

# VETOED MEASURES

## CHAPTER 576

### HOUSE BILL NO. 1012

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

### DEPARTMENT OF TRANSPORTATION

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to provide for legislative council studies; to provide for transfers; to provide a contingent continuation of the single state registration system; to create and enact a new section to chapter 8-11.1 and a new section to chapter 24-02 of the North Dakota Century Code, relating to midwest interstate passenger rail commission dues and authority of the director of the department of transportation to join the multistate highway transportation agreement; to amend and reenact sections 39-04.2-04 and 39-29-10, the new subsection to section 57-40.3-04 of the North Dakota Century Code as created by section 4 of House Bill No. 1393, as approved by the sixtieth legislative assembly, and section 57-40.3-10 of the North Dakota Century Code, relating to distribution of public transportation funds, the operation of off-highway vehicles, motor vehicle excise tax exemptions for tribal members, and motor vehicle excise tax collections; to provide an expiration date; and to declare an emergency.

VETO

May 9, 2007

The Honorable Jeff Delzer  
Speaker.  
North Dakota House of Representatives  
State Capitol  
Bismarck, North Dakota 58505

Item Veto of Section 12 in HB 1012

Dear Speaker Delzer:

I signed House Bill 1012, the appropriation bill for the Department of Transportation, but veto Section 12 of the bill.

Section 12 of HB 1012 would extend the rights entitled to a member of a federally recognized tribe living on a reservation in North Dakota to any tribal member in the country, regardless of the individual's domicile.

While the motor vehicle excise tax applies to all North Dakotans, the state's taxation authority has limits in transactions involving a federally enrolled tribal member. The limit largely depends on geography. This unique exception to tax individuals differently is based primarily on geographic differences and not only tribal affiliation.

According to the United States Supreme Court, tribal tax immunity jurisprudence and the doctrine of tribal sovereignty have a significant geographical component. E.g. Waggoner v. Prairie Band Potawatomi Nation, 126 S. Ct. 676 (2005). As the Court pointed out, Native Americans going beyond reservation boundaries have generally been held subject to nondiscriminatory taxation under state law otherwise applicable to all citizens of the State. E.g. id.

Section 12 of HB 1012 would remove any geographical component to tribal tax jurisprudence and extend a narrowly tailored right that applied exclusively to tribal members transacting business on a reservation to any transactions outside the reservation boundaries. The effect of this extension could cause similarly situated neighbors to be treated differently based solely on their race.

Section 12 of HB 1012 would create inequity and open an exception that would be overly broad and exempt certain individuals from a law that is otherwise blind to a person's nationality. North Dakota's tax laws should respect tribal sovereignty but be applied equitably and without regard to race when tribal immunity based on geography is not involved.

For these reasons, I disapprove and veto Section 12 of HB 1012.

Sincerely,

John Hoeven  
Governor

Disapproved May 9, 2007

Filed May 9, 2007

NOTE: For the full text of House Bill No. 1012, including section 12, see chapter 12.

# CHAPTER 577

## SENATE BILL NO. 2047

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System Board)

## DEFERRED COMPENSATION AUTOMATIC ENROLLMENT

AN ACT to amend and reenact sections 54-52.2-01, 54-52.2-02, and 54-52.2-05 of the North Dakota Century Code, relating to automatic enrollment of employees in the deferred compensation program under the public employees retirement system.

### VETO

May 9, 2007

The Honorable Jack Dalrymple  
President of the Senate  
Senate Chambers  
State Capitol  
Bismarck, North Dakota 58505

RE: SB 2047

Dear President Dalrymple:

I hereby veto Senate Bill 2047 and return it unsigned.

Senate Bill 2047 provides that new state employees would be automatically enrolled in a self-directed 457 Plan, the public sector equivalent of a 401(k) Plan. Under provisions of the bill, the employee would have 30 days from the beginning of employment to fill out a prescribed form "opting out" of the plan.

Although I approve of measures to encourage employees to save for retirement, I have concerns regarding this bill. The bill authorizes the State to withhold a portion of a new employee's salary without his or her prior consent to do so. It requires the action of the new employee to prevent the involuntary withholding of a portion of their salary. A new employee should be treated the same as an existing employee in determining how he or she wants to plan for retirement.

The State offers retirement plans to help its employees save for their retirement, but it should not withhold their salary without their consent and subject them to a penalty if they request out of the plan after they have been automatically enrolled. Individuals should be free to determine in the first instance how best to establish their savings.

Because SB 2047 withholds employees' compensation without their active consent and treats new employees different than existing employees, I have vetoed the legislation.

Sincerely,

John Hoeven  
Governor

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

**SECTION 1. AMENDMENT.** Section 54-52.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.2-01. Deferred compensation program for public employees - Contract.**

Except for an employee employed by an institution under the control of the state board of higher education or the North Dakota university system board office who is eligible for membership in the teachers' insurance and annuity association of America-college retirement equities fund (TIAA-CREF), a participating employer shall automatically enroll employees first employed with the state on or after August 1, 2007, in the deferred compensation program, effective the first day of the month following the employee's first full month of employment with the state, unless the employee executes and files with the public employees retirement system board a prescribed form for opting out of the automatic enrollment within thirty days of beginning employment. The state shall withhold twenty-five dollars per month from the compensation of each employee subject to the automatic enrollment provided for in this section, and the state shall forward those moneys to the board for deposit into an investment option selected by the board for each employee. The state or any county, city, or other political subdivision may, by contract, otherwise agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, fund a deferred compensation program for the employee. The deferred compensation program may consist of a contract, purchase, or investment in a fixed or variable life insurance or annuity contract from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, a savings account at a federally insured financial institution or the Bank of North Dakota, an account with or managed by a dealer registered under chapter 10-04, or any combination of contracts or accounts authorized by this section, as specified by the employee. The public employees retirement board shall specify methods of payment of deferred compensation funds to be selected by individual employees. That board shall determine the number of employees participating in a deferred compensation program necessary to qualify for automatic payroll deduction.

**SECTION 2. AMENDMENT.** Section 54-52.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.2-02. Deferred employee's compensation - Agreements.**

The public employees retirement board, acting on behalf of each state agency, department, board, commission, or institution, may enter into contractual agreements with employees of a state agency, department, board, commission, or institution, including employees who were automatically enrolled in the deferred compensation program pursuant to section 54-52.2-01, on behalf of the state to defer any portion of that employee's compensation allowed under section 457 of the Internal Revenue Code [26 U.S.C. 457].

**SECTION 3. AMENDMENT.** Section 54-52.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.2-05. Administrators authorized to make payments or investments.** Notwithstanding any other provision of law to the contrary, those persons designated to administer the deferred compensation program ~~are hereby authorized to~~ may make payments or investments under the deferred compensation program ~~as specified by the employee~~ in accordance with section 54-52.2-01. The payments or investments may not be construed to be a prohibited use of the general assets of the state, county, city, or other political subdivision.

Disapproved April 26, 2007

Filed April 26, 2007