

VETOED MEASURES

CHAPTER 440

HOUSE BILL NO. 1004

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state auditor.

VETO

April 25, 2017

Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1004 and return it to the House unsigned.

HB 1004 was amended in conference committee. The critical details of the amendment, as shown in the Statement of Purpose of Amendment, eliminate a position held by an identifiable, classified employee (position number 00000510-1) in the State Auditor's office.

We support HB 1004's appropriation and FTE levels and we support the State Auditor's rights and responsibilities to manage personnel and performance in his office. We ask that the Auditor's appropriations be passed at the identical levels of dollars and FTEs but without reference in the Statement of Purpose of Amendment to an employee-specific position number.

The responsibility for execution and administration of state business lies within the executive branch. Each state agency, through its elected or appointed executive officer, is charged with administering the business of that agency. This responsibility includes the administration of personnel decisions, including filling vacant positions, coaching employees, administering discipline appropriately and, as necessary, terminating employees. An agency with classified employees must handle personnel issues pursuant to NDCC Chapter 54-44.3 and NDAC Article 4-07.

The elimination of an identified employee in the Auditor's office, on the Statement of Purpose of Amendment, violates the separation of powers and the fundamental due process rights afforded to all classified employees in the State of North Dakota.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,655,646	\$111,666	\$11,767,312
Operating expenses	1,176,806	(34,023)	1,142,783
North Dakota university system information technology security audits	200,000	(200,000)	0
Information technology consultants	250,000	(250,000)	0
Total all funds	\$13,282,452	(\$372,357)	\$12,910,095
Less estimated income	3,505,870	(94,383)	3,411,487
Total general fund	\$9,776,582	(\$277,974)	\$9,498,608
Full-time equivalent positions	59.80	(3.80)	56.00

SECTION 2. HEALTH INSURANCE INCREASE. The salaries and wages line item in section 1 of this Act includes the sum of \$140,696, of which \$104,201 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

Disapproved April 25, 2017

Filed May 11, 2017

CHAPTER 441

HOUSE BILL NO. 1153

(Representatives Delzer, Carlson, Kempenich, Lefor, Pollert, Seibel)
(Senator G. Lee)

AN ACT to amend and reenact section 54-06-31 of the North Dakota Century Code, relating to state employee recruitment and retention bonus programs.

VETO

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1153 and returned it to the House. As the chief executive of the state, the Governor is responsible for the administration of state business. Article V, § 7 ND Const. This responsibility includes the duty to fill vacant positions and supervise the conduct of executive and ministerial officers. The Legislature can neither add to nor diminish these constitutional duties.

HB 1153 seeks to restrict the authority of the Governor, and only the Governor, to pay recruitment and retention bonuses to cabinet leaders and the Governor's staff. HB 1153 places unprecedented and intentional restrictions on the Governor's ability to fulfill the constitutional duty to recruit and retain cabinet agency directors and key support personnel. These restrictions intrude upon the operations of the executive branch and violate the separation of governmental powers established by the North Dakota Constitution.

The importance of recruitment and retention bonus programs was acknowledged by the Fifty-Seventh Legislative Assembly in enacting Section 54-06-31 of the Century Code. A 2009 amendment added subsection 5, to specifically recognize the importance of recruitment and retention tools for "hard-to-fill occupation[s]", to respond to market forces and competition, or to avoid losing a highly performing incumbent with rare or special skills. Recruiting and retaining experienced and transformational cabinet leaders is an essential step in delivering more efficient government services.

Collectively our seventeen cabinet agencies employ more than 6,000 state workers. These agencies are complex, widely diverse and provide meaningful, specialized, and essential services on behalf of our state citizens. The cabinet agency leadership positions meet the "hard-to-fill" criteria described in NDCC Section 54-06-31 (5).

Further, Cabinet leaders and the Governor's staff are unclassified positions, meaning they are employed "at will." This is different from the vast majority of state employment positions which are "classified" and therefore hold more job protections. As unclassified positions, the Governor's staff and cabinet leaders serve at the pleasure of the Governor. And unlike classified positions, every four years with the election cycle there is increased risk of turnover for these key positions.

To explicitly remove a human resources tool for these specialized, hard-to-fill, and at-will employees will impair the Governor's ability to attract and retain the leadership and staff necessary to effectively execute the duties of the office now and for future governors.

The thriving private sector creates ample competition for attracting and retaining leadership, with more flexibility and higher salary levels than comparable leadership and senior staff roles in the public sector. Any movement to erode the Governor's flexibility will further reduce state government's ability to bring much-needed private sector experience into cabinet leadership positions.

The proposed restrictions upon this administration set forth in HB 1153 serve no constructive purpose. This bill violates the constitutional exercise of executive authority to manage state agencies and to carefully budget appropriated resources. For these reasons, I have vetoed HB 1153.

As Governor, I understand the importance of strong fiscal policies and have proposed more than \$1.5 billion in reduced spending for the next biennium. We are committed to partnering with the Legislature to achieve these costs reductions, even as we continue to search for new, more cost-effective solutions to delivering services and operating our state.

There are many steps we still need to take to improve the efficiency and performance of state government, but HB 1153 is a step in the wrong direction.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-31 of the North Dakota Century Code is amended and reenacted as follows:

54-06-31. State employee recruitment and retention bonus programs - Criteria - Limitations.

State agencies may develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations.

1. State agencies may pay recruitment and retention bonuses under this section only if:
 - a. The agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses;
 - b. The agency has filed a copy of the written policy with the North Dakota human resource management services; and
 - c. The agency reports to the North Dakota human resource management services each bonus provided to an employee under the program.

2. A bonus paid under this section to an employee in the governor's office or any state officer appointed by the governor may not exceed ten percent of the employee's annual salary or five thousand dollars, whichever is less.
3. State agencies must fund bonus programs from within the agency salaries and wages budget.
- ~~3-4.~~ The North Dakota human resource management services shall report periodically to the legislative management on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs.
- ~~4-5.~~ Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.
- ~~5-6.~~ As used in this section, a hard-to-fill occupation includes an occupation or position in which demand exceeds supply, special qualifications are required, competition with other employers is the strongest, there is a risk of losing an incumbent with rare skills, the position is filled by a highly skilled employee who is in high demand in the marketplace, loss of the employee would result in significant replacement costs, the position is filled by key personnel, or the position has other unique recruitment or retention issues identified and documented by the appointing authority.

Disapproved March 27, 2017

Filed May 11, 2017

CHAPTER 442**HOUSE BILL NO. 1201**

(Representatives Sukut, Guggisberg, Hatlestad, Trottier)
(Senators Bekkedahl, Kreun)

AN ACT to create and enact a new subsection to section 47-16-13.1 of the North Dakota Century Code, relating to landlord responsibilities regarding carbon monoxide detection devices; to amend and reenact section 23-13-15 and subsection 4 of section 54-21.3-03 of the North Dakota Century Code, relating to the installation of carbon monoxide and smoke detection alarms; to provide a penalty; and to provide an effective date.

VETO

April 26, 2017

The Honorable Larry Bellew
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Re: Veto of HB 1201

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1201 and return it to the House of Representatives unsigned.

An important principal of America's success as a nation is the principal of individual responsibility.

While carbon monoxide represents a very small, yet measurable life safety risk in residential rental property, this risk can and should be managed by local building codes, property owners and renters themselves, rather than more burdensome statewide regulations.

There are simple, low-cost non-governmental solutions to this risk, including the use of carbon monoxide monitors available at local retail stores.

For these reasons, I have vetoed House Bill 1201.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-15 of the North Dakota Century Code is amended and reenacted as follows:

23-13-15. Smoke and carbon monoxide detection systemsalarms for residential rental property - Penalty.

1. All residential rental property that includes a wood or other fuel-fired fireplace, heater, or appliance or an attached garage, with the exception of property covered by section 23-09-02.1 or unless exempted by state and local building and fire codes, must be equipped with smoke carbon monoxide detection systemsalarms or other approved alarm systems for the protection of occupants of the property. ~~Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal.~~The installation and maintenance must be in accordance with state and local building and fire codes. All residential rental property, with the exception of property covered by section 23-09-02.1, must be equipped with smoke detection alarms or other approved alarm systems for the protection of occupants of the property. The state fire marshal and local fire departments shall provide information concerning the installation of smoke and carbon monoxide detection systemsalarms to owners of residential rental properties. ~~A system~~Alarms installed in a single-family rental dwelling must be maintained and inspected by the tenant occupying the single-family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the systemalarms upon the occupancy of each new tenant. The tenant is responsible for maintaining the systemalarms during the tenant's occupancy.
2. The landlord of a residential dwelling ~~unit~~ shall provide an approved visual smoke and carbon monoxide detection systemalarm or other visual alarm system for fire and carbon monoxide if requested in writing by a tenant who is deaf. A landlord is not subject to this subsection if the rental property of that landlord does not exceed one building and that building does not exceed four residential dwelling ~~units~~dwellings.
3. Nothing in this section may be construed to alter the provisions of chapter 54-21.3 regarding smoke detection and carbon monoxide systems or alarm systems alarms for newly constructed residences.
4. Any property owner who willfully fails to install a systemsmoke detection alarm as required by this section is guilty of a class B misdemeanor.
5. A landlord may charge a tenant for damages equivalent to three times the cost associated with replacing an alarm that was damaged during the time the tenant occupied the property.
6. A landlord may not be held liable for injury or damages caused as the result of an inoperable carbon monoxide alarm.

SECTION 2. A new subsection to section 47-16-13.1 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 2 and section 47-16-13, if a carbon monoxide detection device is found to be inoperable, the landlord of a residential dwelling unit shall correct the situation within thirty days after receiving written

notification from the tenant, state fire marshal, fire chief, building inspector, or other fire, building, or safety official. If the landlord fails to correct the situation within the thirty days, the tenant may repair the carbon monoxide detection device or purchase and install a carbon monoxide detection device and may deduct the repair cost or purchase price from the next rental payment made by the tenant. A landlord may require a tenant who has a residency of longer than thirty days to provide the battery for a battery-operated carbon monoxide detection device.

SECTION 3. AMENDMENT. Subsection 4 of section 54-21.3-03 of the North Dakota Century Code is amended and reenacted as follows:

4. a. The state building code or a building code adopted by a city, township, or county may not include a requirement that fire sprinklers be installed in a ~~single-family~~single-family dwelling or a residential building that contains no more than two dwelling units.
- b. The state building code, plumbing code, electrical code, or an equivalent code adopted by a ~~political subdivision~~city, township, or county must provide that a building designed for and used as a school portable classroom may be constructed and inspected as a temporary structure as defined by the state building code or may be permitted as a permanent school portable classroom. The foundation system of such a structure must comply with the recommendations of the manufacturer's engineering report for a pre-engineered unit or a structural engineer's report. Frost-free footings may not be required for a temporary structure that meets the requirements of the state building code unless required by an engineering report. Temporary electrical and plumbing installations may be allowed for any structure by the governmental entities governing those areas of construction or the applicable codes.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on January 1, 2019.

Disapproved April 26, 2017

Filed May 11, 2017

CHAPTER 443**SENATE BILL NO. 2119**

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

AN ACT authorizing the state of North Dakota acting through job service North Dakota to sell or lease certain property; to provide for a study; to provide a statement of legislative intent; to provide reports to the budget section; and to declare an emergency.

VETO

May 1, 2017

Honorable Brent Sanford
President of the Senate
North Dakota Senate
North Dakota State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2119, a bill related to certain Job Service North Dakota properties.

Sections 2, 3, 4 and 5 of Senate Bill 2119 detail specific lease prices, building sale prices, preference for specific lessees and purchasers of state owned buildings. Before any sale or lease of state property, a transparent, arms length offering of any vacant space should be considered rather than pre-specifying occupants. Further, a thorough analysis of these buildings, fair market lease and sale valuations, and applicable state and federal statutes should be completed versus pre-determining lease or sale price.

The responsibility for execution and administration of state business lies exclusively within the executive branch of state government. N.D. Const. art. V. Each state agency, through its elected or appointed executive officer, is charged with administering the business of that agency. This responsibility includes the location of its staff and use of its location(s) to optimize value to North Dakota taxpayers.

Our office will instruct Job Service North Dakota, in cooperation with Office of Management and Budget, to proceed with a thorough, comprehensive, transparent, economic study of Job Service locations. We will seek the input of other state agencies, including the Attorney General's office, regarding space needs and potential savings as a part of this study and will consider them as potential tenants for all vacant space.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STUDY OF PROPERTIES BY JOB SERVICE NORTH DAKOTA - BUDGET SECTION REPORT. During the 2017-18 interim, job service North Dakota shall study the feasibility and desirability of selling its properties in Rolla and Minot and the main office in Bismarck. The study must identify historical data and documentation regarding the purchase price and funding source of each property and provide for an appraisal of each property in accordance with section 54-01-05.2. The study must include a determination of the allowable sales price for each property in accordance with state and federal law. Job service North Dakota shall collaborate with the office of management and budget to develop a proposal for the attorney general's office and highway patrol to lease portions of the Minot property from job service North Dakota, while allowing job service North Dakota to continue occupying a portion of the property necessary for normal business operations. Job service North Dakota shall report its findings and recommendations to the budget section before July 1, 2018.

SECTION 2. LEASE OF PROPERTY BY JOB SERVICE NORTH DAKOTA - ROLLA PROPERTY. Beginning July 1, 2017, job service North Dakota may lease to Rolette County, as allowed by state and federal law, Parcel #29-0001-29089-000-00006700-2904000000; city of Rolla OTS Lot 17 Block 7 and Parcel #29-0001-29090-000-00006701-2904000000; city of Rolla OTS Lot 18 Block 7 in the city of Rolla, Rolette County, North Dakota. Job service North Dakota may lease the property to Rolette County for a sum of one dollar until the property is sold. The lease must provide that all operational and maintenance costs related to the property are the responsibility of Rolette County until the property is sold.

SECTION 3. SALE OF PROPERTY BY JOB SERVICE NORTH DAKOTA - ROLLA PROPERTY - BUDGET SECTION APPROVAL. If a sale of the property is determined feasible based on the study required in section 1 of this Act and subject to budget section approval, the state of North Dakota acting through job service North Dakota may sell and convey Parcel #29-0001-29089-000-00006700- 2904000000; City of Rolla OTS Lot 17 Block 7 and Parcel #29-0001-29090-000-00006701-2904000000; City of Rolla OTS Lot 18 Block 7 in the City of Rolla, Rolette County, North Dakota. Job service North Dakota may cause this property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. The provisions of section 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Job service North Dakota shall grant Rolette County a right of first refusal for the purchase of this property for the sum of one dollar within one year of the date of budget section approval. If the study in section 1 of this Act determines the one dollar purchase price to be inadequate based on state or federal law, job service North Dakota shall sell and convey the property to Rolette County at ninety percent of current fair market value within one year of the date of budget section approval. If Rolette County does not exercise its right to purchase the property at ninety percent of current fair market value, job service North Dakota may sell and convey the property to another purchaser for the current fair market value. Net proceeds from the sale must be used as authorized and directed by law. Net proceeds from the sale must be considered received proportional to the funding sources used for the original purchase of the property by Job Service North Dakota. The general fund proportional amount of net proceeds from the sale must be deposited in the job service federal advanced interest repayment fund.

SECTION 4. LEASE OF PROPERTY BY JOB SERVICE NORTH DAKOTA - BISMARCK PROPERTY - JOB SERVICE NORTH DAKOTA RELOCATION - BUDGET SECTION REPORT. The office of management and budget shall determine

the most efficient and cost-effective use of job service North Dakota property Parcel #0485-010-045; Lot N.50' of L 3, ALL L 4-6, ALL L 17-19; Block 10; Addition - TIBESAR'S first in the city of Bismarck, Burleigh County, North Dakota. The office of management and budget shall develop a plan for the most efficient and cost-effective use of the property which may require job service North Dakota to lease all or a portion of the property described in this section to certain state agencies, including the attorney general's office, as allowed by state and federal law. Based on the plan developed by the office of management and budget, and upon the lease of all or a portion of the property described in this section, job service North Dakota may relocate all or a portion of its central office operations to Parcel #0729-001-001; Lot 1; Block 1; Addition - Wisdom Office Park in the city of Bismarck, Burleigh County, North Dakota. The office of management and budget shall report to the budget section regarding its plan before the leasing of the job service North Dakota central office and subsequent relocation of job service North Dakota to the Bismarck regional office.

SECTION 5. LEGISLATIVE INTENT - MINOT AND BISMARCK JOB SERVICE NORTH DAKOTA PROPERTIES. It is the intent of the sixty-fifth legislative assembly that if, as a result of the study provided for in section 1 of this Act, the sale of job service North Dakota property in Minot and its main office in Bismarck is determined feasible, the office of management and budget request authorization and any necessary funding from the sixty-sixth legislative assembly for the conveyance of the property for use by other state agencies.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Disapproved May 1, 2017

Filed May 3, 2017

CHAPTER 444**HOUSE BILL NO. 1015**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an appropriation for defraying the expenses of the state auditor; to provide an appropriation to North Dakota state university; to provide an appropriation to Dickinson state university; to provide an appropriation to the department of human services; to provide for transfers; to identify grant funding; to create and enact a new subsection to the new section to chapter 40-05 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2166, as approved by the sixty-fifth legislative assembly, relating to property tax incentives granted by a city; to amend and reenact sections 5-02-01.1 and 6-09-15.1, subsection 8 of section 15-10-38 as amended by section 2 of Senate Bill No. 2037, as approved by the sixty-fifth legislative assembly, section 43-26.1-05.1 as created by section 2 of Senate Bill No. 2131, as approved by the sixty-fifth legislative assembly, subsection 7 of section 47-02-27.4 as created by section 1 of House Bill No. 1228, as approved by the sixty-fifth legislative assembly, and sections 54-06-04.3 and 57-20-04 of the North Dakota Century Code and subsection 3 of section 8 of House Bill No. 1024, section 21 of Senate Bill No. 2013, and section 23 of Senate Bill No. 2013, as approved by the sixty-fifth legislative assembly, relating to alcohol special event permits, temporary loans to the general fund, the teacher loan forgiveness program, criminal history record checks, exclusions from the statutory rule against perpetuities, state agency publication fees, property tax increase reports, cost reimbursement land sales, an oil and gas valuation study, and effective dates; to repeal section 57-20-05 of the North Dakota Century Code, relating to tax certifications; to suspend section 54-35-23 of the North Dakota Century Code, relating to the tribal and state relations committee; to provide for the administration of the tobacco prevention and control trust fund; to provide exemptions; to provide statements of legislative intent; to provide for legislative management studies; to provide for a legislative management tribal taxation issues committee; to provide for a report to the legislative management; to provide for a budget section report; to provide an effective date; to provide an expiration date; and to declare an emergency.

VETO

May 2, 2017

The Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bellew,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 29 of House Bill 1015, the appropriations bill for the Office of Management and Budget.

Section 29 would eliminate the five-month extension approved for the Board of University and School Lands to begin meeting its obligations under the Administrative Agencies Practices Act. This veto restores the five-month extension.

The extensive effort required to bring the Board of University and School Lands into compliance as an administrative agency justifies extension of the effective date to January 1, 2018.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of House Bill No. 1015, including section 29, see chapter 14.

CHAPTER 445

HOUSE BILL NO. 1019

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department; to amend and reenact sections 55-08-06 and 55-08-07.1 of the North Dakota Century Code, relating to permits for motor vehicles and parks and the recreation concession revolving fund; to provide a grant to the international peace garden; to authorize the transfer of Dakota institute inventory; to provide exemptions; to provide a statement of legislative intent; and to declare an emergency.

VETO

April 25, 2017

The Honorable Lawrence Bellew
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Re: Item Veto of HB 1019

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 13 and the second sentence in Section 17 of House Bill 1019.

Section 13:

The rules anticipated under Section 13 would create an exception applicable to a limited number of individuals who rent boat slips in a state-owned marina. Additionally, these rules would conflict with existing and long-standing public safety rules governing boat traffic in designated swimming areas.

The parks and recreation department director is authorized to "adopt rules relating to the protection, care, and use of state parks, state campgrounds, state recreational areas, or reserves, and any other real or personal property administered by the director." NDCC 55-08-01.3 (7). In an appropriate exercise of this authority, rules governing state park swimming areas, boat ramps and marinas were first promulgated in 1987 and amended in 1992, 1996, 2006 and 2011. NDAC § 58-02-08-18. These regulations prohibit swimming in state parks except in designated areas and prohibit any boat, canoe or raft from entering a designated swimming area. NDAC § 58-2-08-18 (1) and (2)(c).

We have instructed our new director of parks and recreation to meet with the individual park customers renting marina slips and work toward developing local practices that balance the enjoyment of marina users, their families and guests with the interest of managing liability risk and providing safe recreational areas for all citizens of North Dakota.

Section 17:

The second sentence under Section 17 is vetoed. We have asked the President of Bismarck State College to work in collaboration with the parks and recreation department director, the state historical society and other stakeholders to develop a plan for the optimum use or sale of the Dakota institute property as identified in Section 17.

For the reasons explained above, I have vetoed Section 13 and the second sentence in Section 17 in House Bill 1019.

Sincerely,

Doug Burgum
Governor

Disapproved April 25, 2017

Filed May 11, 2017

NOTE: For the full text of House Bill No. 1019, including sections 13 and 17, see chapter 18.

CHAPTER 446**HOUSE BILL NO. 1020**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide an appropriation to the industrial commission; to amend and reenact section 57-51.1-07, subsection 10 of section 61-02-02, section 61-02-08, subsection 1 of section 61-02-78, section 61-02-79, the new section to chapter 61-03, as created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, and sections 61-29-06, 61-40-05, and 61-40-11 of the North Dakota Century Code, relating to the oil extraction tax development fund, the definition of water conveyance project, the state water commission chairman and vice chairman, the infrastructure revolving loan fund, a Bank of North Dakota line of credit, economic analyses for certain water projects, management of the Little Missouri scenic river, the authority of the western area water supply authority, and water rates of the western area water supply authority; to provide for budget section approval; to provide for a state engineer study; to provide for an industrial commission study; to provide for a legislative management study; to provide for reports; to provide a statement of legislative intent; to designate funding; to provide for a transfer; to provide exemptions; to provide a contingent effective date; to provide an effective date; to provide an expiration date; and to declare an emergency.

VETO

May 2, 2017

The Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed the last sentence of paragraph 2, Section 5 and all of Section 27 of House Bill 1020, the appropriations bill for the State Water Commission.

The portion of Section 5 that reads: "subject to budget section approval and upon notification to the legislative management's water topics overview committee." is vetoed. This sentence requires the Commission to seek budget section approval before transferring funding between the projects identified under paragraph 1, Section 5.

In *Kelsch v. Jaeger*, the North Dakota Supreme Court concluded the legislature may not delegate legislative powers to a subset of its members. 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 5 will interfere with the duties and responsibilities of the State Water Commission as defined under North Dakota law. NDCC § 61-02-04.

Section 27 of House Bill 1020 requires the Commission budget for the 2019-2021 biennium comply with NDCC §§ 54-44.1-16 and include line items for salaries and wages, operating expenses, capital assets, project carryover, new projects "and any additional line items as determined necessary by the commission or office of management and budget." NDCC § 54-44.1-04.

While well intentioned, these requirements will impair the duties and responsibilities of the Commission. Many water projects fit into multiple line item categories. Certain projects proceed slowly, delayed by legal, environmental, cost share and other factors driven by outside parties. The simpler budgeting format previously adopted and approved by the legislature gives the Commission a flexible and efficient model from which to work and should be retained.

As Chair of the State Water Commission, I will ensure our governing board prioritizes public transparency of project expenditures through regular and detailed reporting.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of House Bill No. 1020, including sections 5 and 27, see chapter 19.

CHAPTER 447

HOUSE BILL NO. 1023

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public employees retirement system; to provide for a transfer; to provide for solicitations of bids for the public employee health benefits coverage; to provide for a study; to create and enact sections 54-35-02.9 and 54-35-02.10 and a new subsection to section 54-52-04 of the North Dakota Century Code, relating to the public employee health care coverage committee and the authority of the retirement board; to amend and reenact sections 54-35-02.4 and 54-52.1-08.2 of the North Dakota Century Code, relating to the employee benefits programs committee; and to provide an expiration date.

VETO

May 2, 2017

The Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
North Dakota State Capitol
Bismarck, ND 58505

Dear Speaker Bellew,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed House Bill 1023, but vetoed sections 6, 7, 8, 9, 10, 12 and 13. HB 1023 is the appropriation bill for the North Dakota Public Employees Retirement System (PERS).

Sections 7, 9, 10 and 12 propose creating an entirely new legislative committee, the Public Employee Health Care Coverage Committee. This new committee is intended to study and make recommendations regarding, among other things, the terms of PERS requests for proposals for health insurance coverage. Section 13 refers only to sections being vetoed so it is no longer relevant.

Section 8 changes the scope of the Employee Benefits Programs Committee (EBPC) by eliminating its ability to consider legislative measures and proposals which impact health insurance, effectively splitting the review of employee benefits into two competing committees. Section 8 also eliminates any committee oversight during the 2017-2019 interim for retiree health insurance coverage. Retirement and health insurance benefits must be considered together in a unified, holistic way, along with salary and all other forms of compensation, to optimize value to both recipients and taxpayers as a complete package.

The North Dakota Century Code authorizes PERS to manage the retirement and insurance plans to ensure a comprehensive package of benefits that assists in the recruitment and retention of high-performing employees. Currently, 13 legislative members comprise the EBPC and two legislative members serve on the PERS Board of Trustees, providing significant legislative input to the process.

Section 6 forces early termination of the existing health insurance contract for PERS members on June 30, 2019, and proposes to restrict the next negotiated contract to a two-year period. It is an unproven hypothesis that a two-year, non-renewal contract period will produce lower rates from potential providers.

Under current law, the PERS Board of Trustees, in conjunction with the EBPC, holds the responsibility to assess market alternatives. We share the Legislature's interest in a competitive bid process for PERS health insurance coverage, whether fully or self-insured or a hybrid, that results in lower costs to the state. In addition, multiple future cost saving factors can be considered under our current provider contract.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of House Bill No. 1023, including sections 6, 7, 8, 9, 10, 12 and 13, see chapter 22.

CHAPTER 448

SENATE BILL NO. 2001

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the legislative branch of state government; to provide for applications, transfers, and cancellation of unexpended appropriations; to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the creation of a legislative revenue advisory committee; to provide for legislative management studies; and to declare an emergency.

VETO

May 1, 2017

Honorable Brent Sanford
President of the Senate
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 7 of Senate Bill 2001, the appropriations bill for Legislative Management.

Section 7 of the bill creates a legislative revenue advisory committee, charged with analyzing executive revenue forecasts while assessing "agency revenues, including an assessment of the delivery and cost of services, staffing, and billing processes, to identify improvements to the efficiency and effectiveness of the services that will result in reduced costs for state agencies." This encroaches upon the governor's constitutional duty, outlined in Article V, § 7 of the North Dakota Constitution, entrusting the administration of state business to the state's chief executive. It is the responsibility of the executive branch to analyze and optimize the performance of individual agencies, operating within the budgetary and policy directives of the legislature.

Furthermore, the creation of a parallel legislative revenue advisory committee would result in overlapping and duplicative efforts. The state of North Dakota currently has in place the Advisory Council on Revenue Forecasting, a collection of private and public stakeholders, including legislators, dedicated to ensuring all third-party forecasting done for the state considers on-the-ground realities. While there is certainly room to improve this process, creating another redundant committee does not address the fundamental challenge of revenue forecasting in a commodity-driven economy. If anything, competing groups could result in conflicting revenue forecasts, creating additional challenges for the state's budgeting process.

Currently, the legislature has the final authority to accept, amend, or reject the executive revenue forecast. Looking ahead, collaboration between the Legislative Assembly and Advisory Council on Revenue Forecasting, focused on achieving an

accurate forecast that provides certainty for taxpayers and policymakers, is welcomed and encouraged.

Sincerely,

Doug Burgum
Governor

Disapproved May 1, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2001, including section 7, see chapter 26.

CHAPTER 449

SENATE BILL NO. 2003

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to create and enact two new sections to chapter 15-10 and a new section to chapter 54-12 of the North Dakota Century Code, relating to approval of capital projects requested by institutions under the control of the state board of higher education, the nickel trophy, and tuition and fee waivers for law enforcement officers; and to amend and reenact sections 15-10-48, 15-10-49, 15-18.2-05, 15-18.2-06, 54-10-22.1, and 54-44.1-11 of the North Dakota Century Code, relating to matching grants for institutions under the control of the state board of higher education, state aid to institutions, the minimum amount payable through the higher education funding formula, protecting donor records from audits of university and college foundations, and the cancellation of unexpended appropriations; to repeal chapter 15-10.2 of the North Dakota Century Code, relating to the midwestern higher education compact; to provide for the transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide exemptions; to provide for the reallocation of oil and gas tax distributions; to authorize the conveyance of real property owned by the state of North Dakota; to provide for studies; to provide for legislative management reports; to provide legislative intent; to provide an effective date; and to declare an emergency.

VETO

May 2, 2017

The Honorable Brent Sanford
President of the Senate
North Dakota Senate Chambers
North Dakota State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed Senate Bill 2003, but vetoed items in Sections 18, 24, 32, 39 and all of Section 6. SB 2003 is the North Dakota University System appropriations bill.

Section 6.

Article VJII, § 6 of the North Dakota Constitution gives the State Board of Higher Education "full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control." and "control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this state." ND Const. art. VIII, § 6(b)(e). The restrictions in Section 6 intrude upon the operations of the Board and violate the separation of governmental powers established by the North Dakota Constitution.

Section 18.

That portion of paragraph 3, Section 18 that reads "any portion of" is vetoed. The ambiguity of the vetoed language will cause unintended confusion and uncertainty. The remaining language in paragraph 3 achieves the intent of the legislative assembly.

Section 24.

Paragraph 3 (c) of Section 24 is vetoed. This paragraph requiring Dickinson State University to certify that "a North Dakota architect was used to design the presidential library" is hereby vetoed. For example, this condition would preclude the hiring of one of the many North Dakota State University architecture graduates who work at firm:s across the United States.

Section 32.

The second sentence under Section 32 is vetoed. We have instructed the President of Bismarck State College to work collaboratively with the parks and recreation department director, the state historical society and other stakeholders to develop a plan for the optimum use or sale of the Dakota Institute property as identified in Section 32.

Section 39.

The portion of paragraph 39 that reads "and for credit hours completed at the school" is hereby vetoed. Reducing general fund appropriations based upon credit hours is contrary to the legislatively approved higher education funding formula.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2003, including sections 6, 18, 24, 32, and 39 see chapter 28.

CHAPTER 450

SENATE BILL NO. 2013

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide an appropriation to the state treasurer; to provide for transfers; to provide for distributions from permanent funds; to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the energy impact fund; to amend and reenact subsection 5 of section 57-51-01 and sections 57-51-15 and 57-51.1-07.6 of the North Dakota Century Code, relating to oil and gas gross production tax definitions and allocations and the political subdivision allocation fund; to repeal section 57-51.1-07.6 of the North Dakota Century Code, relating to the political subdivision allocation fund; to provide exemptions; to provide for reports; to provide statements of legislative intent; to provide for a legislative management study; and to provide an effective date.

VETO

May 2, 2017

The Honorable Brent Sanford
President of the Senate
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 4, Section 20 and a portion of Section 12 of Senate Bill 2013, the appropriations bill for the Department of University and School Lands.

Section 4 was amended in conference committee and approved by the legislature without the scrutiny or transparency of the full legislative public hearing process. This section directs the State Treasurer to transfer \$16,100,000 - \$8.0 million from the strategic investment and improvements fund and \$8.1 million from the state disaster relief fund - to appropriate the sum of \$10,000 to each of approximately 1,610 organized and unorganized townships in non-oil producing counties. At a time when North Dakota is dealing with an unprecedented revenue shortfall, nearly every state agency and department has made substantial cuts in budgets based upon limited reserves and/ or new initiatives that streamline state government. Without demonstrated evidence of differentiated need or want, this exactly equal, across-the-board appropriation is both arbitrary and an inefficient use of our scarce financial resources. Further, given how depleted all of our reserves and ending balances have become, it would be risky to reduce the state disaster relief fund by \$8.1 million.

The portion of Section 12 that reads: "Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section." is vetoed. This sentence requires the Department of University and School Lands to seek budget section approval before

spending funds approved by the full legislative assembly. In *Kelsch v. Jaeger*, the North Dakota Supreme Court stated: "as otherwise provided in the constitution, the legislature may not delegate legislative powers to others, including a subset of its members." 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 12 would interfere with proper management of this state agency. The specific language addressed to the Governor and the Commissioner in Section 12 "to achieve efficiencies and budgetary savings . . . through the use of innovative ideas and through alternative solutions relating to information technology" remains. Our office, in conjunction with our state CIO, will monitor this IT project closely in terms of scope, budget spending and outcomes and work closely with the Commissioner of University and School Lands to accomplish the project goals.

Section 20 of Senate Bill 2013 directs the Commissioner of University and School Lands to apply a specific interpretation to the terms "gross production," "market value" and "gross proceeds of sale" as stated in its mineral lease form. The North Dakota Attorney General act as legal counsel to the Commissioner of University and School Lands, including providing legal advice related to its minerals leases and other contracts. The restrictions set forth in Section 20 are an encroachment upon the Attorney General's authority to provide legal advice to this state agency and a violation of the separation of governmental powers established by the North Dakota Constitution.

Sincerely,

Doug Burgum
Governor

Disapproved May 2, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2013, including sections 12 and 20, see chapter 38.

CHAPTER 451**SENATE BILL NO. 2016**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; to provide a statement of legislative intent; to provide for a legislative management study; to provide for a study by the office of management and budget; to provide an appropriation to the office of management and budget; and to declare an emergency.

VETO

May 2, 2017

Honorable Brent Sanford
President of the Senate
North Dakota Senate
North Dakota State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed SB 2016, the appropriations bill for Job Service North Dakota, but vetoed sections 10 and 12.

The language in section 10 appropriates \$25,000 to the Office of Management and Budget for contracting with an outside entity to conduct a study of the "most cost-effective use" for the Bismarck central office located at 1000 E. Divide Ave. The section limits the analysis of the "cost savings" to general fund dollars and specifically selects only one other state agency with which to compare costs.

It is unnecessary to expend \$25,000 to narrowly study the cost-effective uses of a single state property. Further, this narrowly defined scope of the study will produce an incomplete and misleading result, ignoring federal and other special fund financial impact when determining relocation, rental and remodeling costs.

Section 12 declares section 10 to be an emergency measure. Given the veto of section 10, section 12 is no longer applicable.

Our office will instruct Job Service North Dakota to proceed with a review of its locations immediately. We will seek the input of other state agencies' potential cost savings as part of this review and will consider them as potential tenants for all vacant space.

Sincerely,

Doug Burgum
Governor

Disapproved May 1, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2016, including sections 10 and 12, see chapter 41.

CHAPTER 452**SENATE BILL NO. 2018**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide exemptions; to provide for transfers; to provide for a report; and to declare an emergency.

VETO

May 1, 2017

Honorable Brent Sanford
President of the Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9, I have signed Senate Bill 2018, the appropriations bill for the commerce department, with an item veto in Section 12.

The portion of Section 12 that reads: "\$300,000 to an organization that provides workplace safety," is vetoed.

This earmark appeared in the final commerce appropriations bill from conference committee. It was added without the benefit of full transparency and scrutiny afforded appropriations that proceed through the public hearing process and full legislative review.

The remaining language in Section 12 gives clear direction to the commerce department to establish guidelines and procedures for awarding grants and vouchers.

Sincerely,

Doug Burgum
Governor

Disapproved May 1, 2017

Filed May 3, 2017

NOTE: For the full text of Senate Bill No. 2018, including section 12, see chapter 43.