

1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2290**
2 **SENATE GOVERNMENT and VETERANS AFFAIRS COMMITTEE**
3 **FEBRUARY 5, 2021**

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5 Good morning Chairman Vedaa and members of the Senate Government and
6 Veterans Affairs Labor Committee. My name is David Hogue. I am a North Dakota
7 state senator representing District 38, which includes northwest Minot and the city of
8 Burlington. I appear before your committee to seek support for Senate Bill 2290.

9 SB 2290 was inspired by Covid-19 pandemic. Recall the onset of the pandemic
10 in the February/March period of 2020. The Trump Administration and the US Congress
11 passed a massive “Stimulus” spending bill that authorized the expenditure of not less
12 than \$ 1.25 billion dollars per state on spending proposals with very few restrictions.
13 West Virginia used some its Cares Act dollars to fix potholes and other road projects,
14 South Dakota used some of its Cares Act appropriation to fund the Highway Patrol
15 operating budget. Both expenditures have come under scrutiny from Congress and
16 state regulators. In North Dakota, we took Cares Act dollars to remediate abandoned
17 oil wells. My point is that there were very few meaningful restrictions on the manner in
18 which the states chose to spend the Cares Act money. Even the time sensitive
19 restriction of spend the money by December 31, 2020 has been relaxed so that states
20 are spending that federal appropriation in 2021.

21 The Biden Administration and the new Congress is poised to unveil and pass
22 another Cares Act appropriation. News account generally describe a package that will
23 be even a larger appropriation than the Trump Administration. We don’t know when

1 that money will be disbursed to the states presently. Here's one thing we do know:
2 under the ND Constitution, the Legislative Branch has exclusive, unfettered authority to
3 appropriate public dollars, regardless of how they come into our state's coffers. But
4 what is the North Dakota Legislature to do when it is not in session, as was the case
5 during the onset of the pandemic in March of 2020, and when the Cares Act dollars
6 were disbursed to the states in early summer 2020? SB 2290 proposes an answer.

7 First, on lines 18-19 of page one, and lines 5-6 of page 2, SB 2290 calls a
8 "Executive Branch" timeout. It says that regardless of any dollars that come to the
9 state, if it comes in an increment of more than \$100 million, than the full legislative
10 assembly needs to act to approve that expenditure. I am not at all critical of the
11 executive branch. It found itself in uncharted waters and reacted to the situation it
12 found itself in from the massive appropriation from the federal government. In these
13 unprecedented times, consider that the executive branch appropriated more than a
14 billion dollars without legislative assembly input. Yes, they consulted with key members
15 of the legislative branch as best it could under the time constraints imposed upon it, and
16 yes, the spending measures were rubber stamped by the Budget Section, but that is not
17 a fair, appropriate, or constitutional substitute for what the ND Constitution requires. To
18 not require legislative action for such large appropriations is to abdicate our
19 constitutional obligation.

20 SB 2048 respects the constitutional imperative that the legislative branch
21 appropriate all dollars but it's also practical. It proposes that disbursements under \$ 5
22 million be handled by the Emergency Commission. In other words, we don't want to

1 have a special session every time a small sum comes into our public treasury. That
2 seems a reasonable compromise for our biennial legislative sessions.

3 In between \$ 5 million and \$ 100 million, SB 2048 makes another nod to practical
4 realities. It says that the Budget Section would have the authority to approve spending
5 measures greater than \$ 5 million but less than \$ 100 million. As you know, the Budget
6 Section was formally recognized as a standing and interim committee of the ND
7 Legislature last session. The Budget Section is comprised of about one-third of all the
8 members of the legislative assembly. The members of the Budget Section, as provided
9 in statute, are the appropriations committee members from the house and senate, the
10 house and senate majority and minority leaders (4), the house and senate assistant
11 majority and minority leaders (4), and the speaker of the house.

12 Under an amendment I am offering your committee this morning, the Budget
13 Section would have the authority to amend proposals that come through the executive
14 branch and are passed along to the ND Emergency Commission. In this amendment,
15 we make clear that the legislative branch, acting through the Budget Section, will have
16 the ability to modify spending proposals that fall between \$ 5 million and \$ 100 million
17 that come from the Emergency Commission. This amendment proposal enhances the
18 ability of the legislative branch to meaningfully participate in the process of appropriating
19 federal dollars in a pandemic environment. It also ensures that after we leave Bismarck
20 in late April or early May, we will have the ability to make the spending decisions that
21 the constitution and people of North Dakota expect us to make.

1 Chairman Vedaa and members of the Committee, I'm happy to stand for
2 your questions.

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