VETOED MEASURES

CHAPTER 515

SENATE BILL NO. 2015

(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget, the superintendent of public instruction, the state board of higher education, and the department of human services; to create and enact a new section to chapter 48-01.2, a new subdivision to subsection 1 of section 54-10-14, and a new section to chapter 54-27 of the North Dakota Century Code and a new section to House Bill No. 1185, a new section to Senate Bill No. 2083, and a new subdivision to subsection 6 of section 1 of House Bill No. 1438, as approved by the sixty-second legislative assembly, relating to public improvement bids and contracts, entities required to be audited by the state auditor, a report on federal grants, an emergency declaration, and an employer's prohibition on firearm possession; to amend and reenact section 39-02-03, subdivision a of subsection 2 of section 54-03-20, and sections 54-16-03.1 and 54-35-02.3 of the North Dakota Century Code and sections 1 and 8 of House Bill No. 1014 and sections 1 and 8 of House Bill No. 1020, as approved by the sixty-second legislative assembly, relating to the powers and duties of the director of the department of transportation, housing reimbursement for members of the legislative assembly, petitions to the emergency commission, legislative management employee benefits programs committee, appropriations for the industrial commission, and appropriations to the branch research centers; to provide an exemption; to provide for various transfers; to provide legislative intent; to provide for legislative management reports; and to declare an emergency.

VETO

May 18, 2011

The Honorable Drew Wrigley
Senate Chambers
President of the Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2015

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 12, 25, and 31 of Senate Bill 2015 and returned it to the Senate.

Section 12 is vetoed because it would infringe upon the executive authority of the Governor to submit proposed legislative initiatives to the Legislature. Article V, Section 7 of the North Dakota Constitution states: the "governor shall present information on the condition of the state, together with any recommended legislation, to every regular and special session of the legislative assembly." "As all of the

branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others." City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969). The primary function of the executive branch is to manage the affairs of the state, including the careful budgeting of resources. This budgeting process necessarily involves making recommendations to the Legislature that contain executive branch assessments of the amount and preferred allocation of resources needed to fulfill legislative policies. Section 12 would impermissibly mandate the manner in which the executive carries out its constitutional responsibilities and is therefore unconstitutional.

Section 25 is vetoed because it would require OMB approval of any change order or expenses which exceed the bid amount on state contracts. Large projects have numerous change orders, ranging from insignificant adjustments having little fiscal impact to significant changes that warrant more review and oversight. If this section were enacted, OMB would have to review and approve hundreds of funding requests each quarter that would typically be handled by statewide elected officials and agency directors. This process would be inefficient, ineffective, and unworkable, with the inevitable result of project delays and increased costs for all parties. With respect to higher education projects, certain requirements addressing this issue have been established in other provisions of the North Dakota Century Code. For example, Senate Bill 2323, enacted during the 2011 legislative session, requires monthly variance reports to the Director of the Office of Management and Budget for higher education construction projects budgeted for over $250,000. These monthly reports are made available to the Budget Section upon request. The variance reports must include the amount of any change orders, as well as the amount of any potential or anticipated change orders. Reporting change orders in this manner retains sufficient oversight over projects while not imposing needless administrative burdens that Section 25 would have required.

Section 31 is vetoed because it requires the Department of Commerce to seek emergency commission and budget section approval before awarding or spending funds for tourism infrastructure grants. The Supreme Court has provided that except "as otherwise provided in the constitution, the Legislature may not delegate legislative powers to others, including a subset of its members…." Kelsh v. Jaeger, 641 N.W.2d 100 ¶21 (N.D. 2002). The Legislature may delegate certain powers to ascertain fact; however, the full legislature "must set forth reasonably clear guidelines to enable the appropriate body to ascertain the facts." Id. Section 18 of Senate Bill 2057 contains the $750,000 appropriation for tourism infrastructure grants, stating only that "[t]he department of commerce shall use $750,000 of these funds for tourism infrastructure grants." This delegation of decision-making authority to the budget section would constitute an impermissible delegation of legislative powers to a subset of the Legislature's members.

For these reasons, I have vetoed Sections 12, 25, and 31 of Senate Bill 2015.

Sincerely,

Jack Dalrymple
Governor

Disapproved May 18, 2011
Filed May 18, 2011

NOTE: For the full text of Senate Bill No. 2015, including sections 12, 25, and 31, see chapter 41.

CHAPTER 516

SENATE BILL NO. 2020

(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to create and enact a new subsection to section 11-37-02 and a new section to chapter 61-04 of the North Dakota Century Code, relating to joint powers entities and commerce authorities and metering certain water sources; to amend and reenact subsection 2 of section 11-37-03, section 11-37-04, subsection 8 of section 11-37-06, and subsection 1 of section 11-37-08 of the North Dakota Century Code and section 7 of chapter 20 of the 2009 Session Laws, relating to conversion of joint powers entities to commerce authorities and additional powers of commerce authorities and Fargo flood control project funding; to provide exemptions; to provide a transfer; to repeal section 5 of chapter 535 of the 1999 Session Laws, relating to pledge of revenues from the Grand Forks corporate center; to provide legislative intent; to provide for retroactive application; to provide for application; to provide an expiration date; and to declare an emergency.

VETO

May 18, 2011

The Honorable Drew Wrigley
President, ND Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2020

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 9 and 15 of Senate Bill 2020 and returned it to the Senate.

Sections 9 and 15 are vetoed because they would enact an unworkable metering regime that is not well suited to serve the needs of the state. The State Water Commission is in the best position to develop and enforce an efficient, effective system of water metering, including sealed meters, regular reporting, periodic compliance checks, and appropriate administrative oversight. The installation of remote metering devices mandates a system that may be more susceptible to tampering or circumvention than more conventional metering and reporting systems. Furthermore, the State Water Commission is the appropriate entity to devise penalties adequate to deter water permit violations and enforce proper use of water meters. Each of these objectives may be achieved administratively without the need for the $500,000 of project funds specified in Section 9, an amount I am concerned may grow significantly if a remote metering program were expanded statewide.

Therefore, sections 9 and 15 of Senate Bill 2020 are vetoed because the State Water Commission will be better able to administer an effective, efficient statewide water meter system that will best serve the public long term.

Sincerely,

Jack Dalrymple
Governor

Disapproved May 18, 2011
Filed May 18, 2011

NOTE: For the full text of Senate Bill No. 2020, including sections 9 and 15, see chapter 46.