North Dakota Legislative Council

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IMPACT OF ERRORS IN GUBERNATORIAL VETOES

This memorandum provides an analysis of the potential impact of the contradictory documents submitted by the Governor in his veto of Senate Bill No. 2014 (2025).

BACKGROUND

Senate Bill No. 2014, the Industrial Commission budget for the 2025-27 biennium, was approved by the Senate on May 2, 2025, and by the House on May 3, 2025. The Speaker of the House and the President of the Senate signed the bill in the early morning hours of May 3, 2025, and subsequently transmitted it to the Governor for consideration. On May 19, 2025, the Governor sent a transmittal letter, an objection letter, and the marked up copy of the signed bill (appendix) to the President of the Senate indicating the Governor had signed Senate Bill No. 2014, vetoed portions of the bill, and filed it with the Secretary of State. The Secretary of State signed the bill on May 19, 2025, and posted all three documents on the Secretary of State's website.

Governor's Veto Correspondence

Transmittal Letter

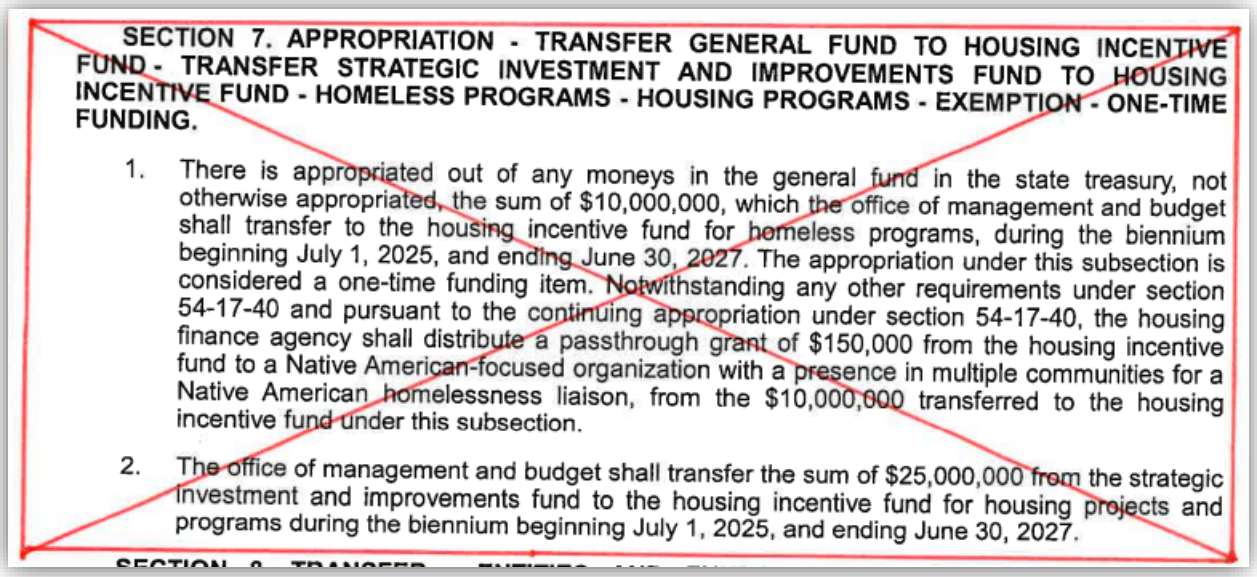
The transmittal letter sent by the Governor to the President of the Senate states:

> This is to inform you that on May 19, 2025, I have signed Senate Bill 2014 and filed it with the Secretary of State. I also have vetoed **Sections 7 and 31** of Senate Bill 2014. (**emphasis supplied**)

The plain text of the transmittal letter states the entirety of Sections 7 and 31 of Senate Bill No. 2014 were vetoed by the Governor.

Marked-Up Bill

The bill returned by the Governor containing the Governor's redlining of the items he vetoed clearly indicates the removal of all of Sections 7 and 31.



SECTION 7. APPROPRIATION - TRANSFER GENERAL FUND TO HOUSING INCENTIVE FUND - TRANSFER STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO HOUSING INCENTIVE FUND - HOMELESS PROGRAMS - HOUSING PROGRAMS - EXEMPTION - ONE-TIME FUNDING.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $10,000,000, which the office of management and budget shall transfer to the housing incentive fund for homeless programs, during the biennium beginning July 1, 2025, and ending June 30, 2027. The appropriation under this subsection is considered a one-time funding item. Notwithstanding any other requirements under section 54-17-40 and pursuant to the continuing appropriation under section 54-17-40, the housing finance agency shall distribute a passthrough grant of $150,000 from the housing incentive fund to a Native American-focused organization with a presence in multiple communities for a Native American homelessness liaison, from the $10,000,000 transferred to the housing incentive fund under this subsection.
2. The office of management and budget shall transfer the sum of $25,000,000 from the strategic investment and improvements fund to the housing incentive fund for housing projects and programs during the biennium beginning July 1, 2025, and ending June 30, 2027.

Objection Letter

The objection letter sent by the Governor to the President of the Senate notes the Governor "vetoed items in Section 7 and Section 31 of Senate Bill 2014." The objection letter further states:

> Section 7 of Senate Bill 2014 directs a $150,000 passthrough grant from the Housing Incentive Fund to a Native American-focused organization for the purpose of funding a homelessness liaison position. While it is important to make culturally informed efforts to address homelessness, especially in our Native American communities, I cannot support this provision within Section 7.

The Governor also proceeds to express concerns about addressing homelessness through a "piecemeal approach" reasoning it should be addressed through a "comprehensive, sustainable, and statewide strategy" with "stable and recurring funding with clear performance expectations and oversight," not through one-time funding. Unlike objection letters issued by former Governor Doug Burgum in relation to item vetoes of less than a full section of a bill, in which the portion of objectionable language being vetoed was quoted or distinctly identified in text of the letter, Governor Armstrong's letter merely describes his objections to Section 7 generally, rather than quoting the objectionable language he seeks to remove. Given the lack of quoted language and considering the entire $10 million in funding provided in subsection 1 of Section 7 consists of one-time funding, one reasonably could interpret the objection letter as intending to remove all of subsection 1, rather than just one of the three sentences in subsection 1.

ISSUE

The issue surrounding the item veto of Senate Bill No. 2014 centers on the inconsistencies among the three documents transmitted by the Governor.

While the transmittal letter and Governor's veto marking on the bill definitively indicate the removal of all of Sections 7 and 31, the objection letter is unclear and open to interpretation as to the intended scope of the Section 7 veto. The question that arises under this scenario is which document is treated as the controlling document when the documents transmitted by the Governor contain conflicting directives.

CONTROLLING VETO DOCUMENT ANALYSIS

The authority of the Governor to veto a bill or items within an appropriation bill is found under Section 9 of Article V of the Constitution of North Dakota, which states in pertinent part:

> The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.
>
> The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, must immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill becomes law.

The Governor has 3 legislative days from the date of delivery to issue a veto while the Legislative Assembly is in session and 15 legislative days from the date of delivery, weekends excluded, to issue a veto when the Legislative Assembly is not in session. N.D. Const. art. V, § 9.

In North Dakota, when the Governor vetoes a bill and returns it to the house of origin, the veto is effective, complete, and irrevocable. As noted in *North Dakota Legislative Assembly v. Burgum*, "Under the constitution, a veto is either effective when made or it exceeds the Governor's authority and is a legal nullity." 2018 ND 189, ¶ 9, 916 N.W.2d 83. *Burgum* further provides, "A veto is complete and irrevocable upon return of the vetoed bill to the originating house." *Id.* at ¶ 32. "[T]he Governor has no power to withdraw a veto, nor may he reach that result by agreeing with an attorney general opinion that a veto exceeded constitutional limits." *Id.* at ¶ 9. Therefore in North Dakota, the Governor does not have authority to amend or revoke a veto and the Governor's veto is final when made.

The North Dakota Supreme Court has cited a number of principles for construing constitutional provisions. In *Kelsh v. Jaeger*, the Court stated:

> When interpreting the state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement. The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. We give words in a constitutional provision their plain, ordinary, and commonly understood meaning. When interpreting constitutional provisions, we apply general principles of statutory construction. We must give effect and meaning to every provision and reconcile, if possible, apparently inconsistent provisions. We presume the people do not intend absurd or

> ludicrous results in adopting constitutional provisions, and we therefore construe such provisions to avoid those results.

2002 ND 53, ¶ 7, 641 N.W.2d 100 (internal citations omitted).

A threshold issue in the analysis of the impact of the Governor's item veto of Senate Bill No. 2014 is what constitutes the official veto document. Applying the principles outlined by the Court, it is clear the vetoed bill is the controlling document for purposes of the Governor's power under Section 9 of Article V of the Constitution of North Dakota. The plain language of the constitutional provision makes clear the veto and the objection letter should be treated as two related, but separate and legally distinct documents, which are delivered to the Legislative Assembly to exercise the Governor's constitutional veto power. The plain language of Section 9 of Article V references "any vetoed item or bill" and "a written statement of the governor's objections," the latter of which is offset by commas.

Under the language in Section 9 of Article V of the Constitution of North Dakota, the item being returned for reconsideration is the bill subject to a full or partial veto and the document which accompanies the vetoed bill that is subject to reconsideration is the statement of the Governor's objections. Stated differently, the bill, subject to a full or partial veto, is the primary document which must be returned for reconsideration. It logically follows that because the Legislative Assembly reconsiders the vetoed bill or item, not the statement of objections, the vetoed bill is the official veto document.

This conclusion is supported by the North Dakota Supreme Court. The Court has said "'[d]isapproval' is an executive act and the evidence of it must be indicated specifically **on the bill itself** with reference to the particular item or items involved." *State ex rel. Sandaker v. Olson*, 65 N.D. 561, 260 N.W. 586, 588 (1935) (**emphasis supplied**). The Court made clear the veto and the objection letter are two distinct documents the Governor must forward to the Legislative Assembly to comply with the Constitution. As such, the veto and the objection letter should be treated as two related, but separate and legally distinct documents delivered to the Legislative Assembly and disapproval of any items must be indicated on the bill itself.

The official veto document clearly and unambiguously indicates the Governor exercised his constitutional item veto authority to remove the entirety of Sections 7 and 31 of Senate Bill No. 2014 (2025). This intent is reflected by a large red box drawn around the entirety of each respective section with a large red "X" in the box. The Governor did not cross out specific words, phrases, or sentences, which was the practice employed by former governors when issuing an item veto. *See* vetoed bills for House Bill No. 1015 (2013); House Bill No. 1020 (2017); Senate Bill No. 2003 (2017); Senate Bill No. 2013 (2017); Senate Bill No. 2018 (2017). Because the red "X" covers all of Section 7, it is logical to conclude the markings unambiguously require all of Section 7 to be struck from the bill.

In a 2014 opinion, the Attorney General opined on the legal effect of a statement of intent included in a Governor's veto message. As part of the opinion request, the State Auditor inquired as to the effect and legal significance of a statement of intent in the Governor's veto message. The Attorney General opined a statement of intent included in a Governor's veto message is not a matter of binding legal authority. The opinion states:

> While it does not establish a stand-alone legal authority, a statement of intent in a Governor's veto message establishing which line item to tap first is given due consideration in determining the intent of legislation, just as committee hearing minutes, testimony and other forms of legislative history are considered. It is therefore my opinion that a statement of intent included in a Governor's veto message stating which line item is to be tapped first is entitled to due consideration, but is not a matter of binding legal authority.

2014 N.D. Op. Att'y Gen. No. L-14, 3 (2014).

Because the markings on the official veto document are unambiguous, only the veto markings on the bill should be considered, not extrinsic aids. This principle is referenced in several sections of the North Dakota Century Code, including Sections 1-02-05 and 9-07-02. Section 1-02-05 prohibits a court from disregarding the clear letter of the law when the statute is unambiguous. *See also* NDCC § 1-02-39 (providing that aids of construction may be used when a statute is ambiguous); *Powell v. Statoil Oil & Gas LP*, 2023 ND 235, ¶ 11, 999 N.W.2d 203 (stating reliance on legislative history is not appropriate absent ambiguity). Further, Section 9-07-02 provides, "[t]he language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity." The North Dakota Supreme Court has held, "[u]nambiguous language will be given its clear meaning." *Kief Farmers Co-op. Elevator Co. v. Farmland Mut. Ins. Co.*, 534 N.W.2d 28, 32 (N.D. 1995).

When looking to extrinsic aids, reference to the Governor's objections may be helpful, but only to the extent the veto markings on the bill are ambiguous. In this case, the markings are neither unclear nor ambiguous.

The executive branch has suggested in recent statements to the press the veto message reflecting the objections serves as the official veto by the Governor, whereas the veto markings on the bill merely serve as a color-coded visual aid. This interpretation is not only inconsistent with the plain language of Section 9 of Article V, judicial precedent, and administrative guidance, but it would also lead to an absurd or ludicrous result. The North Dakota Supreme Court has made abundantly clear, constitutional provisions are to be construed in such a manner to avoid absurd or ludicrous results. *North Dakota Comm'n on Med. Competency v. Racek*, 527 N.W.2d 262, 266 (N.D.1995); *Kelsh*, 2002 ND 53, ¶ 7.

The risk of ambiguity in a written statement of the Governor's objections is significant, particularly as compared to the risk of ambiguity in deciphering the language marked for removal on the face of the physical copy of the bill. The Governor's correspondence related to the veto at issue is illustrative of this concern. In this case, two of the three pieces of correspondence, the transmittal letter and vetoed bill, support the conclusion that the entirety of Section 7 should be removed from the bill. The third piece of correspondence, the written statement of the Governor's objections, is ambiguous, at best. In this correspondence, in addition to references to the $150,000 passthrough grant from the housing incentive fund to a Native American-focused organization for the purpose of funding a homelessness liaison position, the Governor also expresses concerns about addressing homelessness through a "piecemeal approach" reasoning it should be addressed through a "comprehensive, sustainable, and statewide strategy" with "stable and recurring funding with clear performance expectations and oversight," not through one-time funding. Unlike certain objection letters issued by former administrations, Governor Armstrong's letter simply describes his objections to Section 7, rather than quoting the objectionable language he seeks to remove. As such, reasonable minds may disagree as to whether the Governor intended to veto all or part of the provision.

It is unclear how ambiguities in a written statement of the Governor's objections would be resolved short of involving a court. It would not be appropriate to allow the Governor and Attorney General to resolve the ambiguity by agreement. Following the *Burgum* Court's analysis, allowing such an agreement "would leave the law in an indeterminate state subject to the discretion of the Governor and Attorney General." 2018 ND 189 at ¶ 9. Further, it would not be appropriate for a subset of the legislature to agree with the Governor regarding the Governor's intent related to the veto. The doctrine of legislative nondelegation prohibits a subset of the Legislative Assembly from resolving ambiguity in a veto. *See Burgum*, 2018 ND 189, ¶ 46. "The North Dakota Constitution creates three branches of government and vests each branch with a distinct type of power." *Id. at* ¶ 40. "Unless expressly authorized by the State Constitution, the Legislature may not delegate its purely legislative powers to any other body." *Id.* at ¶ 46 (quoting *County of Stutsman v. State Historical Soc. of North Dakota*, 371 N.W.2d 321, 327 (N.D. 1985)).

Allowing a small group of legislative leaders to resolve an ambiguity in the veto by agreement would be the equivalent of legislative leadership overriding all but one sentence of the vetoed Section 7 without the entire legislature having an opportunity to vote on the override. Allowing a subset of the Legislative Assembly to override a veto would be delegating a purely legislative power to a small group of members. *See Burgum*, 2018 ND 189, ¶ 46. This delegation could be considered an unconstitutional delegation. *See id.* Delegating to legislative leadership the task of agreeing on a preferred interpretation of an ambiguous veto would establish a dangerous precedent, mired with pitfalls. For instance, there are no guidelines for how many leaders must agree, what happens if one leader refuses to agree, if leaders from one political party refuse to agree, or if the leaders have a disagreement as to interpretation of the veto message. *See id.* at ¶ 53 ("A law that provides no safeguards against arbitrary action is a clear sign that the Legislative Assembly has improperly attempted to delegate legislative power.") In these situations, it is not clear who makes the final decision.

Further, the potential ramifications of identifying the written statement of the Governor's objections as the controlling veto document extend far beyond this particular circumstance. The level of detail provided in the written statements of a Governor's objections may vary widely from administration to administration. This is evidenced by historical approaches to the written objections. For example, Governor Doug Burgum's written statements of objections in relation to item vetoes of less than a full section of a bill distinctly identified the portion of objectionable language in text of the letter. *See* veto letter accompanying the partial veto of Senate Bill No. 2003 (2017) with statements including: "That portion of paragraph 3, Section 18 that reads 'any portion of' is vetoed", "Paragraph 3(c) of Section 24 is vetoed", "The second sentence under Section 32 is vetoed", and "The portion of paragraph 39 that reads 'and for credit hours completed at the school' is hereby vetoed." *See also* veto letter accompanying the partial veto of House Bill 1020 (2017) with statements including, "The portion of Section 5 that reads: 'subject to budget section approval and upon notification to the legislative management's water topics overview committee.' is vetoed."

If the recent contention of the Governor would be adopted, interpretation of a gubernatorial veto would no longer be a matter of objective interpretation and would instead require an analysis and determination of executive intent. For these reasons, if the written statement of the Governor's objections is considered the controlling document, ambiguities most likely will be inevitable and frequent, requiring judicial resolution on a regular basis. It is unreasonable to believe such a result would be consistent with the intent and purpose of the people adopting the constitutional provision. Rather, such a result would more likely be considered absurd or ludicrous, and construction in this fashion should be avoided.

Clerical Errors

It also has been suggested by the Governor that the red markings crossing out the entirety of Section 7 of Senate Bill No. 2014 was a markup error that should be corrected. At the outset, the "markup error" is beyond the scope of a mere clerical error based on North Dakota Supreme Court's interpretation of the term's meaning. Clerical errors arise from oversights or admissions, and cannot apply to correct errors of substance. *See State v. Welch*, 2019 ND 179, ¶ 5, 930 N.W.2d 615 ("case law further describes what constitutes a clerical error as one that 'must not be ... of judgment or even of misidentification, but merely of recitation ... mechanical in nature'"); *see also Fargo Glass & Paint Co. v. Randall*, 2004 ND 4, ¶ 6, 673 N.W.2d 261 ("The court, under the guise of correcting a clerical error, could not change the party liable for the judgment to a new and different corporate entity[,]" as the judgment accurately reflected "uncontroverted evidence in the proceedings").

Even if the perceived error is characterized as a clerical error, neither the Governor nor the Attorney General have statutory authority to correct the error on their own accord. While the North Dakota Century Code provides statutory authority to correct or otherwise address clerical errors in certain circumstances, the Century Code does not authorize a correction of a clerical error in this circumstance.

Section 1-02-06 states "Clerical and typographical errors shall be disregarded when the meaning of the legislative assembly is clear." In *Treiber v. Citizens State Bank*, the North Dakota Supreme Court applied Section 1-02-06 to disregard what the Court identified as a clerical or typographical error in the bill drafting process. 1999 ND 130, ¶ 22, 598 N.W.2d 96. The Court stated:

> [I]n this case, the legislature clearly did not intend to change the word "of" to "or." The text of the bill contains no underscoring or overstrikes to demonstrate an intentional change of language. Obviously, the change is the result of a clerical or typographical error in the bill drafting process. Accordingly, we follow the directive of Section 1–02–06 and disregard the error.

Section 1-02-06 does not apply in this circumstance, because the plain language clearly indicates an error shall be disregarded only if the meaning of the *Legislative Assembly* is clear. Even if the error could be properly classified as the Governor's clerical or typographical error, it would be inappropriate to disregard the error under the authority of Section 1-02-16 because it is beyond the scope of the statute. Additionally, as discussed at length above, because the written statement of the Governor's objections does not constitute a clear recitation of the Governor's intent to veto particular words, phrases, or sentences, it is not clear whether the markup error is a clear error based on the content of the written objections alone.

In addition, unlike the statutory authority granted to the Legislative Council to correct ministerial or clerical errors, the Governor does not have express statutory authority to correct ministerial or clerical errors. Section 46-03-11 authorizes the Legislative Council and the Secretary of State to correct clerical errors for publication of the Session Laws and Century Code. The section states: "[t]he secretary of state and the legislative council shall correct ministerial or clerical errors and supervise the publication of the session laws and pocket part supplements to this code in a manner and form prescribed by the legislative council, correlating each year's laws with this code." The Century Code also includes a number of statutory authorizations to correct or disregard clerical or typographical errors, including:

- Section 38-09-15, which allows the state, department, or agency to proceed with scheduling leasing if it appears that an omission or typographical error in the published notice is not prejudicial to the state's interest.
- Sections 57-33.2-12, 57-34-04.2, and 57-38-39, which authorize the Tax Commissioner to identify if the tax due is understated on a return because of a mathematical or clerical error and notify the taxpayer of the error and the additional tax due.
- Section 57-14-01, which authorizes the county auditor, upon discovery that the assessor has made a clerical error in valuing real property, to proceed to correct the assessment books and tax lists in accordance with the facts and to correct the error or omission in the assessment.

- Section 57-14-05, which authorizes the county auditor to correct clerical errors in compiling tax lists to ensure they conform to the assessment books.

Without clear statutory authorization, neither the Governor nor the Attorney General has the authority to correct a perceived ministerial or clerical error in the vetoed bill. This conclusion is supported by the Attorney General in a 2012 opinion, in which the Attorney General acknowledged his office had no explicit authority to correct a clerical mistake like that which is given to the Legislative Council and Secretary of State in Section 46-03-11 or the trial court's authority to correct clerical mistakes at any time. *See* 2011 N.D. Op. Att'y Gen. No. L-10 (2011).

IMPACTS ON LEGISLATIVE AUTHORITY

Veto Override Authority

Section 9 of Article V of the Constitution of North Dakota provides the authority for the Legislative Assembly to override a veto when the item or bill is returned to the house of origin. Under the language in Section 9 of Article V, the item being returned for reconsideration is the bill, subject to a full or partial veto. To reconsider the vetoed bill, the Legislative Assembly will need to reconvene or be called back for a special session by the Governor.

In 1991, the Attorney General considered the authority of the Legislative Assembly to reconvene to override a veto. In that situation, the Attorney General issued an opinion concerning the possible reconvening of the Legislative Assembly to override vetoes following the 1991 session and concluded: "The Legislature may not consider an override of a bill which the Governor vetoed after the 1991 legislative session adjourned." N.D. Op. Att'y Gen. No. L-16 (1991). The Attorney General reasoned:

> There is no provision for the bill to be returned to the Legislature for its reconsideration once it has been submitted to the Secretary of State. 'If the Legislature be not in session, the Governor cannot transmit [the bill] to the legislative body. The Constitution does not require an impossible act.' Since there is no provision for the return of the bill to the Legislature, the bill cannot become law. In order to reconsider the bill, the Legislature must reintroduce the bill.

N.D. Op. Att'y Gen. No. L-16 (1991) (quoting *Sandaker*, 260 N.W. 586, 588 (N.D. 1935)) (internal citation omitted).

However, this Attorney General opinion is inapplicable. The opinion's analysis relies entirely on a previous version of the Constitution. At the time, the Constitution specified the Governor must return the bill to the house it originated in "unless the legislative assembly by its adjournment, prevent [the bill's] return." The language regarding the legislative adjournment preventing the bill's return has been removed from the Constitution. Section 54-07-01.5 also clearly requires the Governor to file bills with the Secretary of State instead of transmitting the bill to the Legislative Assembly if the Legislative Assembly is not in session. Furthermore, the executive branch has acknowledged the authority of the Legislative Assembly to reconvene for purposes of overriding a veto. In the veto message of Senate Bill No. 2316 (1997) Governor Schafer wrote, "I believe sufficient authority already exists under NDCC 54-03-02 to deal with a truly emergency situation. The Legislature can call itself back into session to deal with a delayed veto, so long as the Legislature has not exceeded the 80 day limitation in the Constitution. To date, no Legislature has breached the 80 day deadline in our state's history." 1997 S.L. 549.

The Legislative Assembly also can avoid the issue presented in the previous Attorney General Opinion by requesting the return of the bill from the Secretary of State. Section 54-09-02(1) provides the Secretary of State shall, "[r]eceive bills and resolutions from every session of the legislative assembly, and shall perform such other duties as may devolve upon the Secretary of State by resolution of the two houses, or either of them." *See also Masons Manual of Legislative Procedure* Section 756 (2020 edition) ("Legislation also is sometimes recalled from the executive for further consideration. Legislation is usually recalled by a resolution, but sometimes a committee is sent to the executive for that purpose.") Therefore, the Legislative Assembly could pass a resolution requesting the bill back from the Secretary of State for purposes of a veto override. Once the Legislative Assembly has the bill in its possession, the Legislative Assembly can exercise the constitutional authority of the Legislative Assembly to override vetoes by the Governor under Section 9 of Article V.

Taken to its logical conclusion, the position of N.D. Op. Att'y Gen. No. L-16 (1991) leads to an absurd result in which the Legislative Assembly could not override a veto made after the Legislative Assembly adjourned and could only pass a new bill in a special or reconvened session. However, if the Legislative Assembly passes a new bill, that same bill could be vetoed by the Governor and the Legislative Assembly yet again could not override the veto. This potentially perpetual cycle of the Legislative Assembly attempting to re-enact legislation previously vetoed by the Governor, only to have the Governor once again veto the legislation after the reconvened session of the Legislative Assembly adjourns, would create an absurd result of effectively removing the legislative branch's power

to override a veto. Taking the 1991 Attorney General Opinion at face value, the only way the Legislative Assembly could retain its veto override power would be for the Legislative Assembly to gavel in for 3 legislative days after the final bill passed by the Legislative Assembly is transmitted to the Governor.

Special Session

The authority of the Governor to call a special session is found under Section 7 of Article V of the Constitution of North Dakota, which provides, "[t]he governor may call special sessions of the legislative assembly."

In recent statements, the Governor has characterized this veto error to the media as "an honest mistake" and publicly stated that, if needed, he would "call the Legislature back to ensure the appropriate funding is delivered." Additionally, the Governor stated, "[w]e inadvertently made the mistake, which is on us and our office." Because the error resulting in the veto of $35 million in funding approved by the Legislative Assembly arose through the actions of the executive branch, one could argue the onus is on the Governor to convene a special session of the North Dakota Legislative Assembly to address the funding shortfall.

Reconvened Session

The authority of the Legislative Assembly to convene is found in Section 7 of Article IV of the Constitution of North Dakota, which provides in part:

> No regular session of the legislative assembly may exceed eighty natural days during the biennium. The organizational meeting of the legislative assembly may not be counted as part of those eighty natural days, nor may days spent in session at the call of the governor or while engaged in impeachment proceedings, be counted. Days spent in regular session need not be consecutive, and the legislative assembly may authorize its committees to meet at any time during the biennium. As used in this section, a "natural day" means a period of twenty-four consecutive hours.

Section 54-35-16, enacted in 1995, authorizes the Legislative Management to issue a call for the Legislative Assembly to convene after it has adjourned, regardless of whether the motion to close the regular session of the Legislative Assembly was to recess to a time certain, adjourn to a time certain, or adjourn sine die. The length of a session called by the Legislative Management may not exceed the number of natural days available under the Constitution which have not been used by that Legislative Assembly.

The Legislative Assembly has 6 remaining legislative days that may be used to reconvene. The Legislative Assembly historically has kept additional days to provide flexibility to address unforeseen issues or actions taken at the federal level and to allow sufficient time to collaborate and pass bills. Although the use of one of the remaining legislative days painstakingly saved during the regular legislative session to convene for the purpose of correcting a mistake of the Governor's office may not be the best use of the remaining days of the 2025 Legislative Assembly, the Legislative Management has the authority to do so. The Legislative Assembly already has noted there may be a need to address federal funding issues that may arise. If any of the remaining 6 legislative days are used to override the veto, less days are available to address possible budget shortfalls, redistricting litigation, or other emergencies.

CONCLUSION

Precedent supports the assertion the bill, not the Governor's objection letter, is the official veto document. To conclude otherwise by allowing the Governor and the Attorney General to designate the language vetoed through a subjective interpretation of the intent of the statements in an objection letter would come at a steep risk. If an objection letter is considered the controlling veto document, the absence of any legal requirement mandating a governor to explicitly state in an objection letter the quoted language to be removed poses the risk of an objection letter being drafted in an intentionally vague manner to allow the veto markings on the bill to be later disregarded based on a subjective interpretation of intent. For the Legislative Assembly to exercise its veto override power effectively, it must be able to rely on an objective document that clearly illustrates ***what*** was vetoed. This document is the marked-up copy of the bill. With the content of the vetoed language clearly identified, the Legislative Assembly's decision on whether to override the veto is then informed by the Governor's statement of ***why*** the veto was executed.

Reading the marked-up copy of Senate Bill No. 2014 as the official veto document, the large red "X" covering all of Section 7 unambiguously states the entire section is subject to the veto, not just certain portions of Section 7. As a result, the $35 million appropriated in Section 7 may not be distributed to address homelessness issues in the State without further action by the Legislative Assembly. To take further action, the Legislative Assembly would need to reconvene to use saved legislative days or the Governor would need to use his constitutional authority to convene a special session of the Legislative Assembly.

Because the Governor has characterized this veto as "an honest mistake" and publicly stated he would "call the Legislature back to ensure the appropriate funding is delivered" the prudent remedy would be for the Governor to call a special session to allow the Legislative Assembly to remedy the veto error. It is in the best interest of the state to allow the policymaking branch of government to retain its responsibly saved legislative days to address unforeseen policy issues that may arise between now the start of the 2027 legislative session, rather than using those days to correct an error made by the executive branch. Engaging in interpretive gymnastics to attempt to disregard the clear markings on the face of the bill to provide a quick fix for an admitted error will have the effect of establishing a precedent that may lead to future unintended and detrimental consequences for both the legislative and executive branch.

ATTACH:1