consist of the same members as now provided for under chapter 31 governing villages, but the trustees shall require the clerk of such village to transmit assessment books together with a certified copy of the minutes showing the proceedings of the board of equalization, to the county auditor in each county in which such village is situated, and when the trustees have made a levy on the property assessed within such village to correctly proportion the amount to be certified to each county in accordance with the valuation returned by the assessor and as left by the equalization board.

§ 9. DUTIES, COUNTY TREASURER.] The county treasurer shall perform the same duties in relation to the collection of taxes for such villages as is now or may hereafter be provided for.

§ 10. REPEAL.] All acts and parts of acts contained in chapter thirty-one (31), of the political code of North Dakota, relating to incorporation of villages, powers and duties of its officers, not conflicting herewith, are made applicable to the organization of villages hereunder.

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 All acts or parts of acts in conflict herewith are hereby repealed.

§ 12. EMERGENCY.] Whereas an emergency exists, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1911.

VETO

CHAPTER 315.

[S. B. No. 29—Welch]

STATE HISTORICAL SOCIETY. POWERS.

AN ACT to Amend Sections 240 and 241 of the Revised Codes of 1905, and Sections 242 of the Same Code as Amended by Chapter 132, Laws of 1907, Relating to the State Historical Society of North Dakota, and Making an Appropriation.

VETO.

Bismarck, March 18, 1911.

To the Honorable, Secretary of State:

I file herewith senate bill No. 29, an act to amend section 240 and 241 of the Revised Codes of 1905, and section 242 of the same code as amended by chapter 132, laws of 1907, relating to state his-

torical society of North Dakota and making appropriation therefor, without my approval, for the reason that this bill increases the standing appropriation for the historical society in the sum of fifteen hundred dollars annually, and for the reason that the revenues of the state have been exceeded in the appropriations.

JOHN BURKE
Governor.

CHAPTER 316.

[S. B. No. 306—Cashel]

INTOXICATING LIQUORS.

AN ACT Amending Sections 9358 and 9354 of the Revised Codes of 1905, as Amended and Re-Enacted by Section 5, of Chapter 183 of the Laws of 1909, Regulating the Sale of Intoxicating Liquors by Druggists Who are Registered Pharmacists, and to Provide a Method of Such Sales in Cases of Emergency.

VETO.

Bismarck, March 13, 1911.

To the Honorable, the Secretary of State:

I file herewith senate bill No. 306, a bill for an act amending section 9358 and 9354 of the Revised Codes of 1905, as amended and re-enacted by section 5 of chapter 183 of the laws of 1909 regulating the sale of intoxicating liquors by druggists who are registered pharmacists and to provide the method of such sale in case of emergency, without my approval, for the reasons following:

Section 9358 of the revised codes of 1905 as amended by section 5 of chapter 183 of the Session Laws of 1909, provides that any physician who is lawfully and regularly engaged in the practice of his profession as a business, may, in case of emergency, prescribe intoxicating liquors by written or printed prescription, which prescription may be filled by a pharmacist holding a druggist's permit or by a doctor issuing the prescription who holds a permit. That is, under section 9358, prescriptions can only be filled by pharmacists holding druggist's permits, or by the doctor who issues the prescription and who has a permit under the law to sell intoxicating liquors, or a physician may administer without charge.

Senate bill No. 306 proposes to amend the law further by permitting any registered pharmacist to fill a prescription. As far as the pharmacist is concerned there are no restrictions whatever. The law simply requires the sale to be made by a registered pharmacist, and being a registered pharmacist he has

full license to fill all the prescriptions that may be presented to him.

Prohibition laws have always recognized intoxicating liquors as a medicine, but the sale is surrounded with restrictions so as to prevent the abuse of the law. Under the present law for granting permits to sell intoxicating liquors the applicant must be a person of good moral character and registered pharmacist under the state laws, lawfully and in good faith engaged personally and individually in the business of a druggist in his district. He must be a man who, in the judgment of the judge of the district court, can be entrusted with the responsibility of selling liquor for medicinal, scientific, sacramental or mechanical purposes. He must have in his business, exclusive of intoxicating liquors and fixtures, a stock of drugs and druggist's sundries, if in a city, of the value of at least $2000, and if elsewhere of the value of at least $1500. He must file an application or a petition with the clerk of the district court setting forth all of the foregoing, and upon the day set for the hearing of his petition he must prove all of the allegations of his petition before he is granted his permit.

Under senate bill No. 306, the pharmacist who fills the prescription need not be a man of good moral character. He need not be engaged personally in the business of a druggist in his district. He may use intoxicating liquors as a beverage. He need not have a stock of drugs. All that the law requires of him is that he be a registered pharmacist.

This amendment would entitle every pharmacist to keep a supply of liquor to fill prescriptions without a permit, and would destroy the effect of the law making the finding of liquor prima facie evidence in prosecutions.

Again, the law does not restrict the druggist to the filling of prescriptions issued by doctors who are residents of the state and subject to the laws of the state. It says specifically that "Any physician who is lawfully and regularly engaged in the practice of his profession as a business and who in case of emergency and actual need shall deem any intoxicating liquors necessary for the health of his patient may give such patient a written or printed prescription therefor," which prescription may be filled by any registered pharmacist, and while the druggist may fill the same without a permit the physician may not. The entire responsibility is thrown upon the physician. He is the only person that can be punished for a violation of this section and he may be outside the state and not subject to the jurisdiction of our courts. If senate bill 306 should become a law there would be nothing to prevent doctors in adjoining states from sending in prescriptions by mail and no law to prevent registered pharmacists from filling such prescriptions. Both foreign doctor and the resident registered pharmacist could work together in safety; and while there should be some

law to enable persons who are sick to secure intoxicating liquors as a medicine in case of emergency and actual need, it should be surrounded with such reasonable restrictions as to secure the real object and intent of the law. True, the present law does not limit the filling of prescriptions to the prescriptions of resident physicians, but it does require that the prescription can only be filled by a druggist having a permit under the laws of this state to sell intoxicating liquors, and as the intoxicating liquors can only be sold under a permit, it is immaterial whether the prescription is written by a resident or foreign physician.

To take away the restrictions safeguarding the sale would in my judgment weaken the law and make it harder to enforce, and I therefore withhold my approval.

JOHN BURKE,
Governor.

CHAPTER 317.

[S. B. No. 89—Plain]

ADDITIONAL FARMERS' INSTITUTE APPROPRIATION.

AN ACT to Amend Section 1319 of Chapter 14 of the Revised Codes of North Dakota for 1905, Entitled "An Act to Create a State Farmers' Institute Board of Directors and Prescribing Its Powers and Duties, and Making an Appropriation for Conducting Farmers' Institutes."

VETO.

Bismarck, March 18, 1911.

To the Honorable, the Secretary of State:

I file herewith senate bill No. 89, an act to amend section 1319 of chapter 14 of the Revised Codes of North Dakota, for 1905, entitled an act to create a state farmers institute, board of directors and prescribing its powers and duties and making an appropriation for conducting the farmers institutes, without my approval for the reason that the law which this act purports to amend appropriates $12,000 biennially for farmers' institutes and this act increases the amount $28,000, and inasmuch as the appropriations exceed the revenues of the state, I withhold my approval.

JOHN BURKE,
Governor.

CHAPTER 318.

[S. B. No. 1—LaMoure]

EXPERIMENT STATION.

AN ACT Appropriating an Annual Sum of Money for the Use of the Government Experiment Station at Fargo for Conducting Demonstration Farms and for Furnishing Samples of Seed Grain and Otherwise Co-operating with Farmers; for Publishing Reports and Bulletins, for Analysis of Fertilizers and Stock Food, for Complying with the Provisions of the Pure Paint, Paris Green, and Formaldehyde Laws, and for Making Other Experiments.

VETO.

Bismarck, March 19, 1911.

To the Honorable, the Secretary of State:

I file herewith senate bill No. 1, an act appropriating an annual sum of money for the use of the government experiment station at Fargo for conducting demonstration farms and for furnishing samples of seed grain and otherwise co-operating with farmers for publishing reports and bulletins, for analysis of fertilizers and stock foods, and complying with the provisions of the pure paint, paris green and formaldehyde laws, and for making other experiments, without my approval, for the reason that there is a standing appropriation. Chapter 28 of the laws of 1909, appropriating $12,000 biennially for this same purpose. It does not appear that this law is an amendment to chapter 28 of the laws of 1909, nor that it is intended to take the place of it. This act repeals all laws in conflict with it, but it is not in conflict with said chapter 28, and for the reason that the revenues of the state have been exceeded in the appropriations, the bill is vetoed.

JOHN BURKE,
Governor.

CHAPTER 319.

[H. B. No. 177—Englund]

APPOINTMENT OF TERMINAL AGENTS.

AN ACT Repealing Chapter 134 and to Amend Section 2, Chapter 135, Session Laws of 1909, Authorizing the Board of Railroad Commissioners to Appoint Agents at Terminal Points of Duluth and Minneapolis, for the Benefit of Shippers of Grain of this State, and Providing for Their Compensation, and Appropriating Funds for the Purpose of Carrying Out the Provisions of This Act.

VETO.

Bismarck, March 15, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 177, a bill for an act repealing chapter 134 and to amend section 2, chapter 135, Session Laws of 1909, authorizing the board of railroad commissioners to appoint agents at terminal points of Duluth and Minneapolis, for the benefit of shippers of grain of this state, and providing for their compensation and appropriating funds for the purpose of carrying out the provisions of this act without my approval for the following reasons:

This act appropriates nine thousand six hundred dollars to pay the salaries of two grain experts to sit on the grain board of appeals at Duluth and Minneapolis for the ensuing two years. Under the laws of the state of Minnesota, such agents are permitted to sit on the grain board of appeals, but have no voice in the deliberations of the said grain board and no vote.

For the past two years we have had representatives on this board and they made a report to the twelfth legislative assembly containing much valuable information and recommendations.

The legislative assembly having exceeded the revenues of the state, and these representatives having no voice or vote on the said grain board of appeals, and it being improbable that they can add anything to the information furnished and the recommendations made, it looks like a useless expenditure of public money that can well be dispensed with.

JOHN BURKE,
Governor.

CHAPTER 320.

[H. B. No. 293—Williams]

STREET CAR LINE.

AN ACT Providing for the Extension of the State Street Car Line from the Capitol to the State Penitentiary; and Providing for Its Equipment and Making an Appropriation Therefor.

VETO.

Bismarck, March 17, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 293, an act for the extension of the State street car line from the capitol to the state penitentiary and providing for its equipment and making an appropriation therefor, without my approval, for the reason that it is in conflict with sections 12 and 17 of the enabling act under which our state government was organized.

This act appropriates out of the fund known as the "capitol building fund," the sum of fifteen thousand dollars for the building of a street railway from the capitol to the penitentiary under the supervision of the trustees of public property.

The "capitol building fund" is a fund created from the sale of public lands granted to the state by section 12 of the enabling act for the purpose of erecting public buildings at the capital for legislative, executive and judicial purposes, and section 17 of the enabling act granting to the state fifty thousand acres for public buildings at the capital. And while there is a difference in the wording of the two sections, the purposes of the two grants are expressly the same, viz., for public buildings at the capital. Under these grants the state acquired eighty-two thousand acres of land for the building of public buildings at the capital.

In the case of Dubuque etc. R. R. Co. v. Litchfield in 23 Howard (U. S.) 66, the court held that "such grants should be strictly construed against the grantee and pass nothing but what is conveyed in clear and explicit language." And our own supreme court has followed this rule twice in construing grants of public lands to the state in the enabling act.

First, in the case of Board of University and School Lands vs. McMillan, 12 N. D. 280. In this case the court passed upon all the provisions of the enabling act granting land to the state and said,

"It is entirely clear from the provision of the enabling act just quoted that the entire grant of lands to the state for educational purposes was in trust and that the express terms of the

grant require the state as trustee to maintain the permanency of the funds so granted and further that it limits the state to the use of the interests of the permanent fund and requires that such interest shall be used only for the support of the schools.

"We now turn to the provisions of the Constitution relating to the grant and the trust thereby imposed. Section 205 reads as follows: 'The State of North Dakota hereby accepts the several grants of land granted by the United States to the state of North Dakota by the act of congress entitled—An act to provide for the Division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on equal footing with the original states, and to make donations of public lands to such states, under the conditions and limitations therein mentioned; reserving the right, however, to apply to congress for modification of said conditions and limitations in case of necessity." Continuing the court held

"The proceeds of the sale of all school and institution lands must be kept under the provisions of the constitution as a perpetual fund, the interest and income of which could only be used for the maintenance of the schools and educational institutions." Then taking up sections 12 and 17 of the enabling act the court said:

"What we have said in reference to the limitations imposed by the enabling act and the constitution upon the power of the legislature has no application to what is known as the "capitol land grant." The funds derived from this grant are not required to be kept permanent. On the contrary under the terms of the grant they may be used at such times and in such manner as the legislature may determine. This grant was made expressly for the purpose of erecting public buildings at the capital for legislative, executive and judicial purposes. Sections 12 and 17 of the enabling act. The only limitations upon the power of the legislature is that the proceeds of this grant shall be used for the purposes for which it was made, to-wit, the erection of buildings at the state capital."

Again in the case of State vs. Budge et al, 14 N. D. 532. The legislature in 1905 passed a law providing for a capitol commission and the building of a capitol and governor's residence at the capital out of the capitol building fund, and the question was raised whether or not the residence for the governor of the state at the capital was a public building, within the meaning of the enabling act. And the court said:

"Whether a residence for the governor of the state at the capitol is a public building within the terms of the enabling act or not is a matter of argument between opposing counsel in the

case. Section 12 of the enabling act grants fifty sections of land to the state for the purpose of erecting public buildings at the capital for legislative, executive and judicial purposes. Section 17 of said act grants to the state fifty thousand acres of land for public buildings at the capital of the state. There is no other provision in the enabling act relating to or prescribing what buildings are to be deemed public buildings within the purposes of this act. The legislature is vested with the power to dispose of such land and the duty of using the proceeds subject to the terms of said act. The legislature has enacted that an executive mansion shall be erected out of the proceeds of said land and thereby declared an executive mansion to be a public building within the meaning of said act. We deem that a correct and reasonable construction of the enabling act The custom is generally to provide the governor with a home at the capital. Generally this is owned by the state. The possession is in the state. It is used by the state through its executive. The governor is present at the capital of the state to discharge public functions. The occupancy of the executive mansion may be correctly considered to be for public purposes and be a public building within the meaning of the enabling act. Section 17 does not grant this land solely for capitol building purposes. Other buildings may be erected out of the proceeds. Fleckton v. Lamberton, 69 Minn. 187. The grant under section 17 and the grant under section 12 of these public lands may be appropriated and disposed of for a capitol building. Whether the grant under section 12 may be used for a governor's residence, we need not determine, as section 17 clearly admits the erection of such residence out of the lands thereby granted."

From this reasoning it clearly appears that the court held the building of the governor's mansion at the capital was not in conflict with the grants for the reason that the mansion is a public building belonging to the state, in the possession of the state upon land owned by the state. That it is to be occupied by the governor of the state who is present at the capital of the state to discharge public functions. And that inasmuch as congress did not specify the kind of buildings that were to be erected at the capital, the legislature had the right to designate the governor's mansion as a public building and authorize the construction of the same out of the capital building fund.

The supreme court of Montana had the same question under consideration in the case of State vs. Cook, 17 Mont. 529, and the court said:

"When congress made the grant of land to the state for public buildings at the capital of the state by act of congress, approved Feb. 22, 1889, providing for the admission of the state into the Union, it was enacted that the lands so granted should be held appropriated and disposed of exclusively for the purposes men-

tioned in the act in such manner as the legislature of the state might provide. The state, by ordinance No. 1, section 7, has accepted these lands for the purposes specified and by legislation has provided for the erection of a capitol exclusively out of moneys from the fund to be created from the disposition of the lands so granted by congress. The state is the agent to carry out the objects of the donation. The fund created by the statute is a trust fund established by law in pursuance of the act of congress."

The state of Washington was admitted under the same enabling act and in the case of Allen vs. Grimes, 37 Pac. Rep. 662, the supreme court of Washington gives the enabling act the same construction and says:

"This grant as we view it is in the nature of a trust imposed upon the state to select the number of acres granted, and to apply the proceeds of their sale to the purposes mentioned."

Again in the case of State ex rel Houston vs. Maynor, 71 Pac. Rep. 775, the court places the same construction upon the grant of school and institution lands to the state. The school and institution lands granted in the enabling act received the same construction in the case of State vs. Rice (Mont.) 83 Pac. Rep. 874.

After the grants have been made, we find the following language in section 17 of the enabling act: "And the lands granted by this section shall be held appropriated and disposed of exclusively for the purposes herein mentioned in such manner as the legislature of the respective states may severally provide." And the purposes mentioned are for public buildings at the capital. It clearly follows that the fund created from the sale of the lands granted for the building of public buildings at the capital is a trust fund and can be used only for the purposes mentioned in the grant; viz., the building of public buildings at the capital.

Is the money appropriated in this act out of the capitol building fund for such purposes? It provides, "the state board of trustees of public property is authorized, if in their judgment a saving can be made to the state, immediately after the passage and approval of this act to extend the street car line and electric line or any part therof from the capitol building down Ninth street and Broadway to the penitentiary, connecting with the tracks of the Northern Pacific Railway Co. and the Minneapolis, St. Paul & Saulte Ste. Marie Railway Co., for the purpose of hauling coal and other commodities, and to purchase the necessary equipment for the same." A street and electric car line is not a public building, and if, by any possible construction, it could be deemed such, it is not at the capital as provided in the enabling act. True, the act provided that it should commence at the capitol and continue down Ninth street, one of the

streets in the city of Bismarck a distance of about one mile, and then a distance of about two miles further through the country to the penitentiary.

If the legislature has the power and authority to build an electric line from the capitol to the penitentiary, it would have authority to build from the capitol to the asylum or to any or all of the state institutions. The construction of this line of railway is not the construction of public buildings at the capital. It is more in the line of internal improvements, and the courts have held that grants of land for internal improvements could not be used for the purpose of building public buildings.

In re Internal Improvement Fund, 24 Colorado 247, the supreme court of Colorado in construing the enabling act under which Colorado was admitted, said:

"The phrase 'internal improvement' as used in section 12 of the enabling act and in section 2378, revised statutes, United States, does not include public buildings such as asylum, state house, university, and any other public building of like character. The fund created by the proceeds derived from section 12 of the enabling act cannot be used for the construction of public buildings; that the buildings named are not such internal improvements as are contemplated in Section 12, is evidenced also in other provisions of the enabling act whereby donations of public lands are specifically made for public buildings; among them section 8, which donates fifty sections for a capitol building; section 9, fifty sections for the purpose of erecting suitable building for a penitentiary or state prison; section 10, seventy-two sections for the use and suport of the university; section 11 donates certain salt springs, together with six sections of land adjoining to be used and disposed of on such terms and conditions and regulations as the legislature shall direct. Section 12, five per cent of the proceeds of sale of agricultural public lands for internal improvements. By these provisions several separate and distinct donations are made for definite purposes, and the proceeds derived therefrom constitute trust funds to be applied thereto." See also in re Internal Improvement Co. 18 Col. 317.

If the proceeds of the sale of public lands granted for internal improvements cannot be used for the building of public buildings, it follows, of course, that the proceeds of the sale of lands granted for the erection of public buildings cannot be used for works of internal improvement. And if the building of this street car line is a work of internal improvement, it can only be authorized by a two-thirds vote of the people as provided in section 185 of the constitution of the state.

My attention has been called to section 1268 of the revised codes of 1905 which provides an appropriation out of the capitol building fund for the building of the state trolley line which

is now operated by the state from the capitol down Fourth street, a distance of about one mile, and I am asked to accept this as a precedent to follow. In the light of all the authority quoted and in the light of the clear, expressed provisions of the grants, this law, which has never before been questioned, should not have much weight as an authority. The state has diverted under the act referred to, the sum of twenty thousand dollars from this trust fund; and it is the duty of the legislature and the state officers to guard the trust that congress has reposed in the state and to see that the fund created from the proceeds of the sale of these grants is expended for the purpose for which the grants were made; and to this end, it is the duty of the state to restore to this fund the twenty thousand dollars already diverted from it for the building of the street car line now in operation.

JOHN BURKE,
Governor.

CHAPTER 321.

[H. B. No. 260—Hoge]

SELECTION OF CANDIDATES.

AN ACT to Amend Section 12, Chapter 109, of the Laws of 1907, Entitled "An Act Providing for the Selection of Candidates for Election by Popular Vote, and Relating to Their Nomination and the Perpetuation of Political Parties" and Relating Particularly to Percentage of Votes Required to Nominate Candidates.

VETO.

Bismarck, March 17, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 260, an act to amend section 12, chapter 109 of the laws of 1909, entitled an act providing for the selection of candidates for election by popular vote and relating to the nomination and the perpetuation of political parties, and relating particularly to the percentage of votes required to nominate candidates, without my approval, for the reasons following:

Section 12 of chapter 109 of the laws of 1907 contains the following provision:

"If the total vote cast for any party candidate or candidates for any office for which nominations are herein provided for, shall equal less than thirty per cent of the total number of votes cast for secretary of state of the political party he or they represented at the last general election, no nominations shall be made in that party for such office." In the case of State ex rel

Dorval vs. Hamilton, 129 N. W. Rep., 619, the supreme court of our state construed this provision as an "arbitrary, unnatural, unreasonable and therefore unconstitutional provision."

This provision is amended by said house bill No. 260, as follows:

"If the total vote cast for any party candidate or candidates for any office for which nominations are herein provided for, shall equal less than twenty-five per cent of the average number of votes cast for governor, secretary of state and attorney general of the political party he or they represented at the last general election no nomination shall be made in that party for such office."

In this act the legislature provides that the percentage shall be based upon an average number of votes cast for a group of candidates, but they have selected a group that would bring the average up much higher than the percentage required by the law that was held unreasonable and therefore the percentage required by this act is unreasonable, unjust and unconstitutional under the decision referred to.

JOHN BURKE,
Governor.

CHAPTER 322.

[H. B. No. 81—Collins]

APPROPRIATION FOR STATE UNIVERSITY.

AN ACT to Appropriate Money for Maintenance, Equipment, and Permanent Improvements at the State University of North Dakota.

VETO.

Bismarck, March 17, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 81, an act to appropriate money for maintenance, equipment and permanent improvements at the state university of North Dakota, without my approval, for the reason that it appears on its face to be a duplicate of senate bill No. 24, which appropriates $147,200.00 for maintenance equipment and permanent improvements at the state university, and which act, viz., senate bill 24, has been duly approved.

JOHN BURKE,
Governor.

CHAPTER 323.

[H. B. No. 215—Ployhar]

FIFTH JUDICIAL DISTRICT.

AN ACT Defining the Boundaries of the Fifth Judicial District, Fixing the Terms of Court Therein, and Validating Certain Judgments.

VETO.

Bismarck, March 17, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 215, defining the boundaries of the fifth judicial district, fixing terms of court therein and validating certain judgments, without my approval, for the reason that section 1 of this act defines the boundaries of the fifth judicial district and provides that the fifth judicial district of the state of North Dakota shall consist of the counties of Stutsman, Foster, Eddy and Wells. The district at the present time consists of the counties of Stutsman, Foster, Eddy, Wells, Griggs, Barnes, LaMoure, and Logan, and if this act should become a law it would leave the counties of Logan, LaMoure, Barnes and Griggs outside of any judicial district.

JOHN BURKE,
Governor.

CHAPTER 324.

[H. B. No. 445—Fried]

AN ACT to Amend and Re-Enact Section 1189 of the Revised Codes of North Dakota for 1905.

VETO.

Bismarck, March 17, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 445, an act to amend and re-enact section 1189 of the revised codes of North Dakota for 1905, without my approval, for the reason that the same, if enacted, would be in conflict with the board of control bill passed by the twelfth legislative assembly.

JOHN BURKE,
Governor.

CHAPTER 325.

[H. B. No. 176—Fraine]

ARMORY SITES.

AN ACT to Amend and Re-Enact Sections Two and Four of Chapter 174 of the Session Laws of 1907, Relating to the Appropriation for Armory Sites and Transfer of Armories, Companies, Batteries and Regimental Bands When Mustered Out of Service, or Otherwise.

VETO.

Bismarck, March 18, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 176, an act to amend and re-enact section 2 and 4 of chapter 174 of the session laws of 1907, relating to the appropriation for armory sites and transfer of armory companies, battalions and regimental bands when mustered out of service or otherwise, without my approval, for the reason that this bill increases the appropriation for this purpose in the sum of ten thousand dollars, and the revenues of the state having been exceeded by the appropriations, I withhold my approval.

JOHN BURKE,
Governor.

CHAPTER 326.

[H. B. No. 436—Fassett]

REGULATING HOSPITALS.

AN ACT to License and Regulate Hospitals, Sanitariums and Other Institutions and for the Protection of Patients Therein.

VETO.

Bismarck, March 18, 1911.

To the Honorable, the Secretary of State:

I file herewith house bill No. 436, to license and regulate hospitals, sanitariums and other institutions and for the protection of patients therein, without my approval, for the following reasons:

Section 5 of this act provides that no major operation shall be performed on any patient in any licensed hospital except in an emergency until the attending physician or surgeon has filed with the superintendent of the hospital a statement giving the

reasons and pathological conditions that render the operation necessary. This statement must also be approved and signed by an independent qualified physician not to be in any way a financial beneficiary from the operation. It will be noticed that this provision is confined to operations in hospitals only, and there is nothing to prevent any physician or surgeon from performing such operation in the patient's home or in any place, except a licensed hospital. It prevents such operations in the very place that is best equipped and especially provided with sanitary conditions for such operations, unless the conditions named are complied with; but leaves the door wide open for such operations elsewhere and without any conditions and regulations.

If this act became a law, surgeons who do not want to comply with the conditions would simply perform their operations outside of licensed hospitals and instead of being a protection it would be a detriment to the patient in depriving him of the sanitary conditions and superior equipments of the hospital.

Again, since this bill reached this office, I have heard from nearly all the eminent physicians and surgeons of the state, men in whom I have confidence, and nearly all of them say that the conditions are practically impossible to comply with. I have talked also with members of the legislative assembly that passed the bill and am informed that the bill passed without discussion and without its receiving any attention. The members that I have talked with have also said that if they had known of its provisions they would not have supported it. The bill was introduced by request towards the close of the session, and seems to have passed without any opposition or comment.

Relying upon the representations made by so many eminent and honorable physicians and surgeons of the state and believing that this measure would only tend to drive such operations out of the places especially equipped for such work and into places where the performance of such operations would be much more dangerous, I withhold my approval.

JOHN BURKE,
Governor.