

VETOED MEASURES

CHAPTER 586

HOUSE BILL NO. 1273

(Representatives Koppelman, Bellew, Heilman, Heinert, Kasper, Louser)
(Senators Clemens, Larsen, Meyer, Paulson, Vedaa, Wobbema)

AN ACT to create and enact a new section to chapter 16.1-01 of the North Dakota Century Code, relating to the prohibition of ranked-choice and approval voting in elections; and to amend and reenact subsection 7 of section 11-09.1-05 and subsection 9 of section 40-05.1-06 of the North Dakota Century Code, relating to home rule powers.

VETO

April 6, 2023

The Honorable Dennis Johnson
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND

Re: House Bill 1273

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1273 and return it to the House.

House Bill 1273 undermines local control of local political subdivisions exercising their granted powers under home rule charter, specifically prohibiting using an approval voting method or ranked-choice voting method in local elections. This bill also applies restrictions to local elections held by counties, cities and other political subdivisions, regardless of whether they have adopted a home rule charter.

To be clear, under existing law, counties and cities currently do not - and should not - have authority to implement approval voting or ranked-choice methods for state and federal elected office. Home rule authority applies only to local elections.

House Bill 1273 blatantly infringes on local control and the ability of residents in home

rule cities to determine which method of local city election is best for their communities based on the unique aspects of city elections, including those that often have a very large field of candidates elected at-large and not by wards, with no party affiliation and no primary or runoff elections.

Currently, the mantra of "one person, one vote" is often cited in opposition to approval voting. However, in city and county elections using the current plurality voting method in North Dakota, individual voters already often have the opportunity to vote for multiple candidates for two, three, or four seats on a city council or county commission, for example.

Only one political subdivision, the city of Fargo, uses approval voting, having adopted this method through a citywide ballot measure in 2018 approved by 63.5% of those voting on the measure. Ranked-choice voting is not used by any political subdivision in North Dakota.

House Bill 1273 - sponsored by a dozen legislators but none of the 18 legislators who represent Fargo - subverts the will of Fargo residents and overturns the supermajority approval of their 2018 ballot measure five years later.

House Bill 1273 also rolls back the power granted to ill 155 cities - across every North Dakota legislative district - that have adopted a home rule charter under North Dakota Century Code 40-05.1-06 Subsection 9, which states that home rule cities have authority "to provide for all matters pertaining to city elections, except as to qualifications of electors."

Withdrawing this authority after it has already been exercised to carry out the supermajority will of voters is an egregious example of state overreach and demonstrates a lack of respect for local control. Further, instead of taking the opportunity to respect the decision made by over 30,000 Fargo voters and include a grandfather clause in House Bill 1273, the Legislative Assembly is attempting to move the goalposts after the rules were set and legally followed.

To nullify the legitimate votes of tens of thousands of North Dakota citizens and prevent other home rule cities and counties from exercising their home rule authority over elections of their own elected officials is improper and invites legal action against the state.

In North Dakota, we frequently rail against federal overreach that impacts states' rights. If we truly believe in limited government and local control, we can begin by honoring the boundaries, intent and spirit of home rule charters, especially when there is no evidence of any harm having occurred from trusting the residents of cities to have self-determination within the bounds of their home rule charters.

For the reasons stated above, House Bill 1273 is vetoed.
Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

7. Provide for all matters pertaining to county elections, except as to qualifications of electors and the limitations provided in section 2 of this Act.

SECTION 2. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Ranked-choice voting - Approval voting - Prohibition.

1. A ranked-choice voting method that allows voters to rank candidates for an office in order of preference and has ballots cast tabulated in multiple rounds following the elimination of a candidate until a single candidate attains a majority may not be used in determining the election or nomination of any candidate to any local, state, or federal elective office.
2. An approval voting method that allows voters to vote for all the candidates the voter approves of in each race and the candidates receiving the most votes will be elected until all necessary seats are filled in each race may not be used in determining the election or nomination of any candidate to any local, state, or federal elective office.
3. Pursuant to a home rule charter or not, an ordinance enacted or adopted by a county, city, or other political subdivision which is in conflict with this section is void.

SECTION 3. AMENDMENT. Subsection 9 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

9. To provide for all matters pertaining to city elections, except as to qualifications of electors and the limitations provided in section 2 of this Act.

Disapproved by the Governor on April 6, 2023.

Filed April 25, 2023

CHAPTER 587

HOUSE BILL NO. 1475

(Representatives Koppelman, Grueneich, Louser, Murphy, Pyle, D. Ruby, Schneider,
Vetter)
(Senators Paulson, K. Roers)

AN ACT to amend and reenact subdivision i of subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to speed limitations on multilane highways; and to provide a penalty.

VETO

March 29, 2023

The Honorable Dennis Johnson
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND

Re: House Bill 1475

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1475 and return it to the House.

House Bill 1475 increases the maximum speed limit on access-controlled, multilane interstate highways from 75 miles per hour (mph) to 80 mph unless otherwise permitted, restricted or required by conditions.

Increasing the maximum speed limit on interstate highways increases both the risk of speed-related crashes and the potential severity of such crashes. From 2017 to 2021, 178 people died in speed/aggressive driving-related crashes in North Dakota, and speeding or traveling too fast for conditions is a factor in approximately 30% to 40% of all fatal crashes in North Dakota each year. A study by the Insurance Institute of Highway Safety found that a 5 mph increase in the speed limit is associated with an 8.5% increase in fatality rates on interstate highways and freeways.

This increased risk runs counter to the goals of Vision Zero, North Dakota's multi-agency effort to eliminate fatalities and serious injuries caused by motor vehicle crashes. The 98 fatalities from motor vehicle crashes in North Dakota recorded in 2022 was the lowest annual total in 20 years, yet much work remains to improve seat belt usage in our state. In 2022, approximately 2 out of 3 fatalities were unbelted where seat belts were present in the vehicle.

Compared with secondary enforcement laws, primary seat belt laws have been associated with a 10% to 12% higher observed seat belt use rate, according to 2019 data from the National Highway Traffic Safety Administration.

A primary seat belt law is a reasonable and responsible means of mitigating the increased risk of a higher speed limit. In the absence of a primary seat belt law, I am unable to support the heightened risk of an increased speed limit on interstates.

For the reasons stated above, House Bill 1475 is vetoed.

Sincerely,

Doug Bugum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision i of subsection 1 of section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

- i. ~~Seventy-five~~Eighty miles [~~120.70~~128.75 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.

Disapproved by the Governor on March 29, 2023.

Filed April 25, 2023

CHAPTER 588

HOUSE BILL NO. 1532

(Representatives Cory, Kasper, Kempenich, Lefor, Nathe, Porter, Strinden)
(Senators Beard, Burckhard, Hogue, Meyer, Wobbema)

AN ACT to create and enact chapter 15.1-39 of the North Dakota Century Code, relating to the establishment of an educational reimbursement program; to provide for a legislative management study; to provide for a legislative management report; to provide an appropriation; and to provide an effective date.

VETO

April 21, 2023

The Honorable Dennis Johnson
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND

Re: House Bill 1532

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1532 and return it to the House.

House Bill 1532 appropriates \$10 million in state-collected tax dollars for the purpose of offsetting tuition costs for students attending nonpublic K-12 schools. These dollars would be paid directly to private schools.

Our administration supports school choice and believes that competition can improve outcomes in the K-12 education system, just as competition forces businesses to continually improve their goods and services in order to survive and thrive in a changing economy.

As North Dakota explores a path toward improved outcomes in our K-12 education system, we commend the sponsors and supporters of HB 1532 for championing change and school choice. North Dakota needs school choice for all parents, regardless of income or geography.

However, in its final amended form, this bill is not the comprehensive solution we need. It falls short of meaningfully enhancing school choice – especially in rural areas far from any existing nonpublic schools – and lacks incentives to expand nontraditional options in K-12 education. The bill also lacks public transparency and

accountability standards for the actual use of the proposed tuition offset payments.

Also, this bill as written would not go into effect until July 1, 2024, just six months before the next legislative assembly convenes in regular session. By utilizing the upcoming interim to explore best practices through school choice, competition and innovation in education, we can create a more comprehensive policy that empowers parent choice, improves outcomes for students and provides a greater return on investment of taxpayer dollars. Other states such as Arizona and Iowa have made great strides in passing transformational legislation aimed at producing better outcomes in education. Senate Bill 2284, still pending in the Legislature, would require such a study.

Finally, our objection to this bill is not related to its cost. The state spends 100 times more per year on public schools than is proposed in this bill for tuition offsets for students who attend nonpublic schools – and our K-12 public school system will receive record levels of state funding in the 2023-2025 biennium.

Simply put, HB 1532 does not go far enough to promote competition and expand choice in K-12 education. If not done correctly now, this bill could impede our ability to expand school choice in a meaningful way in the years ahead.

For the reasons stated above, House Bill 1532 is vetoed.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 15.1-39 of the North Dakota Century Code is created and enacted as follows:

15.1-39-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Parent" means a resident of this state who is a parent, conservator, legal guardian, custodian, or other individual with legal authority to act on a program participant's behalf.
2. "Program" means the educational reimbursement program created under this chapter.
3. "Program participant" means an eligible child participating in the program.
4. "Public school" means a public school in this state which serves students in any grade from kindergarten through grade twelve.
5. "Qualified education expenses" means the cost of tuition for a program participant to enroll in or attend a qualified school.

6. "Qualified school" means a nonpublic school in the state which accepts program funds, not including a home school.

15.1-39-02. Educational reimbursement program establishment.

1. The superintendent of public instruction shall establish and administer an educational reimbursement program to reimburse qualified schools for qualified education expenses of program participants.
2. To participate in the program:
 - a. The parent of an eligible child shall request a program form for the school year from a qualified school in which the eligible child is enrolled; and
 - b. Upon receiving the parent's program form, the qualified school shall:
 - (1) Certify to the superintendent of public instruction proof of the eligible child's enrollment at the school; and
 - (2) Request program funds for the eligible child's qualified education expenses.
3. For each eligible school program form received, the superintendent of public instruction shall pay to the qualified school in which the eligible program participant is enrolled a sum equivalent to the qualified education expenses, but not more than thirty percent of the per-student payment rate under subsection 3 of section 15.1-27-04.1.
4. A qualified school that receives funds under this chapter shall use the funds to offset the cost of qualified education expenses the program participant or parent otherwise would be obligated to pay. A qualified school may not use funds received under this chapter for any other purpose.
5. If a program participant is enrolled in a qualified school for less than an entire school year, the qualified school must return to the superintendent of public instruction the funding provided under this chapter for that school year, reduced on a prorated basis, to reflect the shorter enrollment period. The superintendent of public instruction shall deposit with the public school district in which the program participant resides any funds returned under this section.

15.1-39-03. Program participant eligibility.

A child is eligible for the program if the child is:

1. Eligible to attend public school;
2. Enrolled in a qualified school for any grade from kindergarten through grade twelve; and
3. Documented as a child who is a dependent in a family with gross taxable income of less than five hundred percent of the federal poverty level.

15.1-39-04. Superintendent of public instruction duties - Rules.

In administering the program, the superintendent of public instruction:

1. Shall develop procedures and forms necessary to implement the program.
2. Shall use a standardized enrollment form to determine a qualified school's and child's eligibility for the program and make the form readily available to the public.

15.1-39-05. Program suspension.

The superintendent of public instruction shall suspend a qualified school from the program for failure to comply with applicable law or the program's requirements. The superintendent of public instruction shall notify the school in writing that the school's participation in the program is suspended. The notification must specify the grounds for the suspension and state the school has ten business days to respond and take any corrective action ordered by the superintendent of public instruction. Following the expiration of the ten-day period, the superintendent of public instruction shall:

1. Declare the school ineligible for the program;
2. Order temporary reinstatement of the school's participation in the program, conditioned on the performance of specified action by the school; or
3. Order full reinstatement of the school's participation in the program.

15.1-39-06. Fraudulent use of funds - Referral to attorney general.

If the superintendent of public instruction obtains evidence of fraudulent use of program funds, the superintendent shall refer the matter to the attorney general for investigation and prosecution.

15.1-39-07. Limitation on regulation of qualified schools.

1. The program does not expand the regulatory authority of the superintendent of public instruction, a school district, or any other government agency to impose additional regulations on a qualified school under the program beyond what is necessary by the superintendent of public instruction to enforce the program's financial and administrative requirements. The superintendent of public instruction or a school district may not regulate a qualified school's educational program under the program.
2. A qualified school may not be required to alter the school's creed, practices, admissions policy, or curriculum to receive reimbursement for qualified education expenses.
3. The state auditor shall audit program funds disbursed to a qualified school.

15.1-39-08. Educational reimbursement program expenditures - Report.

On or before September 25, 2025, and annually each year thereafter, the superintendent of public instruction shall report to the legislative management any educational reimbursement program expenditures and supporting data.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - FUNDING OF NONPUBLIC SCHOOLS.

1. During the 2023-24 interim, the legislative management shall study the funding of nonpublic schools. The study must include:

- a. An evaluation of how other states fund nonpublic schools, including accountability and oversight methods;
 - b. A comparison of funding based on need versus funding every student;
 - c. An evaluation of the impact funding nonpublic schools would have on equity related to rural schools and students affected by federal education regulations;
 - d. A review of the number of students denied admission or attendance by nonpublic schools;
 - e. An evaluation of the impact funding nonpublic schools would have on constitutionally obligated budgets;
 - f. A review of the impacts and benefits of enrolling qualified nonpublic teachers and administrators into the teachers' fund for retirement, including an actuarial study and fund impact; and
 - g. Methods of providing school choice options for any family, including families in rural communities, by identifying underlying challenges and options for collaboration across school types and collecting data to identify trends in school choice by geography.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

SECTION 3. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - EDUCATIONAL REIMBURSEMENT PROGRAM. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$10,000,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of establishing an educational reimbursement program, for the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION 4. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 2024.

Disapproved by the Governor on April 21, 2023.

Filed April 28, 2023

CHAPTER 589

SENATE BILL NO. 2231

(Senators Luick, Meyer)
(Representatives Cory, Karls)

AN ACT to create and enact sections 14-02.4-03.1 and 15.1-06-21 of the North Dakota Century Code, relating to preferred pronoun discriminatory practices and school policies on expressed gender.

VETO

March 30, 2023

The Honorable Tammy Miller
President of the Senate
North Dakota Senate Chambers
State Capitol
Bismarck, ND

Re: Senate Bill 2231

Dear President Miller:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2231 and return it to the Senate.

Section 1 of Senate Bill 2231 codifies First Amendment protections against compelled speech, setting state policy addressing pronoun use by state employees. However, vetoing Section 1 changes nothing, because under existing free speech protections, a state employee already cannot be required to use preferred pronouns but may still voluntarily do so. I would have no objections to signing this bill if it contained only Section 1.

Section 2 infringes on local control by unnecessarily injecting the state into rare instances most appropriately handled at the parent, teacher and school district level. This section removes discretion from school boards, schools and teachers in determining how to accommodate the needs of all students in public schools. Further, the First Amendment already prohibits compelled speech and protects teachers from speaking contrary to their beliefs, and courts across the country have upheld these rights.

Ambiguity throughout this bill would invite lawsuits and put teachers in the precarious position of trying to determine how to refer to students without violating law. The teaching profession is challenging enough without the heavy hand of state government forcing teachers to take on the role of pronoun police. Parents, teachers

and administrators using compassion, empathy and common sense can address individual and infrequent situations that may arise.

At the end of the day, children are the future of our state, and we have a duty to protect all of them. North Dakota will continue to stand for free speech, local control and freedom from discrimination.

For the reasons stated above, Senate Bill 2231 is vetoed.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 14-02.4-03.1 of the North Dakota Century Code is created and enacted as follows:

14-02.4-03.1. Preferred pronoun - Government entity.

1. Unless required by law, a government entity may not require an employee to:
 - a. Use an individual's preferred pronoun when addressing or mentioning the individual in work-related communications.
 - b. Designate the employee's preferred pronoun in work-related communications.
2. An individual may assert a violation of this section as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

SECTION 2. Section 15.1-06-21 of the North Dakota Century Code is created and enacted as follows:

15.1-06-21. School policy - Expressed gender.

1. As used in this section:
 - a. "Expressed gender" means a gender identity, whether expressed through behavior, clothing, mannerisms, preferred pronoun, or physical characteristics, which does not conform to the student's sex; and
 - b. "Sex" means the biological state of being male or female, based on sex organs, chromosomes, and endogenous hormone profiles existing at the time of birth.
2. Unless otherwise required by law, a board of a school district, a public school, or a teacher in a public school may not:
 - a. Adopt a policy or practice regarding expressed gender:

- b. Provide or authorize classroom instruction recognizing expressed gender; or
 - c. Provide or require professional development recognizing expressed gender.
3. When required by federal law, a board of a school district, a public school, or a teacher in a public school may adopt a policy concerning a specific student's expressed gender or preferred pronoun if the policy is made in consultation with, and with the approval of, the student's parents or guardians. Notwithstanding this subsection, unless otherwise required by federal law, a teacher in a public school is not required to use a student's preferred pronoun when referring to the student if the preferred pronoun is inconsistent with the student's sex.
4. This section does not prohibit a public school teacher from using a student's preferred pronoun that is inconsistent with the student's sex if the teacher has consulted with, and received approval from, the student's parent or guardian and the school administrator.

Disapproved by the Governor on March 30, 2023.

Filed April 24, 2023

CHAPTER 590

SENATE BILL NO. 2360

(Senators Boehm, Beard, Hogue, Paulson, Wobbema)
(Representative Kasper)

AN ACT to create and enact a new subsection to section 12.1-27.1-01 and a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a public library and required safety policies and technology protection measures; to amend and reenact subsection 5 of section 12.1-27.1-01, sections 12.1-27.1-03.1, and 12.1-27.1-11 of the North Dakota Century Code, relating to obscenity control; to provide a penalty; and to provide for application.

VETO

April 26, 2023

The Honorable Tammy Miller
President of the Senate
North Dakota Senate Chambers
State Capitol
Bismarck, ND

Re: Senate Bill 2360

Dear President Miller:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2360 and return it to the Senate.

Protecting children from explicit sexual material is common sense, and I have signed House Bill 1205, which prohibits books containing explicit sexual material from being kept in the children's collection at public libraries. House Bill 1205 also standardizes the process for local public libraries to review material when requested by parents, library users or other members of the public – a process already in place and working at nearly all public libraries across the state.

Senate Bill 2360, on the other hand, creates an enormous burden for our 84 local public libraries and hundreds of K-12 school libraries by imposing, through the threat of criminal prosecution, a de facto requirement that libraries conduct an expensive review of library materials that have already been through a screening process to protect young people from objectionable material.

While some will argue that such a review isn't necessary because the bill states that a librarian must "willfully" display explicit sexual material in order to be in violation of the law, librarians cannot reasonably be expected to take their chances with what's

currently displayed on the shelves and assume the risk of criminal prosecution based on that subjective standard.

For their own legal protection, librarians will understandably want to review every word and image of every book, magazine, video and other piece of material to ensure it conforms to the law's standards. Senate Bill 2360 goes too far in criminalizing potential disagreements over what constitutes material that is harmful to minors, based on the bill's subjectivity.

Senate Bill 2360 also fails to provide an appropriation to cover the considerable expense of this review process, making this an unfunded mandate that local and school libraries are ill-equipped to afford and manage.

A fiscal note prepared by the North Dakota State Library stated that the bill would require the implementation of a statewide authentication system for access to databases, at a cost of \$300,000 initially and \$150,000 per year in annual, ongoing subscription costs. While the State Library was ultimately exempted from the bill's requirements, its fiscal note outlined numerous, substantial costs for local libraries to comply with the bill, including additional staff, extra cataloging and new software systems. Exempting the State Library and excluding private school K-12 libraries from having to comply with this bill creates further inequities.

America is built on a foundation of freedom of speech, the free exchange of ideas and the freedom from government interference to read – or not to read – books that share ideas and stories across the spectrum of human nature and experience.

The best way we protect our youth is through involved and caring parents making decisions in the best interests of their children, whether at home, online or in a public or school library – not with unfunded, one-size-fits-all government mandates.

For the reasons stated above, Senate Bill 2360 is vetoed.

Sincerely,

Doug Burgum
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 12.1-27.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:
 - a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
 - b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and

- c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary reasonable adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

SECTION 2. A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is created and enacted as follows:

As used in this chapter, the term "public library" means a library containing collections of books or periodicals for the general population to read, borrow, or refer to which is supported with funds derived from taxation.

SECTION 3. AMENDMENT. Section 12.1-27.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.1-03.1. Objectionable materials or performance - Display to minors - Definitions - Penalty.

1. A person is guilty of a class B misdemeanor if ~~he~~the person willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which either contains explicit sexual material that is harmful to minors or exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.
2. As used in this section:
 - a. "Explicit sexual material" means any material which:
 - (1) Taken as a whole, appeals to the prurient interest of minors;
 - (2) Is patently offensive under prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
 - (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
 - b. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
 - b-c. "Where minors are or may be invited as a part of the general public" includes any public roadway or, public walkway, public library, or public school library.

e.d. The above ~~shall~~may not be construed to include a ~~bona fide school~~, college, university, museum, ~~public library~~, or art gallery.

SECTION 4. AMENDMENT. Section 12.1-27.1-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.1-11. Exceptions to criminal liability.

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a ~~bona fide school~~, college, university, museum, or public library for limited access for educational research purposes carried on at such an institution by adults only. Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

SECTION 5. A new section to chapter 12.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Safety policies and technology protection measures required - Report - Penalty.

1. A school district, state agency, or public library may offer digital or online library database resources to students in kindergarten through twelfth grade if the person providing the resources verifies all the resources comply with subsection 2.
2. Digital or online library database resources offered by a school district, state agency, or public library to students in kindergarten through twelfth grade must have safety policies and technology protection measures that:
 - a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or downloading materials constituting an obscene performance or explicit sexual material; and
 - b. Filter or block access to explicit sexual material.
3. Notwithstanding any contract provision, if a provider of digital or online library resources fails to comply with subsection 2, the school district, state agency, or public library shall withhold any further payments to the provider pending verification of compliance.
4. If a provider of digital or online library database resources fails to timely verify the provider is in compliance with the safety policies and requirements of subsection 2, the school district, state agency, or public library shall consider the provider's act of noncompliance a breach of contract.
5. A public school library and a public library shall submit an aggregate written report to the legislative management no later than December first of each year regarding any issues related to provider compliance with technology protection measures required by subsection 2.
6. An employee of a school district, state agency, or public library who willfully exposes explicit sexual material to a minor in violation of this section is guilty of a class B misdemeanor.

7. As used in this section, the term "public library" or "state agency" does not include the state library.

SECTION 6. APPLICATION. Sections 1, 3, and 4 of this Act do not apply to the state library.

Disapproved by the Governor on April 26, 2023.

Filed April 28, 2023

CHAPTER 591

SENATE BILL NO. 2015

(Appropriations Committee)

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 provide an appropriation to the office of the governor, legislative assembly, adjutant general, legislative council, department of environmental quality, department of labor and human rights, department of public instruction, department of commerce, department of health and human services, department of career and technical education, and judicial branch; to create and enact a new subsection to section 10-30.5-02 and a new subsection to section 54-44-11 of the North Dakota Century Code, relating to the purpose and use of the North Dakota development fund and a facility management operating fund; to amend and reenact section 15.1-27-04.1 as amended by section 10 of Senate Bill No. 2284, as approved by the sixty-eighth legislative assembly, sections 15.1-36-02 and 15.1-36-04, subsection 2 of the new section to chapter 19-03.1, as created by section 1 of Senate Bill No. 2248, as approved by the sixty-eighth legislative assembly, subsection 1 of section 21-10-12, as amended in section 3 of Senate Bill No. 2330, as approved by the sixty-eighth legislative assembly, section 24-02-37.3, as amended by section 10 of House Bill No. 1012, as approved by the sixty-eighth legislative assembly, sections 48-10-02, 54-06-14.7, and 54-21-19, sections 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, as amended in sections 3, 4, 5, and 6 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52-02.15 as created by section 7 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52-03, subsection 2 of section 54-52-06.4, as amended in section 1 of House Bill No. 1309, as approved by the sixty-eighth legislative assembly, subsection 4 of section 54-52-17, as amended in section 4 of House Bill No. 1183, as approved by the sixty-eighth legislative assembly, section 54-52.2-09 as created by section 13 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 3 of section 54-52.6-01 and section 54-52.6-02 as amended in sections 14 and 15 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 1 of section 54-52.6-02.1 and section 54-52.6-02.2 as created by sections 16 and 17 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 2 of section 54-52.6-03 as amended by section 18 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52.6-09 as amended in section 22 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-63.1-04, and the new subsection to section 61-16.1-11, as created in section 1 of Senate Bill No. 2372, as approved by the sixty-eighth legislative assembly, of the North Dakota Century Code and section 2 of House Bill No. 1438, as approved by the sixty-eighth legislative assembly, relating to baseline funding and the determination of state school aid, loans from the coal development trust fund, evidence of indebtedness, distribution of illegal drugs, legacy fund earnings, the flexible transportation fund, the capitol grounds planning commission spending limit, the state leave sharing program, capitol grounds rent collections, the retirement board, the public employees retirement system retirement plan, the public employees retirement system plan for state peace officers, the clean sustainable energy authority duties, and joint water resource boards; to repeal section 5 of Senate Bill No. 2020, as approved by the sixty-eighth legislative

assembly, relating to a transfer of Bank of North Dakota profits to a water infrastructure revolving loan fund; to provide for a transfer; to provide an exemption; to provide for a legislative management study; to provide a report; to provide a penalty; to provide for application; to provide a retroactive effective date; to provide a contingent effective date; to provide an effective date; and to declare an emergency.

VETO

May 9, 2023

The Honorable Tammy Miller
President of the Senate
North Dakota Senate Chambers
State Capitol
Bismarck, ND

Re: Senate Bill 2015

Dear President Miller:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed Senate Bill 2015, the Office of Management and Budget appropriations bill, and filed it with the Secretary of State. I also have vetoed items in Sections 30, 32 and 53 of SB 2015.

Section 30.

Section 30 changes the definition of Legacy Fund "earnings," which was established earlier this session by the Legislature in SB 2330 as an amount equal to 7% of the five-year average of the June 30th value of the Legacy Fund assets as reported by the State Investment Board, calculated every other year on even-numbered years.

The Legacy Fund, our state's permanent endowment fund, is growing rapidly, with a balance of \$8.8 billion at the end of February 2023. The Legacy Fund directly receives 30% of North Dakota oil and gas tax revenue, with the other 70% being invested each biennium on water and road infrastructure, education, human services, local political subdivisions and other priorities that touch the lives of every North Dakotan.

On the last day of session, Section 30 of SB 2015 was added to increase the percentage used in the earnings calculation from 7% to 8%. With this higher percentage, the Legislature would be withdrawing an estimated \$70.5 million in additional Legacy Fund earnings every two years, only to have these withdrawals sit in low interest-bearing general fund accounts.

Vetoing the change in Section 30 and maintaining the percentage at 7% will retain that \$70.5 million in earnings in the Legacy Fund, helping the fund to grow at a faster

pace while protecting the Legacy Fund's principal and utilizing better cash management to generate higher earnings - all while not affecting any specific appropriations in the 2023-25 budget.

One estimate projects that the 8% rate would have resulted in roughly \$600 million to \$650 million less in the Legacy Fund's balance after 10 years. By keeping the withdrawal percentage at 7% every other year, a projected \$486 million in Legacy Fund earnings still remains in the 2023-25 final budget. Retaining more earnings in the Legacy Fund helps ensure a strong and stable future for North Dakota.

Section 32.

Section 32 adds an unnecessary restriction on the authority of the Capital Grounds Planning Commission to use designated funds where they have the most impact. This nine-member Commission includes the lieutenant governor, director of the State Historical Society, two citizen appointees, one licensed architect and four legislators, two from each chamber.

The duties of the Commission include the general administration of the Capitol Building Fund and the proper planning to maintain standards of the design and architecture for state facilities. In addition, Century Code already prescribes that major interior changes including new construction, remodeling, or renovation of any kind that are proposed or considered for the buildings or facilities on the Capitol grounds must be reviewed by the Commission.

Section 32 contradicts those duties by limiting the scope of work for the Commission by requiring that expenditures for projects and planning must be related to remodeling expenses only. The current process for the Commission has been effective in maintaining the symbol and headquarters of state government, and this change only adds red tape and guts the authority of a thoughtfully designed, existing governance board with a track record of making prudent, prioritized and fiscally responsible decisions.

This proposed restriction on the authority of the Commission will impair its ability to cover the comprehensive and complex needs of maintaining an accessible, safe and inspiring Capitol grounds with 132 acres and a collection of historically significant buildings totaling over 1.1 million square feet.

Section 53.

Section 53 of SB 2015 applies a retroactive date for House Bill 1438, which I signed earlier this session granting a property tax exemption for buildings and land belonging to certain nonprofit public charities, including hospitals and nursing homes, effective Dec. 31, 2022.

Section 53 retroactively applies the tax exemption to become effective Dec. 31, 2021, which creates numerous implementation problems.

The tax revenue for the 2021 calendar year has already been collected and allocated by the proper political subdivisions, including local school districts, cities, counties, park districts and many other taxing districts, and there is no mechanism for these local governments to recover those funds. Thus, the only way to retroactively fulfill the tax exemption is for each local government to grant a 2021 rebate to the nonprofit

directly from other tax dollars collected in 2022. However, some political subdivisions may not have the liquidity or systems to facilitate this transfer between taxpayers and certain nonprofits, making the claw-back provision of Section 53 especially onerous on those local governments, school districts and their constituents.

The hallmark of a strong and fair economy is a stable tax and regulatory environment. Passing retroactive tax laws sets a dangerous precedent. Local political subdivisions have been following existing tax laws, and it's unfair to them to change the tax rules to enable a claw-back after the taxable period has been closed for nearly 1 ½ years.

For the reasons stated above, Sections 30, 32 and 53 of SB 2015 are vetoed.

Sincerely,

Doug Burgum
Governor

Disapproved by the Governor on May 9, 2023.

Filed May 10, 2023

NOTE: For the full text of Senate Bill No. 2015, including sections 30, 32, and 53, see chapter 47. This bill was voided October 12, 2023, by the North Dakota Supreme Court in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly*.