

VETOED MEASURES

CHAPTER 506

HOUSE BILL NO. 1156

(Representatives Klemin, Frantsvog, Schmidt)
(Senators Andrist, Carlisle, Dotzenrod)

AN ACT to amend and reenact sections 11-09.1-03 and 11-09.1-04 and subsection 6 of section 11-09.1-04.1 of the North Dakota Century Code, relating to county home rule.

VETO

April 3, 2013

The Honorable Bill Devlin
Speaker of the House
House Chambers
State Capitol
Bismarck ND 58505

Dear Speaker Devlin:

Pursuant to Article V, Section 9, of the North Dakota Constitution, I have vetoed House Bill 1156 and returned it to the House.

House Bill 1156 is vetoed because a public vote on a home rule charter is an important decision for county residents and a very serious policy question. Home rule charters have a tendency to involve the incurring of debt and increased taxation to service that debt. These important questions should be voted upon at an election where a substantial turnout of eligible voters is likely to occur. A county special election would undoubtedly result in an extremely low turnout of voters. A question as important as the adoption of a home rule charter should take place at an election where a substantial number of voters will participate.

Therefore, I am vetoing House Bill 1156.

Sincerely,

Jack Dalrymple
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-03. Submission of charter to electors.

At least sixty days, but no more than two years, after submission of the charter to the board of county commissioners, the board of county commissioners shall submit the proposed charter ~~must be submitted~~ to a vote of the qualified electors of the county at a special election called by the board or at a primary or general election. If the proposed charter has been submitted to a vote of the qualified electors of the county, the board of county commissioners may call a special election to resubmit the proposed charter to a vote of the qualified electors of the county, and the special election must take place at least sixty days after the call for the special election. The board may amend the proposed charter prior to its resubmission to the electors.

SECTION 2. AMENDMENT. Section 11-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-04. Ratification by majority vote - Supersession of existing charter and conflicting state laws - Filing of copies of new charter.

If a majority of the qualified electors voting on the charter at the election vote in favor of the home rule charter, it is ratified and becomes the organic law of the county on the first day of January or July next following the election effective date specified in the charter or sixty days after the election, whichever is later, and extends to all its county matters. The charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. The charter may not authorize the enactment of ordinances to diminish the authority of a board of supervisors of a township or to change the structure of township government in any organized civil township, without the consent of the board of supervisors of the township. No ordinance of a home rule county shall supersede section 49-22-16. One copy of the charter as ratified and approved must be filed with the secretary of state; one with the recorder for the county, unless the board of county commissioners designates a different official; and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

SECTION 3. AMENDMENT. Subsection 6 of section 11-09.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

6. If a majority of the qualified electors voting in each county on the charter votes in favor of the multicounty home rule charter, it is ratified and becomes the organic law of the multicounty area on the first day of January following the election or other effective date specified in the charter or sixty days after the election, whichever is later.

Disapproved April 3, 2013
Filed April 22, 2013

CHAPTER 507**HOUSE BILL NO. 1209**

(Representatives Kreidt, Heller, Rohr, Schmidt, Wieland)
(Senators J. Lee, Unruh)

AN ACT to amend and reenact section 50-24.5-10 of the North Dakota Century Code, relating to compensation for top management personnel of basic care facilities.

VETO

April 11, 2013

The Honorable Bill Devlin
Speaker of the House
House Chambers
State Capitol
Bismarck ND 58505

Dear Speaker Devlin:

Pursuant to Article V, Section 9, of the North Dakota Constitution, I have vetoed House Bill 1209 and returned it to the House.

I hereby veto House Bill 1209 because the enhanced salary reimbursement proposed in the measure is not currently funded in the budget for the Department of Human Services, and there is no indication that it will be funded by either the House or the Senate. The proposal itself, which would allow reimbursement for higher compensation for top management personnel of a basic care facility, is a reasonable proposal, considering the difficulty of retaining good managers in our current economy. However, it is essential that any spending proposal have an identified source of funds. There is still time during this legislative session to amend the necessary language and the required funding of \$435,481 in the budget bill for the Department of Human Services. That decision remains with the legislature.

Therefore, I am vetoing House Bill 1209.

Sincerely,

Jack Dalrymple
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.5-10 of the North Dakota Century Code is amended and reenacted as follows:

50-24.5-10. Compensation for top management personnel - Department to adopt emergency rules.

1. Notwithstanding the requirements of subsection 2 of section 28-32-03, the department of human services has the authority to ~~create~~adopt emergency rules related to the compensation for top management personnel of a basic care facility combined with a hospital.
2. Except for a person with at least five percent ownership, a person on the governing board, or any person related within the third degree of kinship to top management personnel, the department of human services may not limit compensation for top management personnel of a basic care facility.

Disapproved April 11, 2013

Filed April 22, 2013

CHAPTER 508**HOUSE BILL NO. 1015**

(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; to create and enact a new subsection to section 54-44.1-18 of the North Dakota Century Code, relating to political subdivisions submitting budget information to the state budget database website; to amend and reenact section 14-03.2-05 as created by section 1 of House Bill No. 1128, as approved by the sixty-third legislative assembly, section 15.1-27-25, subsection 1 of section 23-35-07, subsection 4 of section 23-35-08, subsection 2 of section 41-09-87, sections 48-10-02 and 54-44.1-04, and subsection 1 of section 57-02-08.1 as amended by Senate Bill No. 2171, and subdivision e of subsection 1 of section 62.1-04-03 as amended by House Bill No. 1327, as approved by the sixty-third legislative assembly, of the North Dakota Century Code and section 12 of House Bill No. 1012, section 1 of House Bill No. 1019, section 5 of House Bill No. 1020, sections 5, 6, and 7 of House Bill No. 1358, and section 15 of Senate Bill No. 2018, as approved by the sixty-third legislative assembly, relating to marital agreement requirements, distributions of royalties, health district budgets, the capitol building fund, Uniform Commercial Code filings, agency budget requests, homestead tax credit, concealed weapons permits, grants to a jurisdiction adjacent to an Indian reservation, appropriations for defraying the expenses of the parks and recreation department, loans to the western area water supply authority, transportation funding distributions, and research North Dakota grants; to provide exemptions; to provide an exception to general fund transfers to the budget stabilization fund; to provide for the use of funds by the department of human services; to provide for various transfers; to provide legislative intent; to provide for a budget section report; to provide for legislative management studies; to provide an effective date; to provide a contingent effective date; and to declare an emergency.

VETO

May 23, 2013

The Honorable Bill Devlin
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Dear Speaker Devlin:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed items in Sections 13 and 14 and all of Sections 15 and 25 of House Bill 1015 and returned it to the House.

I have vetoed that portion of Section 13 in the second paragraph that reads "The office of management and budget, subject to budget section approval, may adjust the

market policy point based on an estimated inflationary factor during the 2013-15 biennium." This sentence is vetoed because the budget section has no constitutional role in the administration and execution of the compensation plan as adopted by the legislative assembly. This responsibility is a purely executive function not appropriate for ratification by the budget section of the legislative assembly. See City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969) ("[T]here is an implied exclusion of each branch from the exercise of the functions of the others."); NDAG 2007-L-08.

I have vetoed that portion of Section 14 beginning with "PILOT PROJECT" in the section title and continuing through the end of the second-to-last sentence, leaving only the last sentence of Section 14. This item is vetoed because it constitutes an unconstitutional insertion of the Emergency Commission into the management of the state's compensation program. The administration of salary dollars within the limits of legislative appropriations is properly reserved to the executive branch agency directors. The vetoed pilot program would grant the Emergency Commission, a majority of which are legislators, broad discretion to determine whether an agency had provided "documentation justifying the need" for the salary dollars in the accrued leave line. This broad, discretionary review and approval of a purely executive function violates the principle of constitutional separation of powers and is clearly impractical, considering the numerous Emergency Commission meetings that would be required to review and approve each agency's use of this last share of salary dollars. The last sentence of Section 14, which is not vetoed, confirms that accrued leave is simply a type of salary to which state employees are entitled by virtue of their employment. As a result of this item veto, both the accrued leave and salary and wages lines remain available for payment of salaries by any agency. Although the proposed pilot project is eliminated by this item veto, my intention is to direct agencies to rely first and foremost on the salary line and not access the accrued leave line for salary until necessary.

Section 15 is vetoed because it directs the office of management and budget to transfer funds at the request of the Racing Commission from the breeders' fund to the purse fund and racing promotion fund in conflict with N.D.C.C. Section 53-06.2-11, which states: "The commission may not transfer money among the funds." This kind of policy change should be brought forward by the Racing Commission itself and have a full legislative hearing where those who rely on the breeders' fund have an opportunity to be heard. North Dakota's horse breeders rely on the breeders' fund and it should not be accessed for racing promotion or other purposes without full consideration of their objections.

Section 25 is vetoed because a limitation of 60 days on the permissible extension of the July 15th filing date does not provide adequate time to prepare a budget proposal for agencies that experience circumstances justifying a delayed filing schedule. Such circumstances include: uncertainty of federal funding; variability in case load numbers for human service programs; variability in trends of inmate headcounts; unpredictable approvals in federal transportation funding programs; the importance of having more current, accurate revenue projections for water project appropriations from the resources trust fund; availability of fall enrollment numbers for estimating the appropriation necessary to cover the per-student payments for the biennium; and other similar situations.

Sincerely,

Jack Dalrymple
Governor

Disapproved May 23, 2013
Filed May 23, 2013

NOTE: For the full text of House Bill No. 1015, including sections 15 and 25, see chapter 15.