VETOED MEASURES

CHAPTER 657

HOUSE BILL NO. 1002
(Legislative Council)
(Interim Committee on Resources Research)

SCIENCE AND TECHNOLOGY PROGRAM

AN ACT directing the legislative council to administer a scientific and technological research and development program, to set out its responsibilities and duties, to provide for its staffing; to set forth legislative intent concerning the coal trust fund; and to provide an appropriation.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1002 provides a $1,600,000 appropriation to the Legislative Council to administer a scientific and technological research and development program. The bill states that the science and technology program is the statutory successor of the Regional Environmental Assessment Program (REAP).

The concept for the Regional Environmental Assessment Program developed from an interim study of the Legislative Council before the Forty-Fourth Legislative Assembly in 1975. The intent of the interim committee studying the proposal was to plan for the use of non-renewable natural resources by designing a system to collect available environmental, economic, and societal information.

According to the Report of the Legislative Council, the thinking at that time was that two important products could result from such an information system:

1. A continually developing baseline assessment of environmental, economic, and social conditions in the region.

2. A list of potential development activities which would contribute to the regional objectives within the limitations of the regional ecological, social, and economic conditions.

The interim committee envisioned that REAP would reliably predict the impact or results of development before they occurred in order that state and local government as well as citizens could intelligently judge whether the development is desirable.

REAP was officially created by an appropriation of $2,000,000 from the Coal Severance Tax Trust Fund to the Legislative Council in the Forty-Fourth Legislative Session. The Legislature expressed its hopes for the new information system as follows:

"It is the intent of the legislative assembly that priorities shall be given to the development of necessary data and information systems in regard to the existence of and potential use of North Dakota's natural resources in order that citizens of this state, officials of the executive branch of government and local government, and the legislative assembly, may know with a high degree of certainty the alternatives available to the state in any use and development of resources, and the results and impacts of any such use or development, in order that there shall not be material detrimental deterioration of the environmental quality of life in North Dakota, but that any such use shall in fact enhance the quality of life of the citizens of this state."

Through fiscal year 1979, North Dakota will have spent $4,000,000 on this project. It is apparent that the laudable objectives of 1975 are not attainable. After four years REAP has not addressed the social impacts of natural resource development. Although this focus was central to the original concept of REAP's mission, REAP's governing body has ignored it.

REAP changed direction during the current biennium. Instead of continuing to gather important baseline data, which changes daily, REAP's governing body chose to commit resources to purchasing expensive computer hardware. All the federal standards for determining the deterioration of air and water quality are based on base-year data which REAP was directed to gather. The decision to buy a computer system rather than gathering this critical data permits the development of North Dakota's resources without first establishing adequate environmental safeguards. I cannot agree with this priority.

House Bill 1002 changes the original concept of REAP in another way: REAP would become a staff function of the Legislative Council to be known as the science and technology program. This is objectionable because the bill avoids any statutory reference to coordination between the legislative and executive branches of government. The original recommendations for REAP included in the Report of the Legislative Council to the Forty-Fourth Legislative Assembly called for transferring REAP to the executive branch of government in two to four years. In House Bill 1002 there is no official role provided for the executive branch in the important process of collecting and analyzing the data which would be available for future decision-makers. The choices which lie ahead of our state are important enough to demand that state government be united in its stand on how much pollution and environmental change and how much disruption of our established way of life will be tolerated. The people expect this coordination, but the Legislature has avoided it.

I do not approve the appropriation of another $1,600,000 for a system that has not accomplished the purposes it was created for.

Therefore, I veto House Bill 1002.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. SCIENCE AND TECHNOLOGY PROGRAM - STAFF - RELATIONSHIP TO USERS.)

1. The legislative council, or its designee, shall administer a scientific and technological research and development program (hereafter called "science and technology program" or "program"). The program shall be operated in accordance with the provisions of this Act and the existing statutory authority of the legislative council.

2. The legislative council staff office shall provide staff for the program, and the council, or its designee, may hire such additional staff as it deems necessary, including a program staff director. The council, or its designee, shall set compensation for any additional staff within the limits of legislative appropriations.

3. The council, or its designee, shall structure the program to provide scientific and technical assistance to the legislative assembly and the legislative council; and, in

cooperation with other state agencies, to coordinate with and assist in the:

a. Development of a comprehensive environmental data base for North Dakota.

b. Development of information systems capable of meeting the needs of North Dakota decision makers.

c. Development of assessment/modeling capabilities to forecast the environmental characteristics of North Dakota.

d. Development of monitoring systems to detect changes in the environmental characteristics of North Dakota.

As used in this subsection, "environmental" includes physical, biological, social, and economic factors.

4. The council, or its designee, may contract for such research or development with any suitable person or governmental or private entity. The emergency commission may authorize the transfer of funds between the council, or its designee, and any state agency to support contracts between the council, or its designee, and that agency.

5. The council shall give preference to existing state entities when contracting for research or development.

6. Capabilities developed by, or under contract to, the council shall, to the extent possible, be multidisciplinary in nature and be designed to:

a. Provide comprehensive outputs useful to a variety of user entities.

b. Ensure that all data and analytic methods can be clearly identified by the user so as to allow the user to judge its value.

c. Enhance the ability of user entities to meet their own responsibilities, thus reducing the duplication of research and development among governmental entities.

7. Capabilities developed shall, to the extent feasible, be transferred to other governmental entities for operation. The recipient entity is hereby authorized to enter into an agreement with the council, or its designee, for receipt and operation of a capability to be transferred. All computer software developed by or for the council shall be its property and may be sold by the council, and all proceeds from such sale shall be deposited in the special trust fund from the coal severance tax. Any software sold pursuant to this subsection shall be sold without warranty

of any kind, and shall not be maintained by the council, or its designee.

SECTION 2. SCIENCE AND TECHNOLOGY PROGRAM - FEE POLICIES - DATA HANDLING - AID FROM AGENCIES AND INSTITUTIONS.)

1. The council, or its designee, may establish a user fee policy to be charged to various classes of users of its products and services. The council may decide that one or more classes of users may receive its products or services, or both, free of charge.

2. Data obtained by the council, its designee, or its staff from other governmental agencies which is not normally made public or, if it is made public, is not made public in the form the council, its designee, or its staff will be using it, shall be subject to the source agency's policy on dissemination of the information consistent with state and federal laws.

SECTION 3. SCIENCE AND TECHNOLOGY PROGRAM - GRANTS TO STATE AGENCIES - PROCEDURES - DURATION.)

1. The council, or its designee, may, from appropriated funds available to it for that purpose, make grants to state agencies to fund, wholly or partially, unanticipated environmental research needs. The council will be solely responsible for determining which grant applications will be funded. The council shall not consider or fund any grant applications pursuant to this section after December thirty-first of the second fiscal year of any biennium.

2. The council will adopt guidelines for grant applications by August 1, 1979. In addition to the guidelines developed by the council, the council and all applicants shall be guided by the following:

   a. State agencies shall be the only eligible applicants for grants under this section.

   b. Grants may be made only for projects projected to be completed during the biennium in which the grant is made.

   c. Grants shall not be made in which the state would incur costs during a time period following the biennium in which the grant is made.

   d. The recognition of the need for the environmental research must have occurred after adjournment of the legislative assembly which appropriated the funds from which the grant would be made.

e. Grant applications may be submitted to any member of the council, or its designee, and will be forwarded by that member to the council, or its designee.

f. All grant applications received will be placed on the agenda of the council, or its designee, no later than the second meeting after receipt of the application.

g. The council, or its designee, will notify the emergency commission of grant applications and grants made pursuant to this section.

SECTION 4. SCIENCE AND TECHNOLOGY PROGRAM - DATA PROCESSING SERVICES TO COUNCIL.) The office of data processing of the department of accounts and purchases, hereafter "the office", shall provide such data processing services as the council may request within the limits of the appropriations available to the council. All agreements between the department of accounts and purchases, the office, or both, and the predecessor of the council program herein authorized shall be void on July 1, 1979.

SECTION 5. SCIENCE AND TECHNOLOGY PROGRAM - APPROPRIATION.)

1. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative council, the sum of $1,600,000, or so much thereof as may be necessary, and such other public and private funds as may be available, which are hereby appropriated, for the operation of the science and technology program. These funds will be available commencing July 1, 1979, until June 30, 1981, except as provided in subsection 2 of this section.

2. Section 54-44.1-11 shall not apply to the appropriation in this section.

3. The director of accounts and purchases and the state treasurer will make such transfers of funds between lined items of appropriation in this section as may be requested by the chairman of the council when the nature of studies and duties undertaken by the council requires such transfers.

4. The science and technology program created by this Act is the statutory successor to the resources research committee and the North Dakota regional environmental assessment program established by Senate Bill No. 2004, forty-fifth legislative assembly.

SECTION 6. LEGISLATIVE INTENT.) The legislative assembly recognizes that moneys were appropriated from the special fund created by subsection 2 of section 12 of chapter 563 of the 1975 Session Laws for support of the regional environmental assessment program, and that such moneys were used, in essence, in response to

the impact of rapid coal development. The legislative assembly intends that, until otherwise specifically provided by law, further deposits in the trust fund referred to above, or its statutory successor, shall consist of moneys allocated from coal severance tax revenue as provided by law, and shall not consist of deposits from the regional environmental assessment program or its successor entity.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 658

HOUSE BILL NO. 1014
(Committee on Appropriations)

COMMISSIONER OF VETERANS' AFFAIRS SALARY MAXIMUM

AN ACT making an appropriation for defraying the expenses of the department of veterans' affairs of the state of North Dakota.

VETO

March 8, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1014 appropriates $273,766 for the expenses of the Department of Veterans' Affairs.

Section 1 of the bill includes the following line item:

"Salaries and wages $227,006
(Includes salary of commissioner not
to exceed $46,200 for the biennium)"

State law provides that the Administrative Committee on Veterans' Affairs shall set the salary of the commissioner. The only restriction on the Committee's authority to determine the salary level of the commissioner is that the salary must be "within the limits of legislative appropriation". (Section 37-18.1-03 North Dakota Century Code)

With the parenthetical phrase "(Includes salary of commissioner not to exceed $46,200 for the biennium)", the Legislature is substituting itself for the statutory committee for purposes of setting the salary of the commissioner. This in effect would amend state statute in an appropriation bill and is inappropriate.

The specific language by which the Legislature proposes to determine the salary of the commissioner is as follows:

"(Includes salary of commissioner not
to exceed $46,200 for the biennium)"

Therefore, I veto this specific language in House Bill 1014.

Sincerely yours,

ARTHUR A. LINK
Governor

Disapproved March 8, 1979

Filed March 14, 1979

NOTE: For the full text of House Bill No. 1014 containing the salaries and wages line item of section 1, see chapter 13.

CHAPTER 659

HOUSE BILL NO. 1067
(Legislative Council)
(Interim Committee on Judicial System)

JUDICIAL NOMINATING COMMITTEE

AN ACT to create and enact chapter 27-25 of the North Dakota Century Code, relating to the creation of a judicial nominating committee.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1067 creates a nine member judicial nominating committee composed of three members appointed by the Chief Justice of the North Dakota Supreme Court, three members appointed by the President of the State Bar Association and three members appointed by the Speaker of the House of Representatives.

Although I favor the concept of a judicial nominating committee, I object to this bill because the composition of the committee lacks balance.

Section 97 of the North Dakota Constitution, passed by the people in 1976, requires the Legislature to establish a judicial nominating committee. However, the Forty-Fifth Legislative Assembly failed to enact judicial nominating committee legislation. During the interim

following the legislative session, I carried out what I believed to be the intent of the Constitution by creating judicial nominating committees by executive act when vacancies occurred in the offices of a district judge and a supreme court justice.

In each case, I established a nominating committee consisting of six members; two appointed by the Governor, two appointed by the Chief Justice of the North Dakota Supreme Court and two appointed by the President of the State Bar Association. By all reports, the two interim nominating committees worked well and in each case, succeeded in providing me with a list of qualified candidates from which to make the judicial appointment.

House Bill 1067 is not acceptable because the Governor has been excluded from the bill as an appointing authority for members of the nominating committee. Early in the Forty-Sixth Legislative session, the House of Representatives unanimously approved an amended version of House Bill 1067 giving the Chief Justice of the North Dakota Supreme Court, the President of the State Bar Association, the Speaker of the House of Representatives, and the Governor two appointments each to an eight member nominating committee. However, the Senate rejected the House amendments and passed the bill in its present form.

The Governor should be included as an appointing authority for some members of the nominating committee.

Therefore, I veto House Bill 1067.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 27-25 of the North Dakota Century Code is hereby created and enacted to read as follows:

27-25-01. DEFINITIONS.) In this Act unless the context or subject matter otherwise requires:

1. "Candidate" means any person under consideration by the committee to fill a judicial vacancy.

2. "Chairman" means the chairman of the committee and includes any acting chairman.

3. "Committee" means the judicial nominating committee.

4. "Judge" means a justice of the supreme court or a judge of district court, including an associate district judge.

5. "Nominee" means any candidate selected by the committee for inclusion on the list of candidates submitted to the governor.

27-25-02. CREATION AND COMPOSITION OF COMMITTEE - TERMS OF OFFICE - APPOINTMENT - VACANCIES.) A judicial nominating committee is hereby created to consist of nine persons of whom three shall be appointed by the chief justice, three by the president of the state bar association, and three by the speaker of the house of representatives. If the house of representatives is not in session, the speaker for the most recent session shall make the indicated appointments. Each appointing authority shall appoint one judge or one attorney authorized to practice law in this state and two citizens who are not judges, former judges, or attorneys authorized to practice law in this state. An appointment not made within forty-five days after July 1, 1979, shall be made by the chief justice. The term of each member shall be three years. Initially, as determined by lot, three members shall serve for three years, three members shall serve for two years, and three members shall serve for one year. At the end of a member's term, the appointing authority shall appoint a successor for a full three-year term. No member shall serve for more than two full three-year terms. Membership shall terminate if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing authority for the remainder of the term. Any appointment to fill a vacancy not made within forty-five days after a vacancy occurs shall be made by the chief justice. The committee shall select one of its members as chairman.

27-25-03. SUBMISSION OF NOMINEE LIST TO GOVERNOR.) Within sixty days of receipt of written notice from the governor to the chairman that a vacancy in the office of judge exists, the committee shall submit to the governor a list of not fewer than three nor more than seven nominees for appointment. No list of nominees submitted to the governor by the committee shall be valid unless concurred in by a majority of its members and so certified by the chairman to the governor. If the committee fails to submit the list of nominees within the time prescribed by this section, the governor may fill the vacancy by appointing a qualified person, or proceed according to subsection 2 of section 27-25-04.

27-25-04. GOVERNOR APPOINTMENT OR SPECIAL ELECTION CALLED.) Within thirty days of receipt of the list of nominees the governor shall do either of the following:

1. Fill the vacancy by appointment from the list of nominees submitted by the committee, which appointment shall continue only until the next general election, when the office shall be filled by election for the remainder of the term.

2. Call a special election to fill the vacancy for the remainder of the term.

Whenever the governor determines to call a special election to fill a vacancy, the governor shall issue a writ of election to the auditors of all counties when a vacancy exists on the supreme court or to the auditors of the counties in the district in which the district court vacancy occurs commanding them to notify the boards of election in the counties to hold a special election at a time designated by the governor. If the governor determines to call a special election within sixty days of time of the holding of the next general election, the special election shall be held at the same time as the general election.

27-25-05. POWERS AND DUTIES.) The committee shall:

1. Establish rules and procedures to implement this Act, subject to the approval of the supreme court. The committee shall file a copy of current rules and procedures with the secretary of state and shall provide a copy to any citizen upon written request. A copy shall also be filed with the legislative council for publication in the administrative code in accordance with the format established by the legislative council.

2. Seek out qualified judicial candidates and may solicit judicial candidate nominations from any citizen.

3. Consider the qualifications of each candidate whose name is submitted to the committee for consideration.

4. Assure that each judicial nominee submitted by the committee to the governor is qualified to hold the office in which there is a vacancy.

5. Make such inquiry into the qualifications of each candidate, including age, residence, experience, and moral character, as the committee deems appropriate in order to secure a list of the most highly qualified nominees.

27-25-06. SUBMISSION OF NAMES BY CITIZENS - WITHDRAWAL.) A person may submit the name of any qualified citizen for consideration as a candidate. Submission shall be in writing on forms provided by the committee. Any candidate may withdraw from consideration by written request to the chairman of the committee.

27-25-07. COMMITTEE MEMBERS INELIGIBLE FOR VACANCY APPOINTMENT.) No member of the committee shall be considered as a candidate or nominee during the member's term on the committee, or for a period of two years thereafter.

27-25-08. EXPENSES OF COMMITTEE.) Committee members shall be allowed expenses for travel, board, and lodging incurred in the

performance of their duties as provided in sections 44-08-04 and 54-06-09.

27-25-09. COMMITTEE BUDGET.) The supreme court shall prepare and present to the legislative assembly a proposed biennial budget for the committee.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 660

HOUSE BILL NO. 1192
(Murphy)

GAME AND FISH PERSONNEL POLICE POWERS

AN ACT to amend and reenact sections 20.1-02-15 and 29-05-10 of the North Dakota Century Code, relating to the definition of peace officer, and to the powers of certain game and fish department personnel; and providing a penalty.

VETO

March 16, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1192 restricts the authority of game wardens to enter buildings without a search warrant. Present law gives game wardens the authority to enter buildings without a search warrant when the warden has reason to believe that game or fish or green furs are present in the building that have been taken as the result of some illegal activity. (Section 20.1-02-15, N.D.C.C.) The law does not give game wardens the authority to enter dwelling houses without a warrant, nor would this bill have any effect on that Fourth Amendment safeguard. However, House Bill 1192 will restrict the game warden's authority to search buildings and will make a game warden's job more difficult.

A peace officer presently has the authority to enter a building if there is danger of evidence being removed or destroyed. The change in the law proposed in House Bill 1192 could be interpreted in a manner that will require game wardens to obtain a search warrant even if there is immediate danger of evidence being removed or destroyed. House Bill 1192 does not grant any exceptions to the warrant requirement, but simply states that the right to enter and search without a warrant shall not apply to buildings. Abandoned buildings used by poachers to hide game will be impossible to enter without a search warrant or permission of the owner or person in charge of the premises.

If, for example, a game warden was aware of contraband such as an illegally taken deer stored in an abandoned barn, granary, or school house, he would not be allowed to enter such a building without first obtaining a search warrant or finding the owner of the building to obtain permission. The evidence could easily be removed while the warden is obtaining a warrant or permission.

State laws cannot give game wardens the authority to violate citizen rights by performing illegal searches. All game wardens must comply with the Fourth Amendment requirements for search and seizure, as must all peace officers. House Bill 1192, however, unnecessarily restricts game wardens more than other peace officers. For this reason, it should not be permitted to become law.

Therefore, I veto House Bill 1192.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 20.1-02-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-15. POLICE POWERS OF COMMISSIONER, DEPUTY COMMISSIONER, AND BONDED APPOINTEES OF COMMISSIONER.) The commissioner, deputy commissioner, and any bonded appointees of the commissioner shall have the power:

~~1.--Of~~ of a peace officer as provided in title 29, for the purpose of enforcing this title and any other state laws, rules, or regulations relating to big game, small game, fur-bearers, fish, and other wildlife.

~~2.--To--make--arrests--upon--view--and-without-warrant-for-any violation-committed-in-his-presence-of-this-title-and--any other--state--laws,--rules,-or-regulations-relating-to-big game,-small-game,-fur-bearers,-fish,-and-other-wildlife.~~

~~3.--To--enter--and-inspect-any-hotel,-restaurant,-cold-storage warehouse,-plant,-icehouse,-or-any-building-used--for--the storage--of--dressed--meat,--game,-or-fish-to-determine-if game-or-fish,-or-parts-thereof,-are-kept-or-stored-therein contrary-to-this-title.~~

~~4.~~ In addition each such person shall have power:

1. To open, enter, and examine, without warrant, all ~~buildings,~~ meat processing plants, game cleaning facilities, fishhouses, camps, tents, vessels, boats, wagons, automobiles, or other vehicles, cars, crates, boxes, and other receptacles and places when he has reason to believe that game or fish, or parts thereof, or green furs which have been taken or are held or possessed contrary to this title may be found. The right to enter and search without a warrant, however, shall not apply to the buildings, dwelling house or living quarters of any person, or ~~of~~ a sealed railroad car, unless permission is given by the owner or person in control of the premises.

~~5.~~ 2. To open and examine any package in the possession of a common carrier which he suspects or has reason to believe contains game or fish, or parts thereof, taken, held, or falsely labeled contrary to this title. Every such common carrier, and every agent, servant, or employee thereof, shall permit any such officer to open and examine any such package. Any package so opened and not confiscated shall be restored to its original condition by the officer making the examination.

~~6.~~ 3. To enter, without warrant, upon the premises of any dealer or trader in green furs to inspect any warehouses, storerooms, or other storage places, and may call for and inspect records of buying, shipping, or selling of green furs. ~~The--right--to-enter-and-search-without-a-warrant, however,-shall-not-apply-to--the--dwelling--house--or--the living-quarters-of-any-person-or-of-a-sealed-railroad-car.~~

~~7.~~ 4. To seize and hold, subject to court order, any green furs obtained illegally.

~~8.~~ 5. To inspect all premises used for the purpose of propagating and domesticating game birds or protected animals.

SECTION 2. AMENDMENT.) Section 29-05-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-05-10. "PEACE OFFICER" DEFINED.) A peace officer is a sheriff ~~of a county~~ or his deputy, ~~or~~ a coroner, constable, marshal, or policeman of a township or city, and, for the purposes of enforcing title 20.1, the commissioner, deputy commissioner, and bonded employees of the game and fish department.

Disapproved March 16, 1979

Filed March 23, 1979

CHAPTER 661

HOUSE BILL NO. 1291
(Representative Gackle)
(Senator Goodman)

COAL CONVERSION FACILITY PROPERTY TAX EXEMPTION

AN ACT to amend and reenact section 57-60-06 of the North Dakota Century Code, relating to the exemption from property taxes of coal conversion facilities under construction.

VETO

March 15, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1291, as passed by the Forty-Sixth Legislative Assembly, would exempt coal conversion facilities from property tax while they are under construction. Under present law, these plants are taxable during the construction phase. Once a coal conversion facility comes into production, present law imposes a conversion privilege tax upon the plant based upon production in lieu of property taxes.

My objection to the exemption of power plants from property tax during construction is based on simple fairness.

A house in the city that is under construction on the assessment date is subject to assessment and taxation according to its value in its uncompleted state.

A commercial building under construction on the assessment date is subject to property tax.

Industrial buildings under construction on the assessment date are subject to assessment and taxation even if the plant will receive a new industry property tax exemption, upon completion of construction, pursuant to chapter 40-57.1, N.D.C.C.

It is unfair to exempt a large coal conversion facility from taxes during the time it is under construction when other property in the state is subject to assessment and taxation while under construction.

As an example of the effect the passage of House Bill 1291 could have on a county in terms of lost revenue, I would cite the property taxes levied on Coal Creek Station while under construction. McLean County levied a total of $600,672.58 in taxes on the Coal Creek Station buildings and power plant in 1976 and 1977 while the plant was under construction. This tax is a legitimate source of revenue to a county experiencing the impact of the construction of a large coal conversion facility.

For these reasons, I veto House Bill 1291.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 57-60-06 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-06. PROPERTY CLASSIFIED AND EXEMPTED FROM AD VALOREM TAXES - IN LIEU OF CERTAIN OTHER TAXES - CREDIT FOR CERTAIN OTHER TAXES.) Each coal conversion facility shall be classified as personal property and, from commencement of construction, shall be exempt from all ad valorem taxes except for taxes on the land on which such facility is located. The taxes imposed by this chapter shall be in lieu of ad valorem taxes on the property so classified as personal property. The taxes imposed by this chapter shall also be in lieu of those taxes imposed by chapters 57-33 and 57-33.1 on cooperative electrical generating plants that qualify as coal conversion facilities as defined in this chapter for gross receipts derived from the operation of such plants on or after July 1, 1975. Each cooperative electrical generating plant shall receive a credit against the taxes imposed by this chapter for any taxes imposed pursuant to chapters 57-33 and 57-33.1 and payable after July 1, 1975. Such credit shall apply only for such taxes actually paid, and shall be applied against the taxes imposed by this chapter in the years in which such payments are made.

Disapproved March 14, 1979

Filed March 23, 1979

CHAPTER 662

HOUSE BILL NO. 1335
(Gackle, Freborg, Scofield, Winkjer)

COAL DEFINED

AN ACT to create and enact a new section to any legislation enacted by the forty-sixth legislative assembly providing for a coal severance tax, defining the term "coal" and specifically excluding leonardite (natural oxidized lignite) from that definition.

VETO

March 22, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1335 defines the word "coal" for purposes of the coal severance tax. The bill specifically excludes leonardite (natural oxidized lignite) from the definition of coal. Under current law the coal severance tax is imposed on all leonardite mined in the state.

"Leonardite" is lignite slack or oxidized lignite. It is formed by the natural weathering of lignite coal. The term "leonardite" was chosen to honor Dr. A. G. Leonard, the first director of the North Dakota Geological Survey, who took part in the initial investigations of the mineral. According to the North Dakota Geological Survey, the term "leonardite" has been used generally to

designate partially oxidized lignite, although the term is seldom used outside the state of North Dakota. In other parts of the country, the substance is known generally as "lignite slack."

Leonardite has been mined commercially in several western North Dakota counties. Commercial development of leonardite in North Dakota has been limited primarily to use for drilling mud in the oil industry. It appears that the demand for leonardite will increase as the pace quickens nationwide for oil field development. Other potential uses of leonardite include use as a stabilizer in water treatment, as a source of brown stain for wood finishing, and, because of leonardite's high humic acid content, use as a soil conditioner and fertilizer. According to Philip G. Freeman of the University of North Dakota, the leading researcher in the uses of leonardite, the humic acid properties of leonardite have little or no value for the soils of North Dakota because the soils in the state have a high humus content. Rather, if leonardite is going to be used for agricultural purposes, it would best serve those soils not located in North Dakota, such as the sandy soils of the American Southwest.

Because of the current demand for leonardite for oil-well drilling mud, processed leonardite presently sells for $30 to $50 a ton.

I believe that creating an exemption from the coal severance tax for leonardite is unwarranted for several reasons.

First and foremost, leonardite is, in fact, a form of lignite. Like lignite, it is severed from the earth through strip-mining. As in the case of lignite, leonardite is a non-renewable natural resource of our state. The strip-mined lands reclamation laws apply to the mining of leonardite.

The proponents of this bill have argued that leonardite should be exempt from the coal severance tax because, unlike lignite, leonardite is not used as a fuel. This argument is not persuasive since the use of the resource is not and was not the inspiration for the coal severance tax. The severance tax was enacted to tax the sale of non-renewable natural resources that are the product of strip-mining. The purpose and policy of the tax was to compensate the state for the depletion of its non-renewable natural resources. It was also enacted to raise revenue for impact costs.

The severance tax, as the name implies, is truly a <u>severance</u> tax, rather than a sales or use tax. In the case of leonardite, as in the case of lignite, the "severance" consists of stripping the overbearing soils to allow for the excavation of the mineral, followed by replacing the soils according to the state's reclamation laws.

I find the imposition of the severance tax on leonardite to be just and reasonable. I see no reason to exempt this natural resource from taxation.

Therefore, I veto House Bill 1335.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) A new section to any legislation enacted by the forty-sixth legislative assembly providing for a severance tax on coal is hereby created and enacted to read as follows:

DEFINITION.) As used in this chapter, the term "coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term shall not include leonardite (natural oxidized lignite).

Disapproved March 22, 1979

Filed April 3, 1979

CHAPTER 663

HOUSE BILL NO. 1340
(Hanson)

BIG GAME HUNTING WITH ANIMALS

AN ACT to amend and reenact section 20.1-05-04 of the North Dakota Century Code, relating to the use of horses and mules in hunting big game.

VETO

March 5, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1340 allows hunters to use horses, mules, and other animals in pursuing big game. Present law prohibits the use of horses, mules and other animals in hunting big game.

This bill gives an unfair advantage to those hunters who are privileged to own or rent horses. Other hunters are confined to established trails in their vehicles, or, if they leave the trail, they must pursue their quarry on foot.

Allowing hunters to use horses to take big game decreases the hunted animal's chances of evading the hunter.

Furthermore, I have received information that indicates passage of this bill will put a strain on hunter-landowner relationships.

Prior to 1973, hunters were permitted to use horses, but problems developed and the practice was outlawed by the Forty-Third Legislative Assembly.

For the foregoing reasons, I veto House Bill 1340.

Sincerely yours,

ARTHUR A LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 20.1-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-05-04. USING DOGS~~,--HORSES,~~ AND ARTIFICIAL LIGHTS IN TAKING BIG GAME UNLAWFUL.) No person, to hunt, pursue, kill, take, or attempt to take, or to aid in the hunting or taking of, any big game animal, shall:

1. Use any dog~~,-horse,-mule,-or-other-animal~~.

2. Use any artificial light, including spotlights and automobile and motorcycle headlights.

3. Engage in the practice commonly known as shining for deer. Any person who shines any area commonly frequented by big game animals with any artificial light, between the hours of sunset and sunrise, is in violation of this section. ~~However,--any--person-may-use-a-flashlight-of-not-over-two cells-in-the-aggregate-of-three-volts-to-take-raccoon.~~

Disapproved March 5, 1979

Filed March 9, 1979

CHAPTER 664

HOUSE BILL NO. 1487
(Conmy, Kloubec, R. Hausauer, Timm)

CONSTRUCTION WORK IN PROGRESS

AN ACT to amend and reenact section 49-06-02 of the North Dakota Century Code, relating to value of property for ratemaking purposes.

VETO

March 16, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1487 would amend the North Dakota Century Code to add "construction work in progress" to the value of property for rate-making purposes. The law now says the rate base is determined from the money "honestly and prudently invested, less accrued depreciation."

Arguments can be made for the concept of "Construction Work in Progress" (CWIP). The most convincing argument for it is that if CWIP is allowed in the rate base, the utility can avoid one large, sudden rate increase occurring when the plant is placed in service.

However, I believe the disadvantages of adding CWIP to the rate base through mandatory language in a statute far outweigh any possible benefits. The primary disadvantages are:

1. The consumer is assuming a stockholder expense.

2. Higher initial rates are passed on to the consumer.

3. Consumers' dollars are worth more to consumers today, due to inflation, and future dollars will be worth less. This is particularly true for low and moderate income families and those on fixed incomes.

4. Elderly citizens should not be forced to pay more for electricity in order to finance future developments they may never have the opportunity to use. We should also take note of people who have to move because of changes in jobs who will not be able to take advantage of all of the benefits of future construction.

I recognize that the cost of power plant construction has escalated in recent years, but I fear that there will be less incentive for public utilities to control costs when they know that the consumer will be paying these costs years and years before the same consumer gets his or her first kilowatt of electricity from the project.

At the present time the Public Service Commission is able, through administrative policies, to significantly ease the economic burden that inflation has placed on utilities. For example, the Public Service Commission has, through administrative decisions, allowed utilities to pass on directly the increased costs of fuel to consumers each month. The Commission has, through its policies, permitted the interest on funds used during construction to be added to the rate base. Recently the Public Service Commission adopted the policy of permitting utilities to increase their rates based on "forward test years." When a utility files a rate increase, it projects a forward test year which is used as a base for estimating costs and revenues. This gives a much more reasonable picture of inflation and its effect on utilities earnings.

I believe that the present administrative policies of the Public Service Commission provide more than adequate protection of the economic interests of the utilities.

Therefore, I veto House Bill 1487.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-06-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-06-02. VALUE OF PROPERTY FOR RATEMAKING PURPOSES - DETERMINATION.) The value of the property of a public utility, as determined by the public service commission for ratemaking purposes, shall be the money honestly and prudently invested therein by the utility, including construction work in progress, less accrued depreciation.

Disapproved March 16, 1979

Filed March 23, 1979

CHAPTER 665

HOUSE BILL NO. 1491
(Wald)

RECOVERY OF DAMAGES FROM INTOXICATION

AN ACT to amend and reenact sections 5-01-06 and 5-01-09 of the North Dakota Century Code, relating to recovery of damages resulting from intoxication and the unlawful delivery of alcoholic beverages to certain persons; and providing a penalty.

VETO

March 13, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1491 amends sections 5-01-06 and 5-01-09 of the North Dakota Century Code.

Section 5-01-06, N.D.C.C, is sometimes referred to as the "Civil Damage Act" or the "Dram Shop Act." This statute reads as follows:

> "5-01-06. Recovery of damages resulting from intoxication.--Every wife, child, parent, guardian, employer, or other person who shall be injured in person, property or means of support by any intoxicated person, or in consequence of intoxication, shall have a right of action against any person who shall have caused such intoxication by disposing, selling, bartering, or

giving away alcoholic beverages contrary to statute for all damages sustained."

House Bill 1491 would limit civil liability under the Dram Shop Act to licensed or unlicensed sellers of alcoholic beverages. I believe this legislation to be harmful to the residents of North Dakota.

The proponents of this legislation argue that one should be able to serve intoxicants to guests in one's home without fear of being held civilly liable because of negligent acts committed by a guest who was served the intoxicants. I submit that the primary emphasis should be on the protection of totally innocent third parties who may be injured or killed because of the intoxication of the guest.

The amendment to section 5-01-09 consists of the word "obviously" before the words "intoxicated person" in that section. The effect of the amendment is to make it more difficult for a plaintiff to recover from a liquor dealer who has sold intoxicants to an individual who has, because of that intoxication, either killed or injured someone. The North Dakota Supreme Court has, in various decisions, set forth what a plaintiff must prove in order to recover from a dispenser of alcoholic beverages. It is submitted that there should be no further roadblocks placed in the way of the legitimately injured plaintiff to recover from someone whose actions of selling or providing excessive alcoholic beverages to another person has caused the injury or death of the plaintiff.

For the above reasons, I veto House Bill 1491.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 5-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-06. RECOVERY OF DAMAGES RESULTING FROM INTOXICATION.) Every ~~wife, child, parent, guardian, employer, or other~~ person who shall be injured in person, property, or means of support by any intoxicated person, or in consequence of intoxication, shall have a right of action against any ~~person~~ licensed or unlicensed seller and his agent or employees who shall have caused such intoxication by disposing, of or selling, ~~bartering, or giving away~~ alcoholic beverages contrary to statute for all damages sustained.

SECTION 2. AMENDMENT.) Section 5-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-09. DELIVERY TO CERTAIN PERSONS UNLAWFUL.) Any person delivering alcoholic beverages to a person under twenty-one years of age, an habitual drunkard, an incompetent, or an obviously intoxicated person is guilty of a class A misdemeanor, subject to the provisions of sections 5-01-08, 5-01-08.1 and 5-01-08.2.

Disapproved March 13, 1979

Filed March 19, 1979

CHAPTER 666

HOUSE BILL NO. 1493
(Representatives Gackle, Berg, A. Hausauer)
(Senators Tallackson, Nelson)

WATER USE FEES

AN ACT to amend and reenact subsection 2 of section 61-02-14 and section 61-04-06.2 of the North Dakota Century Code, relating to water use fees.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1493 limits the authority of the Water Commission to promulgate regulations relating to water use fees.

The restrictions that this legislation places on the Water Commission are the direct result of an Attorney General's opinion of December 27, 1978 that was requested by the Water Commission. Basically, this bill enacts into law the content of the Attorney General's opinion on the power of the Water Commission to levy water use fees. However, House Bill 1493 contains language which goes beyond the content of the Attorney General's opinion in restricting the Water Commission's authority to set fees. Section 2 of the bill contains the following statement:

"The permit fees shall be based only on the direct costs incurred for the necessary and proper planning and administration of the allocation and appropriation of the waters of the state for a specific permit or a specific class of permits." (Emphasis supplied)

The underlined portion of the above-quoted language in the bill is objectionable because it limits the authority of the Water Commission beyond that which was considered necessary in the opinion of the Attorney General.

For this reason, I veto House Bill 1493.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 2 of section 61-02-14 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. To define, declare, and establish rules and regulations:

   a. For the sale of waters and water rights to individuals, associations, corporations, municipalities, and other political subdivisions of the state, and for the delivery of water to users; however, if the commission promulgates regulations for the sale of water, the regulations shall apply only to those waters which the commission has itself appropriated and reserved by the construction, operation, and control of works undertaken by the commission, and which has made available to water users; and the extent of the charges for water use authorized by those regulations shall be limited to the costs of making those waters available through storage and delivery works.

   b. For the full and complete supervision, regulation, and control of the water supplies within the state;.

   c. Repealed by S.L. 1975, ch. 575, § 2.

   d. Establish rules and regulations governing and providing for financing by local participants to the maximum extent deemed practical and equitable in any water development project in which the state

participates in cooperation with the United States or with political subdivisions or local entities.

SECTION 2. AMENDMENT.) Section 61-04-06.2 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-06.2. TERMS OF PERMIT.) The state engineer may issue a conditional permit for less than the amount of water requested, but in no case may he issue a permit for more water than can be beneficially used for the purposes stated in the application. He may require modification of the plans and specifications for the appropriation. He may issue a permit subject to fees for water use, terms, conditions, restrictions, limitations, and termination dates he considers necessary to protect the rights of others, and the public interest. The permit fees shall be based only on the direct costs incurred for the necessary and proper planning and administration of the allocation and appropriation of the waters of the state for a specific permit or a specific class of permits. Conditions and limitations so attached shall be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 667

HOUSE BILL NO. 1519
(Representatives Marsden, R. Hausauer, Timm)
(Senator Melland)

BUSINESS AND INDUSTRIAL DEVELOPMENT COMMISSION

AN ACT to amend and reenact section 54-34-03 of the North Dakota Century Code, relating to the appointment of the business and industrial development commission.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1519 amends the section of the North Dakota Century Code which sets forth the composition of the Business and Industrial Development Commission. Under present law, the Commission is composed of one member appointed by the Governor from each judicial district and two members from the state at large. This bill also sets forth legislative intent as follows:

"1. Maximum emphasis be put on industrial development and international marketing.

2. Provision for input from development related groups in North Dakota industry be made.

3. Industry compatible to existing North Dakota culture and environment be attracted.

4. The commission be representative of the segment of the North Dakota economy most interested in business and industrial development."

I object to House Bill 1519 for the following reasons:

1. The bill changes the number of members on the Commission from eight to six. This change is unnecessary.

2. The bill changes the make-up of the Commission as follows: Four members are to be appointed by the Governor from lists of nominees submitted by specified special interest groups and two members are to be appointed from the state at large. I believe that the present law gives the Governor the flexibility to appoint members to the Commission to fairly reflect the business and industrial community. To curtail the Governor's appointment power as proposed by this bill is undesirable.

   If the proponents of this bill felt there was a need to update the statute to provide consistency with any new judicial districts as may be adopted by Supreme Court rule, that change could have been made without limiting the Governor's appointment power in the manner provided in this bill. Until the Code is amended to reflect any changes in the judicial districts, I see no reason why the present law cannot serve as the geographical basis for selecting members of the Business and Industrial Development Commission.

3. The bill states that the terms of the presently serving members of the Commission are all scheduled for expiration on June 30, 1979. This is unfair to the currently serving commissioners because they were appointed to four-year staggered terms.

4. The bill states that the legislative intent is to put "maximum emphasis" on "industrial development and international marketing." I submit that the Legislature should have demonstrated its concern for developing North Dakota's potential in the field of international marketing by committing funds, as requested in the executive budget, for the position of international marketing representative for the Business and Industrial Development Department.

Because the changes in the Business and Industrial Development Commission contained in this legislation are undesirable and totally without justification, I hereby veto House Bill 1519.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 54-34-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-03. APPOINTMENT OF BUSINESS AND INDUSTRIAL DEVELOPMENT COMMISSION - LEGISLATIVE INTENT.) The business and industrial development commission, hereinafter called the commission, shall consist of the governor as chairman and ~~eight~~ six members appointed by ~~him,--one~~ the governor. One member ~~to~~ shall be appointed from ~~each-of-the-six-judicial-districts-and-two~~ a list of three names submitted by each of the following four groups: the financial community in North Dakota, consisting of the North Dakota savings and loan league and the North Dakota bankers association; the North Dakota state chamber of commerce; the North Dakota industrial development association; and organized labor. Two members ~~to~~ shall be appointed from the state at large. ~~The~~ Terms of the commission members appointed or serving before July 1, 1979, will terminate on June 30, 1979. New members shall be appointed for a term of four years staggered so that the terms of ~~two~~ three members expire ~~each year~~ every two years. The terms of the three commission members appointed for the first two year period shall be determined by lot. Vacancies shall be filled in the same manner as the original appointment, except that vacancies occurring for other than the expiration of a term shall be filled by appointment for only the remainder of the term of the member causing the vacancy. All members of the commission shall be reimbursed for expenses incurred in attending meetings and otherwise performing official duties at the same rates and in the same manner as other state officials.

It is the intent of the legislative assembly of the state of North Dakota that:

1. Maximum emphasis be put on industrial development and international marketing.

2. Provision for input from development related groups in North Dakota industry be made.

3. Industry compatible to existing North Dakota culture and environment be attracted.

4. The commission be representative of the segment of the North Dakota economy most interested in business and industrial development.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 668

HOUSE BILL NO. 1604
(Winkjer, Kretschmar, Stenehjem, Unhjem)

MINERAL DEVELOPER DEFINED

AN ACT to amend and reenact subsection 4 of section 38-18-05 of the North Dakota Century Code, relating to the definition of mineral developer.

VETO

March 12, 1979

The Honorable Vernon Wagner
Speaker of the House
House Chambers
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1604 would change the definition of "mineral developer" under the "Surface Owner Protection Act", (Chapter 38-18, N.D.C.C.) to mean a person who acquires or leases "at least fifty-one percent of the mineral rights...." The present law defines the term "mineral developer" as "the person who acquires the mineral rights or lease...."

The North Dakota Supreme Court has held that present law requires a person to own or lease one hundred percent of the mineral rights in order to fall within the definition of "mineral developer" under the Act. (North American Coal Corporation v. Huber, 268 N.W. 2d 593 (1978)).

The Legislature enacted the "Surface Owner Protection Act" in 1975 as the result of an interim study by the Legislative Council Committee on Resources Development before the Forty-fourth Legislative Assembly. The Executive Branch Advisory Committee Task Force on Coal Gasification participated in the study.

The stated purpose of the Act is to "provide the maximum amount of constitutionally permissible protection to surface owners from the undesirable effects of development, without their consent, of minerals underlying their surface." (Section 38-18-03, N.D.C.C.).

The major thrust of the Act is to require the mineral developer to obtain the consent of the surface owner before a mining permit may be issued by the Public Service Commission. However, the Act does provide a narrow exception to the consent requirement. Section 38-18-06(5), N.D.C.C. sets forth a procedure whereby the mineral developer who owns or has acquired leases to all of the mineral rights may bring an action in district court to determine adequate compensation for the surface owner. The statute states that, upon making such a determination, the district court is required to issue an order authorizing the Public Service Commission to issue a surface mining permit. (Section 38-18-06(5), N.D.C.C.).

With this bill, the Legislature would give a coal company that does not own all of the mineral rights the status of a "mineral developer" and the right to take advantage of the section of the "Surface Owner Protection Act" designed as an exception for mineral developers who own or have acquired all of the minerals. This would allow a company that owns only fifty-one percent of the minerals to go to court to receive authorization for a mining permit, not only without the consent of the surface owner, but without the consent of the owner of forty-nine percent of the minerals.

I do not believe that North Dakota should give this power, which has been likened to the power of eminent domain, to the coal companies.

Therefore, I veto House Bill 1604.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 4 of section 38-18-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Mineral developer" shall mean the person who acquires ~~the mineral rights or lease~~ at least fifty-one percent of the mineral rights or a lease of at least fifty-one percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.

Disapproved March 12, 1979

Filed March 19, 1979

CHAPTER 669

SENATE BILL NO. 2039
(Committee on Appropriations)

LEGISLATIVE INTENT ON COAL DEVELOPMENT IMPACT GRANTS

AN ACT making an appropriation for defraying the expenses of the coal development impact office of the state of North Dakota; and setting forth legislative intent and guidelines.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2039 appropriates funds from the Coal Development Fund to the Coal Development Impact Office. Section 3 of this bill sets forth the legislative intent concerning how the coal impact money should be spent by the Coal Impact Office:

"SECTION 3. LEGISLATIVE INTENT AND GUIDELINES ON IMPACT GRANTS.) The legislative assembly intends that the moneys appropriated to, and distributed by, the coal development impact office for grants are to be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by coal development impact. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling, services or programs to alleviate other sociological impacts,

or services or facilities to meet secondary impacts. All grant applications and presentations to the coal development impact office shall be made by an appointed or elected government official."

I object to this section of Senate Bill 2039 because I believe that "sociological" costs of coal development can be as real as "basic governmental services" and should properly be considered in grants made by the Coal Impact Office.

Side effects of rapid development often include increases in the incidence of crime, alcoholism, drug abuse, child abuse, and marital problems, to name a few. It is clear to me that some agency of state or local government must bear the responsibility for addressing these sociological costs of sudden population growth in a community.

I believe that impact money raised by the coal severance tax is the appropriate source of revenue to pay for social costs of coal development.

If the Coal Impact Office is prohibited by law from expending funds for sociological costs, local and state taxpayers will be required to pay these costs.

I further object to the provision in Section 3 of Senate Bill 2039 which states that only elected or appointed governmental officials may make applications or presentations to the Coal Impact Office. Ordinary citizens are thereby excluded from this aspect of the governmental process. I believe that all people have the right to appear before any agency of government to state their case. I abhor legislation which seeks to curtail this fundamental right of the citizens of this state and of this nation.

I believe Section 3 of Senate Bill 2039 is contrary to the interests of all the people of this state. I hereby veto Section 3 of Senate Bill 2039.

Sincerely yours,

ARTHUR A. LINK
Governor

Disapproved April 12, 1979

Filed April 13, 1979

NOTE: For the full text of Senate Bill No. 2039 containing section 3, see chapter 77.

CHAPTER 670

SENATE BILL NO. 2040
(Committee on Appropriations)

QUALIFICATIONS OF GAME AND FISH COMMISSIONER

AN ACT making an appropriation for defraying the expenses of the game and fish department of the state of North Dakota; providing for a performance review; and declaring an emergency.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2040 provides the appropriation for the State Game and Fish Department. Section 5 of the bill contains the following language:

"SECTION 5. SALARIES AND QUALIFICATIONS OF COMMISSIONER.) The legislative assembly encourages the appointment of a game and fish commissioner possessing a bachelor's degree, or the equivalent thereof, in fishery and wildlife management or a related natural science, and having experience in fish and wildlife management and public administration, including the supervision of employees, development of programs, and the preparation of budgets. If the commissioner meets such qualifications, the commissioner's salary shall be $32,000 for

the first year of the biennium and $34,080 for the second year of the biennium. If the new commissioner does not meet such qualifications, the commissioner's salary shall not exceed $51,000 for the 1979-81 biennium."

I find this section objectionable because the Governor's ability to appoint a qualified person to the office of Game and Fish Department Commissioner is unnecessarily limited.

The law gives the Governor the authority to appoint a Game and Fish commissioner and gives the Legislature the authority to set the commissioner's salary. (Section 20.1-02-01 and 20.1-02-03, N.D.C.C.) Since the Game and Fish commissioner's salary is set forth in the appropriation in Senate Bill 2040, Section 5 of the bill is unnecessary for this purpose.

Therefore, I veto Section 5 of Senate Bill 2040.

Sincerely yours,

ARTHUR A. LINK
Governor

Disapproved April 12, 1979

Filed April 13, 1979

NOTE: For the full text of Senate Bill No. 2040 containing section 5, see chapter 78.

CHAPTER 671

SENATE BILL NO. 2044
(Legislative Council)
(Interim Budget Section)

APPROVAL OF CETA EMPLOYEES REQUIRED

AN ACT to require state agencies, departments, and institutions to obtain the approval of the budget section of the legislative council prior to employing persons through programs provided under the Federal Comprehensive Employment and Training Act of 1973.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2044 prohibits state agencies from employing persons funded under the federal Comprehensive Employment and Training Act (CETA) without first obtaining the approval of the budget section of the Legislative Council.

By limiting the ability of state agencies to hire CETA employees, this bill hinders state government's ability to provide maximum services to the citizens of the state at minimal direct cost.

Present law gives the Emergency Commission the authority to permit agencies to receive federal funds during the interim. (Section 54-16-04.1, N.D.C.C.) This statute provides adequate safeguards

against unchecked growth in the size of state government between legislative sessions while permitting state agencies to take advantage of federal dollars which may be available for public service employment programs.

The budget section of the Legislature is not a statutorily established body. Senate Bill 2044 poses a constitutional question as to the legality of delegating the decision to place CETA workers in agencies during the interim.

The state should be permitted, with as little hindrance as possible, to accept federal dollars and personnel to provide services to the citizens of the state.

Senate Bill 2044 is an intrusion into the authority of the executive branch to meet the needs of the citizens at the lowest cost to the state taxpayer.

Therefore, I veto Senate Bill 2044.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. USE OF EMPLOYEES UNDER CETA PROGRAMS - APPROVAL OF BUDGET SECTION OF THE LEGISLATIVE COUNCIL REQUIRED.) No state agency, board, commission, department, institution, or other unit of state government which receives any funds appropriated by the legislative assembly may employ any participant in any Public Service Employment programs under the Federal Comprehensive Employment and Training Act of 1973 [Pub. L. 93-203; 87 Stat. 839; 29 U.S.C. 801 et. seq.], as amended, without obtaining the prior approval of the budget section of the Legislative Council. Further, any positions funded as Public Service Employment positions shall remain in effect only for such period of time as may be approved by the budget section.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 672

SENATE BILL NO. 2070
(Legislative Council)
(Interim Committee on Industry, Business and Labor)

MIDA BONDS RESTRICTED FOR RETAIL ENTERPRISES

AN ACT to amend and reenact section 40-57-02 of the North Dakota Century Code, relating to the definitions of projects and municipalities under the Municipal Industrial Development Act of 1955; and to provide for the application of this Act.

VETO

March 26, 1979

The Honorable Wayne G. Sanstead
President of the Senate
Senate Chambers
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2070 restricts the issuance of bonds under the Municipal Industrial Development Act (chapter 40-57, N.D.C.C.) for financing retail enterprises in municipalities having a population over 7,500. The bill also repeals the section of existing law which permits MIDA bond financing for "any other industry or business not prohibited by the Constitution or laws of the state of North Dakota." (Section 40-57-02(6), N.D.C.C.)

Under current law, the governing body of the municipality is permitted to authorize the issuance of MIDA bonds for whatever projects are deemed necessary or desirable for the community.

I recently signed into law Senate Bills 2068 and 2069, which are intended to address some of the problems surrounding the issuance of bonds under the Municipal Industrial Development Act.

Elected officials in the communities of North Dakota should have the responsibility and the right to make independent decisions on the industries and enterprises which would be beneficial or detrimental to their communities. Senate Bill 2070 deprives these officials of that part of our governmental process.

Therefore, I veto Senate Bill 2070.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Section 40-57-02 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57-02. ~~"PROJECTS"~~ "PROJECT" AND ~~"MUNICIPALITIES"~~ "MUNICIPALITY" DEFINED.) As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" ~~shall--include~~ includes counties as well as ~~municipalities-of-the-types-listed-in-section-40-01-01,-subsection-1~~ cities, and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02; and the term "project" ~~shall--mean~~ means any real property, buildings, and improvements on real property or the buildings thereon, and any equipment located on such real property or in such buildings, or elsewhere, or personal property which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more such enterprises, engaged or to be engaged in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof, including the retail sale of any such product by the enterprise that assembled, fabricated, manufactured, mixed, or processed it and the incidental sale of any service of a kind essential to the primary activities of the enterprise.

2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or ~~manufacture~~ manufacturing, provided that "selling" shall not include the sale of any service except storing, warehousing, and distributing or as provided in subsection 1 nor shall it

include the sale at retail of any product except as provided in subsection 1.

3. Providing hospital, nursing home, or other health care facilities and service.

4. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.

5. Public vocational education.

~~6. Any other industry or business not prohibited by the Constitution or laws of the state of North Dakota.~~

In no event, however, shall the term "project" include those undertakings defined in chapter 40-35, with the exception of projects referred to in subsections 3, 4, and 5.

SECTION 2. APPLICATION.) This Act does not apply to any bond issue authorized by the governing body of the municipality pursuant to section 40-57-04 prior to July 1, 1979, even though the bonds are actually issued or sold after July 1, 1979, nor shall it apply to municipalities having a population of less than seven thousand five hundred.

Disapproved March 26, 1979

Filed April 3, 1979

CHAPTER 673

SENATE BILL NO. 2083
(Legislative Council)
(Interim Committee on State and Federal Government)

LEGISLATIVE REVIEW OF ADMINISTRATIVE RULES

AN ACT to provide for the referral of proposed and existing administrative rules to an interim committee of the legislative council.

VETO

March 12, 1979

The Honorable Wayne Sanstead
President of the Senate
Senate Chambers
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2083 would give the chairman of the Legislative Council the authority to assign proposed and existing rules and regulations promulgated by executive branch agencies to an interim committee for review and recommendation. I vetoed similar bills in 1975 and 1977.

Every executive branch agency has the statutory authority to promulgate reasonable rules and regulations. All proposed administrative rules are submitted to the Attorney General for his opinion as to their legality before they are adopted. (Section 28-32-01, N.D.C.C.)

If any person is aggrieved by the operation of an administrative rule, that person has the right to petition the agency for a reconsideration of the rule. The agency may hold a public hearing

on the reconsideration of the rule if it deems such a hearing desirable.

Furthermore, the Administrative Agencies Practices Act gives persons aggrieved by the decisions or the rules of an administrative agency the right to appeal the question in the district court and the Supreme Court. (Sections 28-32-15 and 28-32-19, N.D.C.C.)

Since the present statutory procedures are fully adequate to insure that the administrative agency rule-making power is exercised fairly and competently, I see no valid reason for the legislative branch of government to encroach on the rule-making power of the executive branch.

Therefore, I veto Senate Bill 2083 as a violation of the separation of powers doctrine.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. PROPOSED RULES REFERRED TO INTERIM COMMITTEE - COMMITTEE RESPONSIBILITY.) The chairman of the legislative council may assign proposed and existing rules and written complaints received concerning such rules to an appropriate interim subject matter committee. The committee shall study and review assigned rules to determine whether or not:

1. Administrative agencies are properly implementing legislative purpose and intent.

2. There are court or agency expressions of dissatisfaction with state statutes or with rules of administrative agencies promulgated pursuant thereto.

3. The court opinions or rules indicate unclear or ambiguous statutes.

The committee may make rule change recommendations to the adopting agency and may make recommendations to the legislative council for the amendment or repeal of enabling legislation serving as authority for rules.

An interim committee's failure to review proposed rules prior to publication shall not prevent rules from taking effect, nor shall the recommendations or opinions of an interim committee in any way affect the legality of any rule as determined by the attorney general.

Disapproved March 12, 1979

Filed April 3, 1979

CHAPTER 674

SENATE BILL NO. 2092
(Melland)

LATE PAYMENT CHARGES

AN ACT to allow creditors to charge a late payment charge in the amount of one and one-half percent on accounts receivable from thirty days after the obligation is incurred, and to require creditors to supply debtors with a periodic statement.

VETO

March 23, 1979

The Honorable Wayne G. Sanstead
President of the Senate
Senate Chambers
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2092 allows creditors to collect a late payment service charge in the amount of 1 1/2% per month (18% per year) on overdue accounts. This is not legal under present law. Current law only permits creditors to collect interest or service charges if they are agreed to in a written contract by the debtor.

At the outset, it should be made clear that this legislation will have no effect on retail sales installment contracts. Whenever a consumer purchases goods or services on an installment basis, he or she must sign a contract for the interest and service charges that are added to the price of the goods or services. This would remain the case under Senate Bill 2092.

Senate Bill 2092 would affect debts for goods or services where the consumer has not agreed to pay for interest or service charges. Generally, these debts are for necessaries and are involuntarily rather than voluntarily incurred. The most common types of debts that this bill applies to are medical, hospital, and fuel bills.

This bill permits creditors to charge interest at the rate of 18% per year by calling it a "service charge" or "late payment" charge. I submit there is no relationship between the creditor's actual cost of carrying an overdue account and the 18% carrying charge contained in this bill. For example, a hospital bill of $5,000 is not at all unusual today. If a person fell behind in making payments on a hospital bill, the creditor could, from the thirty-first day after the obligation became due, begin charging monthly "service charges" of $75 ($900 in a year). Many families would be hard-pressed to pay that service charge alone and would be literally unable to reduce the principal of the debt. This legislation would have the undesirable result of forcing many families who are struggling to pay large medical bills into bankruptcy.

It is apparent that the people who will be hardest hit by this legislation are those who can ill-afford the cost of additional interest on their involuntary debts. It is those who are on fixed or low incomes who are least able to afford the kind of medical insurance that would protect them from large medical and hospital bills.

Because I cannot support legislation that treads most heavily on those with limited resources, I veto Senate Bill 2092.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. LATE PAYMENT CHARGE ON ACCOUNTS RECEIVABLE.) A creditor may charge, receive, and collect a late payment charge in an amount not to exceed one and one-half percent per month on all money due on account from thirty days after the obligation of the debtor to pay shall have been incurred. The late payment charge provided in this section may be charged only if at the time the obligation was incurred the creditor did not intend to extend any credit beyond thirty days and any late payment of the obligation was unanticipated. The provisions of this section shall not apply to money due on retail installment contracts, as defined in chapter 51-13, and money due on revolving charge accounts, as defined in chapter 51-14.

SECTION 2. PERIODIC STATEMENT TO BE FURNISHED TO DEBTOR.) A creditor may charge the late payment charge provided for in section 1 only if he promptly supplies the debtor with a statement as of the end of each monthly period, or other regular period agreed upon by the creditor and the debtor, in which there is any unpaid balance. Such statement shall recite the following:

1. The percentage amount of the late payment charge which will be charged beginning thirty days after the obligation is incurred.

2. The unpaid balance at the beginning or end of the period.

3. An identification of any amounts debited to the debtor's account during the period.

4. The payments made by the debtor to the creditor during the period.

5. The amount of the late payment charge and also the percentage annual simple interest equivalent of such amount.

6. A legend to the effect that the debtor may at any time pay the total unpaid balance.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the debtor.

Disapproved March 21, 1979

Filed April 3, 1979

CHAPTER 675

SENATE BILL NO. 2125
(Strinden, Smykowski)

DRIVER RECORD ABSTRACT CONFIDENTIALITY

AN ACT to create and enact a new subsection to section 39-16-01 of the North Dakota Century Code, relating to the definition of consumer reporting agency; and to amend and reenact sections 39-16-03 and 39-16-03.1 of the North Dakota Century Code, relating to the highway commissioner releasing abstracts of operating records on court order only, and the confidentiality of driver record abstracts more than three years old.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2125 requires written permission from the licensed driver or a court order before an insurance company can obtain the driver's motor vehicle driving record from the Highway Department. Under current law any person can request a driving record provided the Department notifies the driver that his or her record was requested.

The cumbersome process for obtaining driving records required by Senate Bill 2125 will make it difficult for insurance companies to issue insurance binders to North Dakota residents for standard

family auto policies. This is so because insurance companies base their rates on the driving records of all the drivers in the applicant's household. Although the local insurance agent could secure the written permission of the head of the household, this would authorize only the release of his or her driving record.

Denying insurance companies access to driving records leads to the inevitable result of penalizing the good drivers in the state. At the present time some insurance companies provide discounts of up to 20% for drivers with good driving records. If Senate Bill 2125 becomes law, it would be difficult if not impossible for insurance companies to distinguish the good drivers from the careless drivers.

In my recent veto of a similar bill seeking to limit legitimate access to driving records, I stated in my message that:

> "Restricting the availability of motor vehicle records to insurance companies will have an adverse effect on the insurance rating system in North Dakota. The overall result may be the good drivers with no or few violations will be subsidizing the careless drivers with numerous tickets. Ultimately, rates may be increased to cover claims by poor drivers."

The citizens of this state have nothing to gain and may lose the economic benefits of merit rating of their insurance premiums if Senate Bill 2125 becomes law.

For these reasons and the reasons stated in my veto message on House Bill 1352, I hereby veto Senate Bill 2125.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) A new subsection to section 39-16-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports.

SECTION 2. AMENDMENT.) Section 39-16-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-03. ABSTRACTS - ACCIDENT REPORTS - FEE - NOT ADMISSIBLE IN EVIDENCE.)

1. The commissioner upon request shall furnish ~~any~~ the requesting person a certified abstract of the operating record of any person subject to the provisions of this chapter, which shall include the convictions, adjudications, and admissions of commission of traffic offenses of ~~such~~ the person and suspensions, revocations, and restrictions of ~~his~~ driving privileges, if the request for the abstract is made by any federal, state, or local law enforcement agency or their agents. The commissioner upon request shall in addition furnish ~~any person~~ a copy of that portion of an officer's accident report which does not disclose the opinion of the reporting officer, when the report shows that death, personal injury, or property damage of ~~two~~ three hundred dollars or more resulted from ~~such~~ the accident.

2. Notwithstanding the provisions of section 44-04-18, a court order or a written request signed by the licensed person is required before the commissioner may furnish a certified abstract of the operating record of any person subject to this chapter to any person, other than those listed in subsection 1. For the purposes of administration, if the commissioner receives a request from a consumer reporting agency, or an insurance company, it shall be presumed that the requirements of this section have been met. Requests from individuals shall be accompanied by a signed request before the commissioner could release the record.

3. Copies of accident reports and abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

4. A fee of two dollars shall be paid for each abstract of any operating record or copy of accident report and the commissioner shall send an additional copy of the abstract or accident report to the driver whose abstract or accident report was ~~requested~~ ordered to be furnished, accompanied by a statement identifying the person ~~making the request, provided that no~~ who requested the court order. No abstract or statement shall be sent to a driver ~~where~~ if the request for ~~his~~ the abstract was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions.

SECTION 3. AMENDMENT.) Section 39-16-03.1 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-03.1. ENTRIES ON DRIVER RECORD ABSTRACTS MORE THAN THREE YEARS OLD CONFIDENTIAL.) ~~Notwithstanding any other provisions of this chapter~~ Except when used for statistical purposes, no entry more than three years old on a driver record or abstract shall be available to the public, ~~except for statistical purposes~~ reported by any consumer reporting agency, or used by any insurance company as information in connection with the underwriting of insurance or in determining insurance coverage, other than by order of a court of competent jurisdiction.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 676

SENATE BILL NO. 2131
(Committee on Education)
(At the request of the Department of Public Instruction)

TUITION PAYMENT BY SCHOOL DISTRICT

AN ACT to amend and reenact subsections 1 and 2 of section 15-40.2-05 of the North Dakota Century Code, relating to payment of tuition by school district.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2131 amends the section of the North Dakota Century Code that sets forth the procedure for the determination of school tuition disputes.

Under present law the parent or guardian of a pupil may apply to the school board of the county of residence for approval of elementary and high school tuition payments to another school district when the pupil attends school in another district. The law now provides that if the application of the parent or guardian is disapproved by the school board, the parent or guardian may appeal the decision to a committee composed of the county judge, the states attorney, and the county superintendent of schools. Under current law the decision of this committee is final in elementary school tuition cases and

appealable to the State Board of Public School Education in high school tuition cases.

Senate Bill 2131 provides that elementary school tuition decisions of the three-member county committee are appealable to the State Board of Public School Education.

I object to Senate Bill 2131 because I believe elementary school tuition decisions are local matters that are best decided at the local level by the elected officials of the county.

I believe that the strength of our state lies in the independence of our local communities and local institutions. I do not approve of legislation that lessens the decision-making power of local government because the inevitable result is an erosion of local government's responsibility to the citizens who reside in the community.

Because of my conviction that local government is the best judge of its own interest in local matters and because of my belief that the interjection of state government into matters of purely local interest is undesirable, I hereby veto Senate Bill 2131.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 1 of section 15-40.2-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. High School. If the pupil is a high school pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the particular pupil, or other reasons of convenience, ~~it~~ the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school terms, up to the completion of the pupil's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board shall be final.

SECTION 2. AMENDMENT.) Subsection 2 of section 15-40.2-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Elementary. If the pupil is an elementary pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances or other reasons of convenience, ~~it~~ the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition shall be limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee ~~shall be final~~ may be appealed to the state board of public school education and the decision of the board shall be final.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 677

SENATE BILL NO. 2150
(Sands)

SEVERANCE TAX EXEMPTION FOR COAL USED FOR SPACE HEATING

AN ACT to create and enact a new section to any legislation enacted by the forty-sixth legislative assembly providing for a severance tax on coal, to provide an exemption for coal used for space heating purposes.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2150 provides an exemption from the coal severance tax for coal used for heating buildings in this state.

I object to this bill for three reasons:

1. This bill at best would give minimal tax relief to a very few people.

2. The tax exemption sought in this bill is based on the ultimate use of the coal. Such an exemption ignores the purpose of the coal severance tax. As I stated in my recent message to the Legislative Assembly in vetoing House Bill 1335 . . ."the use of the resource is not and

was not the inspiration for the coal severance tax. The severance tax was enacted to tax the sale of non-renewable natural resources that are the product of strip mining."

3. If Senate Bill 2150 becomes law, it will open the door for exemptions from the coal severance tax and will inevitably lead to erosion of this tax base.

For these reasons, I hereby veto Senate Bill 2150.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) A new section to any legislation enacted by the forty-sixth legislative assembly providing for a severance tax on coal is hereby created and enacted to read as follows:

SEVERANCE TAX EXEMPTION FOR COAL USED FOR SPACE HEATING PURPOSES.) No severance tax shall be imposed on coal used for heating buildings in this state. The coal mine owner or operator shall require the person purchasing the coal for heating of buildings or for resale to consumers for heating of buildings to certify the amount of the coal purchased which will be used for heating purposes.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 678

SENATE BILL NO. 2160
(Olin, Strinden)

UNEMPLOYMENT COMPENSATION BENEFIT ADJUSTMENT

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to an adjustment to taxable income for individuals and fiduciaries with respect to unemployment compensation benefits.

VETO

March 26, 1979

The Honorable Wayne G. Sanstead
President of the Senate
Senate Chambers
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2160 would tax an unemployed worker's insurance benefits when his or her gross income reaches $12,000 a year.

This bill would place an undue financial burden on seasonally unemployed workers in North Dakota. The formula for determining the weekly benefits awards approximately one-half of the worker's former wage. This benefit amount is barely sufficient to maintain the worker until he or she can return to work. To tax these minimum benefits when a worker is living on an income that is meant to substitute his or her normal wage is unjustified.

Unemployment insurance benefits have always been regarded as insurance benefits and are not awarded on the basis of means. This bill violates that concept. The taxing of unemployment insurance benefits will create more pressure for higher benefit payments and wages on the part of workers, and to pay higher benefits will accomplish nothing more than transferring payments from one tax fund into another.

The Congress of the United States, after intensive study, set the gross income requirements at $20,000 for a single taxpayer, and $25,000 for a couple filing a joint tax return before taxing unemployment insurance benefits. The National Commission on Unemployment Insurance, after a year of study and hearings throughout the United States, has strongly recommended to the Congress of the United States that the Federal Tax Act be repealed.

Senate Bill 2484 would provide conformance of North Dakota's tax law to Public Law 95-600, which includes the taxation of unemployment insurance benefits after the worker's wages reach $20,000 and $25,000 respectively. This conformity will further reduce the confusion the taxpayer faces when preparing his or her federal and state income tax returns.

Senate Bill 2484 carries an emergency clause making it effective January 1, 1979, while Senate Bill 2160 would go into effect on July 1, 1979. Accordingly, the taxpayer would pay taxes on $20,000 or $25,000 from January 1, 1979 to June 30, 1979, and from July 1, 1979 to December 31, 1979 the taxpayer would be required to pay state income taxes on the unemployment insurance benefits in excess of $12,000 gross income.

Senate Bill 2160 does not provide any administrative costs to administer this tax by the North Dakota Employment Security Bureau. Additional costs will be incurred to maintain additional records of payments to workers, notifying all recipients of insurance benefits, maintaining current addresses of previously paid workers, and providing the information to the State Tax Department. Federal funds will not be made available for this purpose.

Therefore, I veto Senate Bill 2160.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) A new subdivision to subsection 1 of section 57-38-01.2 of the 1977 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Increased by the amount of any unemployment compensation benefits received to the extent that the federal adjusted gross income of the taxpayer, determined without regard to unemployment compensation benefits, and the unemployment compensation exceeds twelve thousand dollars.

Disapproved March 26, 1979

Filed April 3, 1979

CHAPTER 679

SENATE BILL NO. 2280
(Senators Vosper, Iszler, Nelson)
(Representatives Berg, Dotzenrod, R. Jacobsen)

FAMILY FARM CORPORATIONS

AN ACT to create and enact five new sections to chapter 10-06 of the North Dakota Century Code, authorizing small family-type corporations to engage in farming and ranching operations within specified limitations, providing for a definition of farming, requiring reports, and providing for enforcement; to amend and reenact section 10-06-01 of the North Dakota Century Code, prohibiting farming by corporations; to repeal sections 10-06-02, 10-06-03, 10-06-05, and 10-06-06 of the North Dakota Century Code, relating to disposal of lands acquired prior to July 29, 1932, disposal of lands acquired subsequent to July 29, 1932, title to farm lands acquired by corporation since July 29, 1932, and the sale of the lands of noncomplying corporations; and providing a penalty.

VETO

March 29, 1979

The Honorable Wayne G. Sanstead
President of the Senate
Senate Chambers
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2280 repeals North Dakota's anti-corporation farm law and permits family farm and ranch operations to incorporate.

Corporation farming is not a new idea in North Dakota. The Anti-Corporation Farming Act was initiated and passed by the people in 1932 in the drought and depression days. The law gave banks and corporations that had acquired farms through foreclosure proceedings and other means ten years to dispose of the farmlands they owned. The law prohibits corporations from farming or owning farmlands. Its constitutionality was tested and upheld in both the North Dakota Supreme Court and the United States Supreme Court.

Toward the end of the ten-year grace period, a concerted effort was made to amend the anti-corporation farm law in the 1941 legislative session. According to the news stories of that time, five thousand farmers marched on the State Capitol; they succeeded in killing the attempt to weaken the law.

Corporate farming legislation has been introduced and defeated in many legislative sessions since 1941. In 1967 the legislative assembly passed a corporate farm bill. Governor William L. Guy vetoed the bill, and the assembly passed it over his veto. The bill was referred and in November, 1968, the people defeated the corporate farming measure by a three to one margin.

Today North Dakota is unique in the nation because it has retained its family-based style of agriculture. We are the envy of many states which have recently enacted laws restricting corporate farm activity.

North Dakotans can thank our present law for our unique status; it has served us well over the past forty-five years. That law has helped to keep the ownership of the land in the hands of those who are farming it. Current law permits cooperative corporations to farm only if 75% of the stockholders are actually making their living from farming. Consequently, most North Dakota farmland is owned by North Dakotans. I do not think we want to change that.

I cannot support Senate Bill 2280 because it will endanger the strong family-based type of agriculture which prevails in our state.

At first glance, this bill appears to be acceptable legislation. By its title it permits only small family-type operations to incorporate. To the casual observer, it appears that this bill will restrict corporation farming to those families who now farm North Dakota's land. But consider the implications of this bill. First, there is no limit on the amount of acreage that could be accumulated. This could lead to very few large corporations controlling much of North Dakota's food production.

Second, there is no requirement that 14 out of 15 possible stockholders be residents of North Dakota. This will foster absentee ownership of the land. The bill does require the officers and the directors of the corporation to be "actively engaged in operating the farm or ranch." However, the bill does not define what "actively engaged in farming or ranching" means. This provision could lead to out-of-state officers and directors

controlling the management of the corporation. The bill only requires one stockholder to actually reside on the farm. I contend that personal ownership of farmland by the people who farm it is a major factor contributing to North Dakota's present strength and agricultural productivity.

Third, I submit that this bill has implications far beyond our generation or even our children's generation. It may take three or four generations, but eventually these corporation farms are going to become larger and larger at the expense of our small family farms. When the family farms disappear, so do our towns and so does our rural North Dakota way of life. Any action that hastens the de-population of rural communities works a hardship on main street and such necessary institutions as schools and churches.

We need only to look at what is happening across the country for evidence of this pattern. There have been many changes in agriculture over the last forty years. Farms have dramatically increased in size. We have noted the nationwide trend away from on-farm, family ownership of land. We have seen the declining proportion of farm labor contributed by the operator and immediate family. This differentiation between ownership, management, and labor indicates the tendency away from the family farm as the historically dominant farm type in this country.

There are several other reasons why this bill should not become law. Although the tax benefits of incorporating have been emphasized, there is no doubt that these benefits will only accrue to the large, wealthy farmer or rancher. In essence, incorporation provides tax benefits to those farmers who need them the least. This is not an estate planning or tax planning tool that would be used by average-sized farms simply because other less costly estate planning methods are now available.

In Senate Bill 2280, North Dakotans are faced with a policy decision of potentially enormous consequences. The future of the small farm is at stake. I subscribe to the policy of preserving and rejuvenating our rural life style and economy. I strongly believe that all agricultural policy decisions made in North Dakota today should work toward a system of agriculture in which the ownership, operation, and management of a farm unit are all vested within the family who resides on the farm and makes its livelihood from that farm.

To further this policy, I have worked closely with the Agriculture Department and the Family Farm Committee, the Industrial Commission and the Bank of North Dakota in developing the Beginning Farmer Program. I have recently signed into law three bills proposed by the Family Farm Committee to help ease the entry of young farmers into agriculture. These bills, by providing tax incentives to persons who sell their farmland to beginning farmers and by increasing the availability of agricultural loans, will help foster the family farm.

Because I believe that opening the door to corporation farming is potentially dangerous to the small family farm and contrary to the public interest of the state of North Dakota, I hereby veto Senate Bill 2280.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

CORPORATIONS ALLOWED TO CARRY ON FARMING AND RANCHING OPERATIONS - LIMITATIONS.) Nothing in this chapter shall be construed as prohibiting any domestic corporation from owning real estate or carrying on farming or ranching operations, if the domestic corporation meets all of the following qualifications:

1. Shareholders or members do not exceed fifteen in number, and each shareholder or member is related to each of the other shareholders or members within one of the following degrees of kinship: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is the spouse of a person so related.

2. The corporation does not have as a shareholder or member a person, other than a trust or estate, who is not a natural person.

3. The corporation does not have as a shareholder or member any person who is not a citizen of the United States or a permanent resident alien of the United States.

4. The corporation does not have more than one class of shares.

5. The officers and directors of the corporation are limited to stockholders or members who are actively engaged in operating the farm or ranch. At least one of its shareholders or members shall be an individual residing on or operating the farm or ranch.

6. At least fifty-one percent of the gross income of the corporation comes from farming or ranching operations.

7. The corporation's income from rent, royalties, dividends, interest, and annuities does not exceed twenty percent of the corporation's gross receipts.

SECTION 2.) A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

FARMING - DEFINITION.) As used in this chapter, "farming" means a cultivation of land for production of agricultural crops or livestock, or the raising of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.

SECTION 3.) A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

REPORTS.) Every corporation engaged in farming after July 1, 1979, shall file with the secretary of state a report containing all of the following information:

1. The name of the corporation and its place of incorporation.

2. The address of the registered office of the corporation in this state and the name and address of its registered agent in this state.

3. The acreage and location listed by section, township, range, and county of all land in the state owned or leased by the corporation and used for farming.

4. The names and addresses of the officers and the members of the board of directors of the corporation.

5. The numbers of shares of stock or the percentage of interest and the acreage the corporation used for farming owned or leased by persons residing on the farm and actively engaged in farming and the number of shares of stock or the percentage of interest in the acreage of the corporation used for farming owned or leased by relatives within the degree of kinship listed in subsection 1 of section 1.

6. The name, address, and number of the shares of stock or the percentage of interest in the acreage of the corporation use for farming owned or leased by each stockholder or member and the relationship of each stockholder or member to the other stockholders or members.

7. A statement as to percentage of gross receipts of the corporation derived from rent, royalties, dividends, interest, and annuities.

No corporation may commence farming in this state until the secretary of state has inspected the reports and certified that its proposed operations comply with the provisions of section 1 of this Act. Each corporation engaged in farming shall file an annual report containing the information with respect to the preceding calendar year prior to March first of each year.

SECTION 4.) A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

FAILING TO FILE REPORT - FALSIFIED INFORMATION - PENALTY.) Every corporation which fails to file any report required under the provisions of this chapter or willfully files false information on any report required under the provisions of this chapter is guilty of a class A misdemeanor.

SECTION 5.) A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

ENFORCEMENT.) If the attorney general has reason to believe that any person is violating the provisions of this chapter, the attorney general shall commence an action in the district court in which any agricultural or farm land relative to the violation is situated, or if situated in two or more counties, in the district court for that county in which a substantial part of the land is situated. The attorney general shall file for the record with the register of deeds in each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, it shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation, owning or leasing the land has a period of three years from the date of the order to divest itself of the lands. During the three-year period, the corporation may farm and use the lands for agricultural purposes. The three-year limitation period is deemed to be a covenant running with the title to the land against any grantee, successor, or assignee of the corporation, which is also a corporation. Any land not divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law. It shall be lawful for any corporation, domestic or foreign, to acquire agricultural or farm land as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural or farm land

acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter.

SECTION 6. AMENDMENT.) Section 10-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. FARMING BY DOMESTIC AND FOREIGN CORPORATIONS PROHIBITED.) All corporations, both domestic and foreign, except as otherwise provided in this chapter, are hereby prohibited from engaging in the business of farming or agriculture. For the purposes of this chapter the term "corporation" includes joint stock companies and associations.

SECTION 7. REPEAL.) Sections 10-06-02, 10-06-03, 10-06-05, and 10-06-06 of the North Dakota Century Code are hereby repealed.

Disapproved March 28, 1979

Filed April 3, 1979

CHAPTER 680

SENATE BILL NO. 2330
(Committee on Appropriations)

NATURAL GAS PIPELINES ACROSS FEDERAL LANDS

AN ACT to allow low pressure natural gas pipelines to cross federal lands located in North Dakota.

VETO

March 17, 1979

The Honorable Wayne G. Sanstead
President of the Senate
Senate Chambers
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2330 authorizes the construction of low pressure gas gathering lines across federal lands without a permit from the federal government.

The federal government has, in the past, been slow to act on gas gathering line permit applications. Furthermore, the current federal moratorium on permits pending the completion of a pipeline corridor study has caused the needless waste of natural gas by flaring at the wellhead. As chairman of the Industrial Commission, I am fully aware of this deplorable situation and of the need to save our natural gas resource at a time when energy resources are scarce. The Industrial Commission's policy is to restrict flaring of gas at the wellhead through a system of limited oil production until gas gathering systems are in place.

Thus, while I understand the reasons why Senate Bill 2330 was introduced, I object to it for the following reasons:

First, this bill will be ineffective. The federal government has full control over the management of its own lands. This legislation will have no legal force or effect on federal law or policy. The appropriate vehicle for conveying grievances to the federal government is through a resolution of the Legislative Assembly.

Second, Senate Bill 2330 states that any gas gathering lines constructed across federal lands would come under the jurisdiction of the Public Service Commission. This creates a potential conflict with a major bill still pending before the Legislature concerning the state's siting act--Senate Bill 2233. Under present law and under Senate Bill 2233, the Public Service Commission has no jurisdiction over the laying of gas gathering lines. There are good reasons for exempting these low pressure lines from the siting act:

1. These lines are small and have minimal impact on the environment.

2. Rights of way for these pipelines cannot be acquired by eminent domain.

3. Subjecting these lines to the siting act would cause inevitable delays, potentially resulting in more gas being wasted pending the site reviews required under the act before a permit may be issued.

I do not believe the Legislative Assembly intended to subject gas gathering lines to the provisions of the siting act. However, in order to avoid the possibility of conflicting laws on gas gathering lines, I hereby veto Senate Bill 2330.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE FINDINGS.) The legislative assembly finds that, at a time when every effort should be made to avoid the needless waste of energy, much natural gas associated with oil production in western North Dakota must be flared at the well site rather than transported to a place where it can be used because private persons are prohibited from constructing pipelines which cross federal lands without a permit.

SECTION 2. NATURAL GAS - PIPELINES TO CROSS FEDERAL LANDS.) Subject to regulations of the public service commission, adopted after consultation and in agreement with appropriate federal agencies, and subject to any relevant federal or state laws, any person directly involved in the production of oil and gas may construct a low pressure pipeline across federal lands if the pipeline is necessary to deliver natural gas to a point where it can be used to supply energy for people. As used in this Act, "person" includes individuals, corporations, partnerships, cooperative associations, and joint ventures.

Disapproved March 17, 1979

Filed April 3, 1979

CHAPTER 681

SENATE BILL NO. 2350
(Albers, Solberg)

SPEEDING, MOVING VIOLATIONS, AND SPEED ZONES

AN ACT to create and enact a new section to chapter 39-09 of the North Dakota Century Code, relating to limitations on the reduction of speed zone speed limits; and to amend and reenact sections 39-06.1-06 and 39-06.1-09 of the North Dakota Century Code, as contained in sections 1 and 2 of House Bill No. 1449, as approved by the forty-sixth legislative assembly, relating to fines and points assessed against driver's licenses for violation of speed limits, and to the definition of moving violation, and removing certain violations related to motorcycles from that legislation; and to amend and reenact paragraph 11 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to points assessed against driving records for speeding violations.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2350 establishes a new system of graduated fines and points for speeding violations under 55 miles per hour. The point

and fine system set forth in this bill for speeds under 55 miles per hour is less stringent than under current law.

I believe it is important to maintain our present point and fine penalties at these low speeds to discourage speeding violations within city limits.

For this reason, I hereby veto Senate Bill 2350.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 39-06.1-06 of the North Dakota Century Code as amended by section 1 of House Bill No. 1449, as approved by the forty-sixth legislative assembly, is hereby amended and reenacted to read as follows:

39-06.1-06. AMOUNT OF STATUTORY FEES.) The fees required for a noncriminal disposition pursuant to either section 39-06.1-02 or section 39-06.1-03 shall be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee in the amount of ten dollars.

2. For a moving violation as defined in section 39-06.1-09, a fee in the amount of twenty dollars.

3. For a violation of section 39-09-02, or an equivalent ordinance, involving a speed in excess of fifty-five miles per hour, the penalty shall be a fee and a point assessment against the driver's license as follows:

Speed (mph)	Fee ($)	Points
56 - 60	$ 5	0
61 - 65	$ 5 plus $1/each mph over 60	1
66 - 70	$10 plus $1/each mph over 65	2
71 - 75	$15 plus $2/each mph over 70	3
76 - 80	$25 plus $3/each mph over 75	4
81 - 90	$40 plus $3/each mph over 80	6
91 - 100	$70 plus $3/each mph over 90	8
101 +	$100 plus $5/each mph over 100	12

The provisions of paragraph (11) of subdivision a of subsection 3 of section 39-06.1-10 shall only apply to violations involving speed limits less than fifty-five miles per hour.

4. For a violation of section 39-09-01, or an ordinance defining careless driving, a fee in the amount of thirty dollars.

5. For a violation of section 39-09-02, or an equivalent ordinance, which violation is not provided for in subsection 3 of this section, the penalty shall be a fee as follows:

   a. From one to five miles per hour in excess of the lawful limit, a fee in the amount of five dollars.

   b. From six to ten miles per hour in excess of the lawful speed limit, a fee in the amount of ten dollars.

   c. From eleven to twenty-five miles per hour in excess of the lawful speed limit, a fee in the amount of ten dollars, plus an additional fee in the amount of one dollar for each mile per hour above ten miles per hour in excess of the lawful speed limit.

   d. Twenty-six or more miles per hour in excess of the lawful speed limit, a fee in the amount of thirty dollars, plus an additional fee in the amount of two dollars for each mile per hour above twenty-five miles per hour in excess of the lawful speed limit.

SECTION 2. AMENDMENT.) Section 39-06.1-09 of the 1977 Supplement to the North Dakota Century Code as contained in section 2 of House Bill No. 1449, as approved by the forty-sixth legislative assembly, is hereby amended and reenacted to read as follows:

39-06.1-09. "MOVING VIOLATION" DEFINED.) For the purposes of section 39-06.1-06 and section 39-06.1-13, a "moving violation" means ~~a--violation-of-section-39-09-02,-or-an-equivalent-ordinance,~~ ~~or~~ a violation of section 39-04-22; subsection 1 of section 39-04-37; sections 39-05-12; 39-06-01; 39-06-14; 39-06-16; 39-08-09; 39-08-18; 39-09-05; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapters 39-10 ("general rules of the road") or 39-21 ("equipment of vehicles"), or equivalent ordinances, except those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

SECTION 3.) A new section to chapter 39-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

SPEED ZONES - REDUCTION LIMITATION.) No street, road, or highway in the state highway system or any other township, county, or state road or highway shall be posted in a manner which reduces the maximum speed limit on the street, road, or highway by more than

twenty miles per hour between any two signs so posted in a speed zone.

SECTION 4. AMENDMENT.) Paragraph 11 of subdivision a of subsection 3 of section 39-06.1-10 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

(11) A violation of section 39-09-02, or equivalent ordinance, where charge is speeding in violation of speed limits set at less than fifty-five miles per hour:		
(a)	From nine to fifteen miles per hour in excess of the lawful limit	~~2 points~~ 1 point
(b)	From sixteen to twenty-five miles per hour in excess of the lawful limit	~~4 points~~ 3 points
(c)	Twenty-six or more miles per hour in excess of the lawful limit	6 points

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 682

SENATE BILL NO. 2367
(Nething, Melland)

SALE OF STATE HOSPITAL LAND

AN ACT to authorize the state health officer of the state department of health to sell or trade one tract of land owned by the state of North Dakota and used by the state hospital.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2367 authorizes the sale of a tract of land owned by the state at Jamestown, North Dakota. The land is adjacent to the State Hospital and is currently used by the State Hospital as part of the Hospital Farming Program.

I am opposed to this sale of 86 acres of prime hayland because I believe that owning this land will be worth more to our state over the years than the monetary compensation the state would receive for the sale of the land. This parcel presently provides a stable source of feed supply for the maintenance of the State Hospital dairy herd.

Therefore, I veto Senate Bill 2367.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) The state health officer of the state department of health is authorized to sell or trade, in separate parcels or in any combination, the following property presently used by the state hospital at not less than the appraised value obtained from a duly qualified appraiser:

1. That portion of section five, township one hundred thirty-nine north, range sixty-three west, which runs in a northwest-southeast direction, being bound by that certain township road on the north and east and by the burlington northern railroad right of way on the west and south. This tract of land comprises approximately eighty-six acres.

SECTION 2.) The tracts of land described in section 1 shall be sold as prescribed by sections 38-09-01, 54-01-05.1, and 54-01-05.2. However, the state health officer may accept sealed bids in lieu of the public auction required by section 54-01-05.2. The state health officer, with the concurrence of a representative of the Bank of North Dakota and the commissioner of university and school lands, may accept or reject any or all bids received on the land. Factors to be considered by the state health officer, the representative of the Bank of North Dakota, and the commissioner of university and school lands in accepting any bid shall be:

1. The bidder's ability to comply with local zoning ordinances.

2. The history of the bidder in protecting environmental and aesthetic considerations.

3. The bidder's past performance and current expertise in industrial development within the community.

Any proceeds received from the sale of the tracts shall be deposited in the general fund in the state treasury.

SECTION 3.) The state is not responsible for the payment of any special assessments levied and assessed by any taxing district against property subject to sale and conveyance pursuant to this Act.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 683

SENATE BILL NO. 2371
(Senators Tennefos, Peterson)
(Representatives Rued, Vander Vorst)

SUITABILITY FOR WORK

AN ACT to amend and reenact section 52-06-36 of the North Dakota Century Code, relating to the factors considered in determining suitability for work and good cause for voluntarily leaving with respect to unemployment compensation benefits.

VETO

March 23, 1979

The Honorable Wayne G. Sanstead
President of the Senate
Senate Chambers
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2371 amends section 52-06-36 of the North Dakota Century Code by establishing additional criteria for determining "suitable work" for purposes of eligibility for unemployment compensation benefits.

Under the provisions of the present North Dakota Unemployment Compensation Law, an individual is disqualified from benefits for failing to accept or to apply for suitable employment without good cause. Present law provides a number of factors which are to be considered in determining suitability of work. These factors include the degree of risk involved to an individual's health, safety, and morals, the physical fitness and prior training of the

individual, the experience and prior earnings of the individual, the length of unemployment of the individual, the individual's prospects of obtaining work in his customary occupation, and the distance of available work from the residence of the individual.

The existing provisions of the North Dakota Unemployment Compensation Law allow for a fair and reasonable determination to be made as to whether work is suitable based upon an examination of the facts and circumstances of each case. Senate Bill 2371 provides that work is to be deemed suitable if net earnings available after payroll tax deductions are at least equal to 75% of the individual's average weekly wage in the individual's last base period quarter and in no event less than minimum wage. The definition of "suitable work", as set forth in Senate Bill 2371, is inflexible and does not allow for the application of pertinent factors necessary to make a fair and reasonable determination as to whether or not work is suitable.

There are two types of problems which are created by Senate Bill 2371, administrative and conceptual. The administrative problems created by Senate Bill 2371 arise from the language which refers to the individual's average weekly wage in the individual's last base period quarter. Senate Bill 2371 does not specify how the individual's weekly wage is to be determined, nor does it specify what is to be done in the event that an individual does not have any earnings during the last quarter of the individual's base period. Even if an individual does have earnings during the last quarter of the base period, these earnings may not be representative of the individual's earnings during his base period. Additionally, on each claim the employer who paid the wages in the last base period quarter would have to be contacted to verify average weekly wages. This would be an administratively cumbersome process.

The conceptual problems created by Senate Bill 2371 concern two areas. First, in some instances, Senate Bill 2371 would make the law more liberal than it is in its present form. A good example would be the situation where an individual moved to North Dakota from a highly industrialized state where wages are generally higher than they are in North Dakota. Under present law, this individual would be required to accept the prevailing wage for similar employment in North Dakota in order to be eligible for unemployment compensation benefits. Senate Bill 2371 would allow this type of individual to hold out for a higher wage than the prevailing wage in North Dakota.

Another conceptual problem in the bill is that it would promote extensive inconsistency in the administration of the Unemployment Compensation Program. This inconsistency would be caused by the reference to net earnings after payroll tax deductions, in determining suitability of work. Since an individual has flexibility in determining the number of exemptions he claims for payroll tax deductions, situations would arise in which two individuals had the same number of dependents but each individual claimed a different number of exemptions for purposes of payroll tax

deductions. In these situations, work which would be considered suitable for one individual might not be considered suitable for another individual even though both individuals have the same number of dependents. This type of inconsistency is totally unacceptable, and would not promote a fair and proper administration of the Unemployment Compensation Program.

In the operation of the Unemployment Compensation Program, the issue of suitability of work has been administered without difficulty over the years. In fiscal year 1978, 262 claimants were disqualified for refusal to accept or to apply for suitable work. The issue of what is suitable work is a very complex question which should have a great deal of study before undergoing legislative change.

Consequently, I will direct the North Dakota Employment Security Bureau, through its staff and advisory council, to study the issue of suitability of work to determine if there are any problems in this area and to develop proposed solutions in the event that any problems are discovered.

The changes in the Unemployment Compensation Law provided in Senate Bill 2371 are unworkable and not justified. Therefore, I veto Senate Bill 2371.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 52-06-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-36. FACTORS CONSIDERED IN DETERMINING SUITABILITY OF WORK AND GOOD CAUSE FOR VOLUNTARY LEAVING.) In determining whether or not any work is suitable for an individual and in determining the existence of good cause for voluntarily leaving his work under section 52-06-02, subsections 1 and 3, there shall be considered among other factors, and in addition to those enumerated in this section, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his residence, and the prospects for obtaining local work. Work shall be deemed suitable if the net earnings available after payroll tax deductions are at least equal to seventy-five percent of the individual's average weekly wage in the individual's last base period quarter and in no event shall be less than minimum wage. No work shall be deemed suitable and benefits

shall not be denied under the North Dakota unemployment compensation law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Disapproved March 21, 1979

Filed April 3, 1979

CHAPTER 684

SENATE BILL NO. 2450
(Senator Barth)
(Representative Kretschmar)

PARIMUTUEL HORSE RACING AUTHORIZED

AN ACT to provide for parimutuel horse racing conducted by nonprofit charitable, fraternal, religious, and veterans' organizations, civic and service clubs, and other public-spirited organizations; definitions; the creation of a racing commission; appointment of a director of racing; racing commission powers and duties; issuance of licenses; license authorization and fees; allotment of racing days to applicants; bets and certificates; bet payoff formulas; payments to school districts; audits and investigations; reasons and procedure for license refusal, suspension and revocation; and the attorney general to represent the commission in hearings; and providing a penalty.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

The Forty-Sixth Legislative Session made substantial strides to increase gambling in North Dakota. House Bill 1215 adds sports pools and authorizes raffles on college campuses. Senate Bill 2450 is "AN ACT to provide for parimutuel horse racing conducted by nonprofit charitable, fraternal, religious, and veteran's

organizations, civic and service clubs, and other public-spirited organizations." On March 14, 1979 I sent a letter to the Senate and House requesting timely consideration of important legislation so that I would be able to consider it while the Legislature was in session. Notwithstanding this request, both of these bills were passed in the closing days of the session and were not messaged to me before the Legislature adjourned sine die.

I have permitted House Bill 1215 to become law without my signature to indicate my disapproval of expanding gambling under the authority approved by the people in 1976. I do not believe that when the people of our state approved the constitutional amendment granting legislative authority to enact charitable gambling in North Dakota that they intended each succeeding legislature to increase and expand the scope and nature of gambling. Yet this is exactly the pattern that is developing. While I did not sign the original gambling bill (House Bill 1264) passed by the 1977 Legislature, neither did I veto it. I refrained from exercising my personal opposition to gambling in recognition of the approval by a vote of the people which authorized the Legislature to enact charitable gambling.

Senate Bill 2450 is an expansion of a type of gambling, better known as betting. It holds forth promise of getting more in return than one puts into the wager. This is a false hope that in the majority of cases does not materialize. Gambling is the hope of getting something for nothing.

Section 3 of Senate Bill 2450 states that one of the duties of the Racing Commission is:

> "To promulgate rules and regulations for effectively preventing the use of any substance, compound items or combination thereof of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racing animal unless specifically authorized by the commission."

The very need to write into law regulatory requirements by the Commission to prevent illegal use of "any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racing animal..." demonstrates that the business of animal racing is fraught with innumerable illegal, inhumane and unethical manipulations. The placing of monetary bets on racing animals with benefits to certain winners only compounds the incentive to employ the aforementioned illicit acts recognized in the bill.

Section 11 of Senate Bill 2450 sets forth the bet payoff formulas including the following distribution of revenue:

> "Two and one-half percent shall be deposited in a special racing commission fund from which the moneys shall be distributed to the school districts of the state by the state

treasurer, as prescribed by commission rule, in the same proportion as state foundation program payments are made."

I find this proposal very objectionable. To dedicate proceeds of this kind of gambling for the support of our most important public obligation, the education of our children from kindergarten through high school somehow suggests that the end justifies the means. Should this kind of educational support become established, we would run the risk of compromising our educational values which must never be dependent upon special interests.

An additional factor reinforcing my opposition to Senate Bill 2450 is an initiated constitutional amendment permitting parimutuel betting on horses and dogs was defeated in the primary election of 1964 by a vote of 41,871 in favor and 76,198 opposed.

For all the reasons aforementioned, I veto Senate Bill 2450.

Sincerely yours,

ARTHUR A. LINK
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) As used in this chapter:

1. "Charitable organization" means any nonprofit organization operated for the relief of poverty, distress, or other condition of public concern within this state, which has been so engaged within this state for two years.

2. "Civic and service club" means any branch, lodge, or chapter of a nonprofit national or state organization which is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a civic or service purpose within this state, which shall have existed in this state for two years. "Civic and service club" shall also mean a similar local nonprofit organization, not affiliated with a state or national organization, which is recognized by resolution adopted by the governing body of the city in which the organization conducts its principal activities, or by the governing body of a county if such organization conducts its principal activities outside the limits of a city but within a county. Such club shall have existed in this state for two years.

3. "Commission" means the North Dakota racing commission.

4. "Director" means the director of the North Dakota racing commission.

5. "Fraternal organization" means a nonprofit organization within this state, except for college and high school fraternities, which is a branch or lodge or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. Such organization shall have existed within this state for two years.

6. "Other public-spirited organization" means a nonprofit organization recognized by the governing body of a city or county by resolution as public-spirited and eligible under this Act.

7. "Racing" means horse racing under the certificate system.

8. "Religious organization" means any nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observances which has been so gathered or united in this state for two years.

9. "Veterans' organization" means any congressionally chartered organization within this state, or any branch or lodge or chapter of a nonprofit national or state organization within this state, the membership of which consists of individuals who were members of the armed services or forces of the United States. Such organization shall have been in existence in this state for two years.

SECTION 2. ORGANIZATIONS ELIGIBLE TO CONDUCT RACING.) Nonprofit charitable, fraternal, religious, and veterans' organizations, civic and service clubs, and other public-spirited organizations, as defined by this Act, shall be eligible to conduct racing pursuant to this Act.

SECTION 3. RACING COMMISSION CREATED - MEMBERS - APPOINTMENT - TERMS - QUALIFICATIONS - COMPENSATION - RULEMAKING.)

1. A North Dakota racing commission under the secretary of state is hereby created. The commission shall consist of five members appointed by the governor, with the consent of the senate, for five-year terms or until a successor is appointed and qualified. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve only for the unexpired portion of the term. The terms of the commissioners shall be staggered so that one term shall expire each July first. A new commission member shall be appointed at the expiration of the five-year term of each incumbent member of the commission. No more than three members of the commission

shall be of the same political party. Not more than three members of the commission shall be appointed from either east or west of the Missouri River.

2. No person may be eligible for appointment to the commission who shall not have been a resident of this state for at least two years prior to the date of appointment and is not of such character and reputation as to promote public confidence in the administration of racing within the state. No person who has a financial interest in racing may be a member of the commission or employed by the commission. Failure to maintain compliance with the provisions of this subsection shall be grounds for removal from the commission or from employment with the commission.

3. The commission members shall receive forty dollars per diem compensation and such allowable mileage and expense reimbursement as received by other state officials.

4. The commission members shall annually elect a chairman from among their number. Three members of the commission shall constitute a quorum with authority to act. The commission's hearings and rulemaking procedures shall be pursuant to chapter 28-32.

SECTION 4. APPOINTMENT OF DIRECTOR OF RACING - QUALIFICATIONS - SALARY - DUTIES - OTHER PERSONNEL - ADMINISTRATIVE FUNCTIONS.)

1. The racing commission shall appoint a director of racing who shall have such qualifications as the commission may determine. The commission shall establish the director's salary.

2. The director shall devote his full time to the duties of the office. The director shall be the executive officer of the commission, and shall enforce the rules, regulations, and orders of the commission. The director shall perform such other duties as the commission prescribes.

3. The commission may employ such other persons as it deems necessary.

4. Administrative functions of the commission, except personnel matters, shall be housed in the office of the secretary of state under the secretary of state's general supervision.

SECTION 5. RACING COMMISSION POWERS AND DUTIES.) The commission shall have the following powers and duties:

1. To provide for racing under the certificate system.

2. To set racing dates.

3. To promulgate rules and regulations for effectively preventing the use of any substance, compound items or combination thereof of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racing animal unless specifically authorized by the commission.

4. To supervise and check the making of parimutuel pools, parimutuel machines and equipment at all races held under the certificate system.

5. To make rules governing, restricting, or regulating bids on licensees' concessions and leases on equipment.

6. To approve all proposed extensions, additions, or improvements to the buildings, stables, or tracks upon property owned or leased by a licensee.

7. To exclude from race courses any person who violates the racing laws or any rule, regulation, or order of the commission or any law of the United States or this state.

8. To compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records shall be kept.

9. To investigate the operations of any licensee and cause the various places where race meets are held under the certificate system to be visited and inspected at reasonable intervals for the purpose of satisfying itself that the rules and regulations are strictly complied with.

10. To request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants, and animals that are lawfully on the race track.

11. To license all participants in the racing industry and to require and obtain such information as the commission deems necessary from licensed applicants.

12. To prescribe and enforce additional rules, regulations, and conditions under which all horse races shall be conducted.

SECTION 6. ISSUANCE OF LICENSES - APPLICATIONS.)

1. The commission may permit and authorize the racing of horses under the certificate system. Upon compliance by an applicant with this Act, the commission may issue a license to conduct races.

2. An application for a license to conduct a racing meet shall be signed under oath and filed with the commission as prescribed by rule and this Act. The application shall contain the following:

   a. The name and post-office address of the applicant.

   b. The location of the racetrack and whether it is owned or leased. If leased, a copy of the rental agreement shall be included.

   c. A statement of the applicant's previous history and association sufficient to establish that the applicant is an eligible organization.

   d. The time, place, and number of days such racing meet is proposed to be conducted.

   e. The type of racing to be conducted.

   f. Such other information as the commission may require.

SECTION 7. LICENSE AUTHORIZATION AND FEES - REVOCATION AUTHORITY.)

1. Each license issued under the certificate system shall describe the place and track or racecourse at which the licensee may hold such races. The authority conferred in any one license shall be limited to the calendar year for which it is issued. Every license shall specify the number of days the licensed races shall continue, the hours during which racing is to be conducted, and the number of races to be held per day. Races authorized under this Act may be held only between the hours of nine a.m. and twelve midnight.

2. The commission may charge a license fee for horse racing commensurate with the size and attendance of the race meet, but no charge less than ten dollars nor in excess of one hundred dollars per day shall be made. The license fees shall be remitted to the state treasurer and placed in a special racing fund to be used to pay for the operation and salaries of the commission and its employees.

3. Every club or organization applying for a license under the certificate system shall give bond payable to the state of North Dakota with good security to be approved by the commission. The bond shall be the amount the commission determines will adequately protect the amount normally due and owing to the state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.

4. The commission may grant, refuse, suspend, or withdraw licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise boys, veterinarians, valets, and concessionaires. No license issued pursuant to this Act is valid for more than one calendar year, but a license issued pursuant to this Act shall be valid at all race meetings conducted by the licensee during the one-year period. License fees shall be as established by the commission.

5. The commission, upon proof of violation of any provision of this Act or any rule or regulation adopted by the commission, may fine, suspend, or revoke any license granted pursuant to this Act.

SECTION 8. ALLOTMENT OF RACING DAYS TO APPLICANTS.) If an applicant is eligible to receive a license under this Act, the commission shall fix the racing days that shall be allotted to an applicant and issue a license for the holding of such racing meets. Any eligible organization or club which has adopted and used regular or approximate regular dates for their events for the past two years shall be allotted those dates if requested.

SECTION 9. LICENSE REQUIRED - PENALTY FOR VIOLATION.) No person shall hold any racing meet under the certificate system without having first obtained and having in full force and effect a license issued by the commission. Any person who violates the provisions of this section shall be guilty of a class A misdemeanor.

SECTION 10. BETS AND CERTIFICATES - RULEMAKING.)

1. The certificate system shall allow a licensee to receive money from any person present at a race who desires to bet on any horse entered. A person betting on a horse to win shall acquire an interest in the total money bet on all horses in the race in proportion to the amount of money bet by the person under rules and regulations established by the commission. The licensee shall receive such bets and issue certificates to the bettors on which shall be shown the number of the race, the amount bet, and the number or name of the horse selected by a person as the winner. The commission may also establish rules and regulations for place, show, quinella, combination, or other type betting usually connected with horse racing.

SECTION 11. BET PAYOFF FORMULAS - SPECIAL FUND - PAYMENTS TO SCHOOL DISTRICTS.)

1. For each racing meet where the average daily amount be on the total races held exceeds fifty thousand dollars, the licensee shall deduct eighteen and one-quarter percent of the total parimutuel pool bet on each individual race. Of this amount, fourteen and one-quarter percent of the amount deducted shall be retained by the licensee to cover

expenses, and the remaining four percent shall be remitted to the state treasury, as prescribed by the racing commission. Three percent shall be deposited in a special racing fund from which the moneys shall be distributed to the school districts of the state by the state treasurer, as prescribed by commission rule, in the same proportion as state foundation program payments are made. The remaining one percent shall be placed in a special racing commission operating fund from which all salaries and expenses of the racing commission and its employees shall be paid. All other moneys shall be retained in the parimutuel pool to be paid out to bettors holding winning tickets, as provided by racing commission rule.

2. For each racing meet where the average daily amount bet on the total races held is less than fifty thousand dollars, the licensee shall deduct eighteen and one-quarter percent of the total parimutuel pool bet on each individual race. Of this amount, fifteen and one-quarter percent of the amount deducted shall be retained by the licensee to cover expenses, and the remaining three percent shall be remitted to the state treasury, as provided by racing commission rule. Two and one-half percent shall be deposited in a special racing commission fund from which the moneys shall be distributed to the school districts of the state by the state treasurer, as prescribed by commission rule, in the same proportion as state foundation program payments are made. The remaining one-half percent shall be placed in a special racing commission fund from which all salaries and expenses of the racing commission and its employees shall be paid. All other moneys shall be retained in the parimutuel pool to be paid out to bettors holding winning tickets as provided by racing commission rule.

3. All moneys deposited pursuant to this section for the benefit of the commission or the foundation program are hereby appropriated.

SECTION 12. AUDITS AND INVESTIGATIONS BY STATE AUDITOR.) The state auditor when requested by the commission, the governor, or the attorney general, shall conduct audits and investigate the operations of any licensee. The commission shall reimburse the state auditor for all services rendered.

SECTION 13. REFUSAL, SUSPENSION, AND REVOCATION OF LICENSES - REASONS.) The commission may refuse, suspend, or revoke licenses under the certificate system and privileges granted by it or terminate racing privileges for just cause. Reasons constituting just cause include:

1. Any action or attempted action by a person contrary to the provisions of this Act or other statute.

2. Corrupt practices which include, but are not limited to:

   a. Prearranging or attempting to prearrange the order of finish of a race.

   b. Failing to properly pay the winnings to a bettor or to properly return change to a bettor upon purchasing a ticket.

   c. Falsifying or manipulating the odds on any entrant in a race.

3. Any violation of the rules of racing adopted by the commission.

4. Willful falsification or misstatement of fact in an application for racing privileges.

5. Material false statement to a racing official or to the commission.

6. Willful disobedience of a commission order or of a lawful order of a racing official other than a commissioner.

7. Continued failure or inability to meet financial obligations connected with racing meets.

8. Failure or inability to properly maintain a race track.

SECTION 14. ATTORNEY GENERAL TO REPRESENT COMMISSION IN HEARINGS - RULE PROMULGATION.) The attorney general shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of this Act. The commission shall reimburse the attorney general for the cost of all services rendered. The commission may employ private counsel for rule promulgation and to ensure that all its hearings are conducted fairly.

SECTION 15. REVOCATION, SUSPENSION, OR FINE - PROCEDURE.) The commission, upon proof of violation by a licensee, its agents or employees of any provision of this Act or any rule or regulation promulgated by the commission may, on reasonable notice to the licensee and after giving such licensee an opportunity to be heard, fine the licensee or revoke or suspend its license. In the event of revocation, the licensee shall not be eligible to receive another license within twelve months from the date of revocation. Every decision or order of the commission shall be made in writing and filed with the director for preservation as a permanent record of the commission. Such decision shall be signed by the chairman, attested by the director, and dated. All hearings and appeals shall be conducted in accordance with chapter 28-32.

Disapproved April 12, 1979

Filed April 13, 1979

CHAPTER 685

SENATE BILL NO. 2460
(Melland, Goodman)

LIEUTENANT GOVERNOR AS FEDERAL AID COORDINATOR

AN ACT to establish the office of federal aid coordinator and to provide for the powers and duties of that office and the assumption of the responsibilities of the division of economic opportunity, the state planning division, the office of energy management, and the special projects coordinator; to amend and reenact subsection 3 of section 20.1-02-17.1, and sections 20.1-02-18.1, 23-11-30, 23-18.2-27, 54-01-05.4, 54-01.1-08, 54-40.1-01, subsection 2 of section 54-40.1-02, and subsection 6 of section 54-40.1-04 of the North Dakota Century Code, relating to various responsibilities of the federal aid coordinator office; and to repeal sections 54-07-06, 54-34.1-01, 54-34.1-02, 54-34.1-03, 54-34.1-04, 54-34.1-05, 54-34.1-08, 54-34.1-09, and 54-34.1-15 of the North Dakota Century Code, relating to the division of economic opportunity and the state planning division; to require the legislative council to review the effect of consolidation of offices into the office of federal aid coordinator; and to provide an appropriation for the federal aid coordinator office and the natural resources council.

VETO

April 12, 1979

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2460 repeals the enabling legislation for three agencies within the executive branch of state government: the State Planning Division, the Office of Economic Opportunity, and the Office of Energy Management. The bill establishes the Office of the Federal Aid Coordinator to carry on the operations of the three agencies.

Section 1 of the bill states that the Federal Aid Coordinator Office is created in the Office of the Lieutenant Governor and that the Lieutenant Governor is the coordinator.

I object to Section 1 of Senate Bill 2460 because, by its provisions, the Legislative Assembly is assigning duties to the Lieutenant Governor.

Section 77 of the North Dakota Constitution states that the Lieutenant Governor serves as President of the Senate and that "Additional duties shall be prescribed by the governor."

Section 71 of the North Dakota Constitution vests the Governor with executive power. The Legislative Assembly does not share executive power with the Governor. I believe that the power to assign the duties of the Lieutenant Governor is an executive power which rests solely in the Governor.

When I acceded to this office, I solemnly swore to uphold the Constitution and the laws of the state of North Dakota. I will not endorse any legislative act that encroaches on the executive power which the Constitution intended the Governor to preserve.

In vetoing Section 1 of Senate Bill 2460, my intent is to preserve in the Office of the Governor the authority to properly administer the executive branch of government.

In Section 1 of Senate Bill 2460, the Legislature is exercising authority vested in the Governor by Section 77 of the Constitution of this state.

Therefore, I hereby veto Section 1 of Senate Bill 2460.

Sincerely yours,

ARTHUR A. LINK
Governor

Disapproved April 12, 1979

Filed April 13, 1979

NOTE: For the full text of Senate Bill No. 2460 containing section 1, see chapter 553.