

Senate Memorial Resolution "A"—(Nelson of Grand Forks, Fowler
and Stucke)

GEORGE YOUNG

Be It Resolved by the Senate of the State of North Dakota:

WHEREAS, George Young, an old time resident and respected citizen of LaMoure, North Dakota, and an uncle of Senator M. R. Young of LaMoure County, has been called by death;

THEREFORE, BE IT RESOLVED, that this Senate express its deep sympathy to Senator Young and to the other members of the family, and that a copy of this resolution be delivered by the Secretary of the Senate to Senator Young.

Filed January 14, 1941.

VETOES

H. B. No. 335—(Committee on Appropriations)

**TRANSFER OF \$20,000 FROM AUTO TRANSPORTATION FUND
TO THE GENERAL FUND**

An Act to transfer to the general fund \$20,000 from the balance on hand July 1, 1941, in the "Auto Transportation Fund."

March 22, 1941.

Mr. Herman Thorson
Secretary of State
Bismarck, North Dakota

Dear Mr. Thorson:

I am filing House Bill 335 herewith, without my approval. This bill transfers \$20,000.00 out of the Auto Transportation Fund to the General Fund of the State.

After a careful examination of the statutes which provide for revenue and require that excise and license fees imposed thereby be deposited to the credit of the Auto Transportation Fund, I am of the opinion:

1. That some of the license fees which are covered into the Auto Transportation Fund have been appropriated, by constitutional amendment adopted June 1940, for the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways, and that by reason thereof such revenue can not be now diverted to any other purpose by legislative transfer.

2. That the transfer of the amount involved in this act only operates to transfer the public money from one fund to another. This money is now in a special fund and can not be disbursed without a legislative appropriation having first been made.

3. That if it be hereafter determined that some of the revenue that is now covered into the Auto Transportation Fund must be covered into the State Highway Fund by reason of the constitutional dedication of some of the license fees for highway purposes, then the funds available for the regulation of the Auto Transportation Service and the payment of the administrative expenses necessarily incurred thereby, may prove insufficient for said purpose, and therefore it is inadvisable to transfer any money out of the Auto Transportation Fund which may be required by the Public Service Commission to discharge its official duties.

I believe that sound public policy and the best interest of the state will be served by a veto of this measure. Manifestly, if this money is not expended and if it is subject to lawful transfer it can be transferred by the next legislative session.

For these reasons, I have and do hereby veto this act.

Sincerely yours,
JOHN MOSES
Governor

JM:HH

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

§ 1. The sum of \$20,000 of the balance on hand July 1, 1941, in the "Auto Transportation Fund" created by Section 25 of Chapter 164 of the Session Laws for the year 1933, is hereby transferred to the general fund of the State of North Dakota.

H. B. No. 90—(Erickson of Divide, Welder, Erickson of Williams,
Semerad, Bymers, Bubel)

ASSESSMENT OF PUBLIC UTILITIES

An Act Providing for the Consideration by the State Board of Equaliza-
tion of certain Property Valuation in Determining the Value of
Public Utilities for Taxing Purposes.

March 22, 1941

Mr. Herman Thorson
Secretary of State
Bismarck, North Dakota

Dear Mr. Thorson:

I transmit herewith House Bill No. 90 which is entitled, "An Act Providing for the Consideration by the State Board of Equalization of Certain Property Valuation in Determining the Value of Public Utilities for Taxing Purposes," without my approval.

Reference to the Journals of the Twenty-seventh Legislative Assembly discloses that this bill originated in the House and was passed by that body. It was then transmitted to the Senate for action. Page 880 of the Senate Journal discloses that upon consideration by the Senate the bill was indefinitely postponed, upon a roll call vote and that no action was ever taken by the Senate to reconsider. It appears, however, that by error the bill was returned to the House as having been passed unchanged.

From this, it appears beyond controversy that although the bill has been certified by the Officers of the Legislature as having been passed, it was never passed by the Senate. The inescapable conclusion is that inasmuch as the bill was not passed by both branches of the Legislature, as required by the Constitution, it was never legally enacted and therefore can not become law.

Respectfully submitted,
JOHN MOSES
Governor

JM:SB

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

§ 1. The original cost, depreciated, the reproduction cost new, depreciated, and the fair value of all operating property of each public utility assessed under the statutes of this state by the State Board of Equalization, as found, calculated and determined by the Public Service Commission of the State of North Dakota, or the Interstate Commerce Commission of the United States, as said figures apply to railroad corporations operating within the State of North Dakota, shall be considered as evidence of the value of such utility by the State Board of Equalization in determining the assessed

valuation of such public utility or railroad for the purpose of taxation, and in the event of inadequate or excessive earnings, or inflated or deflated stock and/or bond market values, shall be given due consideration and weight with other lawful factors in such determination.

H. B. No. 114—(Tuff and Allen by Request)

BOARD OF PARDONS, POWERS, DUTIES AND PROCEDURE

An Act to Amend and Re-enact Section 11105 of the Compiled Laws of the State of North Dakota for the year 1913, as Amended by Chapter 130 of the 1939 Session Laws of the State of North Dakota, Relating to the Board of Pardons, the Powers and Duties thereof, and the Procedure Before Such Board; Repealing All Acts or Parts of Acts in Conflict Herewith; Declaring an Emergency.

March 22, 1941

Mr. Herman Thorson
Secretary of State
Bismarck, North Dakota

Dear Mr. Thorson:

I return herewith House Bill No. 114, being "An Act to Amend and Re-enact Section 11105 of the Compiled Laws of the State of North Dakota for the year 1913, as Amended by Chapter 130 of the 1939 Session Laws of the State of North Dakota, Relating to the Board of Pardons, the Powers and Duties Thereof, and the Procedure Before Such Board; Repealing All Acts or Parts of Acts in Conflict Herewith; Declaring an Emergency," without my approval.

The reason for withholding my approval to this measure is that it will not be possible for the Clerk of the Board of Pardons to comply with the legislative mandate with reference to giving notice of hearing, by registered mail, to the persons enumerated in the bill, for the reason that the available records at the Penitentiary do not disclose such information, and for the further reason that the appropriation for the Pardon Board is inadequate for such purpose.

The object sought by the bill, however, will be substantially accomplished, by rules of practice and procedure adopted by the Board of Pardons at its regular session this, the 22 day of March, 1941.

Respectfully submitted,
JOHN MOSES
Governor

JM :B

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

§ I. AMENDMENT.] That Section 11105 of the Compiled Laws of the State of North Dakota for the year 1913 as amended by Chapter 130 of the 1939 Session Laws of North Dakota, be and the same is hereby amended and re-enacted to read as follows:

§ 11105. All applications for pardon, parole, reprieve, or commutation of sentence shall be filed with the clerk of the Board of Pardons. Applications for pardon shall be heard only at the two regular meetings of the Board, appointed to be held respectively on the 15th day of March and the 10th day of August of each year. All applications for pardon must be filed at least thirty days before the regular meeting of the Board at which hearing is sought. Application for parole may be heard at either regular or special meetings, and shall come on for hearing pursuant to such notice as the Board of Pardons may prescribe. Notice of all applications for pardon, parole, reprieve or commutation, and of the time and place of hearing, shall be given by the Clerk of the Board of Pardons to the judge who presided at the trial, and if he is no longer in office, notice shall also be given to his successor in office, and to the states attorney who prosecuted the action, and if he is no longer in office, notice shall also be given to his successor in office, and to the sheriff or chief of police who investigated the crime involving the applicant, and if he is no longer in office, notice shall also be given to his successor in office. Such notice shall, be of at least ten days and shall, set forth the name of the person, or the persons, on whose behalf application is made; the crime of which he was convicted; the time and place of conviction; and the term of imprisonment; and the name of the judge who presided and the state's attorney who prosecuted. Service of such notice shall be made by registered mail, and in cases of murder, manslaughter in the first degree, rape by force, kidnapping of first degree robbery such notice shall be posted in a conspicuous place at the front door of the courthouse of such county for four consecutive weeks prior to said hearing. Proof of the posting of said notice shall be filed with the clerk of the Board before hearing. Provided that a reprieve in capital cases may be granted, as provided in Section 11100, as amended by Chapter 248 of the Laws of 1935, without such notice. Provided, further that an application for pardon, commutation or parole may, also, be heard at a special meeting, called in case of emergency, under Section 11100, Compiled Laws of 1913, as amended by Chapter 248, Laws of 1935; but no such application shall be heard unless there is filed a written statement signed by the applicant or someone in his behalf, setting forth the facts as to the emergency, and the Board shall first determine whether an emergency does in fact exist; and if it finds there is no emergency, no further action shall be taken. If the Board finds

there is an emergency, then a hearing may be had upon such notice to the judge and the state's attorney as the Board may deem sufficient.

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

§ 3. EMERGENCY.] This act is hereby declared to be an emergency measure and shall be in full force and effect from and after the date of its passage and approval.

S. B. No. 152—(Topp, Dahl, Thatcher)

ESTABLISHMENT OF MERCHANDISING BOARDS

An Act to authorize, regulate and control the handling and distribution, sale, possession, purchase and dispensing of merchandising boards, and the sale and exhibition of goods and merchandise through the merchandising board, providing the method of taxing and licensing of merchandising boards; and providing penalties for violations of the provisions of said Act.

March 22, 1941

Mr. Herman Thorson
Secretary of State
Bismarck, North Dakota

Dear Mr. Thorson:

I return herewith Senate Bill No. 152, being "An Act to Authorize, regulate and control the handling and distribution, sale, possession, purchase and dispensing of merchandising boards, and the sale and exhibition of goods and merchandise through the merchandising board, providing the method of taxing and licensing of merchandising boards; and providing penalties for violations of the provisions of said Act," without my approval.

I do not believe that this proposed bill is in harmony with the Constitution of the State of North Dakota; I believe the element of lottery is involved, and I do not believe that it is good, sound public policy. I believe that a measure of this sort will pander to and foster the gambling instinct, particularly insofar as the children of the State are concerned.

For these reasons, I have vetoed this measure.

Respectfully submitted,
JOHN MOSES
Governor

JM:B

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

§ 1. MERCHANDISING BOARDS.] Merchandising boards may be handled and distributed, imported, transported, possessed, purchased and sold, and goods and merchandise may be sold and exhibited and displayed through the medium of merchandising boards in the State of North Dakota, in the manner and under the conditions set forth in this Act; provided, however, that such goods and merchandise so sold by means of such merchandising board must not be other than goods and merchandise constituting the usual and ordinary stock in trade of the retailer using such board.

§ 2. RETAIL SALE OF.] Any retailer, duly licensed by law to operate a place of business within the State of North Dakota, whose purpose it is to display, sell, or offer for sale goods and merchandise, is hereby permitted and authorized to sell and exhibit goods and merchandise for sale through the medium of merchandising boards purchased from duly licensed wholesalers, in the manner and pursuant to the regulations and restrictions contained in this Act; provided, however, that such retailer shall not be authorized or permitted to hold a wholesale license to handle or distribute merchandising boards.

§ 3. WHOLESALE SALE OF.] Any wholesaler, having an established wholesale house, and operating the same in the State of North Dakota, engaging in the handling and distribution of merchandising boards, must first procure from the State Tax Commissioner a license, the fee for which shall be in the sum of Fifty Dollars a year. Such wholesaler shall make application for license to the State Tax Commissioner in writing, on such form as the Tax Commissioner may require, showing such information as shall be required to bring the wholesaler under the provisions of this Act. All license fees shall be collected by the State Tax Commissioner and paid to the State Treasurer, who shall deposit it to the credit of the General Fund. Each such license shall be issued for the term of one year covering a fiscal period of July 1st of one year until July 1st of the ensuing year; provided that such license shall not be transferable, and provided further that if said wholesale business is maintained in more than one location, a separate license shall be had for each such location. No wholesaler or retailer shall be permitted to sell or offer to sell, by means of any merchandising board, any goods or merchandise unless the aggregate value of such goods in merchandise sold through each such board equals in retail value at least one hundred per cent (100%) of the total income from such board.

§ 4. TAX.] There shall be levied and collected and paid to the State Treasurer, on all merchandising boards sold in the State of North Dakota, the following tax to be paid prior to the sale and delivery thereof to the retailer, and at the time of delivery by the

wholesaler; a sum equal and equivalent to the amount of three per cent (3%) of the total income to be received by the retailer from the merchandising board.

§ 5. STAMPS.] Stamps representing the said tax set forth in Section 4 shall be securely affixed to each merchandising board sold by the wholesaler, and it shall be unlawful for any retailer, or any person except wholesale dealers, to possess any merchandising board within the State of North Dakota upon which there are not affixed thereto such stamps. The said stamps shall be prepared and printed by the State Tax Commissioner, in such form as may be necessary and in denominations of one cent, five cents, ten cents, twenty-five cents and one dollar, and shall be issued to and sold to all licensed wholesale dealers upon requisition thereof from time to time; and it is hereby made the duty of such wholesaler under this Act to attach to or cause to be attached to each merchandising board in the proper amounts such stamps as are provided for in this Act before the same are delivered, shipped to or consigned to any retail dealer. The funds received from the sale of said stamps by the State Tax Commissioner shall be turned over to the Treasurer of the State of North Dakota, and shall be deposited by him to the credit of the General Fund.

§ 6. PRICE OF MERCHANDISE.] No wholesaler or retailer shall be permitted to sell or offer for sale by means of the merchandising board any goods or merchandise at a higher price than the aggregate goods or merchandise would be sold at if sold across the counter, or at a higher price than normally.

§ 7. ITEMS PER BOARDS.] No wholesaler or retailer shall be permitted to sell or offer for sale any goods or merchandise by means of the merchandising board unless there shall be two or more items of merchandise sold per board.

§ 8. INCOME PER BOARD.] No wholesaler or retailer shall be permitted to sell or offer for sale any goods or merchandise on the merchandising boards where the income per board shall exceed the sum of Fifty Dollars (\$50.00).

§ 9. CHARGE PER PURCHASE.] The charge for each purchase made by any consumer on the merchandising board shall not exceed the sum of five cents, for each purchase of which the retailer or seller shall give consideration.

§ 10. ORGANIZATIONS.] Any fraternal, religious and charitable organization may engage in the retail sale of goods and merchandise through the medium of the merchandising board.

§ 11. ADMINISTRATION AND ENFORCEMENT.] There is hereby conferred upon the State Tax Commissioner the power and authority to administer and enforce the provisions of this Act.

§ 12. PENALTY.] Any person violating any of the provisions of this Act shall, upon conviction, be fined not more than One Hundred Dollars (\$100.00), or imprisoned in the County Jail for not more than thirty days, or by both such fine and imprisonment. And shall the person so convicted be the holder of a license, the same shall be revoked by the State Tax Commissioner, and such conviction shall be sufficient evidence and ground for such revocation.