

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

LEGISLATIVE MANAGEMENT

Wednesday, June 21, 2017
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 2:45 p.m.

Members present: Senators Ray Holmberg, Kelly M. Armstrong, Joan Heckaman, Jerry Klein, Erin Oban, Ronald Sorvaag, Rich Wardner; Representatives Al Carlson, Bill Devlin, Mike Lefor, Scott Louser, Jim Schmidt, Jay Seibel

Members absent: Senator Donald Schaible; Representatives Larry Bellew, Kathy Hogan, and Corey Mock.

Others present: John Bjornson, Allen H. Knudson, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

It was moved by Representative Carlson, seconded by Senator Wardner, and carried on a voice vote that the minutes of the June 13, 2017, meeting be approved as distributed.

DISCUSSION OF RECONVENING OF THE 65TH LEGISLATIVE ASSEMBLY

Chairman Holmberg called on Mr. John Bjornson, Legal Division Director, Legislative Council, for comments regarding the opinion of the Attorney General issued in response to questions submitted by Representative Carlson and Senator Wardner. He distributed three documents--[Analysis of Attorney General Opinion Regarding Item Vetoes](#), [Item Veto Authority](#), and [Attorney General Letter Opinion 2017-L-04](#).

Mr. Bjornson said the Legislative Council staff does not agree with all portions of the opinion issued by the Attorney General. He said the Legislative Council staff was particularly concerned the opinion may result in the Governor being able to veto single words or phrases, which previous Attorney General opinions and the North Dakota Supreme Court have indicated is not permitted. Even in instances in which the Attorney General opinion indicated an item veto was ineffective, he said, there are concerns with respect to the failure of the opinion to address the question of whether it was permissible to selectively strike words or phrases from a bill. He said the opinion also does not make clear the result of the determinations of the Attorney General. For example, he said, the veto of the \$300,000 portion of an appropriation of \$2.25 million was found to be proper by the Attorney General. He said the Legislative Council staff contends the portion of the appropriation vetoed was a condition on the appropriation and may not be vetoed without vetoing the entire appropriation. Even if the veto were authorized, he said, the question remains whether the \$300,000 should be removed from the total appropriation.

Mr. Bjornson said the two issues of most concern with respect to the opinion appear to be whether a veto may remove funding in a section of the bill which sets conditions on the use of the appropriation if the total appropriation in another section of the bill was not vetoed, and whether the Governor may selectively delete portions of sentences to change the intent of legislation. He said previous Attorney General opinions and judicial decisions appear to be clear on prohibiting those practices. With respect to the selective deletion of words and phrases, he said, permitting such a practice could lead to a governor removing a word like "not" from a sentence prohibiting an activity or a use of funds, and thereby permitting the activity or the use of funds contrary to the intent of the Legislative Assembly. He said allowing that practice would authorize a governor to legislate or create new law which is a function of the Legislative Assembly and which would constitute a violation of the separation of powers doctrine.

Senator Wardner asked if the legislative branch were to litigate the vetoes what the significant issues would be. Mr. Bjornson said the Governor's ability to selectively strike words or portions of a sentence would be at the top of the list. He said the litigation could be done in house or outside counsel could be engaged and the case probably could be challenged directly at the Supreme Court.

Senator Armstrong said if the Legislative Assembly were to meet to override the vetoes, that would not address the issues regarding the Governor's veto authority.

Representative Carlson distributed information ([Appendix B](#)) relating to a statement by Governor Burgum regarding the opinion. He said the committee needs to defend the legislative branch of government and the long-term effect of these vetoes. He said the committee appears to have four options:

1. To accept the vetoes and move on.
2. To call for the Legislative Assembly to reconvene for the purpose of veto override, which he understands is probably not going to happen.
3. To ask the Attorney General for more clarification, which he feels would be delayed and may not be helpful.
4. To proceed with litigation to have the Supreme Court provide direction on the issues at hand. He said he prefers this option.

Representative Lefor asked what was meant in the opinion by "the veto is ineffective"? Mr. Bjornson said the impact of that language is unclear.

The committee discussed potential litigation. Senator Heckaman said she would like more information regarding what specifically would be litigated. Senator Wardner said there needs to be some time for planning and preparing the lawsuit. Chairman Holmberg said it would not work for the committee to build the case itself. Representative Carlson said the staff should identify the issues and return to the committee with a recommendation on how to proceed. Chairman Holmberg said if outside counsel is required, the committee will need to authorize that expenditure. He said there is a history of legislator attorneys trying a case against the Lieutenant Governor. Representative Carlson said the advice of senior legislators who are attorneys also should be received.

It was moved by Senator Wardner, seconded by Representative Carlson, and carried on a roll call vote that the Legislative Management authorize the Legislative Council to proceed with litigation relative to the Governor's post session vetoes, including identifying the specific areas to be challenged and other related items, and request the Legislative Council to report to the Legislative Management at a future meeting. Senators Holmberg, Armstrong, Heckaman, Klein, Oban, Sorvaag, and Wardner and Representatives Carlson, Devlin, Lefor, Louser, Schmidt, and Seibel voted "aye." No negative votes were cast.

Chairman Holmberg announced that the committee's action would preclude the call for the reconvening of the 65th Legislative Assembly for veto override considerations.

COMMITTEE CHAIRMANSHIP

Representative Carlson said he would like to revisit the issue of selection of chairmen of interim committees for the 2017-18 interim. He said there are two education-related committees and both are chaired by Senators. He said the House chairman of the Education standing committee should serve as chair of the Education Policy Committee. He said he also is concerned that Senator Oban has a potential conflict of interest as her husband is the Executive Director of North Dakota United, the union representing the state's teachers.

It was moved by Representative Carlson, seconded by Representative Schmidt, and failed on a roll call vote that the Legislative Management change the chairman of the Education Policy Committee to Representative Mark S. Owens. Representatives Carlson, Devlin, Lefor, Louser, Schmidt, and Seibel voted "aye." Senators Holmberg, Armstrong, Heckaman, Klein, Oban, Sorvaag, and Wardner voted "nay."

Chairman Holmberg said at the last meeting, the Legislative Management reappointed Representative Andrew G. Maragos to the Committee on Protection and Advocacy and he has reached the 6-year statutory limit on serving on the committee.

It was moved by Representative Carlson, seconded by Representative Seibel, and carried on a roll call vote that Representative Karen Karls be appointed to the Committee on Protection and Advocacy. Senators Holmberg, Armstrong, Heckaman, Klein, Oban, Sorvaag, and Wardner and Representatives Carlson, Devlin, Lefor, Louser, Schmidt, and Seibel voted "aye." No negative votes were cast.

No further business appearing, Chairman Holmberg adjourned the meeting at 3:50 p.m.

Jim W. Smith
Director

ATTACH:2