

VETOED MEASURES

CHAPTER 631

SENATE BILL NO. 2018

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

CENTERS OF EXCELLENCE STATE TAX REVENUE IMPACT STUDY

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide an appropriation to the office of management and budget; to provide a contingent appropriation; to provide exemptions; to provide for transfers; to provide a continuing appropriation; to provide for legislative council studies; to provide reports to the budget section; to provide for the establishment of a centers of excellence fund; to create and enact a new subsection to section 15-69-01, a new section to chapter 54-18, a new section to chapter 54-44.1, and a new section to chapter 54-60 of the North Dakota Century Code, relating to definitions relating to centers of excellence, an annual transfer from the state mill and elevator association, the establishment of a searchable database, and the division of workforce development's strategic plan and the North Dakota workforce development council; to amend and reenact subsection 1 of section 15-69-02, subsections 1, 2, and 3 of section 15-69-04, subsections 1, 3, 4, and 5 of section 15-69-05, subsection 2 of section 54-60-16, and section 54-60-17 of the North Dakota Century Code, relating to centers of excellence, the international business and trade office, and higher education internships and work experience opportunities; to provide an expiration date; and to declare an emergency.

VETO

May 8, 2009

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

RE: Senate Bill 2018

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 24 of Senate Bill 2018 and return it to the Senate.

Section 24 unnecessarily duplicates studies and analyses already done by the Department of Commerce and independent economists. The Department of

Commerce conducted an external study that covered similar information proposed in this section during the current biennium and will do another study next biennium. In fact, Senate Bill 2018 already includes a best practices review of the Centers of Excellence program, which the Department of Commerce will expand to cover the information proposed by Section 24.

The State Auditor does fiscal and performance audits of agencies and programs, but this legislation calls for an economic impact study, which is not a function of the Auditor's Office. The State Auditor would have had to hire an outside expert consultant to do the study, which is exactly what the Department of Commerce has already done and will continue to do. Furthermore, the legislation neither authorizes nor appropriates any money to the State Auditor for such a purpose. Finally, the State Auditor already has authority to audit any independent economic analysis commissioned by the Department of Commerce, which is the State Auditor's role.

For these reasons, I have vetoed Section 24 of Senate Bill 2018.

Sincerely,

John Hoeven
Governor

Disapproved May 8, 2009
Filed May 11, 2009

NOTE: For the full text of Senate Bill No. 2018, including section 24, see chapter 46.

CHAPTER 632**HOUSE BILL NO. 1015**

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

BUDGET SECTION AND STATE EMPLOYEE REPORTS

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an exemption; to provide for various transfers; to create and enact section 8 to chapter 160 of the 2007 Session Laws, a new section to chapter 54-27, and paragraph 5 to subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to contingent distributions of grant assistance money, the allocation of funds to certain coal-producing counties, and vacant state employee positions; to amend and reenact sections 18-05.1-01, 18-05.1-02, and 18-05.1-03, subdivision s of subsection 3 of section 32-12.2-02, sections 50-24.5-04, 54-06-08.2, 54-21-24, and 54-24-21.1, and subdivision d of subsection 1 of section 62.1-04-03 of the North Dakota Century Code, relating to payment from the firefighters death benefit fund, the reciprocal licensure and classification system to carry a firearm or dangerous weapon concealed, the personal needs allowance for individuals in basic care facilities, leasing of office space by state entities, liability of the state, and credit card fees charged by state agencies; to amend and reenact sections 1 and 2 of House Bill No. 1350 and subsection 1 of section 3 of Senate Bill No. 2012, as approved by the sixty-first legislative assembly, relating to the Great Plains applied energy technology center and weather-related transportation funding; to provide an appropriation for a statewide salary equity pool; to establish a statewide salary equity pool; to provide for budget section reports; to provide for a transfer of appropriation authority; to limit the number of full-time equivalent positions; to provide legislative intent; to provide for a legislative council study; to provide an appropriation to the department of emergency services; to provide an appropriation to the department of public instruction; to provide an appropriation for the tobacco prevention and control executive committee; to provide for a biennial budget; to restrict expenditures from the water development trust fund; to provide for a report to the legislative council; to provide for retroactive application; to provide an effective date; and to declare an emergency.

VETO

May 11, 2009

The Honorable David Monson
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

RE: House Bill 1015

Dear Speaker Monson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 23, 28, 29, 31, and 32 of House Bill 1015 and returned it to the House.

Section 23 is unconstitutional because it requires executive branch officials to seek prior approval for basic managerial affairs from a subset of the Legislature. This requirement violates the inherent authority of the executive branch to manage state agencies.

The role of the legislative branch is to deliberate upon policies and principles to be adopted in the future and the executive branch is charged with administering those policies and principles. Verry v. Trenbeath, 148 N.W.2d 567 (N.D. 1967). If enacted, the budget section would have to review and approve hundreds of funding requests each quarter that would typically be handled by statewide elected officials and agency directors. This would prohibit elected officials and agency managers from effectively responding to changing public needs and properly managing their agencies.

Section 23 would also place North Dakota agencies in violation of the National Fair Labor and Standards Act, which require agencies to pay annual leave and sick leave to the employee on a timely basis.

Section 28 and 29 require the Department of Commerce to seek budget section approval for a specific building that the full Legislative Assembly has approved and set criteria for its funding. The Supreme Court has said except "as otherwise provided in the constitution, the legislature may not delegate legislative powers to others, including to a subset of its members" Kelsh v. Jaeger, 641 N.W.2d 100 (N.D. 2002).

The Legislature may delegate to a body certain powers to ascertain facts; however, the full "Legislature must set forth reasonably clear guidelines to enable the appropriate body to ascertain the facts." Stutsman County v. State Historical Soc. of North Dakota, 371 N.W.2d 321, 327 (N.D. 1985). Sections 28 and 29 give the budget section unfettered veto power over the will of the full Legislature by granting authority far beyond the responsibility to determine that certain criteria or guidelines are being followed. See N.D.A.G. Opinion 2007-L-08.

Similarly, Section 31 usurps the authority of the full legislative body by transferring that authority to a small subset of the Legislature. Also, Section 31, as well as Section 32, prohibit the Governor from submitting proposed legislative initiatives to the Legislature for consideration and directly violate the Constitution. Article V, Section 7 of the North Dakota Constitution states the "governor shall

present ... any recommended legislation to every regular and special session of the legislative assembly." As the North Dakota Supreme Court has opined, "As all of the branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others." City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969).

For these reasons, I have vetoed Sections 23, 28, 29, 31, and 32 of House Bill 1015.

Sincerely,

John Hoeven
Governor

Disapproved May 11, 2009
Filed May 11, 2009

NOTE: For the full text of House Bill No. 1015, including sections 23, 28, 29, 31, and 32, see chapter 15.

CHAPTER 633**SENATE BILL NO. 2001**
(Appropriations Committee)
(At the request of the Legislative Council)**LEGISLATIVE BUDGET COMMITTEE**

AN ACT providing an appropriation for defraying the expenses of the legislative branch of state government; to provide for transfers; to create and enact a new subsection to section 54-03.1-03 and a new section to chapter 54-35 of the North Dakota Century Code, relating to the agenda of the organizational session and to a legislative budget committee; to amend and reenact subdivision c of subsection 7 of section 54-03-20, section 54-44.1-04, subsection 7 of section 54-44.1-06, and section 54-44.1-07 of the North Dakota Century Code, relating to legislative leaders' monthly compensation, budget requests, and drafts of appropriation bills; to provide for applications and transfers; to provide for a legislative council study; and to provide an effective date.

VETO

May 11, 2009

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

RE: Senate Bill 2001

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 11, 12, 13, 14, and 15 of Senate Bill 2001 and returned it to the Senate.

Sections 11 and 12 circumvent Article IV, Section 7 and Article IV, Section 13 of the North Dakota Constitution by creating a full-time miniature legislature that disenfranchises the full legislative body.

North Dakota's Constitution created a citizen legislature that is limited to 80 legislative days. The creation of a mini-legislature, which would be comprised of 16 legislators picked by the majority leaders, would represent a fraction of the state's constituents to develop the state's budget.

Furthermore, since statehood the legislature has never developed and submitted its own budget to the full Assembly. The executive branch compiled and submitted the budget from 1889 through 1915 until the State Budget Board was created. That board, chaired by the Governor, was comprised of a majority of elected officials from the executive branch of statewide government. This process

continued until the modern budget process was created in 1965 with the advent of the Office of Management and Budget.

For 120 years, the state has recognized the benefit of presenting a budget which includes a broad perspective from an office holder who is elected statewide. Also, the entire body of the Legislature must have an equal opportunity to shape and consider the budget that represents all of the voters of North Dakota, rather than a budget submitted from only select legislators.

I veto sections 13, 14, and 15 because they intrude upon the function of the executive branch and violate the separation of governmental powers established by the North Dakota Constitution and American jurisprudence. These provisions directly violate the separation of powers doctrine and Article V, Section 7 of the North Dakota Constitution, which states the "governor shall present ... any recommended legislation to every regular and special session of the legislative assembly."

The function of the executive branch is to manage the affairs of the state and that includes the careful budgeting of resources. This budgeting process necessarily involves making recommendations to the Legislature that contain executive branch assessments of the amount and preferred allocation of resources needed to fulfill legislative policies. As the North Dakota Supreme Court has opined, "As all of the branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others." City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969).

For these reasons, I have vetoed Sections 11, 12, 13, 14, and 15 of Senate Bill 2001.

Sincerely,

John Hoeven
Governor

Disapproved May 11, 2009
Filed May 11, 2009

NOTE: For the full text of Senate Bill No. 2001, including sections 11, 12, 13, 14, and 15, see chapter 29.

CHAPTER 634**SENATE BILL NO. 2030**
(Legislative Council)
(Correctional Facility Review Committee)**PRISON CONSTRUCTION REVIEW COMMITTEE**

AN ACT providing an appropriation to the department of corrections and rehabilitation for the renovation and expansion project at the state penitentiary; to provide for a prison construction review committee; to provide legislative intent; and to declare an emergency.

VETO

May 11, 2009

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

RE: Senate Bill 2030

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 2 of Senate Bill 2030 and returned it to the Senate.

Section 2 would allow the budget section to approve a change in or expansion of the state penitentiary building project beyond what was authorized by the 61st Legislative Assembly.

During the 60th Legislative session, the Legislature approved the prison project subject to approval by the emergency commission and the budget section. The Attorney General later declared the requirement of budget section approval as unconstitutional as a violation of the separation of powers doctrine. N.D.A.G. 2007-L-08. Article X, Section 12 of the North Dakota Constitution reserves the exclusive right to appropriate monies to the full Legislature, and the North Dakota Supreme Court has said except "as otherwise provided in the constitution, the Legislature may not delegate legislative powers to others, including to a subset of its members" Kelsh v. Jaeger, 641 N.W.2d 100 (N.D. 2002).

Section 2 suffers from the same constitutional infirmities as the process declared unconstitutional by the Attorney General last session. The budget section cannot change what the full legislative body has already authorized and appropriated.

For this reason, I have vetoed Section 2 of Senate Bill 2030.

Sincerely,

John Hoeven
Governor

Disapproved May 11, 2009
Filed May 11, 2009

Note: For the full text of Senate Bill No. 2030, including section 2, see chapter 54.

CHAPTER 635**SENATE BILL NO. 2024**

(Appropriations Committee)

(At the request of the Governor)

**RACING AND PARI-MUTUEL WAGERING
REGULATION**

AN ACT to provide an appropriation for defraying the expenses of the racing commission; to create and enact two new sections to chapter 53-06.2 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to amend and reenact sections 53-06.2-02, 53-06.2-03, 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14, 53-06.2-15, and 53-06.2-16 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to provide for a report to the legislative council; to provide for transition; and to provide an effective date.

VETO

May 18, 2009

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

RE: Senate Bill 2024

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Senate Bill 2024 and returned it to the Senate.

Senate Bill 2024 is unworkable according to both the Attorney General and Agriculture Commissioner, who are charged with executing its provisions.

The amendments to Senate Bill 2024, if enacted, would lead to statutory inconsistencies that would create enforcement ambiguities. According to the Attorney General, North Dakota Century Code sections 53-06.2-01(11) and 53-06.2-08(4) were not amended or repealed by Senate Bill 2024, which creates conflicts in definitions and regulatory oversight.

Senate Bill 2024 was a simple appropriation bill that was amended in conference committee with no public input from the Attorney General or Agriculture Commissioner, the two officials who would be charged with its implementation. The State, the Legislature, and the racing industry would be better served if all parties were able to craft legislation together that addressed the issues facing horse racing in North Dakota.

The vetoed sections of Senate Bill 2024 would not have taken effect for two years. As the Attorney General and Agriculture Commissioner suggest in the attached letter, the Legislative Council should study horse racing, its regulation, and its taxation in an interim committee so all parties can have input into proposed legislation to address the issues raised, but not solved, by Senate Bill No. 2024.

For these reasons, I vetoed Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Senate Bill 2024.

Sincerely,

John Hoeven
Governor

Disapproved May 18, 2009
Filed May 19, 2009

NOTE: For the full text of Senate Bill No. 2024, including sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, see chapter 52.