

## VETOES

Senate Bill No. 214  
(Day)

### TEMPORARY INCREASE IN INCOME TAXES AN ACT

Providing for a temporary increase in income taxes, to remain in effect until the bonds issued in connection with the adjusted compensation to veterans of World War II have been paid.

VETO

March 15, 1949

The Honorable Thomas Hall  
Secretary of State  
Bismarck, North Dakota  
Dear Mr. Hall:

Transmitted herewith without my approval is Senate Bill No. 214, a bill providing for an increase in income taxes.

North Dakota at 15 per cent has the highest state income tax. Colorado and Minnesota come next with 10 per cent each. For the year ending June 30, 1948, income tax supplied \$5,026,000 of an \$11,388,984.66 general fund revenue for our state.

Income tax is recognized as basically a federal source of revenue as evidenced by the much higher federal rates and collections.

To add to our already highest state income tax would definitely discourage farming, industrial and business development so essential to a balanced economy for North Dakota. All of our income taxpayers have reached more than a maximum if private enterprise is going to survive.

I therefore veto this bill.

Respectfully submitted,  
FRED G. AANDAHL  
Governor

FGA:ah

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

SECTION 1. VETERANS' ADJUSTED COMPENSATION INCOME TAX.) An additional tax on all persons, firms and corporations liable for the payment of income tax, equal to ten per cent of the income tax calculated under income tax laws at the time for which

the tax is calculated, shall be paid and reported as other income taxes are paid and reported and shall be separately known and designated as the "Veterans' Adjusted Compensation Income Tax."

SECTION 2. WHEN DISCONTINUED.) Such Veterans' Adjusted Compensation income tax payments shall be due and payable on the income tax liability developed in the year 1949, and shall continue until all bonds issued to raise funds for the payment of adjusted compensation to North Dakota veterans of World War II, together with interest thereon, shall have been paid, or the accumulation in the sinking fund is sufficient to pay all bonds with interest thereon, whereupon this income tax shall be discontinued.

Filed March 15, 1949.

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Senate Bill No. 84  
(Morgan, Flatt, Braun and Bridston)

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#### STATE-OWNED CEMENT PLANT

#### AN ACT

To provide for a survey by research foundation to determine feasibility of establishing state-owned cement plant, and providing appropriation for such survey; authorizing industrial commission to establish a state-owned cement plant if deemed feasible; providing that said state-owned cement plant be designated as "The State of North Dakota, doing business as the North Dakota State Cement Plant"; granting power and authority to the industrial commission to manage and operate said plant, acquire property therefor by purchase, lease or eminent domain, and do all other acts necessary in the management thereof; providing for maintenance of civil actions by or against the state in connection with said state-owned cement plant; providing for annual audits of the operations of said plant; providing for bond issue of not to exceed Five Million (\$5,000,000.00) Dollars for the construction of said plant; providing for the execution of mortgages on properties of the state acquired for said state-owned cement plant to be held in trust by the state treasurer as security for payment of bonds issued; providing for recording of said mortgages; authorizing issuance of bonds, amount, series, manner of execution, sale, to whom payable, maximum interest thereon, manner of payment, establishing fund for payment thereof in state treasurer's office; providing for levies or interest and principal of said bonds; making appropriations for payment of the bonds and for payment of expenses to put this action into effect: providing for investment of sinking fund, and exempting said bonds from state, county and municipal taxes

## VETO

March 17, 1949

The Honorable Thomas Hall  
Secretary of State  
Bismarek, North Dakota  
Dear Mr. Hall:

Transmitted herewith without my approval is Senate Bill No. 84, a bill authorizing the construction of a state owned cement plant. The known limestone deposits of North Dakota are limited and not of first quality for cement. In our state we can offer no effective competition in the cost of manufacture of cement. The saving to our people would come in a shorter freight haul which at present prices would be about twenty-five cents per bag for about half the cement we use. There has been a post war shortage of cement but it is reasonable to assume that the industry will correct that within a year or two.

Government should not enter the field of industry unless there is extraordinary and decided advantages to be gained for the people.

A state owned cement plant in North Dakota at best would be a marginal venture. It should be our purpose to give private enterprise all possible encouragement and not constantly challenge it with new state owned industries. I will not give my approval to the investment of \$5,000,000 of taxpayers' money in such a project.

Our experience with a state owned Mill and Elevator should teach us to be cautious. There is better than \$8,000,000 of taxpayers' money invested in that institution. On December 31, 1948, inventories showed a net worth of \$5,719,496.75. With a few political exceptions it has always bought grain at the open market value and sold its products at the same price as private enterprise. It has been there all these years as a tax exempt business not supporting the normal functions of government as taxable industry does. This year, however, we have started to use a little of the revenue for other purposes. It has been only during the past ten years with the best of non-political management and war time prosperity that it has made enough profit to build net inventories to operating solvency.

The Mill and Elevator's greatest benefit to our people is the lesson it has taught against the advisability of government venturing into ordinary business. This is a high priced lesson. I profit by this lesson and hereby veto this bill.

Respectfully submitted,  
FRED G. AANDAHL  
Governor

FGA :ah

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

SECTION 1.) The research foundation of the state of North Dakota is hereby authorized and empowered to make and conduct a complete survey and investigation for the purpose of determining whether it is commercially and economically feasible to establish a state-owned cement plant in the state of North Dakota.

SECTION 2.) There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of Twenty-five Thousand (\$25,000.00) Dollars, to pay for a survey and investigation by the research foundation to determine the feasibility of establishing a state-owned cement plant in the state of North Dakota. Upon the completion of such survey and investigation, the research foundation shall make a complete report of its findings concerning the establishment of a state-owned cement plant to the industrial commission, which report and conclusions shall contain all of the factors involved in the determination of the feasibility of establishing a state-owned cement plant in the state of North Dakota, such as location, cost of construction, the best type of construction, access to natural deposits for the manufacture and production of cement, access to transportation facilities, marketing data, and any and all other factors that will aid in determining the commercial and economic feasibility of establishing a state-owned cement plant.

SECTION 3.) Should the research foundation in its report to the industrial commission determine, after a complete survey and investigation, that it is feasible to construct and operate a state-owned cement plant, the industrial commission may for the purpose of promoting submit to the electors of the state the question of issuing bonds on the state in an amount not exceeding five million dollars for the purpose of engaging in the business of manufacturing, producing, distributing and selling of cement, and establishing a state-owned cement plant in the state of North Dakota. All business of said state cement plant shall be conducted under the name of "The State of North Dakota, doing business as the North Dakota State Cement Plant." In the creation and establishment of a state-owned cement plant, it is the intention of the legislative assembly that all acts of said state cement plant shall be the acts of the state of North Dakota, functioning in its sovereign and governmental capacity. The North Dakota state-owned cement plant shall not be construed to be a separate sovereign agency of the sovereign power but is the state itself functioning in its sovereign capacity. The title to all property pertaining to the operation of a state-owned cement plant shall be obtained and conveyed in the name of "The State of North Dakota, doing business as the North Dakota State Cement Plant." Written

instruments so executed in the name of the state of North Dakota shall be signed by two members of the industrial commission, of whom the governor shall be one, or the manager of the state-owned cement plant within the scope of his authority as defined by the industrial commission.

SECTION 4.) When a North Dakota state cement plant is established, the industrial commission shall operate, manage and control the same, locate and maintain its place or places of business, and shall make and enforce orders, rules, regulations and by-laws for the transaction of all of its business. The business of the North Dakota state cement plant, in addition to other matters herein specified, may include anything that any such industry may lawfully do, except as herein restricted; but this provision shall not be held to, in any way, limit or qualify either the power of the industrial commission herein granted, or the functions of a state-owned cement plant as herein defined. The industrial commission shall, as soon as the research foundation has determined the feasibility of establishing a state-owned cement plant, meet for the purpose of determining whether such question shall be submitted to the electors.

SECTION 5.) To accomplish the purpose of this act, the industrial commission may acquire by purchase, lease or right of eminent domain, as provided by Chapter 32-15 of the North Dakota Revised Code of 1943, all required property and property rights, may construct, remodel and repair buildings for that purpose, may acquire by purchase all machinery and equipment and all other things necessary, incidental or convenient in the manufacturing and marketing of cement within or without the state of North Dakota, and may dispose of any and all products and by-products connected with the manufacturing of cement, on such terms and conditions and under such rules and regulations as the commission may determine.

SECTION 6.) The industrial commission shall obtain such assistance as in its judgment it may deem necessary for the establishment, maintenance and operation of a state-owned cement plant. It may appoint a manager and such other subordinate officers and employees as it may deem necessary and expedient to employ. It may constitute such manager as its general agent in respect to all of the functions of said state-owned cement plant, subject, nevertheless, to the supervision, limitation and control of the commission. It may employ such architects, contractors, builders and other experts, agents and servants as in the judgment of the commission the interest of the state may require and shall define their duties and designate their titles, fix their compensation and bond; provided, however, that such employees shall be subject to the control and regulation of the commission. The

industrial commission may grant the manager of the state-owned cement plant power to appoint and employ such deputies and subordinates, contractors, architects, builders, attorneys, clerks, accountants and other servants as he shall, in his judgment, deem to be required in the interests of the construction and operation of a state-owned cement plant. The compensation of all such employees, together with the expenditure of the operation and maintenance of a state-owned cement plant, shall remain within the appropriation provided by law. The industrial commission shall determine the employees who shall be bonded and the amount of the bond for each such employee, said bonds to be obtained from the state bonding fund as now provided by law.

SECTION 7.) The industrial commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this act, whether the said employees were appointed directly by the commission or by the manager of the state-owned cement plant, and any such removal may be made whenever in the judgment of the commission the public interest requires such removal; provided, however, that all appointments and removals contemplated by this act shall be made by the commission to promote the efficiency of the operation and management of a state-owned cement plant and to procure the most effective and efficient service thereof in the interests of the state.

SECTION 8.) The industrial commission shall fix the selling price of all things sold incidental to the operation of a state-owned cement plant. In fixing such price or prices, the same shall be fixed, as near as may be, at cost, and there shall be taken into consideration, in addition to other necessary costs, a reasonable charge for depreciation of all property, all overhead expenses and a reasonable surplus, together with all amounts required for the re-payment with interest of funds received from the state.

SECTION 9.) Civil actions may be brought by or against the state of North Dakota on account of causes of action claimed to have arisen out of transactions connected with the operation of a state-owned cement plant upon the conditions and in the manner herein set forth. In such actions the state shall be designated as, "The State of North Dakota, doing business as the North Dakota State Cement Plant," and the service of process therein shall be made upon the manager of the state-owned cement plant. Any action against the state shall be brought in the county where the state-owned cement plant shall have its principal place of business, except as provided in sections 28-0401, 28-0402, 28-0403, 28-0404, 28-0406, and 28-0407. The provisions of sections 54-1003 and 54-1404 shall not apply to claims against the state effected by the provisions of this section.

SECTION 10.) The books, records, accounts, inventories, stock of merchandise, supplies, equipment and all the affairs of the state-owned cement plant shall be audited and examined once in each year by the state board of auditors. The audit shall be made as soon as possible after the 30th day of June of each year. Said audit and the report thereof shall disclose accurately the condition of the state-owned cement plant as of the 30th day of June of that year. Profits and losses shall be computed only on such contracts and commitments, or parts thereof, as shall have been completed on said date, and no estimate or forecast shall be made as to the probable loss or gain on transactions to be completed after said date. Inventories of supplies and stocks on hand shall be computed at the market price on said date. The report shall disclose the actual obligations and commitments of the state-owned cement plant on existing unfulfilled and uncompleted transactions and contracts, and the consideration and price fixed in said contracts, if, in the judgment of said auditors, the same shall be necessary to a full and complete audit, but the report shall constitute a factual report of the conditions, and, to the fullest extent possible, all estimates, forecasts and probabilities shall be eliminated therefrom. Copies of such audit shall be filed with the industrial commission, the manager of the state-owned cement plant, the state board of auditors, and a consolidated balance sheet and operation statement shall be made public.

SECTION 11.) For the purpose of providing funds for the construction of a state-owned cement plant, the state of North Dakota shall when authorized by a vote of the majority of the electors voting thereon issue bonds, not in excess of the amount of Five Million (\$5,000,000.00) Dollars, under the conditions and in the manner hereinafter set forth. Said bonds shall be known as "Bonds of North Dakota, State Cement Plant Series."

SECTION 12.) When the research foundation has ascertained and reported that it is commercially and economically feasible to establish a state-owned cement plant in the state of North Dakota, and when authorized by a vote of a majority of the electors voting thereon the industrial commission may, for the purpose of constructing and establishing the same, authorize the issuance of bonds of the state of North Dakota, not in excess of Five Million (\$5,000,000.00) Dollars, to be sold and paid as hereinafter provided.

SECTION 13.) When the industrial commission shall deem it expedient so to do, it shall cause mortgages to be executed in the manner prescribed by section 3 hereof. The grantee and mortgagee designated in said mortgages shall be "The State Treasurer of North Dakota and his successors in office, in trust." Each mortgage shall be executed and delivered to the treasurer of

North Dakota and his successors in office, in trust, as security for bonds to be issued by the state of North Dakota under the designation of "Bonds of North Dakota, State Cement Plant Series." The property described in and covered by said mortgages shall be such property as is owned by, or may be acquired for the state of North Dakota, doing business as the North Dakota State Cement Plant and dedicated to, or acquired for, the use thereof by the industrial commission. All property dedicated to or acquired for the state of North Dakota, doing business as the North Dakota State Cement Plant, shall be described in and covered by first mortgages so that at all times all of the property of the state of North Dakota, doing business as the North Dakota State Cement Plant shall be pledged to the payment of all of the bonds issued, sold and delivered under the provisions of this act, and attached to each of said mortgages and incorporated by reference into the provisions thereof, shall be an itemized statement of all of the property specified and covered therein, showing the true value of each item thereof based upon appraisal made under the direction of the industrial commission and verified by oath of the appraisers. Said mortgages shall be a first lien upon all of said property.

SECTION 14.) Said mortgages shall be duly recorded in each county in which the property affected thereby is situated. As soon as such mortgages are recorded, they shall be delivered to the state treasurer, and retained by the state treasurer and his successors in office, in trust, until the bonds secured thereby as provided by this act shall be fully paid.

SECTION 15.) As soon as the state treasurer shall receive such mortgages so recorded, he shall notify the governor, the state auditor and the secretary of state, who shall thereupon immediately inspect them; and upon ascertaining from such examination and inspection that said mortgages have been duly and properly executed and recorded, it shall be the duty of the state treasurer to immediately prepare for issue, and the governor and the state treasurer shall thereafter issue, negotiable bonds of the state of North Dakota in an amount not exceeding the value of the property included in the terms of said mortgage as expressed in the itemized statements and valuations attached to said mortgages as provided in section 13 of this act, and in no event in excess of Five Million (\$5,000,000.00) Dollars as hereinbefore provided. Each of the bonds so issued shall contain a recital that it is secured by first mortgages deposited with the state treasurer of North Dakota, upon property of the state, dedicated to the use of the state of North Dakota, doing business as the North Dakota State Cement Plant; that it is issued in pursuance of the provisions of this act; said bonds shall be executed by the governor and the state treasurer under the great seal of the state of North Dakota.



and shall be attested by the secretary of state. The auditor and secretary of state shall endorse and sign on each bond, when issued, a certificate showing that it has been issued pursuant to law and is within the debt limit. The bonds so issued shall be designated as "Bonds of North Dakota, State Cement Plant Series," and may be issued in series from time to time as the industrial commission may by order designate and require. Said bonds shall provide that the same may be prepaid and shall recite the prepayment option in full, and may be callable under said prepayment option upon thirty days written notice to the purchaser or holder thereof, if known, and if not known, by publication of a notice of the desire of the state to prepay the same in some nationally known bond and financial journals, and in a daily newspaper of general circulation in the state of North Dakota, for a period of thirty days prior to said call for prepayment. All bonds issued under this act shall contain a provision that interest thereon shall cease at maturity, or upon a proper call for prepayment of the same as herein provided.

SECTION 16.) The bonds issued as provided by this act shall be payable to the purchaser or bearer as the industrial commission may determine, and shall be in such denominations as the industrial commission shall determine, and payable in series over a period of not to exceed twenty years as the industrial commission may determine. They shall bear interest at the rate of not to exceed three (3%) per cent, payable semi-annually on the first day of January and the first day of July in each year; and coupons shall be attached to each bond evidencing the amount of interest payable on each first day of January and July until maturity.

SECTION 17.) In furtherance of the purpose declared by this act, it is hereby declared to be the duty of the governor and the state treasurer, after the issuance, execution and attestation of said bonds, to deliver them to the industrial commission in such denominations and amounts bearing interest at such rates and in such series as may be determined by the commission. The industrial commission is empowered, authorized and directed in connection with, and in addition to, its other powers and duties, to act as the agent of the state in the negotiation, sale and delivery of said bonds. It shall sell them for cash at not less than par value in such manner and at such times as in its sound discretion it shall deem to be most advantageous to the interests of the state. The commission is hereby authorized to receive all moneys paid by the purchaser of said bonds, upon the sale thereof, and upon the receipt of the purchase price to deliver to each purchaser the bonds by him purchased. Upon such delivery of bonds so purchased and paid for, the **faith and credit of the state of North Dakota** is hereby pledged, both as to principal and interest, to the lawful owner and holder thereof, upon presentation thereof

for payment according to this act. The money so derived and received from the sale of said bonds shall be placed by the industrial commission in the fund of the North Dakota state cement plant. Nothing in this act, however, shall be construed to prevent the purchase of said bonds with funds available for that purpose on deposit in the bank of North Dakota.

SECTION 18.) The state treasurer and his successors in office shall hold the hereinbefore provided for mortgages, first, for the security and payment of the bonds issued as provided in this act, and second, for the satisfaction and cancellation thereof and redelivery to the industrial commission, as and when such bonds have been fully paid.

SECTION 19.) From time to time the industrial commission shall, out of the earnings derived from the operation of the North Dakota state cement plant, pay to the treasurer such moneys as the commission shall deem available to devote to the purpose of paying said bonds and interest. In making said payment the commission shall file a statement with the state treasurer specifying the purpose of such payment. When moneys shall have been so paid to the state treasurer, he shall apply the same to the specified purpose as directed.

SECTION 20.) At the time of each annual meeting of the state board of equalization, after the sale of the bonds herein provided, the industrial commission shall deliver to said board an exact written statement of the bonds issued under the provisions of this act, outstanding and unpaid at that time, including therein the dates of maturity, rate of interest and all other information proper to enable the board intelligently to comply with the provisions of this act in regard to tax levies. On the basis of such information, the board of equalization shall annually levy a tax at the time other taxes are levied sufficient in amount to pay such interest on such bonds as will become due during the year beginning on the next ensuing January 1st, and said tax shall be collected in the same manner as other taxes are collected. In determining the amount of tax sufficient for such purpose, the board of equalization shall take into account whatever moneys, if any, shall have been paid to the state treasurer by the industrial commission, as provided in this act, for the specific purpose of paying such interest. The board of equalization shall apply to the state treasurer for information as to the amount of such moneys, and he shall forthwith supply the information requested. If the amount of such moneys shall equal or exceed the interest on said bonds payable during said year beginning on the next ensuing January 1st, then no tax shall be levied by the board of equalization for that purpose; however, if the amount of such money shall be less than the amount of interest on said bonds payable

during said year, then the board of equalization shall deduct the amount of the interest so payable, and shall levy the tax hereinbefore provided for at least the difference.

SECTION 21.) Whenever it shall appear to the board of equalization from information obtained in any statement delivered by the industrial commission at an annual meeting of said board, as provided in section 20 hereof, that there will mature within a period of five years from such annual meeting any of the bonds provided for in this act, the board shall thereupon, at such annual meeting, levy a tax in an amount equal to one-fifth of the amount of the principal of such bonds; provided, however, that in determining the amount of such tax the board of equalization shall take into account whatever moneys, if any, shall have been paid to the state treasurer by the industrial commission for the specific purpose of paying the principal of said bonds when due as provided in section 19 of this act. The board of equalization shall apply to the state treasurer for information as to the amount of such moneys and as to the time when paid to him. If the amount of the money paid to the treasurer since the date of the last preceding tax levy made by the board of equalization, shall equal or exceed one-fifth of the amount of bonds so to mature, then such tax shall not be levied; but if the amount of such moneys paid to the state treasurer since the date of the last preceding tax levy, shall be in a sum less than one-fifth of the amount of said bonds so to mature, then the board of equalization shall deduct the amount of such moneys so paid from such one-fifth of said bonds, and shall levy a tax hereinbefore in this section provided for the difference. It is the intention of this section to provide that in each of the last five years before the maturity of any bonds, or series thereof, a state tax shall be levied, which, together with such moneys as shall during the next preceding year have been paid to the state treasurer by the industrial commission for that purpose, shall be at least sufficient to pay one-fifth of the principal of said bonds.

SECTION 22.) To identify and distinguish the funds provided and available for payment of the bonds issued pursuant to this act, there is hereby created and established, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the "North Dakota State Cement Plant Bond Payment Fund." All moneys received by the state treasurer, whether from the proceeds of taxes or from payments made by the industrial commission or from legislative appropriation, if any, or otherwise, which shall by law or other designation be made applicable to the payment of said bonds, or interest thereof, shall be kept by him in said fund, separate and distinct and apart from other moneys, and shall be disbursed by him only for the particular purpose or purposes for which such money was delivered to him,

and no other appropriation shall ever be made of the moneys in said fund until all of the bonds issued pursuant to this act shall have been fully paid. Said fund may be deposited by the state treasurer in the Bank of North Dakota as provided by law with respect to other public funds.

SECTION 23.) There is hereby appropriated all of the moneys obtained as proceeds from taxes provided for in the preceding two sections (sections 20 and 21) and all moneys paid to the state treasurer by the industrial commission as specified in section 19 of this act, and all moneys constituting the North Dakota state cement plant bond payment fund, or so much thereof as may be from time to time necessary, to pay the interest and principal upon said bonds as payments thereon shall become due from time to time; and whenever any of said bonds, or any interest coupon or coupons thereon, become due, and shall be presented for payment, the state treasurer shall pay the same out of the fund hereinbefore mentioned. If for any reason, the said fund shall for the time being be insufficient to pay the same, the treasurer shall, and he is hereby authorized to, pay the same out of other moneys available to the state and not otherwise appropriated; but in that case, he shall, as soon as possible, out of the North Dakota state cement plant bond payment fund, return the amount of such deficiency to the source from which the same was taken.

SECTION 24.) The state treasurer shall pay the interest and principal of said bonds upon presentation of any bond or bonds and of the interest coupons, upon maturity, or if the same are called as hereinbefore provided, all of such payments to be made from the North Dakota state cement plant bond payment fund, and without auditor's warrant. Each payment so made in addition to other accounting as provided by law, shall be reported to the North Dakota state cement plant, its manager and officers, and to the industrial commission. All moneys in said fund, or so much thereof as may be necessary, are hereby appropriated for the payment of the interest and principal of said bonds, and this appropriation shall not be repealed and no provision made in this act for payment of the principal of said bonds and interest thereon shall be discontinued until the debt evidenced by said bonds, both as to principal and interest, shall have been fully paid.

SECTION 25.) Moneys in the sinking fund for the bonds issued pursuant to this act and designated in the state treasurer's office as the "North Dakota State Cement Plant Bond Payment Fund" may be invested from time to time by the industrial commission in such securities and on such terms as the industrial and in the prudent management of such fund, provided that moneys in such fund shall be invested only in obligations of the United States government, general obligations of any state which commission shall determine to be for the best interests of the state

has never defaulted in payment of either interest or principal on any of its bonded debt, or other indebtedness, or general obligations of any municipality of the state of North Dakota which has never defaulted in payment of either interest or principal, all of which shall mature or be redeemable at the option of the industrial commission as funds may be needed to pay either interest or principal of the bonds herein provided.

SECTION 26.) All bonds issued pursuant to the provisions of this act and interest thereon shall be exempt from all state, county and municipal taxes.

SECTION 27.) There is hereby appropriated out of the general funds of the state, not otherwise appropriated, the sum of Fifteen Thousand (\$15,000.00) Dollars, or as much thereof as may be necessary, to carry out the provisions of this act when and if the industrial commission determines to carry the same into effect.

SECTION 28.) In the event the industrial commission shall determine to submit to the electors of the state the question of issuing bonds as herein authorized, such commission shall certify such question to the secretary of state and he shall cause such question to be submitted to the electors at the next state wide election in substantially the following form: "Shall the State of North Dakota issue its bonds in the aggregate amount of not to exceed five million dollars for the purpose of establishing and maintaining a state owned cement plant." The secretary of state shall certify such question to the several county auditors and the election thereon shall be conducted and notice thereof shall be given in substantially the same manner as initiated measures are submitted to the electors of the state.

Filed March 17, 1949.

House Bill No. 226  
(Freadhoff, Heland, Fugelstad, Heimes, Sticka, Wollitz, Braun)

AN ACT

To amend and reenact Section 40-5107 of the 1947 Supplement to the North Dakota Revised Code of 1943 and Section 40-5108 of the North Dakota Revised Code of 1943, relating to inclusion of territory within city limits by resolution initiated by governing body of city, providing for a computation of property owners, providing that territory within another municipality shall not be annexed; providing for publication of resolution; providing for protest; providing under what circumstances property shall not be annexed; providing for a hearing thereof and for personal inspection of the territory proposed to be annexed; and providing that lands used exclusively for farming or pasturage purposes shall not be annexed, and declaring an emergency.

VETO

March 19, 1949

The Honorable Thomas Hall  
Secretary of State  
Bismarck, North Dakota

Dear Mr. Hall:

Transmitted herewith without my approval is House Bill No. 226, a bill amending the city annexation law.

Under our present law when a city expands beyond its current boundaries the governing board thereof may by resolution and publication annex such additional area subject only to the limitation of a public hearing and or a review by an appeal commission, made up of three county wide officials. From the standpoint of law enforcement, fire protection, health and sanitation and many other municipal objectives it is advisable and necessary that adjacent industrial and residential areas be included within the corporate limits of the city. To protect itself the city must either have a positive annexation law or much in advance acquire all adjacent undeveloped areas. It is much better to annex as the development proceeds.

When a group of people start an industrial or residential area under the wing of a city and immediately adjacent to its boundaries they have taken the first step in becoming a part of that city.

If they are not trying to get the reflected benefits of the city their development could be started several miles away. If the city does not have the positive annexation power the newly developed area will continue to enjoy the reflected benefits, but will not voluntarily agree to become a part of the city tax base. It would

certainly be contrary to the best interests of all to have a hodge-podge of unorganized city development around the outside of a city.

Perhaps we should specify in detail in our statute some conditions of annexation such as the area carrying with it its proportionate share of township indebtedness but the positive power of the city to annex new development that is rightly a part of it should be preserved.

I therefore veto this bill.

Respectfully submitted,  
FRED G. AANDAHL  
Governor

FGA:ah

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

SECTION 1. AMENDMENT.) Section 40-5107 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-5107. INCLUSION OF TERRITORY WITHIN CITY LIMITS BY RESOLUTION INITIATED BY GOVERNING BODY; COMPUTATION OF PROPERTY OWNERS REQUIRED.) The governing body of a city, by a resolution passed by a two-thirds vote of its members, may extend the boundaries of the city to increase the territory within the corporate limits by not more than one-fourth of its area. Before said resolution is passed the governing body shall compute the number of property owners in the territory proposed to be annexed. The resolution shall describe particularly the land proposed to be incorporated within the city limits, setting forth the boundaries thereof and describing the land platted by blocks and lots, and shall state the number of property owners therein. This section shall not authorize a city so to extend its boundaries as to include territory within another incorporated municipality.

SECTION 2. AMENDMENT.) Section 40-5108 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

40-5108. PUBLICATION OF RESOLUTION INCLUDING TERRITORY WITHIN CITY LIMITS; PROTEST; WHEN ANNEXATION SHALL NOT BE MADE; WHEN HEARING REQUIRED; PASSAGE OF RESOLUTION; FARMING, PASTURING LANDS NOT ANNEXED.) The resolution of the governing body of a city adopted pursuant to Section 40-5107 shall be published in the official newspaper of the city once each week

for four successive weeks, and the territory described in the resolution shall be included within and shall become a part of the city unless a written protest of the proposed extension signed by more than one-fourth of the property owners within the territory described in the resolution is filed with the city auditor within ten days after the last publication of the resolution. If such protest is filed within the time stated, signed by owners of more than three-fourths of the property owners by number within the territory proposed to be annexed, no annexation shall be made. If such protest is filed within the time stated signed by owners of more than one-fourth but not more than one-half of the property owners within the territory proposed to be annexed, the governing body shall hear the testimony offered for or against such annexation. If the governing body, after hearing the testimony and making a personal inspection of the territory to be annexed, is of the opinion that such territory ought to be annexed, it may order the territory included within the corporate limits by a resolution passed by a two-thirds vote of members of the governing body. If the greater portion of the territory proposed to be annexed consists of lands used exclusively for farming or pasturage purposes, it shall not be annexed.

SECTION 3. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Filed March 19, 1949.



## House Bill No. 227

(Freadhoff, Holand, Fugelstad, Heimes, Sticka, Wollitz and Braun)

## AN ACT

Providing for appeal to the district court from decision of annexation review commission relating to the annexation of territory by city; providing for the filing and service of notice of appeal and undertaking for appeal and providing for determination by the district court.

## VETO

March 19, 1949

The Honorable Thomas Hall  
Secretary of State  
Bismarck, North Dakota  
Dear Mr. Hall:

Transmitted herewith without my approval is House Bill 227, a bill providing for appeal to the district court from a decision of annexation.

This bill is an attempt to give the courts authority to decide the merits of the policy or question of annexation. That is a legislative responsibility and not a judicial responsibility. The courts have the authority to decide the question of compliance with the law. If there is such a question in an annexation procedure it can be taken to court without the approval of this bill.

I therefore veto this bill.

Respectfully submitted,  
FRED G. AANDAHL  
Governor

FGA :ah

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

SECTION 1. APPEAL; MANNER AND TIME OF APPEAL; FILING AND SERVICE OF NOTICE OF APPEAL AND UNDERTAKING FOR APPEAL; DETERMINATION BY DISTRICT COURT.) An appeal may be taken to the district court from any decision of the annexation review commission, provided for in section 40-5111 of the North Dakota Revised Code of 1943 by any person, corporation or city aggrieved thereby. Such appeal shall be taken by filing a notice of appeal and undertaking for appeal with the clerk of the district court

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and by service of a copy of such notice of appeal and undertaking for appeal upon the adverse party or parties. Such filing and service must be made within thirty days after the decision of the annexation review commission. The undertaking for appeal must be with sufficient surety to be approved by the clerk of the district court, and must be to the effect that the appellant on the appeal will pay all costs which may be awarded on the appeal not exceeding two hundred fifty dollars. The district court shall hear the evidence for and against such annexation and render its decision accordingly.

Filed March 19, 1949.