

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**LEGISLATIVE MANAGEMENT**

Thursday, September 28, 2017  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 8:00 a.m.

**Members present:** Senators Ray Holmberg, Joan Heckaman, Jerry Klein, Erin Oban, Donald Schaible, Ronald Sorvaag, Rich Wardner; Representatives Larry Bellew, Al Carlson, Bill Devlin, Kathy Hogan, Mike Lefor, Scott Louser, Corey Mock, Jim Schmidt, Jay Seibel

**Member absent:** Senator Kelly M. Armstrong

**Others present:** John Bjornson, Allen Knudson, Brady Mueller, and Claire Ness, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Carlson, seconded by Representative Mock, and carried on a voice vote that the minutes of the June 21, 2017 meeting be approved as distributed.**

**DISCUSSION OF POTENTIAL LITIGATION RELATING TO LINE ITEM VETOES**

Chairman Holmberg said the next item on the agenda is attorney consultation regarding potential litigation relating to line item vetoes. He said this item may be discussed in executive session pursuant to North Dakota Century Code Section 44-04-19.1. He said at this time, a motion would be in order to proceed with the attorney consultation in executive session rather than in a public session.

**It was moved by Representative Carlson, seconded by Representative Schmidt, and carried on a roll call vote that the Legislative Management hold an executive session for the purpose of attorney consultation regarding litigation relating to line item vetoes.** Senators Holmberg, Heckaman, Klein, Oban, Schaible, Sorvaag, and Wardner and Representatives Carlson, Hogan, Lefor, Louser, Mock, Schmidt, and Seibel voted "aye." Representatives Bellew and Devlin voted "nay."

The Legislative Management went into executive session from 8:10 a.m. to 9:12 a.m. and reconvened at 9:25 a.m. During the executive session, the Legislative Management consulted with outside legal counsel and the Legislative Council staff regarding potential litigation relating to line item vetoes, including receipt of advice regarding legal strategies and strengths and weaknesses of legal arguments and questions.

Chairman Holmberg cautioned committee members to not talk about lawsuit issues discussed in the executive session.

In response to a question from Representative Carlson, the Director of the Legislative Council said the lawsuit costs were not budgeted because it was not anticipated during the legislative session. He said he is confident savings will accrue during the quarter ending September 30, 2017, to cover the potential legislative costs of the lawsuit.

Representative Carlson said the lawsuit is necessary to protect the integrity of the legislative institution and separation of powers. He said the Governor cannot be allowed to veto words and change the intent of bills passed by the Legislative Assembly or veto directions on appropriations without vetoing the related spending.

Senator Wardner distributed a sheet ([Appendix B](#)) he prepared listing the Governor's vetoes related to the 2017 legislative session. He said when all is said and done, there are only a couple of issues vetoed that he takes issue with, from a constitutional perspective, and does not believe a lawsuit would be worth pursuing.

Representative Hogan said she has studied the vetoes and feels the vetoes threaten the legal authority of the Legislative Assembly and the roles of the Governor and the Legislative Assembly need to be clarified.

In response to a question from Senator Sorvaag, Chairman Holmberg said another meeting of the Legislative Management would be held to consult with outside counsel after the counsel has defined the areas to be litigated.

Senator Oban said she generally agrees with Representative Carlson relating to protecting the legislative institution, but needs to weigh that against spending the time and resources on the lawsuit.

Representative Mock said he appreciates Senator Wardner's comments and concerns, but feels the Legislative Assembly needs to know and obtain a certainty with regard to the issues being discussed. He said the issues could ultimately affect his constituents in the future.

Representative Carlson discussed the process the committee has been through, which has got them to this point. He said the committee cannot allow the loss of legislative authority to happen without a challenge.

Representative Lefor said the committee would be doing a disservice to the state if they let this issue go unchallenged and remain unclear. He said he supports proceeding with the litigation.

Representative Schmidt said it is important to define the separation of powers. He said the Legislative Assembly needs a long-term decision, and the Attorney General's opinion is not a long-term decision. He said he supports the litigation.

**It was moved by Representative Carlson, seconded by Representative Schmidt, and carried on a roll call vote that the Legislative Management proceed with litigation relating to the line item vetoes.** Senators Heckaman, Schaible, and Sorvaag and Representatives Bellew, Carlson, Devlin, Hogan, Lefor, Louser, Mock, Schmidt, and Seibel voted "aye." Senators Holmberg, Klein, Oban, and Wardner voted "nay."

**It was moved by Representative Carlson, seconded by Representative Mock, and carried on a roll call vote that the Legislative Council staff be authorized to pay costs related to today's attorney consultation regarding the litigation relating to the line item vetoes and be directed to work with the outside attorneys to develop a contract and provide any necessary assistance related to the litigation.** Senators Holmberg, Heckaman, Klein, Oban, Schaible, Sorvaag, and Wardner and Representatives Bellew, Carlson, Devlin, Hogan, Lefor, Louser, Mock, Schmidt, and Seibel voted "aye". No negative votes were cast.

No further business appearing, Chairman Holmberg adjourned the meeting at 9:56 a.m.

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Jim W. Smith  
Director

ATTACH:2