VETOED MEASURES

CHAPTER 722

HOUSE BILL NO. 1447
(Representative Bateman)
(Senator Meyer)

LIVESTOCK REMOVAL WITHOUT BRAND INSPECTION

AN ACT to amend and reenact section 36-09-23 of the North Dakota Century Code, relating to the penalty for removal of livestock from the state.

VETO

March 12, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1447 provides a Class C felony for a second offense of removal of livestock from the state without a brand inspection.

I consider such a penalty too harsh since a second conviction, even if it occurrs decades later, results in a felony.

I understand that amendments are being prepared to Section 36-09-23 NDCC to attach to legislation currently being considered which would make the penalty less onerous.

Those amendments will make the penalty more acceptable.

Therefore, I veto House Bill 1447.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

36-09-23. Removal of livestock from state - Brand inspection - Penalty. No person may remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless such livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a certificate of inspection must accompany such livestock to destination. In lieu of such inspection, the owner or possessor may make and sign an invoice or waybill covering such stock showing marks and brands, number, sex and kind of the stock and the consignee and market destination where official brand inspection is provided by or for the said stockmen's association and mail a copy of such invoice or waybill to the association before the stock leaves the state.

It is unlawful for the owner or possessor to remove any such livestock from any place of such regular official brand inspection unless and until official brand inspection has been made and the brand inspection certificate issued.

~~Any~~ A first violation of this section constitutes a class B misdemeanor. A second or subsequent violation constitutes a class C felony.

Disapproved March 12, 1991
Filed April 5, 1991

CHAPTER 723

HOUSE BILL NO. 1371
(Whalen, Thompson)

INTERSTATE HIGHER EDUCATION AGREEMENTS

AN ACT to amend and reenact section 15-10-28 of the North Dakota Century Code, relating to agreements with other states' institutions of higher learning.

VETO

March 13, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1371 limits the authority of the Board of Higher Education to make funding reductions, in the event of revenue shortfalls, to programs undertaken by agreement with institutions of higher education in other states.

When such shortfalls occur, the Board, like all state agencies, needs as much flexibility as possible to manage higher education programs effectively and efficiently. I believe that flexibility needs to be preserved.

Therefore, I veto House Bill 1371.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-28. Agreements with other states' institutions of higher learning and regional education compacts. The state board of higher education may enter into agreements with institutions of higher learning in other states and regional education compacts. The board, subject to the

limits of legislative appropriations, may make such expenditures as are necessary for the purpose of utilizing the educational facilities of such institutions for teaching North Dakota students. In addition, the board may enter into agreements with institutions of higher learning in other states and regional education compacts for the acceptance of students from other states in North Dakota institutions of higher learning. If funding for the state board of higher education becomes limited or reduced, the board may not reduce funding to the several disciplines currently provided for under agreements with institutions of higher education in other states and under regional compacts, by a greater percentage than that percentage by which the total budget of the board was reduced.

Disapproved March 13, 1991
Filed April 5, 1991

CHAPTER 724

HOUSE BILL NO. 1276
(Representatives D. Olsen, Gilmore, Larson)
(Senators Tallackson, Mushik, Thane)

NURSING HOME OPERATING COST REIMBURSEMENT

AN ACT to amend and reenact sections 50-24.4-01 and 50-24.4-10 of the North Dakota Century Code, relating to definition of terms and reimbursement for nursing home operating costs after January 1, 1990; and to provide an effective date.

VETO

March 20, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1276 establishes by law a formula for nursing home reimbursement, retroactive to January 1, 1990.

The objective of this legislation is the insulation of nursing homes from cuts in state funding in the event that spending reductions are necessary. In case of an allotment, Service Payments to the Elderly and Disabled (SPED), programs for children, persons with mental retardation and the mentally ill are required to bear all of the cuts. That simply is not fair.

When the Governor determines that spending reductions are necessary due to decreases in revenue, the Governor and all state agencies need maximum flexibility to make cuts in a way that results in fairness, minimum harm and shared sacrifices. House Bill 1276 would limit the flexibility necessary to accomplish those ends.

Therefore, I veto House Bill 1276.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-01 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-01. Definitions. For the purposes of this chapter:

1. "Actual allowable historical operating cost per diem" means the per diem operating costs allowed by the department for the most recent reporting year.

2. "Actual resident day" means a billable, countable day as defined by the department.

3. "Department" means the department of human services.

4. "Depreciable equipment" means the standard movable resident care equipment and support service equipment generally used in long-term care facilities.

5. "Direct care costs" means the cost category for allowable nursing and therapy costs.

6. "Final rate" means the rate established after any adjustment by the department, including, but not limited to, adjustments resulting from cost report reviews and audits.

~~6.~~ 7. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances.

~~7.~~ 8. "General and administrative costs" means all allowable costs for administering the facility, including, but not limited to: salaries of administrators, assistant administrators, accounting personnel, data processing personnel, security personnel, and all clerical personnel; board of directors' fees; business office functions and supplies, travel, except as necessary for training programs for dietitians, nursing personnel and direct resident care related personnel required to maintain licensure, certification, or professional standards requirements; telephone and telegraph; advertising; membership dues and subscriptions; postage; insurance, except as included as a fringe benefit under subsection 6; professional services such as legal, accounting, and data processing services; central or home office costs; management fees; management consultants; employee training, for any top management personnel and for other than direct resident care related personnel; and business meetings and seminars.

~~8.~~ 9. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the department has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the department has applied appropriate limitations such as the limit on administrative costs.

10. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.

~~9.~~ 11. "Nursing home" means a facility, not owned or administered by the state government, described in subsection 3 of section 43-34-01.

12. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.

~~10.~~ 13. "Operating costs" means the day-to-day costs of operating the facility in compliance with licensure and certification standards.

~~11.~~ 14. "Payment rate" means the rate determined under section 50-24.4-06.

~~12.~~ 15. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

~~13.~~ 16. "Private-paying resident" means a nursing home resident on whose behalf the nursing home is not receiving medical assistance payments and whose payment rate is not established by any other third party, including the veteran's administration or medicare.

~~14.~~ 17. "Rate year" means a fiscal year for which a payment rate determined under this chapter is effective, from January first to the next December thirty-first.

~~15.~~ 18. "Real estate" means improvements to real property and attached fixtures used directly for resident care.

~~16.~~ 19. "Reporting year" means the period from July first to June thirtieth, immediately preceding the rate year, for which the nursing home submits reports required under this chapter.

~~17.~~ 20. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, nursing home administrators, and any other person performing functions ordinarily performed by such personnel.

SECTION 2. AMENDMENT. Section 50-24.4-10 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-10. Operating costs after January 1, 1990.

1. For rate years beginning on or after January 1, 1990, the department shall establish procedures for determining per diem reimbursement for operating costs.

2. The department shall maintain access to national and state economic change indices that can be applied to the appropriate cost categories when determining the operating cost payment rate.

3. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.

4. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of

allowable operating costs for the reporting year that begins July 1, 1987, taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing home, and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing home. The limits established by the department may not be less, in the aggregate, than the sixtieth percentile of total actual allowable historical operating cost per diems for each group of nursing homes established under this chapter based on cost reports of allowable operating costs in the previous reporting year. The limits established under this subsection remain in effect until the department establishes a new base period. Until the new base period is established, the department shall adjust the limits annually using the appropriate economic change indices established in subsection 5. In determining allowable historical operating cost per diems for purposes of setting limits and nursing home payment rates, the department shall divide the allowable historical operating costs by the actual number of resident days, except that where a nursing home is occupied at less than ninety percent of licensed capacity days, the department may establish procedures to adjust the computation of the per diem to an imputed occupancy level at or below ninety percent. The department shall establish efficiency incentives as ~~appropriate~~ follows: for a facility with an actual rate below the limit rate for indirect care costs, an amount equal to two dollars and sixty cents per resident day or a part thereof as determined by applying seventy percent times the differences between the actual rate, exclusive of inflation indices, and the limit rate, exclusive of current inflation indices will be included as a part of the indirect care cost rate. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories. The department may combine one or more operating cost categories and may use different methods for calculating payment rates for each operating cost category or combination of operating cost categories.

5. The department shall establish a composite index or indices by determining the appropriate economic change indicators to be applied to specific operating cost categories or combination of operating cost categories.

6. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the appropriate index established in subsection 5 of this section for the operating cost category plus an efficiency incentive established pursuant to subsection 4 of this section or the limit for the operating cost category increased by the same index. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

7. Each nursing home must receive an operating margin of at least three percent based upon the lesser of the actual direct care and other direct care rates and the limit rate prior to inflation. The operating margin will then be added to the rate for direct care and other direct care costs categories.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1991.

Disapproved March 20, 1991
Filed April 12, 1991

CHAPTER 725

HOUSE BILL NO. 1091
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Veterans' Affairs)

VETERANS' PREFERENCE APPLICATION

AN ACT to amend and reenact subsection 5 of section 37-19.1-01 of the North Dakota Century Code, relating to the definition of veteran for veterans' preference purposes.

VETO

March 26, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1091 extends the wartime veterans' public employment preference to non-wartime veterans.

While some limited preference for an adjustment period might be in order for non-wartime veterans, this legislation goes too far in providing a lifetime preference. By doing so, the bill dilutes the value of the preference to wartime veterans.

We need to devote greater efforts to assist wartime and disabled veterans.

This bill would lessen our ability to do that.

Therefore, I veto House Bill 1091.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Veteran" means a ~~wartime veteran~~ person as defined in subsection ~~2~~ 1 of section 37-01-40.

Disapproved March 26, 1991
Filed April 5, 1991

CHAPTER 726

HOUSE BILL NO. 1365
(Representatives R. Berg, Wald)
(Senator Meyer)

RENT CONTROLS

AN ACT to prohibit political subdivisions from establishing rent controls.

VETO

March 26, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1365 prohibits political subdivisions from enacting, maintaining or enforcing ordinances or resolutions "...that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property."

Our contacts with numerous city attorneys have indicated that while home rule cities may have the authority to impose rent controls, there has never been any serious discussion of doing so of which they are aware. Therefore, if this legislation is aimed at prohibiting direct rent controls, it appears to be a solution in search of a problem.

More importantly, the language, "have the effect of" is problematic. It could be interpreted to mean that a change in a zoning ordinance could "have the effect of" limiting rent increases by permitting new apartments or commercial buildings. It could be interpreted to mean inability of a city to build or maintain streets could " have the effect of" lowering the value -- and the rent -- of a building. Many actions taken or refused to be taken by city governments could "have the effect of" rent controls.

Our cities do not need to be burdened by such restrictions.

Therefore, I veto House bill 1365.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. **Rent controls - Prohibited.** A political subdivision may not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property. This section does not impair the right of a political subdivision to manage and control residential property in which the political subdivision has a property interest.

Disapproved March 26, 1991
Filed April 5, 1991

CHAPTER 727

HOUSE BILL NO. 1515
(Representatives Wald, Kerzman, D. Olsen)
(Senators Jerome, Marks, Naaden)

ABORTIONS

AN ACT to amend and reenact sections 14-02.1-01, 14-02.1-02, 14-02.1-03, subsection 2 of section 14-02.1-03.1, and sections 14-02.1-04 and 14-02.1-12 of the North Dakota Century Code, relating to abortions and the Human Life Protection Act; and to provide a penalty.

VETO

April 1, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

While each of us has strong beliefs, the heart of the controversy over HB 1515 is women's rights during pregnancy and the question of when the separate human person, with immortal intellect and will, is present. Is it at conception, sometime later, or at birth?

No one knows.

The opinions of thoughtful people, religious and secular, on this issue, differ widely throughout history and in the present day.

Given that unknown, government's role must clearly be restrained. History is full of accounts of the misuse of governmental power, often for a "good" cause. On this issue abuse can exist on both sides. Some even suggest legally requiring abortions for cases of AIDS and to curtail overpopulation. Such abuse must be resisted vigorously on both sides. Government must not overstep its bounds. It must not play God.

I am a Catholic and, although throughout history Catholic writings on when life begins vary widely, I agree with the current Catholic judgment that abortion is wrong.

The issue here, however, is the role of law.

I do not agree with those churchmen who urge government to impose extremely restrictive laws. In that regard, I am in far greater agreement with the many Christians of all faiths who rely heavily on Christ's admonition to cling to "faith, hope and love," not "faith, hope and law," remembering that not once did Jesus say, "There ought to be a law."

The fact that so many thoughtful people today and throughout history have differed in their beliefs on this issue is perhaps why a great many caring faith communities, Jewish, Christian and otherwise, have admonished public officials to tread carefully in public policy in this area.

Let me quote some individual statements which indicate the heartfelt differences of opinion (realizing that, in some cases, there may have been varying statements by these organizations):

The Lutheran Church in America, in its 1970 social statement on "Sex, Marriage and Family," stated:

> On the basis of the Evangelical ethic, a woman or couple may decide responsibly to seek an abortion. Ernest consideration should be given to the life and total health of the mother, her responsibilities to others in her family, the stage of development of the fetus, the economic and psychological stability of the home, the laws of the land, and the consequences for society as a whole.

The National Council of Catholic Bishops, on November 7, 1989, adopted the following statement:

> Our long- and short-range public policy goals include: (1) constitutional protection for the right to life of unborn children to the maximum degree possible; (2) federal and state laws and administrative policies that restrict support for and the practice of abortion; (3) continual refinement and ultimate reversal of Supreme Court and other court decisions that deny the inalienable right to life; (4) supportive legislation to provide morally acceptable alternatives to abortion, and social policy initiatives which provide support to pregnant women for prenatal care and extended support for low income women and their children. We urge public officials, especially Catholics, to advance these goals in recognition of their moral responsibility to protect the weak and defenseless among us.

The United Methodist Church, in General Conference in 1988, adopted the following resolution:

> We support the legal right to abortion as established by the 1973 Supreme Court decision. We encourage women in counsel with husbands, doctors, and pastors to make their own responsible decisions concerning the personal and moral questions surrounding the issue of abortion.

The American Jewish Congress, at its Biennial Convention in 1989, said the following:

> The American Jewish Congress has long recognized that reproductive freedom is a fundamental right, grounded in the most basic notions of personal privacy, individual integrity and religious liberty. Jewish religious traditions hold that a woman must be left to her own conscience and God to decide for herself what is morally correct.

The policy of the Presbyterian Church, adopted in the General Assembly 1983, and reaffirmed in 1985, 1987, 1988, and 1989 reads:

> ...The church's position on public policy concerning abortion should reflect respect for other religious traditions and advocacy for full exercise of religious liberty. The Presbyterian Church exists within a very pluralistic environment. Its own members hold a variety of views. It is exactly this pluralism of beliefs which lead us to the conviction that the decision regarding abortion must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference.
>
> Consequently, we have a responsibility to work to maintain a public policy of elective abortion, regulated by the health code, not the criminal code. The legal right to have an abortion is a necessary prerequisite to the exercise of conscience in abortion decisions. Legally speaking, abortion should be a woman's right because, theologically speaking, making a decision about abortion is, above all, her responsibility.

The United Church of Christ, in its General Synod 16, wrote the following:

> (The Synod) Upholds the right of men and women to have access to adequately funded family planning services, and to safe, legal abortions as one option among others....

The Reorganized Church of Jesus Christ of Latter Day Saints in 1974 (reaffirmed in 1980) adopted the following:

> We affirm the inadequacy of simplistic answers that regard all abortions as murder, or, on the other hand, regard abortion only as a medical procedure without moral significance.
>
> We affirm the right of the woman to make her own decision regarding the continuation or termination of problem pregnancies. Preferably, this decision should be made in cooperation with her companion and in consultation with a physician, qualified minister, or professional counselor....

The Episcopal Church, in its General Convention in 1988, adopted the following:

> We believe that legislation concerning abortions will not address the root of the problem. We therefore express our deep conviction that any proposed legislation on the part of national or state governments regarding abortions must take special care to see that individual conscience is respected and that the responsibility of individuals to reach informed decisions in this matter is acknowledged and honored.

These are the varied conclusions of thinking, caring religious Americans.

There are many other historical writings as well which have led me to conclude that, since neither I nor anyone else can prove the presence of a separate human person at the moment of conception, women's consciences must be respected.

Government policy must find a balanced way which respects the freedom of women in this difficult area. This bill does not do so.

That is why I have vetoed HB 1515.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-01. ~~Purpose~~ Legislative findings and purposes. ~~The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.~~

1. The legislative assembly finds that:

   a. Unborn children are human beings, and abortion is the taking of the life of an unborn child who is a member of the human race;

   b. The most basic of all human rights is the right to life. It has properly been called "the right to have rights". Therefore, the first obligation of any legitimate government is to protect the lives of those human beings within its jurisdiction;

   c. This state has a compelling interest in protecting the lives of unborn children throughout pregnancy;

   d. This state has a compelling interest in protecting the lives of women, and specifically the lives of pregnant women;

   e. This state affirms the longstanding tradition in American law of prosecuting those who perform illegal abortions, and not the pregnant women who undergo them;

   f. Alternatives are available in this state to support women with unplanned and difficult pregnancies and to enable them to give birth, including publicly funded services, high-risk pregnancy and pediatric services, as well as privately funded alternative agencies, such as crisis pregnancy centers and adoption agencies.

2. Based on the findings in subsection 1, it is the purpose of this Act to protect the lives of unborn children; prevent arbitrary, invidious and unconstitutional discrimination against unborn children; protect pregnant women's lives by permitting those medical procedures necessary to preserve their lives; encourage childbirth for pregnant women; and reasonably regulate abortion in conformance with current decisions of the United States supreme court.

SECTION 2. AMENDMENT. Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02. Definitions. As used in this chapter:

1. "Abortion" means ~~the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus~~ the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant, except to save the life or preserve the health of an unborn child, to produce a live birth, to remove a dead unborn child by accepted medical procedures, or to deliver an unborn child prematurely in order to preserve the health of either the mother or the unborn child. However, the termination of a woman's pregnancy with the intent to produce a live birth is not an abortion.

2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed, other than a hospital. For purposes of this Act, an abortion clinic is one operated substantially for the performance of abortions and performs thirty or more abortions per month any two months of a calendar year or which holds itself out to the public as an abortion provider or applies for a license as an abortion provider.

3. "Conception" means the fusion of a human spermatozoon with a human ovum.

4. "Hospital" means an institution licensed by the state department of health and consolidated laboratories under chapter 23-16, and any hospital operated by the United States or this state.

~~4.~~ 5. "Infant born alive" or "live born child" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.

~~5.~~ 6. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of as much of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:

a. According to the best judgment of her attending physician, she is pregnant.

b. The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or based upon a history and physical examination and appropriate laboratory tests.

c. The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.

d. The immediate and long-term physical dangers of abortion, psychological trauma resulting from abortion, sterility and increases in the incidence of premature births, tubal pregnancies and stillbirths in subsequent pregnancies, as compared to the dangers in carrying the pregnancy to term.

e. The particular risks associated with her own pregnancy and the abortion technique to be performed.

f. Alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance and encouragement to carry her child to term including, if the woman so requests, a list of the agencies and the services available from each.

g. In cases where the fetus may reasonably be expected to have reached viability and thus be capable of surviving outside of her womb, the attending physician shall inform the woman of the extent to which he is legally obligated to preserve the life and health of her viable unborn child during and after the abortion.

In addition, the physician may inform the woman of any other material facts or opinions or provide any explanation of the above information which, in the exercise of ~~his~~ the physician's best medical judgment, is reasonably necessary to allow the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.

Informed consent shall be evidenced by a written statement, in the form prescribed by the state department of health and consolidated laboratories and approved by the attorney general, signed by the physician and the woman upon whom the abortion is to be performed, in which statement the physician certifies that ~~he has made the~~ full disclosure has been made as provided above; and in which statement the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

Informed consent shall not be required in the event of a medical emergency when the woman is incapable of giving her consent if a licensed physician certifies the abortion is necessary to prevent her death.

~~6.~~ 7. "Licensed physician" means a person who is licensed to practice medicine or osteopathy under chapter 43-17, or a physician practicing in the armed services of the United States, or in the employ of the United States.

8. "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's body, beginning with conception.

9. "Unborn child" means an individual organism of the species homo sapiens from conception until birth.

~~7.~~ 10. "Viable" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

SECTION 3. AMENDMENT. Section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-03. Consent to abortion - Notification requirements.

1. ~~No~~ A physician ~~shall~~ may not perform an abortion unless prior to ~~such performance~~ the abortion the physician certified in writing that the woman gave her informed consent fully and without coercion, after the attending physician had informed the woman of the information contained in section 14-02.1-02 not more than thirty days nor less than forty-eight hours prior to her consent to the abortion and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Prior to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion ~~shall~~ may be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor ~~requesting the abortion~~ has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours prior to the minor's consent to the ~~performance of~~ abortion or unless the attending physician certifies in writing that ~~he~~ the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last known addresses at least forty-eight hours prior to the minor's consent to the ~~performance of~~ abortion. When a parent of the minor has died or rights and interests of such parent have been legally terminated, this subsection shall apply to the sole remaining parent. When both parents have died or where the rights and interests of both parents have been legally terminated, this subsection ~~shall apply~~ applies to the guardian or other person standing in loco parentis.

2. ~~Subsequent to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of:~~

   ~~a. The written consent of her husband unless her husband is voluntarily separated from her; or~~

   ~~b. The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.~~

~~3.~~ No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor ~~shall~~ may any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

SECTION 4. AMENDMENT. Subsection 2 of section 14-02.1-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Any pregnant woman under the age of eighteen ~~or next friend shall be~~ is entitled to apply to the juvenile court of her place of domicile or permanent residence, or in the place of domicile of her parents for authorization to obtain an abortion without parental consent. Proceedings on such application ~~shall~~ must be conducted in the juvenile court of the county ~~of the minor's residence~~ of her place of domicile or permanent residence, or in the place of domicile of her parents before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-05, except that the parental notification requirements of chapter 27-20 ~~shall~~ are not ~~be~~ applicable to proceedings under this section. All applications in accordance with this section ~~shall~~ must be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. The purpose of the hearing before the juvenile judge or referee ~~shall be~~ is to determine:

   a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects, and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.

   b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.

   c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor, with abortion being considered only as a last resort.

SECTION 5. AMENDMENT. Section 14-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-04. Limitations on the performance of abortions - Penalty.

1. ~~No~~ An abortion ~~shall be done~~ may not be performed by any person other than a licensed physician using medical standards applicable to all other surgical procedures.

2. ~~After the first twelve weeks of pregnancy but prior to the time at which the fetus may reasonably be expected to have reached viability, no abortion may be performed in any facility other than a licensed hospital.~~ Except as provided in subsection 3, no person may perform an abortion upon a pregnant woman unless her attending physician reasonably determines, in the physician's medical

judgment, that the woman's life would be endangered if the unborn child were carried to full term and records, either before or after the abortion, the basis for the physician's determination in the woman's medical record.

3. ~~After the point in pregnancy where the fetus may reasonably be expected to have reached viability, no abortion may be performed except in a hospital and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.~~

~~An abortion under this subsection may only be performed if the above-mentioned medical judgment of the physician who is to perform the abortion is first certified by him in writing, setting forth in detail the facts upon which he relies in making this judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency where the abortion is necessary to preserve the life of the patient.~~ An abortion is also authorized if:

a. The pregnancy resulted from gross sexual imposition, sexual imposition, or sexual abuse of a ward, as those offenses are defined in chapter 12.1-20, and the offense was reported to a law enforcement agency within twenty-one days after the offense or within fifteen days after the time the victim becomes capable of reporting the offense.

b. The pregnancy resulted from incest, as that offense is defined in chapter 12.1-20, and both the offense and the identity of the perpetrator are reported to a law enforcement agency before the pregnancy is terminated.

4. Any licensed physician who performs an abortion without complying with ~~the provisions of~~ this section is guilty of a class A misdemeanor. In addition to any other penalty, upon notice and hearing, if the evidence supports the allegation that a physician has not complied with this section in performing abortions, the physician's license must be revoked for at least one year.

5. It ~~shall be~~ is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

SECTION 6. AMENDMENT. Section 14-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-12. Short title. This chapter may be cited as the North Dakota ~~Abortion Control~~ Human Life Protection Act.

Disapproved April 1, 1991
Filed April 8, 1991

CHAPTER 728

HOUSE BILL NO. 1336
(Representatives Oban, Larson)
(Senators Mushik, Thane)

PROPERTY TAX INSTALLMENT DISCOUNT

AN ACT to amend and reenact sections 57-02-08.2 and 57-20-09 of the North Dakota Century Code, relating to a discount for early payment of property taxes to persons sixty-five years of age or older or permanently and totally disabled with limited income upon payment of property taxes in installments; to provide an appropriation; to provide for application; and to provide an effective date.

VETO

April 4, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1336 provides for new state payments to counties of the amount of discounts allowed for installment payments, without delinquency, of property taxes by any taxpayer who receives the homestead exemption.

This is an extension of the homestead credit program at a time when the state has had to cut or severely restrict other programs which benefit our citizens.

Although the appropriation is rather small, at $82,200, it will result in cuts to other programs of equal or greater merit. We cannot afford new programs when we cannot adequately fund current programs.

Therefore, I veto House Bill 1336.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.2 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.2. Homestead credit - Certification. Prior to March ~~1, 1975, and~~ first of each year ~~thereafter~~, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by ~~him~~ the tax commissioner the name and address of each person for whom the homestead credit provided for in section 57-02-08.1 was allowed for the preceding year, the amount of exemption allowed, the amount of discounts allowed for installment payments of property taxes during the preceding year under section 57-20-09, the total of the tax mill rates of all taxing districts, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for the preceding year, and such other information as may be prescribed by the tax commissioner.

The tax commissioner shall audit such certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county on or before June ~~1, 1975, and~~ first of each year ~~thereafter~~, the sum of the amounts computed by multiplying the exemption allowed for each such homestead in the county for the preceding year by the total of the tax mill rates, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for that year plus the amount of discounts allowed for installment payments of property taxes under section 57-20-09 during that year.

The county treasurer upon receipt of the payment from the state treasurer shall forthwith apportion and distribute it to the county and to the local taxing districts of the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and by the state tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed herein to make such corrections as may be necessary because of errors therein or because of approval of any application for abatement filed by a person because the exemption provided for in section 57-02-08.1 was not allowed in whole or in part.

SECTION 2. AMENDMENT. Section 57-20-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-20-09. Discount for early payment of tax. Except as provided in section 57-20-21.1, the county treasurer shall allow a five percent discount to ~~all taxpayers who shall pay~~ any taxpayer who pays all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. ~~Such discount shall apply~~ Except as provided in section 57-20-21.1, the county treasurer shall allow a five percent discount to any taxpayer who received the homestead exemption under section 57-02-08.1 for the preceding year, if that taxpayer pays taxes in installments and pays each installment for the year without delinquency under section 57-20-01. The county treasurer shall apply the discount for installment payments under this section against the final installment payment for the year. Any discount under this section applies to all general real estate taxes levied for state, county, city, township, school district, fire district, park district, and any other taxing districts, but ~~shall~~ does not apply to personal property taxes or special

assessment installments. ~~Whenever the~~ The board of county commissioners~~, by resolution, determine that an emergency exists in any county by virtue of weather or other catastrophe they~~ may extend the discount period for an additional thirty days.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $82,200, or so much thereof as may be necessary, to the state treasurer for the purpose of payments to counties under this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 4. EFFECTIVE DATE - APPLICATION. Sections 1 and 2 of this Act are effective for taxable years beginning after December 31, 1989.

Disapproved April 3, 1991
Filed April 9, 1991

CHAPTER 729

HOUSE BILL NO. 1462
(Urlacher, Martin)

COMMUNITY SPOUSE RESOURCE ALLOWANCE

AN ACT to amend and reenact section 50-24.1-02.2 of the North Dakota Century Code, relating to community spouse resource allowance.

VETO

April 4, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1462 would increase the community spouse resource allowance for those persons who entered long-term care prior to September 30, 1989, from $25,000 to $66,480.

The fiscal impact to the budget of the Department of Human Services (DHS) is estimated at $1,061,400. No funding has been provided by the legislature in this bill nor has additional funding been added to the DHS budget for this purpose. In fact, to this point, even funding for the "critical needs funding pool," which could have provided a source for this program, has now been deleted from the DHS budget.

Therefore, there is no funding for this enhancement. It would be the worst kind of fiscal mismanagement to begin the 1991-93 biennium with cuts in other DHS programs to accommodate this legislation.

Under the North Dakota Constitution, I have no choice but to stop unfunded programs before they start. We have discussed this issue with interested legislators who, we understand, are working to restore this language if a new funding source can be found.

Therefore, I veto House Bill 1462.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.2. Community spouse resource allowance. ~~In determining eligibility for medical assistance applicants and recipients, the~~ The department of human services shall establish a community spouse resource allowance ~~of at least twenty-five thousand dollars for an ineligible community spouse~~ equal to the maximum community spouse resource allowance permitted under 42 U.S.C. 1396r-5(f)(2).

Disapproved April 2, 1991
Filed April 12, 1991

CHAPTER 730

SENATE BILL NO. 2294
(Senators Tallackson, Vosper)
(Representatives Nicholas, Nowatzki, Dalrymple)

HASTINGS HALL PURCHASE

AN ACT providing an appropriation to the agricultural experiment station to purchase Hastings hall from the state seed department.

VETO

April 4, 1991

The Honorable Lloyd B. Omdahl
President of the Senate
Senate Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2294 provides for a $500,000 appropriation to the Agriculture Experiment Station from general and special funds for the purchase of Hastings Hall from the State Seed Department.

Our research indicates that never before have state general fund dollars been utilized by one state agency to purchase a building from another state agency.

Furthermore, the general fund does not have $300,000 in excess funding to provide for this purchase.

This bill sets a poor precedent and is the beginning of busting the budget.

Therefore, I veto Senate Bill 2294.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $300,000, or so much thereof as may be necessary, and from special

funds, derived from other income, the sum of $200,000, or so much thereof as may be necessary, to the agricultural experiment station for the purpose of purchasing Hastings hall on the North Dakota state university campus from the state seed department, for the biennium beginning July 1, 1991, and ending June 30, 1993.

Disapproved April 3, 1991
Filed April 12, 1991

CHAPTER 731

HOUSE BILL NO. 1599
(R. Berg, Oban, Schneider)

HOUSING AUTHORITY FUNDING

AN ACT to create and enact a new subsection to section 23-11-11 of the North Dakota Century Code, relating to the powers of housing authorities; and to amend and reenact section 54-17-07.6 of the North Dakota Century Code, relating to the acceptance of grants, contributions, loans, and other aid by the state housing finance agency.

VETO

April 8, 1991

The Honorable Ronald Anderson
Speaker of the House
House Chambers
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1599 fragments management of housing authority moneys in this state of only 640,000 people. In addition sparsely populated areas will remain unserved or subservient to urban center authorities. Both concepts are ill advised.

Administrative monies for servicing those areas could only come from General Fund sources . . . and the already redundant structure will be made infinitely worse.

Therefore, I veto House Bill 1599.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-11-11 of the North Dakota Century Code is created and enacted as follows:

To exercise within its area of operation the authority granted to the industrial commission under section 54-17-07.6.

SECTION 2. **AMENDMENT.** Section 54-17-07.6 of the North Dakota Century Code is amended and reenacted as follows:

54-17-07.6. Acceptance of grants, contributions, loans, or other aid. Acting in its capacity as a state housing finance agency, the industrial commission ~~is authorized to~~ may contract for, accept, and administer any grant, contribution, or loan of funds, property, or other aid in any form from the federal government or from any other source, and ~~to~~ may do all things necessary to qualify for any grant, contribution, or loan under any federal program, including those things necessary to qualify for assistance under the federal housing programs in effect from time to time. A housing authority established under chapter 23-11 which elects to exercise the authority granted to the industrial commission under this section preempts the industrial commission from acting within the area of operation of that housing authority. A local housing authority may elect to exercise the authority granted to the industrial commission under this section only within two years of the effective date of this Act. For transition of housing certificates and vouchers, a local housing authority that elects to exercise the authority granted to the industrial commission and that would administer three hundred or more units of certificates and vouchers administered by the industrial commission shall agree to accept a rate of seventy percent of the total contract administrative fees for the affected certificates and vouchers for two years or until all local housing authorities in the state have entered into the administration of their certificates and vouchers, whichever is sooner. The remaining thirty percent of the fees remain with the industrial commission until that time to assure the provision of housing services to rural areas until local administration is implemented.

Disapproved April 8, 1991
Filed April 11, 1991

CHAPTER 732

HOUSE BILL NO. 1079
(Representatives Carlisle, Henegar, St. Aubyn)
(Senators Freborg, Heinrich, Nalewaja)

DRUG OFFENSE MINIMUM SENTENCING

AN ACT to amend and reenact subsection 10 of section 12.1-32-02, sections 12.1-32-02.1, 19-03.1-23, and 54-21-25 of the North Dakota Century Code, relating to sentencing alternatives, prison terms for certain offenders, penalties for unlawful manufacture, delivery, or possession of controlled substances, and authority to contract with other governmental agencies for prisoners and juvenile delinquents; to provide a penalty; to provide an appropriation; and to provide an effective date.

VETO

April 18, 1991

The Honorable Jim Kusler
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Kusler:

House Bill 1079 requires minimum and enhanced sentences in a variety of drug-related cases.

In April of 1989, with regard to Senate Bill 2332, I wrote:

> I firmly believe that judges are in the best position to address the unique cases that may come before them. Judges must impose strict sentences on those who are so evil as to maliciously prey on our children and young people, and they currently have all of the authority they need to do so.
>
> However, I am especially concerned about first-time offenders for whom a jail or prison sentence, instead of providing any sort of rehabilitation, may only serve to confirm in them their worst instincts and result in lifetime criminals. All of us know that there are many cases -- many people -- who could have been saved had some form of alternative sentence been allowed and provided.
>
> I believe in a system in which the judges who are present at trial, who have heard the evidence, who have available to them a pre-sentence

investigation report and who have the input of the victims are able to make an appropriate decision which conforms to the criminal, the crime and the victim.

Furthermore, no appropriation has been provided to address the significant increase in prison sentences which are likely to result from this bill. Corrections budgets in other states which have enacted mandatory sentences have gone out of control.

These same concerns are true today. Although there have been minor amendments to House Bill 1079, they do not address my concerns; and the appropriation provided in the bill -- $126,000 -- is totally inadequate to meet the long-term needs for prison facilities.

Therefore, I veto House Bill 1079.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 12.1-32-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence. This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Minimum prison terms for armed offenders. Notwithstanding any other ~~provisions~~ provision of this title, minimum terms of imprisonment ~~shall~~ must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, ~~he~~ the offender inflicts or attempts to inflict bodily injury upon another, ~~or~~ threatens or menaces another with imminent bodily injury with a dangerous weapon, ~~an~~ explosive, destructive device, or ~~a~~ firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1 or 2 of section 19-03.1-23. Such minimum penalties ~~shall~~ apply only when possession of a dangerous weapon, ~~an~~ explosive, destructive device, or ~~a~~ firearm has been charged and admitted or found to be true in the manner provided by law, and ~~shall~~ must be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

SECTION 3. AMENDMENT. Section 19-03.1-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Minimum terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance~~, provided, that~~, but any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. ~~Any~~ Except when a person delivers a controlled substance without receiving remuneration or agreeing to receive remuneration for the controlled substance, the court may not suspend execution or defer imposition of any sentence imposed under subdivision a, b, or c of this subsection. However, the court may suspend execution of no more than one-half of any sentence imposed for a first offense under subdivision a, b, or c of this subsection. Subject to this requirement, any person who violates this subsection with respect to:

   a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:

      (1) For a first offense, to imprisonment for at least a year and a day.

      (2) For a second offense, to imprisonment for at least five years.

      (3) For a third or subsequent offense, to imprisonment for twenty years.

   b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who delivers marijuana, any person found guilty under this subdivision must be sentenced:

      (1) For a first offense, to imprisonment for at least eight months.

      (2) For a second offense, to imprisonment for at least three years.

      (3) For a third or subsequent offense, to imprisonment for ten years.

c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:

(1) For a second offense, to imprisonment for at least six months.

(2) For a third offense, to imprisonment for at least one year.

(3) For a fourth or subsequent offense, to imprisonment for five years.

d. A substance classified in schedule V, is guilty of a class A misdemeanor.

2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance~~, provided, that~~, but any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:

a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.

b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.

c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.

3. In addition to any other penalty imposed under this section, a person who violates this chapter is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:

a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.

b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years, to be served without benefit of parole. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years, to be served without benefit of parole. It is not

a defense that the defendant did not know the age of a person protected under this subdivision.

c. The court may not defer imposition of any sentence imposed under this subsection, but the court may suspend execution of no more than one-half of any sentence imposed under this subsection.

4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance is guilty of a class B felony and must be sentenced:

a. For a first offense, to imprisonment for at least four years.

b. For a second or subsequent offense, to imprisonment for at least five years.

c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.

6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of ~~his~~ the practitioner's professional practice, or except as otherwise authorized by this chapter~~, provided, that~~, but any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. ~~Any~~ Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony~~, except that any~~. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, is guilty of a class A misdemeanor~~, and any~~. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and

whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.

~~4.~~ 8. Notwithstanding the provisions of section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

SECTION 4. AMENDMENT. Section 54-21-25 of the North Dakota Century Code is amended and reenacted as follows:

54-21-25. Authority to contract with other governmental agencies for prisoners and juvenile delinquents. If the director of ~~institutions~~ the department of corrections and rehabilitation determines that adequate or suitable state facilities or services are not available for adult inmates or juvenile delinquents under ~~his~~ the director's control ~~he~~ the director may contract for same with the proper authorities of the United States, Canada, and any of its governmental subdivisions, another state, another agency in this state or a political subdivision of this state, or with any private or public correctional or treatment facility or agency. The state shall reimburse such entities at an amount to be determined by the state based upon the services the state determines are required for the housing and treatment of the inmates. The director may also contract, without cost to the state, to provide services or facilities for persons held by any of the jurisdictions mentioned in this section. ~~An adult inmate or juvenile delinquent who is considered for transfer to another jurisdiction as herein provided, and who as an adult or as parent or guardian of a juvenile does not consent to the transfer, will be given notice of the pending transfer and a review by an institutional staff board including at least one member from the treatment staff, the security or housing staff, the administrative staff, and chaired by an individual designated by the director of institutions to determine the need and justification for a transfer. The findings of the review board will, if appropriate, be given to the adult inmate or juvenile delinquent or a representative or guardian, and in the case of adults, to the pardon board, and in the case of juveniles, to the designated juvenile court staff for their approval of the requested transfer.~~ If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director ~~of institutions~~, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $126,000, or so much thereof as may be necessary, to the department of corrections and rehabilitation for the purpose of this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. EFFECTIVE DATE. This Act becomes effective on July 1, 1992.

Disapproved April 17, 1991
Filed April 18, 1991

CHAPTER 733

SENATE BILL NO. 2509
(Lindgren)

INFRASTRUCTURE BY PRIVATE OPERATORS

AN ACT to provide for infrastructure construction, improvement, rehabilitation, operation, or management by private operators and to provide for development agreements between public authorities and private operators.

VETO

April 18, 1991

The Honorable Jim Kusler
Secretary of State
State Capitol
600 East Boulevard
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2509 provides for private sector construction and operation of public projects, such as bridges and highways, parks, buildings and many other facilities.

The bill grants extremely broad authority to state, counties, townships and cities to enter into agreements with private persons, corporations, partnerships, cooperatives, joint ventures and consortiums to construct, improve, rehabilitate, operate, manage or own "fee-based facilities." It also provides that the "facility" could be supported, in whole or in part, by a rental fee paid by a public authority from its general funds. This feature could bind the taxpayers for a long period of time to support a privatized facility without the capability of controlling changes in the public use of the facility.

While I believe certain privatization funded only by facility user fees may work, this encumbering of general revenue moneys is ill-advised.

Therefore, I veto Senate Bill 2509.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "BOT facility" means a build, operate, and transfer fee-based facility constructed, improved, or rehabilitated and afterward operated by a private operator who holds title to the facility subject to a development agreement that includes a provision that title will be transferred or revert to the public authority on expiration of an agreed term.

2. "BTO facility" means a build, transfer, and operate fee-based facility constructed, improved, or rehabilitated by a private operator who:

   a. Transfers interest it may have in the facility to the public authority before operation begins; and

   b. Operates the fee-based facility for an agreed term pursuant to a lease, management, or concession agreement.

3. "Development agreement" means a written agreement by and between a public authority and a private operator which memorializes the parties' agreement with respect to the construction, improvement, rehabilitation, ownership, or operation of a fee-based facility. A development agreement must satisfy the requirements of section 3 of this Act.

4. "Fee-based facility" means a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority. The facility may be a library, city hall, and an appurtenant building, a water or sewage treatment plant, or other public improvement; land lying within applicable rights of way; and other appurtenant rights or hereditaments that together comprise a project for which a private operator is authorized to operate or own and impose fees or derive a rent as expressed in the development agreement.

5. "Private operator" means a private person, a corporation or partnership, a cooperative or unincorporated association, a joint venture or consortium that constructs, improves, rehabilitates, owns, leases, operates, or manages a fee-based facility subject to this Act. The term includes related parties and entities that together perform some or all of these functions for the same facility.

6. "Public authority" means the state, a county, township, or city when ownership of or jurisdiction over a fee-based facility has been tendered to and accepted by said authority.

SECTION 2. Private operators. Notwithstanding any other provision of law, private operators may construct, improve, rehabilitate, own, lease, manage, and operate fee-based facilities subject to the terms of this Act. Private operators may mortgage, grant security interests in, and pledge their interests in, for a period not to exceed the length of the development agreement:

1. Fee-based facilities and their components;

2. Development, leases and concessions, and other related agreements; and

3. Income, profits, and proceeds of the fee-based facility.

SECTION 3. Public authority may enter into development agreements. A public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator.

SECTION 4. Contents of development agreements. Development agreements for fee-based facilities entered into pursuant to this Act may provide for private ownership of the facilities without reversion of title; for operating the facilities under leases or management contract; for BOT facilities or BTO facilities; or any other form of ownership or operation considered advisable by the public authority. Development agreements may permit the private operator to:

1. Assemble funds from any available source, including federal, state, and local grants, bond revenues, contributions, and pledges; and

2. Incorporate related improvements into the fee-based facility, subject to requirements of state and federal law.

Development agreements may also include grants of title, easements, rights of way, and leasehold estates that are necessary to the fee-based facility. In addition, a development agreement may authorize the private operator to charge variable rate fees based on time of day, characteristics of services, or other factors and measurement methods considered significant by the public authority for the particular facility.

SECTION 5. Right-of-way acquisition. Private operators may acquire right of way and property by donation, lease, or purchase. When necessary for the construction, alteration, addition, extension, or improvement of any project under this Act, a public authority may acquire any real or personal property by the law of eminent domain of this state and may lease the property or right of way to a private operator.

SECTION 6. Lease term. A lease for public facilities must be for terms of no more than fifty years and must be reviewed and may be revised every five years.

SECTION 7. Application of other law. This Act does not excuse private operators of fee-based facilities from the necessity of obtaining environmental, navigational, design, or safety approvals that would be required if the facility were constructed or operated by a public body.

SECTION 8. Public authority may facilitate projects.

1. A public authority may exercise any power possessed by it with respect to the development and construction of infrastructure

projects to facilitate the development and construction of infrastructure projects under this Act.

2. A public authority may provide services for which it is reimbursed with respect to preliminary planning, planning, environmental certification, and preliminary design of infrastructure projects.

SECTION 9. Development agreements - Mandatory provisions. Development agreements must require:

1. That the plans and specifications for the fee-based facility satisfy the public authority's standards of construction for infrastructure of the same functional classification;

2. For fee-based facilities to be incorporated into the existing infrastructure, that any applicable department or authority review and approve the facility to the same extent as it would for a similar publicly constructed facility;

3. That, after public notice, the private operator manage and operate the fee-based facility in cooperation with the applicable public authority and subject to any bylaws that the public authority and the private operator may from time to time mutually agree upon;

4. That the fee-based facility be subject to regular safety inspections by the applicable public authority;

5. That the anticipated fees, rental income, and revenues from the operation of the facility, or other sources of funding, or any combination thereof, be sufficient to pay the maintenance and operation costs for the facility, and principal of and interest on any evidence of indebtedness to finance the facility; and

6. Any other provisions negotiated by the parties.

SECTION 10. Cost recovery. Development agreements entered into under this Act may authorize private operators of fee-based facilities to impose a fee-based charge for the use of the facility and must require that the fee revenues be applied:

1. To repayment of indebtedness incurred for the fee-based facility;

2. To lease or fee-based concessions payments, if any;

3. To costs associated with the operation, administration, and maintenance of the facility; and

4. To reasonable reserves for future capital outlays, if any.

Residual fee revenues belong to the private operator, except for any royalties that may be payable to a public authority under the development agreement or a related fee-based concession agreement. After the expiration of any lease for a BTO facility, or after title has reverted for a BOT facility, the public authority may continue to charge a fee for the use of the facility.

SECTION 11. Joint authority. When a fee-based facility is or will be situated in the jurisdiction of more than one public authority, or is or will be an interstate or international facility, the applicable authorities concerned may enter into a compact to delegate to one or more of the authorities or a board appointed by the various authorities the authority to exercise all of the powers, duties, and functions of the other authorities regarding the fee-based facility, including the authority to negotiate and administer the development agreement and any related lease and fee-based concession agreement. In addition, if all public authorities having jurisdiction over a fee-based facility concur, title to or authority over the facility may be tendered to the agreed upon authority of choice, which may at its option accept the title of authority to administer pursuant to the development agreement and this section.

SECTION 12. Property tax exemptions - Exemptions from bidding requirements.

1. If approved by the governing body of the city, for property within city limits, or by the governing body of the county, for property outside city limits, new fee-based facilities are exempt from all ad valorem taxes.

2. For portions of the project that do not involve contractor ownership, the construction, improvement, rehabilitation, operation, and management of fee-based facilities by private operators under this Act are subject to all competitive bidding and procurement requirements otherwise applicable under state and local laws, rules, and ordinances, if so determined by resolution of the governing body of the public authority.

SECTION 13. Relation to other law. The rights, powers, and authority conferred by this Act are in addition to other rights, powers, or authority private operators and public authorities may have under other law. This Act does not supersede or repeal, expressly or by implication, any other law permitting the construction, improvement, rehabilitation, ownership, and operation of fee-based facilities by private operators.

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