROPRIATION.] For the purpose of carrying out the provisions of this Act there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of \$60,000 and the further sum of \$275,000 out of the "Twine Plant Operating" fund or such part thereof as may be necessary. Provided, however, that the State Board of Administration shall not carry out or put into effect any of the provisions of this Act if any power and light company now manufacturing and distributing electric current in this state offers within 30 days after the passage and approval of this Act, to enter into a contract with the Board of Administration

to furnish electric current, power and light for the purposes set forth herein at a price not exceeding two cents per kilowatt for a period of two years or more.

S. B. No. 169—(Jones of Ward and Burkhart.)

**HOSPITAL, ETC. LIENS PERSONS INJURED IN ACCIDENTS**

An Act to provide for liens in favor of hospitals and other charitable institutions furnishing care, treatment and maintenance of persons injured in accidents, not subject to the provisions of the Workmen's Compensation Act of North Dakota, for the reasonable value of the service so rendered, upon the rights of action, claims or demands of such injured persons, or judgments recovered thereon, against other persons or corporations, liable in tort for damages, on account of negligence causing the injuries, and upon the proceeds of the settlements of any such claims or demands; and upon and against the insurer of such tort feisor or tort feisors; and upon insurance held by the injured person, and providing for constructive notice upon such insurers, tort feisors and their insurers, if any, by a filing of a lien statement with the Clerk of the District Court of the county in which such services are rendered.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 169, being an Act to provide for liens in favor of hospitals and other charitable institutions furnishing care, treatment and maintenance of persons injured in accidents, not subject to the provisions of the Workmen's Compensation Act of North Dakota, for the reasonable value of the service so rendered, upon the rights of action, claims or demands of such injured persons, or judgments recovered thereon, against other persons or corporations, liable in tort for damages, on account of negligence causing the injuries, and upon the proceeds of the settlements of any such claims or demands; and upon and against the insurer of such tort feisor or tort feisors; and upon insurance held by the injured person, and providing for constructive notice upon such insurers, tort feisors and their insurers, if any, by a filing of a lien statement with the Clerk of the District Court of the county in which such services are rendered, without my approval, for the reason that I believe it is against good, sound public policy.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. Every charitable association, corporation or other institution, maintaining a hospital in the State of North Dakota, supported in whole or in part by private charities, shall, for hospitaliza-

tion services rendered, be entitled to a lien upon any and all rights of action, claims or demands of such injured persons, or judgments recovered thereon against other persons or corporations, liable in tort for damages, on account of negligence causing the injuries, and upon the proceeds of the settlements of any such claims or demands and upon the insurer of such tort feisor or tort feisors, for the reasonable value of the services so rendered to such injured person, and by serving notice of intention to file such lien upon the person or corporation liable for such damages, such notice to be served by registered mail or by personal service in the manner now provided for service of a summons, and upon filing at any time after the rendering of such services has commenced, or from time to time, as to services already rendered, as such institution may deem best, and at least within thirty days after such services have been rendered and completed, in the office of the Clerk of the District Court of the County in which such services were rendered, a lien statement, containing the name of the injured person to whom such services were rendered, and his address as shown upon the hospital records, the date of his admission, and if released at the time of the filing of such lien, the date of his release from the hospital, the name of the person or persons, corporation or corporations alleged or claimed to have been guilty of the negligence causing such injuries, and their addresses if known, or ascertainable from the hospital records, the name of any person or corporation and their address if known or ascertainable from the hospital records, insuring such tort feisor or tort feisors against liability on account of negligence, the name of any insurer covering the injured person, if known; an itemized statement of the hospital's charges, and the total sum claimed to be due, which said lien statement shall be signed in the name of the hospital or institution claiming such lien and verified on behalf of such institution by some person authorized so to do and possessing knowledge of the facts above required, such affidavit showing that the facts therein set forth are true to the best of the knowledge, information and belief of the person making such verification, and that the charges for services made are the reasonable and usual charges of such hospital or institution for such services, and that the sum claimed therein is due and unpaid, together with proof of service of the notice of intention to file a lien.

§ 2. The Clerk of the District Court wherein such lien with proof of service is filed, shall endorse thereon the date and hour of filing, and make an abstract thereof in a book kept for that purpose, to be known as "The Hospital Lien Book," which book shall be properly indexed and shall contain the name of the hospital or institution filing such lien, the date and hour filed, the amount claimed, and the name of the person or persons, corporation or corporations against whom it is filed, and the name of the person to whom such services are rendered, and of any insurer of such injured person, and the num-

ber of the file or files where said original lien is kept. The hospital filing such lien shall pay to the Clerk of the District Court in which the lien claim is filed, the sum of fifty cents as the fee for filing and indexing each lien.

§ 3. Filing of such lien from the time thereof shall be constructive notice to all persons of the claim of said hospital and of its right to a lien upon any claim or demand or cause of action against such tort feasons and the insurer or insurers of such tort feasons, or an insurer of the injured person, and no release of any judgment, claim or demand by such injured person, shall be valid or effective as against such lien, and the person or persons, firm or corporation making any payment to such injured person, or his legal representative, as compensation for injuries sustained, as in settlement of a cause of action claimed to exist for negligence causing such injuries, or out of insurance carried by such tort feasons by the person or corporation furnishing such insurance, shall remain liable to such hospital for the amount of the reasonable charges due at the time of such payment to the extent of the full and true consideration paid or given to the injured person, and any such hospital or institution may enforce its lien by an action at law, against such person or persons, firm or corporation, tort feason or its insurer, by a civil action, provided that judgment obtained against such tort feason or insurer shall not prevent such hospital or institution from collecting the amount of its account against the person for whom said services were rendered, or his insurer, unless payment shall have been made by the tort feason, or the insurer, to such hospital, and then only to the extent that such payment shall have been made.

§ 4. Upon the trial of any action for damages for personal injuries wherein it appears at the trial that services were rendered in hospitalization of the injured person, the court before whom such action is tried, shall require the Clerk of the District Court to search the records, for information as to whether a lien has been filed, and if such lien has been filed, mention of that fact shall be made in the judgment together with the amount claimed and in the event of the collection of such judgment under execution, upon the return of such execution, a sum equal to the amount claimed in said lien, shall be deposited with the Clerk of the District Court for payment of said lien, if the parties involved admit the facts set forth in said lien, provided that if such lien is contested, then such sum to abide the final event of an action to enforce the same which action must be brought by such hospital or institution upon demand, following such deposit, of any of the parties interested, within sixty days after such demand.

§ 5. In the event that such injured person receiving hospitalization shall have a contract providing for indemnity or compensation for the sum incurred for hospitalization received by such injured

person, such hospital shall have a lien upon the amount payable under said contract and the party obligated to make reimbursement for such hospitalization under such contract may pay the sum due thereunder directly to such hospital and such payment shall constitute a full release of the party making such payment under such contract to the amount of such payment; provided, however, that if the amount of the claim is contested, payment shall be made to the Clerk of the District Court and shall be subject to all of the terms and conditions stated in Section 4 hereof.

§ 6. Any person or persons, firm or corporation legally liable under this Act and against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such hospital which has filed such a claim, in reference to such treatment, care and maintenance of such injured person.

§ 7. The provisions of this Act shall not apply to any money becoming due under the Workmen's Compensation Act of the State of North Dakota.

§ 8. Action to enforce said lien shall be commenced within two years after the filing of such lien; except that in cases where the cause of action against tort feisor or insurers shall not have become barred, or actions shall pend, involving the question of liability, then such lien shall continue effective until the final termination of such action or actions, and for a period of two years thereafter.

H. B. No. 330—(State Affairs Committee.)

**ABATEMENT REAL AND PERSONAL PROPERTY ASSESSMENT**  
An Act to amend and re-enact Section 1 and to repeal Section 5 of Chapter 276 of the Session Laws of North Dakota for 1931, relating to the abatement of real and personal property assessments and prescribing the procedure therefor.

V E T O

March 10, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 330, being an Act to amend and re-enact Section 1 and to repeal Section 5 of Chapter 276 of the Session Laws of North Dakota for 1931, relating to the abatement of real and personal property assessments and prescribing the procedure therefor, without my approval, for the reason that the present law gives the Board of County Commissioners adequate power to abate taxes.

Very respectfully,  
WILLIAM LANGER,  
Governor.



*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 1 of Chapter 276 of the Session Laws of North Dakota for 1931 is hereby amended and re-enacted to read as follows:

§ 1. Unless otherwise expressly provided, if any person (including any firm or corporation) against whom an assessment has been made or a tax levied, claims such assessment, or tax or any part thereof to be invalid for any reason herein stated, the same may be abated, or the tax refunded if paid, and the board of county commissioners is authorized and empowered, subject to the approval of the State Tax Commissioner, to abate or refund, in whole or in part, such invalid assessments or taxes in the manner hereinafter prescribed and in the following cases only:

1. When an error has been made in any identifying entry or description of the property, in entering the valuation thereof or in the extension of the tax, to the injury of the complainant.

2. When improvements on any real property were considered or included in the valuation thereof, which did not exist thereon at the time fixed by law for making the assessment.

3. When the complainant or the property is exempt from the tax.

4. When the complainant had no taxable interest in the property assessed against him at the time fixed by law for making the assessment.

5. When taxes have been erroneously paid or error made in noting payment or issuing receipt therefor.

6. When the same property has been assessed against the complainant more than once in the same year, and the complainant produces satisfactory evidence that the tax thereon for such year has been paid; provided, that no tax shall be abated on any real property which has been sold for taxes, while a tax certificate is outstanding except when a contract for the sale of state lands has been cancelled as provided by Chapter 245 of the Session Laws of 1927.

7. When the board of County Commissioners is satisfied beyond a doubt that the assessment of the real or personal property described in the application for abatement is invalid, or excessive as compared with other property of the same class and value in the same assessment district, the board may, if such application is filed on or before the first day of November in the year in which such taxes become delinquent, abate any part thereof in excess of a fair assessment.

§ 2. REPEAL.] That Section 5 of Chapter 276 of the Session Laws of North Dakota for 1931 is hereby repealed.

## S. B. No. 197—(Marshall.)

APPOINTMENT EXAMINERS BOARD OF RAILROAD  
COMMISSIONERS

An Act to amend and re-enact Section 1 of Chapter 231, Session Laws of North Dakota for the year 1927, authorizing and empowering the Board of Railroad Commissioners to appoint examiners for the purpose of holding hearings, and prescribing the powers and duties of such examiners.

## V E T O

March 10, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 197, being an Act to amend and re-enact Section 1 of Chapter 231, Session Laws of North Dakota for the year 1927, authorizing and empowering the Board of Railroad Commissioners to appoint examiners for the purpose of holding hearings, and prescribing the powers and duties of such examiners, without my approval, for the reason that the measure, if enacted into law, would be against the best interests of the State of North Dakota. The people of this State have elected three members of the Board of Railroad Commissioners, and at hearings they are entitled to have one of these members present to conduct the hearing rather than some clerk or employee, who may not even be a taxpayer, appointed by said Board.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 1 of Chapter 231 of the Session Laws of North Dakota for the year 1927 be amended and re-enacted to read as follows:

§ 1. The Board of Railroad Commissioners of North Dakota is hereby authorized and empowered to designate the special assistant attorney general appointed by the Attorney General as commerce counsel of said board, the chief statistician of said board, the chief engineer of said Board, the traffic expert of said board, and the director of motor transportation of said board, or either or any of said parties, as an examiner or examiners for the purpose of holding any hearing or hearings which the said board, or any member thereof has power and authority to hold. Such examiner or examiners, when so appointed, shall have the power to administer oaths and affirmations, issue subpoenas, compel attendance and testimony of witnesses, the production of papers, books, accounts and documents, examine witnesses, and to act in and about such hearing or hearings with the same power and authority that has been or will be invested by law

in said board or any member thereof. The proceedings at such hearings shall be taken in shorthand by a stenographer, reduced to writing, and, together with the exhibits introduced, certified to the board by such examiners as a true, correct and complete record of such hearing. All such hearings shall be taken and deemed to be hearings before said Board of Railroad Commissioners, and the decision of the board in such matters shall be based upon the record as made before any such examiner and certified to by him; provided, that further testimony may be taken if the board deems it advisable and so orders.

S. B. No. 135—(Cain.)

**USE RAILROAD TRACKS FOR HIGHWAY PURPOSES**

An Act to amend Section 10046 of the Compiled Laws of North Dakota for 1913 relating to the use of railroad tracks for highway purposes.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 135, being an Act to amend Section 10046 of the Compiled Laws of North Dakota for 1913, relating to the use of railroad tracks for highway purposes, without my approval, for the reason that it is sometimes necessary for the farmers to use railroad tracks for highway purposes.

Very respectfully,

WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 10046 of the Compiled Laws of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 10046. UNLAWFUL. EXCEPTION.] It is hereby made unlawful for any person when riding or driving or leading any animal or animals, whether the same be or be not attached to any vehicle or sleigh, or while driving a motor vehicle of any kind, to drive upon or use any railroad track in this state as a highway. Provided, however, that this Act shall not apply to highway crossings over any line of railway in the state, nor to depot grounds, station grounds, nor switches or side tracks intended for the use of shippers or the consignee of freight; provided further, that the provisions of this Act shall not apply to the use of railroad bridges also used as toll bridges for persons or vehicles.

§ 2. All Acts and parts of Acts in conflict herewith are hereby repealed.

S. B. No. 111—(Matthaei.)

**PROHIBITING SMOKING IN SPECIFIED PLACES. REPEAL.**  
An Act to repeal Section 10185b of the Supplement to the 1913 Compiled Laws of North Dakota relating to prohibiting smoking in specified places, and the penalties.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return Senate Bill No. 111, being an Act to repeal Section 10185b of the Supplement to the 1913 Compiled Laws of North Dakota, relating to prohibiting smoking in specified places, and the penalties, without my approval, for the reason that I believe it is against good, sound public policy.

Very respectfully,  
WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REPEAL.] That Section 10185b of the Supplement to the 1913 Compiled Laws of North Dakota be and the same is hereby repealed.

H. B. No. 176—(Godwin.)

**SEWERAGE SYSTEM STATE TRAINING SCHOOL**  
An Act authorizing the Board of Administration to construct a sewerage system to extend from the present sewerage system of the State Training School to connect with the syndicate sewer of the City of Mandan; making an appropriation therefor; and declaring an emergency.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 176, being an Act authorizing the Board of Administration to construct a sewerage system to extend from the present sewerage system of the State Training School to connect with the syndicate sewer of the City of Mandan; making an appropriation therefor; and declaring an emergency, without my approval, for the reason that the revenue coming into the State is insufficient to take care of this improvement at this time.

Very respectfully,  
WILLIAM LANGER,  
Governor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. The Board of Administration is hereby authorized and directed to immediately construct a sewerage system to extend from the present sewerage system of the State Training School to the west end of the syndicate sewer of the city of Mandan, provided such city will permit connection without present or future expense to the State of North Dakota, and for such purpose is hereby directed to purchase all materials and supplies necessary therefor, and employ all labor requisite to such work and the supervision thereof.

§ 2. There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of five thousand dollars, or so much thereof as may be necessary to carry out the provisions of this act.

§ 3. An emergency is hereby declared to exist, inasmuch as the present sewerage system of the State Training School creates a public nuisance and a menace to the public health, and this act shall be in full force and effect from and after its passage and approval.

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## CONSTITUTIONAL AMENDMENTS

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### ARTICLE 47

#### REPEAL OF PROHIBITION CLAUSE IN STATE CONSTITUTION (Submitted by initiative petition)

That Section 217, Article 20, of the Constitution of the State of North Dakota, be and the same is hereby repealed.

Approved, Nov. 8, 1932.      134742 to 99316.

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#### CAPITAL REMOVAL FROM BISMARCK TO JAMESTOWN (Submitted by initiative petition)

A measure for the amendment and re-enactment of Section 215 of Article 19 of the Constitution of the State of North Dakota, locating and establishing the seat of government of this state at the City of Jamestown in the County of Stutsman, and locating other state institutions therein named at the places therein referred to, as heretofore designated by the original section, and providing for the apportionment of certain land grants to institutions therein named, as heretofore apportioned by the original sections of the Constitution as it is now written.

Disapproved, March 15, 1932.      170000 to 24368.