

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

North Dakota Legislative Assembly,)
Senator Ray Holmberg, Representative Al Carlson,)
Senator Rich Wardner, Senator Joan Heckaman,) Supreme Court
and Representative Corey Mock,) Case No: _____
)
Petitioners,)
)
v.)
)
North Dakota Governor Doug Burgum,)
)
Respondent.)

**PETITION FOR DECLARATORY JUDGMENT,
OR IN THE ALTERNATIVE, FOR WRIT OF MANDAMUS**

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I. GROUNDS FOR EXERCISE OF ORIGINAL JURISDICTION

[¶1] Under Article VI, Section 2 of the Constitution of North Dakota, this Court has “original jurisdiction with authority to issue, hear, and determine such original and remedial writs as may be necessary to properly exercise its jurisdiction.” The “[C]ourt shall exercise its original jurisdiction . . . in cases of strictly public concern as involve questions affecting the sovereign rights of this state or its franchises or privileges.” N.D.C.C. § 27-02-04.

[¶2] Whether the Governor exceeded his constitutional authority in making select partial vetoes is presented to this Court for determination. This Court exercised its original jurisdiction in a similar case concerning the constitutionality of a partial gubernatorial veto in *State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979) (“*Olson*”). In *Olson*, this Court summarized its original jurisdiction as follows:

The power vested in this court to issue original and remedial writs, even upon a proper showing, is discretionary and cannot be invoked as a matter of right, and the court will determine for itself whether or not the case is within its jurisdiction. It is well-settled that the power of the court to exercise its original jurisdiction extends only to cases in which the question presented is Publici juris, wherein the sovereignty of the state, the franchises or prerogatives of the state, or the liberties of its people are affected. The interest of the state must be primary, not incidental, and the public, the community at large, must have an interest or right which may be affected.

State ex rel. Link v. Olson, 286 N.W.2d at 266 (citations omitted). In *Olson*, this Court exercised its original jurisdiction as “the extent of the power of the governor to partially veto a bill . . . [is an issue] of public concern as [it] affect[s] not only the elected officials who are directly involved, but also the delicate balance of powers between the legislative and executive branches of government.” *Id.* As in *Olson*, the present dispute between the Legislative Assembly, petitioning members thereof, and the Governor concerns the constitutionality of partial gubernatorial vetoes and warrants this Court’s exercise of

original jurisdiction. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.E. 60 (1803) (“[i]t is emphatically the province and duty of the judicial department to say what the law is.”); *Peterson v. Olson*, 307 N.W.2d 528, 531 (N.D. 1981) (issues involving the authority of the governor and legislative assembly merited exercise of original jurisdiction); *Sanstead v. Freed*, 251 N.W.2d 898, 904 (N.D. 1977) (noting it is the responsibility of the Court to interpret the Constitution of North Dakota, and to resolve questions concerning the exercise of powers enumerated therein); *State ex rel. Wefald v. Meier*, 347 N.W.2d 562, 564 (N.D. 1984) (dispute between Attorney General and Secretary of State as to proper ballot language on referred measure involved a justiciable controversy of public interest warranting exercise of original jurisdiction).

II. STATEMENT OF THE ISSUES

[¶3]

1. Whether the Governor’s veto of a clause in section 12 of Senate Bill No. 2018 is unconstitutional.
2. Whether the Governor’s veto of the phrase “any portion of” in subsection 3 of section 18 of Senate Bill No. 2003 is unconstitutional.
3. Whether the Governor’s veto of the phrase “and for credit hours completed at the school” in section 39 of Senate Bill No. 2003 is unconstitutional.
4. Whether the Governor’s veto of a clause in section 5 of House Bill No. 1020 is unconstitutional.
5. Whether the Governor’s veto of a sentence in section 12 of Senate Bill No. 2013 is unconstitutional.

III. STATEMENT OF THE CASE

[¶4] Upon adjournment of the Regular Session of the Sixty-fifth Legislative Assembly of North Dakota, and following passage by a majority of both houses of the Legislative Assembly, Governor Doug Burgum, purportedly in accordance with authority granted him under Article V, Section 9 of the Constitution of North Dakota, vetoed select language in various bills presented to the Governor for signature. Whether the Governor exceeded his constitutional authority in making select partial vetoes is presented to this Court for determination. A corollary to this issue relates to what the current status is of the affected legislation.

IV. STATEMENT OF RELEVANT FACTS NOT IN DISPUTE

[¶5] At issue are the Governor's vetoes of select language in the following bills: section 12, S.B. 2018, 2017 Leg.; subsection 3 of section 18, S.B. 2003, 2017 Leg.; section 39, S.B. 2003, 2017 Leg.; section 5, H.B. 1020, 2017 Leg.; and section 12, S.B. 2013, 2017 Leg. Each of the bills was passed by a majority of both houses of the Legislative Assembly and presented to the Governor. No relevant facts are in dispute and the relief sought by the Legislative Assembly and the individual petitioning members thereof requires interpretation of the Constitution of North Dakota – strictly a question of law. The individual petitioners include: Senator Ray Holmberg, Chairman, Legislative Management; Representative Al Carlson, House Majority Leader and Vice Chairman, Legislative Management; Senator Rich Wardner, Senate Majority Leader; Senator Joan Heckaman, Senate Minority Leader; and Representative Corey Mock, House Minority Leader. To avoid duplication of undisputed facts, the Governor's partial vetoes at issue

and the Governor's written explanation for each partial veto (Add.47-96) are reproduced where relevant in the argument below.

V. ARGUMENT

A. This Court's Exercise of Original Jurisdiction Is Necessary To Resolve An Actual And Justiciable Controversy As To Whether the Governor's Partial Vetoes At Issue Are Constitutional

[¶6] At the heart of this dispute is whether the Governor exceeded the partial veto authority granted under Article V, Section 9 of the Constitution of North Dakota with respect to the partial vetoes at issue – purely questions of law appropriately presented for resolution by this Court. Relevant facts are not in dispute.

1. This Case Presents A Justiciable Controversy.

[¶7] This dispute involves an actual controversy of a justiciable nature warranting this Court's exercise of original jurisdiction. As stated by the Court in *Olson*,

Even a question of whether a matter has, in any manner, been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed to it, is itself a delicate exercise in constitutional interpretation and is a responsibility of this Court as ultimate interpreter of the Constitution of the State of North Dakota.

State ex rel. Link v. Olson, 286 N.W.2d at 267 (quoting *State ex rel. Sanstead v. Freed*, 251 N.W.2d 898, 904 (N.D. 1977)). See also *Dahl v. Dewing*, 131 N.W.2d 434, 439 (N.D. 1964) (holding a veto by the governor of an initiated measure to be unconstitutional).

[¶8] The issues presented to this Court are not hypothetical and are ripe for determination. These issues include whether the partial vetoes at issue are void, and the resulting determination of what the law currently is relative to the bills at issue. These are fundamentally questions of law. See *Lipscomb v. State by and through State Board of Higher Education*, 736 P.2d 571, 573 (Or. Ct. App. 1987) (In a case regarding the validity

of vetoes, "[t]he issue is more basic: Did certain provisions of a bill which the legislature passed become law and thereby become binding on the executive and the courts? That is a legal question for us to decide."). *See also Verry v. Trenbeath*, 148 N.W.2d 567, 570 (N.D. 1967) ("The judicial branch construes the law, passes on its constitutionality, and determines, in accordance with the law, the rights and interests of the individual citizen.").

[¶9] To preserve the balance of power among the three branches of government, the legislative branch must be able to challenge unconstitutional vetoes in court. Foreclosing such a challenge would give the executive branch the power to legislate, deny the legislative branch the power to pass laws by a majority vote rather than the two-thirds vote necessary to override a veto, and strip the judicial branch of its authority to interpret the constitution.

2. The Members Of The Legislative Assembly, Individually And As A Whole, Have Standing To Bring This Action For Declaratory Judgment.

[¶10] Members of the Legislative Assembly individually, as well as the Legislative Assembly as a whole, suffered an injury or threatened injury when legislation lawfully passed by majority vote was altered by the Governor's unconstitutional partial vetoes. The injury was specific to the members of the Legislative Assembly. Their votes and their legislation were distorted and potentially rendered ineffective by the Governor's attempted vetoes. As a result, each member of the Legislative Assembly, individually, has standing to bring this action. *See First Intern. Bank & Trust v. Peterson*, 2011 ND 87, ¶ 9, 797 N.W.2d 316, 321 ("To have standing plaintiffs must show they have suffered some threatened or actual injury resulting from the putatively illegal action, and the harm must not be a generalized grievance shared by all or a large class.").

[¶11] In addition, the Legislative Assembly¹ has associational standing under the test set forth in *First Intern. Bank & Trust v. Peterson*, because 1) its members have standing to sue in their own right, 2) the interests at stake are germane to the organization, and 3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. 2011 ND 87, ¶ 12, 797 N.W.2d 316, 321-22. As discussed above, the individual members of the Legislative Assembly have individual standing to sue. In addition, the Legislative Assembly seeks declaratory relief that will benefit all of the members of the Legislative Assembly. *See id.* at ¶ 12 (“An association’s standing depends on the nature of the relief sought because if the association seeks declarative, injunctive, or other prospective relief, the association’s members will see the benefit of the remedy.”). Further, the participation of the individual members is not required as the Legislative Assembly seeks to protect the official interests of the legislative branch as a whole - interests germane to the organization. Other courts also have found legislative bodies have standing to challenge gubernatorial vetoes. *E.g., Colorado General Assembly v. Lamm*, 704 P.2d 1371, 1378 (Colo. 1985) (“We recognize standing in the general assembly to seek determination of the question whether a purported veto is invalid and therefore, if permitted to stand unchallenged, would cause injury in fact to the legislature’s legally protected right and power to make appropriations by majority vote.”).

3. Declaratory Judgment Is An Available and Proper Remedy - In the Alternative, a Writ of Mandamus Is Requested

¹ On September 28, 2017, when the Legislative Assembly was not in session, Legislative Management, by majority vote, authorized the Legislative Council to retain the undersigned attorneys to commence and prosecute this action to protect the official interests of the legislative branch in accordance with N.D.C.C. § 54-35-17. (Add.97-98.)

[¶12] In *Olson*, this Court determined the declaratory judgment procedure found in North Dakota Century Code § 32-23-01 was the appropriate procedure for examining a governor's authority to partially veto legislation. *Olson*, at 268. Section 32-23-01, NDCC, provides:

A court of record within its jurisdiction shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.

[¶13] As in *Olson*, declaratory judgment is appropriate in this case to resolve questions of constitutional interpretation as applied to the Governor's partial vetoes at issue. The Legislative Assembly requests the Court determine all five partial vetoes at issue are void, and that the bills, without the challenged vetoes, are the current law.

[¶14] In the alternative, should the Court determine declaratory judgment is not the appropriate procedure to address the challenged partial vetoes, the Legislative Assembly requests the Court issue a Writ of Mandamus compelling the Governor and others to treat the partial vetoes as nullities. *See State ex rel. Sego v. Kirkpatrick*, 524 P.2d 975, 987 (N.M. 1974) (affirming peremptory writ of mandamus to compel New Mexico Governor and others to treat certain partial vetoes as nullities). Pursuant to § 32-34-01, [t]he writ of mandamus may be issued by the supreme . . . court[] to any . . . person to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station," Although a writ of mandamus will not issue to compel a discretionary act, the obligation of the Governor and others to treat unconstitutional partial vetoes as nullities is not discretionary. *See Kirkpatrick*, 524 P.2d at 978 (affirming writ of mandamus directing governor to treat unconstitutional partial vetoes as nullities.)

B. The Governor's Veto Power – N.D. Const. Art. V, § 9

[¶15] The Governor's veto authority is derived from Article V, Section 9 of the Constitution of North Dakota, which provides, in relevant part:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it becomes law.

The governor may veto a bill passed by the legislative assembly. **The governor may veto items in an appropriation bill.** Portions of the bill not vetoed become law.

N.D. Const. art. V, § 9 (bold added for emphasis). Section 9 was enacted as part of a new Article V of the Constitution of North Dakota proposed by the Fifty-fourth Legislative Assembly, and approved by the people on June 11, 1996. The new article became effective July 1, 1997. 1995 N.D. Sess. Laws ch. 646, § 9; 1997 N.D. Sess. Laws ch. 568, §§ 9, 14. The Court has not yet had an opportunity to construe Article V, Section 9.

[¶16] Appropriations of public funds is uniquely a legislative function. Pursuant to Article X, Section 12 of the Constitution of North Dakota, public moneys may be paid out or disbursed only pursuant to appropriation by the Legislature. An "appropriation" is the "setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of the government are authorized to use the amount so set apart, and no more, for that object. *Olson*, at 268.

[¶17] In interpreting constitutional provisions, general principles of statutory construction apply. *State v. Hagerty*, 1998 ND 122, ¶ 13, 580 N.W.2d 139. It is improper to construe provisions to create additional requirements the words of the provision do not themselves provide where constitutional provisions are clear and unambiguous. *Haggard v. Meier*, 368 N.W.2d 539, 541 (N.D. 1985). However, "if the language is ambiguous or

the answer doubtful, then the field of inquiry is widened and rules applicable to construction of statutes are to be resorted to. In fact, a wider field of inquiry for information is proper where needed in construing constitutional provisions than legislative enactments.” *Olson*, at 269 (quoting *Newman v. Hjelle*, 133 N.W.2d 549, 556 (N.D. 1965). Where an ambiguity in a constitutional provision exists, the consequences of a particular construction may be considered. *Id.* “[I]tem veto power is to be construed narrowly, and any doubt over the extent of the power should be resolved in favor of traditional separation of powers and the restricted nature of the veto.” *Rants v. Vilsak*, 684 N.W.2d 193, 202 (Iowa 2004)(quotation and citations omitted).

[¶18] The last time this Court considered the Governor’s veto authority was in *State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979). In *Olson*, the Court interpreted an earlier constitutional provision granting the Governor veto rights, previously codified as Section 80 of the Constitution of North Dakota, which provided, as follows:

The governor shall have power to disapprove of any item or items or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items and part or parts disapproved shall be void, unless enacted in the following manner:”

N.D. Const. § 80 (repealed eff. July 1, 1997.) In *Olson*, this Court concluded Governor Link’s partial veto of legislation enacted for the purpose of abolishing both the division of economic opportunity and state planning division, and which created a federal aid coordinator in the office of the Lieutenant Governor, was not authorized by former Section 80 as such legislation was not a separate and distinct provision that could be removed without affecting the other provisions of the bill, and removal of the vetoed provisions would destroy the legislature’s primary purpose for the legislation. This Court in *Olson* held:

We hold that the governor, in exercising his partial veto power, may only veto items or parts in appropriation bills that are related to the vetoed appropriation and are so separate and distinct that, after removing them, the bill can stand as workable legislation which comports with the fundamental purpose the legislature intended to effect when the whole was enacted. He may not veto conditions or restrictions on appropriations without vetoing the appropriation itself.

Olson, at 270-71. See also *Colorado General Assembly v. Owens*, 136 P.3d 262, 267 (Colo. 2006) (determining headnotes defining terms used throughout bills could not be vetoed by governor as they were not “items” as they were not sums of money, but instead functioned as legislative conditions beyond the governor’s item veto power); *Barbour v. Delta Correctional Facility Authority*, 871 So.2d 703, 707 (Miss. 2004) (It “would be ‘monstrous’ if a governor was allowed to make an appropriation into law yet veto either the purpose or conditions, or both, in the process. The result would frustrate the legislative intent unless the legislature then passed the purpose or condition by a two-thirds (2/3) vote”) (internal citations omitted); *Rush v. Ray*, 362 N.W.2d 479, 481 (Iowa 1985) (“It follows conclusively that where the veto power is attempted to be exercised to object to ... language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him....” (internal citations omitted)).

[¶19] In interpreting the limits on gubernatorial item veto power under prior Section 80 in *Olson*, this Court noted the New Mexico Constitution contained an almost identical provision², and quoted the following from the Supreme Court of New Mexico:

The power of partial veto is the power to disapprove. This is a negative power, or a power to delete or destroy a part or item, and is not a positive power, or a power to alter, enlarge or increase the effect of the remaining part or items. It is not the

² Article IV, Section 22, of the Constitution of New Mexico considered by the Court in *Olson* provided as follows: “The governor may in like manner approve or disapprove any part or parts, item or items, of any bill appropriating money, and such part or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided.”

power to enact or create new legislation by selective deletions. Thus, a partial veto must be so exercised that it eliminates or destroys the whole of an item or part and does not distort the legislative intent, and in effect create legislation inconsistent with that enacted by the Legislature, by the careful striking of words, phrases, clauses or sentences.

The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations or contingencies placed upon an appropriation and permit the appropriation to stand.

Olson, at 269-70 (quoting *Kirkpatrick*, 524 P.2d at 981-82 (N.M.) (citations omitted)).

[¶20] Although the Court in *Olson* determined the governor's attempted partial veto was void as resulting in an unworkable piece of legislation, the Court did not, and has not, specifically defined the terms "conditions" or "restrictions" in the context of a governor's veto authority. However, other courts have defined the term "condition" in this context as "a provision in a bill that limits the use to which an appropriation may be put." *Rants v. Vilsack*, at 205 (Iowa 2004) (internal citations omitted). *See also Welden v. Ray*, 229 N.W.2d 706, 710 (Iowa 1975) (condition on an appropriation may be general or specific, negative or affirmative); *Barbour v. Delta Correctional Facility Authority*, 871 So.2d at 708 ("The right of the Legislature to control the public treasury, to determine the sources from which the public revenues shall be derived and the objects upon which they shall be expended, to dictate the time, the manner, and the means both of their collection and disbursement, is firmly and inexpugnably established in our political system.").

[¶21] Although this Court in *Olson* considered how other courts have interpreted the term "items" in construing their state constitutions, this Court has not expressly adopted a specific definition of the term "item" or "items" in this context. The term "item" has been defined by other courts in this context as a separable sum of money appropriated, not "words, phrases or sentences which express purposes or conditions with reference to the appropriation made." *Cason v. Bond*, 495 S.W.2d 385, 392 (Mo. 1973). *See also Colorado*

General Assembly v. Owens, 136 P.3d at 267 ("item of an appropriation bill is an indivisible sum of money dedicated to a stated purpose; the term refers to something which may be eliminated from the bill without affecting the enactment's other purposes or provisions." (internal citations omitted)); *Jubelirer v. Rendell*, 953 A.2d 514, 534-35 (Pa. 2008) (compiling cases from numerous states which have a gubernatorial partial veto constitutional provision including phrase "item of any appropriation bill" or similar language, and restricting term "item" to items of appropriation).

[¶22] This Court in *Olson* determined an unauthorized gubernatorial veto is of no effect, and the bill, including the language the Governor attempted to veto, automatically became law without further action being required. *Olson*, at 272-73. Current Section 9 provides "Portions of the bill not vetoed become law." As a result, if the Court determines the Governor's partial vetoes at issue to be void, the subject bills, including the language attempted to be vetoed, would automatically become law without any further action being required.

C. **The Governor's Veto Of A Clause In Section 12 Of Senate Bill No. 2018 Is Unconstitutional.**

[¶23] Senate Bill 2018 is an appropriations bill for the Department of Commerce. The appropriation of funds for this purpose is provided in Section 1 of the bill. Relevant to this petition, funds were appropriated for "Entrepreneur grants and vouchers" in the amount of \$2,250,000. (Add.1, 48.)

[¶24] Section 12 of S.B. 2018, with the language stricken (vetoed) by the Governor underlined, provides:

SECTION 12. ENTREPRENEURSHIP GRANTS AND VOUCHER PROGRAM – EXEMPTION. Section 1 of this Act includes the sum of

\$2,250,000, of which \$600,000 is from the general fund and \$1,650,000 is from special funds, for an entrepreneurship grants and voucher program to be developed and administered by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the amount appropriated, \$900,000 is to be distributed equally to entrepreneurial centers located in Bismarck, Fargo, and Grand Forks, \$300,000 to an organization that provides workplace safety, and \$300,000 for biotechnology grants. The department shall establish guidelines to provide grants to entrepreneurial centers certified by the department. The department also shall establish guidelines to award vouchers to entrepreneurs to procure business development assistance from certified entrepreneurial centers or to provide grants to entrepreneurs working with an entrepreneurial center. The amount appropriated for entrepreneurship grants in section 1 of this Act is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2019, and ending June 30, 2019.

(Add.50.) The Governor provided the following reasoning for the partial veto:

This earmark appeared in the final commerce appropriations bill from conference committee. It was added without the benefit of full transparency and scrutiny afforded appropriations that proceed through the public hearing process and full legislative review.

The remaining language in Section 12 gives clear direction to the commerce department to establish guidelines and procedures for awarding grants and vouchers.

(Add.47.)

[¶25] The Governor impermissibly vetoed a condition on an appropriation without vetoing the appropriation. *See, e.g. Olson*, at 271 ("[Governor] may not veto conditions or restrictions on appropriations without vetoing the appropriation itself."). The Governor's current budget retains the full \$2.25 million appropriation, and the veto message states the remainder of section 12 provides sufficient guidance to the Commerce Department to award the grants and vouchers. The \$300,000 mentioned in the vetoed clause was not subtracted from the appropriated funds, so the Governor left himself that amount to use at his discretion. *See Colorado General Assembly v. Owens*, 136 P.3d at 267 ("If the Governor were able to veto an individual item contained within the larger overall appropriation without reducing the overall appropriation by the amount of the vetoed item, the Governor could thereby remove any legislative condition as to how that money could

be spent.... [T]he effect of such a construction is to vest the Governor with a positive legislative power that is broader than necessary to combat log rolling or other legislative abuse."(internal citations omitted)); *Rush v. Ray*, 362 N.W.2d at 482 (Iowa) ("[governor] cannot strike a provision that would divert money appropriated by the legislature for one purpose so that it may be used for another.")

[¶26] Section 1, not section 12, of Senate Bill No. 2018 uses the traditional language for appropriations. The use of the language in section 1 indicates legislative intent to treat Section 1 as the appropriation. Additionally, section 12 refers to "[t]he amount appropriated for entrepreneurship grants in section 1 of this Act..." clearly indicating the legislative intent to consider section 1 as the appropriation and section 12 as the conditions placed on the appropriation.

[¶27] In addition, S.B. 2018 does not specify the fund from which the \$300,000 at issue should be drawn. Section 1 of S.B. 2018 appropriates \$2.25 million for entrepreneurship grants and vouchers from both general and special funds. Section 12 provides \$600,000 of the money is from the general fund with the remainder from special funds. There is no mention of the specific source of the \$300,000. As such, the \$300,000 to the workforce safety organization cannot be deemed an appropriation. *See Owens*, 136 at 267 (Colo.) ("the source of funding is as much a part of an item of appropriation as the amount of money appropriated and the purpose to which it is to be devoted,' and so it could not be removed through the item veto power.") (quoting *Colorado General Assembly v. Lamm*, 704 P.2d at 1383-4 (Colo.)); *State ex rel. Link v. Olson*, 286 N.W.2d at 268 ("An 'appropriation' is the 'setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of the government are authorized to

use the amount so set apart, and no more, for that object." (internal citations omitted)). The legislation does not "set aside" the \$300,000 from any particular fund.

[¶28] The grammatical structure of the vetoed provision makes it clear the Legislative Assembly did not intend the \$300,000 to be a separate appropriation. The governor's veto struck only a phrase - not even a full sentence - in section 12 of S.B. 2018. The sentence in which that phrase is found sets forth conditions on the full \$2.25 million.

[¶29] If the veto of the phrase regarding the \$300,000 were upheld, the executive branch would be allowed to decide which fund should retain that money. This would grant the executive the uniquely legislative power of appropriating funds. By leaving the full \$2.25 million in section 1 and the first sentence of section 12, but removing the \$300,000 in the middle of section 12, the governor's attempted veto left an internally inconsistent and therefore unworkable bill. Under *Olson*, such a veto is unconstitutional. *See Olson*, 286 N.W.2d at 271 ("in exercising his partial veto power, [the Governor] may only veto items or parts in appropriation bills that are related to the vetoed appropriation and are so separate and distinct that, after removing them, the bill can stand as workable legislation . . .").

[¶30] Similar partial vetoes in other states have been held unconstitutional as vetoes of conditions on the use of appropriations. *See, e.g., Fordice v. Bryan*, 651 So. 2d 998 (Miss. 1995) (Appendices A and B contain similar bills that the governor unsuccessfully attempted to partially veto); *Cason v. Bond*, 495 S.W.2d at 390 (Mo.) (Governor could not remove clauses specifying particular uses of subsets of \$100,000 appropriation without also vetoing the appropriation). The executive branch does not have the power to reduce or scale appropriations. *See, e.g., The Veto Case*, 222 P. 428, 431-32 (Mont. 1924) ("By reducing the various items he could determine the amount to be appropriated in every

appropriation bill coming to him after the close of the Legislature. Thus...the sole will of the Governor, would determine the appropriation of money.")

[¶31] The partial veto also constituted an unconstitutional attempt by the Governor to legislate, and change the Legislative Assembly's intent. "The Governor may not properly distort legislative appropriations or arrogate unto himself the power of making appropriations by carefully striking words, phrases or sentences from an item or part of an appropriation." *Kirkpatrick*, at 980 (N.M.). The power of the partial veto "is not the positive power to alter, enlarge or increase appropriations by enacting legislation through the device of selective deletions." *Id.* at 984; *Cisneros v. Martinez*, 340 P.3d 597, 603 (N.M. 2014) (quoting *Kirkpatrick*). *See also* *Cenarrusa v. Andrus*, 582 P.2d 1082, 1091-92 (Idaho 1978) (listing several cases supporting this position) (overruled on other grounds by *Nate v. Denney*, 2017 WL 3033308, (Idaho 2017)); *Cason v. Bond*, 495 S.W.2d at 392 ("The executive's veto power is a power conditionally to prevent legislation, but is not the power to enact new laws or to recall or modify old laws.").

[¶32] The Legislative Assembly and petitioning members thereof request the Court determine the Governor's attempted partial veto of the phrase "\$300,000 to an organization that provides workplace safety" is void, resulting in section 12 of S.B. 2018, without the attempted partial veto, automatically becoming the law pursuant to Article V, Section 9 of the Constitution of North Dakota.

D. The Governor's Veto Of The Phrase "Any Portion Of" In Subsection 3 Of Section 18 Of Senate Bill No. 2003 Is Unconstitutional.

[¶33] Senate Bill 2003 is an appropriations bill for the North Dakota University System. Section 18 of SB 2003, with the language stricken by the Governor underlined, provides:

SECTION 18. DICKINSON STATE UNIVERSITY – USES OF FUNDS.

1. The one-time operations and debt repayment line item included in subdivision 8 of section 1 of this Act includes the sum of \$7,409,626, of so much of the sum as may be necessary, which must be used by Dickinson state university as follows:
 - a. \$3,100,000 must be used to repay any outstanding debt on the Biesiot activities center. The funds provided under this subdivision may be used only if the funding provided under this subdivision will result in final satisfaction of any debt associated with the facility; and
 - b. \$4,309,626 must be used for the operations of the institution.
2. Dickinson state university shall utilize up to \$2,000,000 of funding from campus reserves for any additional funding needed to maintain the operations of the institution during the biennium beginning July 1, 2017, and ending June 30, 2019.
3. Dickinson state university may not discontinue any portion of its department of nursing academic program during the biennium beginning July 1, 2017, and ending June 30, 2019.
4. The appropriations identified under this section are considered one-time funding items.

(Add.64 [underlining added].) In his veto letter, the Governor reasoned “[t]he ambiguity of the vetoed language will cause unintended confusion and uncertainty. The remaining language in paragraph 3 achieves the intent of the legislative assembly.” (Add.52.)

[¶34] The North Dakota Attorney General is of the opinion the above attempted veto was ineffective under *Olson* as constituting an impermissible veto of a condition on an appropriation without vetoing the appropriation. N.D. Att’y Gen. Op. 2017-L-04 at p. 5 (Add.103). The language of the bill makes clear the vetoed provision is part of a condition on the appropriation to Dickinson State University. Section 18 is titled "Dickinson State University - Uses of Funds" and sets forth the manner in which the funds may and may not be used. It follows logically that Dickinson State University must use the funds, in part, to maintain the full nursing academic program during the biennium. If the Governor's veto

were allowed to stand, parts of the program could be discontinued and the funds that would have been used for those parts could be spent otherwise, in contravention of legislative intent. In effect, the Governor would be given the power to appropriate in violation of our state constitution. *See Kirkpatrick*, at 982 (N.M.) ("The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations, or contingencies placed upon an appropriation and permit the appropriation to stand. He would thereby create new law, and this power is vested in the Legislature and not in the Governor.") (partially cited in *Olson*, at 269-70); *Rush v. Ray*, 362 N.W.2d at 483 (Iowa) (partial vetoes were unconstitutional vetoes of conditions because "[t]he stricken clauses, standing by themselves, would have no independent purpose if the governor had vetoed the appropriations. Such clauses only have purpose and effect when they stand in conjunction with the appropriations.").

[¶35] The Governor also selectively deleted three words to legislate unconstitutionally and in contradiction of legislative intent. By deleting the phrase "any portion of" from a sentence in Section 18, the Governor effectively created new legislation that contravenes the legislative intent behind the section. There is a meaningful difference between discontinuing a nursing program and discontinuing a portion of the program. Under the Governor's veto, the program could be significantly reduced as long as some shell of the program remained. The Legislative Assembly intended to maintain the current size and scope of the program.

[¶36] Striking the phrase "any portion of" also frustrates the specific intent of the Legislative Assembly for the university to use the appropriated funds to continue the full nursing program. The phrase "any portion of" is not a distinct provision that can be

removed without affecting the appropriation. Removal of the phrase "any portion of" distinctly changes the character of the condition on the appropriation. It is akin to changing "shall not" to "shall". *See Olson*, at 271 (improper to veto a section that "is not a separate and distinct provision which can be removed without affecting the others, as the bill which remains is not workable legislation and the primary purpose of the bill ... is destroyed.")

[¶37] The Legislative Assembly and petitioning members thereof request the Court determine the Governor's attempted partial veto of the phrase "any portion of" is void, resulting in section 18 of S.B. 2003, without the attempted partial veto, automatically becoming the law pursuant to Article V, Section 9 of the Constitution of North Dakota.

E. The Governor's Veto Of The Phrase "And For Credit Hours Completed At The School" In Section 39 Of Senate Bill No. 2003 Is Unconstitutional.

[¶38] Section 39 of S.B. 2003, with the language stricken (vetoed) by the Governor underlined, provides:

SECTION 39. LEGISLATIVE INTENT – NORTH DAKOTA STATE UNIVERSITY – LEASE ARRANGEMENT AND OTHER SAVINGS. It is the intent of the sixty-fifth legislative assembly that future general fund appropriations in support of the North Dakota state university department of nursing program in Bismarck be adjusted for savings resulting from facility lease negotiations and for credit hours completed at the school.

(Add.68 [underlining added].) The Governor provided the following explanation for this partial veto:

The portion of paragraph 39 that reads "and for credit hours completed at the school" is hereby vetoed. Reducing general fund appropriations based upon credit hours is contrary to the legislatively approved higher education funding formula.

(Add.52.)

[¶39] In both the heading and introductory sentence of Section 39 of Senate Bill No. 2003, the Legislative Assembly made clear that section is an expression of its intent for the

appropriation for North Dakota State University. Only the Legislative Assembly may express its legislative intent. The Governor has no authority to supplant an explicit expression of legislative intent with his own or an expression of intent he wishes the Legislative Assembly would have made, particularly when he does so through selectively deleting a handful of words. The Legislative Assembly intended appropriations from the general fund for the NDSU nursing program in Bismarck be adjusted, in part, for credit-hours completed at the school. The Governor's attempted veto of eight words completely changes the intended meaning of the legislation.

[¶40] The Attorney General opined the partial veto was effective as Section 39 merely states legislative intent regarding future general fund appropriations, does not pertain to an appropriation made in S.B. 2003, and is not binding on future legislative assemblies. (Add.103-04.) However, whether the vetoed language is binding on future Legislative Assemblies is irrelevant to the question whether the Governor has the power to change the intent specifically expressed by the Legislative Assembly through the item veto power.

[¶41] The Legislative Assembly and petitioning members thereof request the Court determine the Governor's attempted partial veto of the phrase "and for credit hours completed at the school" is void, resulting in section 39 of S.B. 2003, without the attempted partial veto, automatically becoming the law pursuant to Article V, Section 9 of the Constitution of North Dakota.

F. The Governor's Veto Of A Clause In Section 5 Of House Bill No. 1020 Is Unconstitutional.

[¶42] House Bill No. 1020 is an appropriations bill for the State Water Commission. The appropriation of funds for this purpose is provided in Section 1 of HB 1020.

[¶43] Section 5 of HB 1020, with the language stricken (vetoed) by the Governor underlined, provides:

SECTION 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS – TRANSFERS – BUDGET SECTION APPROVAL.

1. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act from funds available in the resources trust fund and water development trust fund, \$298,875.000 is designated as follows:
 - a. \$120,125,000 for water supply;
 - b. \$27,000,000 for rural water supply;
 - c. \$136,000,000 for flood control; and
 - d. \$15,750,000 for general water.

2. The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, subject to budget section approval and upon notification to the legislative management’s water topics overview committee.

(Add.71-72 [underline added].) The Governor provided the following rationale for the partial veto:

The portion of Section 5 that reads: “subject to budget section approval and upon notification to the legislative management’s water topics overview committee.” is vetoed. This sentence requires the Commission to seek budget section approval before transferring between the projects identified under paragraph 1, Section 5.

In *Kelsch v. Jaeger*, the North Dakota Supreme Court concluded the legislature may not delegate legislative powers to a subset of its members. 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 5 will interfere with the duties and responsibilities of the State Water Commission as defined under North Dakota law. NDCC § 61-02-04.

While well intentioned, these requirements will impair the duties and responsibilities of the Commission. Many water projects fit into multiple line item categories. Certain projects proceed slowly, delayed by legal, environmental, cost share and other factors driven by outside parties. The simpler budgeting format previously adopted and approved by the legislature gives the Commission a flexible and efficient model from which to work and should be retained.

As Chair of the State Water Commission, I will ensure our governing board prioritizes public transparency of project expenditures through regular and detailed reporting.

(Add.70 [emphasis in original].)

[¶44] The Attorney General has examined this partial veto and opined the Governor impermissibly vetoed a condition on an appropriation without vetoing the appropriation, and as a result, the veto was ineffective under *Olson*. N.D. Att’y. Gen. Op. 2017-L-04 at p.7 (Add.105). *See also Olson*, at 271 (“[Governor] may not veto conditions or restrictions on appropriations without vetoing the appropriation itself.”).

[¶45] The language of the bill makes clear the vetoed provision is part of a condition on the appropriation to the State Water Commission. The appropriation includes an explicit allocation of funds to the commission for four specified purposes. The use of the allocated funds for those purposes, absent the approvals set forth in section 5, is a condition on the appropriation. The Governor's attempted veto would completely circumvent the legislative intent regarding the use of the funds and allow the State Water Commission to use the entire amount of appropriated funds however it chooses. The attempted veto would render the original allocation by the Legislative Assembly meaningless. *See Rush v. Ray*, 362 N.W.2d at 482 (Iowa) (“[governor] cannot strike a provision that would divert money appropriated by the legislature for one purpose so that it may be used for another.”); *Cason v. Bond*, 495 S.W.2d at 390 (Mo.) (“Plainly, money devoted to one purpose can not be used for another, and it is equally plain that power to impose conditions before it can become available is legislation.”) (internal citations omitted); *Opinion of the Justices*, 306 A.2d 720 (Del. 1973) (attempted veto of provision requiring prior approval by State Planning Office before expenditure of appropriated funds was unconstitutional veto of a condition placed on an appropriation).

[¶46] Although the Attorney General further opined the utilization of the Budget Section likely violates the separation of powers doctrine, that issue is not presently before this

Court. In addition, if the Governor believed the Budget Section were unconstitutional, his remedy was to veto the appropriation altogether or challenge the condition placed on the appropriation in court. He has no authority to determine the constitutionality of legislation, and his belief regarding the constitutionality of the Budget Section does not permit him to exercise an unconstitutional veto. *See Patterson v. Dempsey*, 207 A.2d 739, 749 (Conn. 1965) ("governor has no power of partial veto over legislation merely because it is unconstitutional"). Regardless, the Budget Section is a legislative body that has allowed the executive branch to enjoy the flexibility required by modern demands, fluctuating revenues, and exigencies otherwise unavailable due to biennial legislative sessions. The Budget Section has not been delegated the power to make law, but only to ascertain facts and execute laws enacted by the Legislative Assembly. Under the modern view of the delegation doctrine, such broad delegation is appropriate and necessary. *See North Dakota Council of School Administrators v. Sinner*, 458 N.W.2d 280, 286 (N.D. 1990) (determining statute authorizing director of budget to make an allotment reducing an appropriation is not an unconstitutional delegation of legislative authority as Legislative Assembly did not delegate power to make law); *Trinity Medical Center v. North Dakota Bd. Of Nursing*, 399 N.W.2d 845, 847 (N.D. 1985) (determining statutory grant of broad authority to Board of Nursing was not unconstitutional delegation of legislative powers).

[¶47] The Legislative Assembly and petitioning members thereof request the Court determine the Governor's attempted partial veto of the phrase "subject to budget section approval and upon notification to the legislative management's water topics overview committee" is void, resulting in section 5 of H.B. 1020, without the attempted partial veto,

automatically becoming the law pursuant to Article V, Section 9 of the Constitution of North Dakota.

G. The Governor's Veto Of A Sentence In Section 12 Of Senate Bill No. 2013 Is Unconstitutional.

[¶48] Senate Bill No. 2013 is an appropriations bill for the Department of University and School Lands. Appropriations for such purposes are provided in section 1 of S.B. 2013.

[¶49] Section 12 of S.B. 2013, with the language stricken (vetoed) by the Governor underlined, provides:

SECTION 12. INFORMATION TECHNOLOGY PROJECT – BUDGET SECTION APPROVAL – LEGISLATIVE INTENT – AGENCY EFFICIENCIES. The capital assets line item and the total special funds line item in section 1 of this Act include \$3,600,000 from the state lands maintenance funds for an information technology project. Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section. It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the governor and the commissioner of university and school lands achieve efficiencies and budgetary savings within the department of trust lands through the use of innovative ideas and through alternative solutions relating to information technology.

(Add.86_underline added.) The Governor provided the following rationale for the partial veto:

The portion of Section 12 that reads: “Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section.” is vetoed. This sentence requires the Department of University and School Lands to seek budget section approval before spending funds approved by the full legislative assembly. In *Kelsch v. Jaeger*, the North Dakota Supreme Court stated: “as otherwise provided in the constitution, the legislature may not delegate legislative powers to others, including a subset of its members.” 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 12 would interfere with proper management of this state agency. The specific language addressed to the Governor and the Commissioner in Section 12 “to achieve efficiencies and budgetary savings . . . through the use of innovative ideas and through alternative solutions relating to information technology” remains. Our office, in conjunction with our state CIO, will monitor this IT project closely in terms of scope, budget, spending, and outcomes and work closely with the Commissioner of University and School Lands to accomplish the project goals.

(Add.83 [emphasis in original].)

[¶50] The Attorney General examined this partial veto and opined the Governor impermissibly vetoed a condition on an appropriation without vetoing the appropriation. As a result, the Attorney General opined the attempted veto is ineffective under *Olson*. N.D. Att’y Gen. Op. 2017-L-04 at p.8 (Add.106).

[¶51] The vetoed language is a condition on the \$3.6 million appropriation because it limits the use of the funds. Specifically, it makes the expenditure of half the appropriation contingent on acquiring Budget Section approval. *See Kirkpatrick*, 524 P.2d at 981-2 (N.M.) (Governor's veto of a condition that made \$150,000 appropriation contingent upon various criteria, including certification and approval by state officials, was unconstitutional); *Opinion of the Justices*, 306 A.2d 720 (Del. 1973) (attempted veto of provision requiring prior approval by State Planning Office before expenditure of appropriated funds was unconstitutional veto of a condition placed on an appropriation).

[¶52] Although the Attorney General further opined the use of the Budget Section in this legislation likely violates the separation of powers doctrine, as discussed in paragraph 46, that issue is not before this Court, and a partial veto was not an authorized means by which the Governor could challenge the use of the Budget Section. In addition, the delegation to the Budget Section complies with the modern view of the delegation doctrine.

[¶53] The Legislative Assembly and petitioning members thereof request the Court determine the Governor’s attempted partial veto of the phrase “Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section” is void, resulting in section 12 of S.B. 2013, without the attempted partial veto, automatically becoming the law pursuant to Article V, Section 9 of the Constitution of North Dakota.

ADDENDUM

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**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2018
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide exemptions; to provide for transfers; to provide for a report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of commerce for the purpose of defraying the expenses of the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$13,015,999	(\$20,211)	\$12,995,788
Operating expenses	16,384,623	(907,001)	15,477,622
Grants	48,134,795	6,375,621	54,510,416
Discretionary funds	784,152	1,415,848	2,200,000
Flood impact grants/loans	0	5,201,752	5,201,752
Agricultural products utilization commission	3,118,611	34,304	3,152,915
North Dakota trade office	2,556,694	(556,694)	2,000,000
Partner programs	2,173,829	(233,984)	1,939,845
Entrepreneurship grants and vouchers	<u>1,500,000</u>	<u>750,000</u>	<u>2,250,000</u>
Total all funds	\$87,668,703	\$12,059,635	\$99,728,338
Less estimated income	<u>53,809,604</u>	<u>14,576,054</u>	<u>68,385,658</u>
Total general fund	\$33,859,099	(\$2,516,419)	\$31,342,680
Full-time equivalent positions	69.40	(3.00)	66.40

SECTION 2. HEALTH INSURANCE INCREASE. The salaries line item in section 1 of this Act includes the sum of \$172,554, of which \$135,102 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Workforce enhancement fund	\$960,069	\$0
Flood impact grants/loans	12,859,869	5,201,752
Research North Dakota	4,353,542	0
Unmanned aircraft system	2,662,105	2,000,000
Base retention grants	1,500,000	600,000
Tourism large infrastructure grants	586,000	0
Enhanced use lease grant	7,500,000	3,000,000
Child care facility grants	2,131,267	0
Homeless shelter grants	1,500,000	0
Tribal community college grants	2,837,130	0
Workforce recruitment campaign	300,000	0
Tourism midwest markets	848,481	0
Entrepreneurship grants and vouchers	1,716,830	0

Tourism international	227,836	0
Educators and industry externships	<u>40,000</u>	<u>0</u>
Total all funds	\$40,023,129	\$10,801,752
Less estimated income	<u>21,359,869</u>	<u>9,801,752</u>
Total general fund	\$18,663,260	\$1,000,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of commerce shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. EXEMPTION. The amount appropriated for the agricultural products utilization commission in section 1 of chapter 18 of the 2015 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item for grants are available for grants during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. EXEMPTION. The amount appropriated for the discretionary funds line item in section 1 of chapter 18 of the 2015 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. EXEMPTION. Of the amount appropriated for the unmanned aircraft systems program in section 1 of chapter 18 of the 2015 Session Laws up to \$1,000,000 is not subject to section 54-44.1-11 and unexpended funds from this amount are available and may be spent during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. TRANSFER - INTERNSHIP FUND. The office of management and budget shall transfer \$950,000 of the amount appropriated in the operating expenses line item in section 1 of this Act to the internship fund for the purpose of administering the operation intern program, for the period beginning with the effective date of this Act and ending June 30, 2019.

SECTION 8. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - BASE RETENTION GRANT PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$600,000 from the strategic investment and improvements fund for a base retention grant program to be developed by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. The grant program must award direct grants and not cost reimbursement grants. The department may award grants of \$200,000 to each community with an air force base or air national guard facilities.

SECTION 9. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - UNMANNED AIRCRAFT SYSTEMS PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$2,000,000 from the strategic investment and improvements fund for operations of the unmanned aircraft systems test site, for the biennium beginning July 1, 2017, and ending June 30, 2019. The department of commerce shall consult with the aeronautics commission regarding test site operational costs and support services and best practices related to the unmanned aircraft systems test site.

SECTION 10. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ENHANCED USE LEASE GRANT PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$3,000,000, of which \$1,000,000 is from the general fund and \$2,000,000 is from the strategic investment and improvements fund for an enhanced use lease grant program, for the biennium beginning July 1, 2017, and ending June 30, 2019. Grants must be awarded for initiatives related to the unmanned aircraft system industry in North Dakota, including for the purposes of infrastructure, research, development, the creation of software, and the purchase of equipment benefiting the unmanned aircraft system. The department of commerce shall require grant recipients to provide matching funds in the form of cash, property, or in-kind consideration, totaling \$1,000,000 for the grants awarded under this program.

SECTION 11. TRADE OFFICE - MATCHING FUND REQUIREMENT. The North Dakota trade office line item and the general fund appropriation in section 1 of this Act include \$2,000,000 of funding relating to the North Dakota trade office. The department of commerce may spend sixty percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2017, and ending June 30, 2019. Matching funds may include money spent by businesses or organizations to pay salaries to export assistants, provide training to export assistants, or buy computer equipment as part of the North Dakota trade office's export assistance program.

SECTION 12. ENTREPRENEURSHIP GRANTS AND VOUCHER PROGRAM - EXEMPTION. Section 1 of this Act includes the sum of \$2,250,000, of which \$600,000 is from the general fund and \$1,650,000 is from special funds, for an entrepreneurship grants and voucher program to be developed and administered by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the amount appropriated, \$900,000 is to be distributed equally to entrepreneurial centers located in Bismarck, Fargo, and Grand Forks, \$300,000 to an organization that provides workplace safety, and \$300,000 for biotechnology grants. The department shall establish guidelines to provide grants to entrepreneurial centers certified by the department. The department also shall establish guidelines to award vouchers to entrepreneurs to procure business development assistance from certified entrepreneurial centers or to provide grants to entrepreneurs working with an entrepreneurial center. The amount appropriated for entrepreneurship grants in section 1 of this Act is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 13. ENERGY AND ENVIRONMENTAL RESEARCH CENTER GRANT - MATCHING REQUIREMENT. The grants line item in section 1 of this Act includes \$500,000 from the research North Dakota fund which the department of commerce shall provide as a grant to the energy and environmental research center at the university of North Dakota. The grant must be utilized for economic development and diversification of the North Dakota economy and may be provided only to the extent the energy and environmental research center provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. ESTIMATED INCOME - RESEARCH NORTH DAKOTA FUND. Notwithstanding section 54-65-08, the estimated income line item in section 1 of this Act includes \$3,500,000 from the research North Dakota fund to the department of commerce for department programs. Of this amount, \$500,000 is for the North Dakota tourism program, \$1,000,000 is for discretionary funds, \$1,500,000 is for entrepreneurship grants and vouchers, and \$500,000 is for providing a grant to the energy and environmental research center at the university of North Dakota.

SECTION 15. TRANSFER - RESEARCH NORTH DAKOTA FUND TO THE GENERAL FUND. Notwithstanding section 54-65-08, the office of management and budget shall transfer \$4,000,000 from the research North Dakota fund to the general fund, during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 16. EMERGENCY. Funding of \$950,000 in the operating expenses line item in sections 1 and 7 of this Act, relating to the operation intern program, are declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2018 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 44 Nays 3 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 63 Nays 25 Absent 6

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2003
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to create and enact two new sections to chapter 15-10 and a new section to chapter 54-12 of the North Dakota Century Code, relating to approval of capital projects requested by institutions under the control of the state board of higher education, the nickel trophy, and tuition and fee waivers for law enforcement officers; and to amend and reenact sections 15-10-48, 15-10-49, 15-18.2-05, 15-18.2-06, 54-10-22.1, and 54-44.1-11 of the North Dakota Century Code, relating to matching grants for institutions under the control of the state board of higher education, state aid to institutions, the minimum amount payable through the higher education funding formula, protecting donor records from audits of university and college foundations, and the cancellation of unexpended appropriations; to repeal chapter 15-10.2 of the North Dakota Century Code, relating to the midwestern higher education compact; to provide for the transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide exemptions; to provide for the reallocation of oil and gas tax distributions; to authorize the conveyance of real property owned by the state of North Dakota; to provide for studies; to provide for legislative management reports; to provide legislative intent; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board of higher education and to the entities and institutions under the supervision of the board, for the purpose of defraying the expenses of the state board of higher education and the entities and institutions under the control of the board, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets - bond payments	\$6,901,461	(\$296,135)	\$6,605,326
Competitive research programs	6,588,225	(560,475)	6,027,750
System governance	7,212,636	1,180,602	8,393,238
Title II	1,006,472	0	1,006,472
Core technology services	41,325,593	20,201,754	61,527,347
Student financial assistance grants	23,886,160	(1,968,854)	21,917,306
Professional student exchange program	3,941,754	(242,412)	3,699,342
Academic and technical education scholarship	13,134,096	(1,117,347)	12,016,749
Two-year campus marketing	747,600	(747,600)	0
Scholars program	2,113,584	(306,469)	1,807,115
Native American scholarship	649,267	(93,944)	555,323
Tribally controlled community college grants	967,250	(367,250)	600,000
Education incentive programs	3,349,000	(485,607)	2,863,393
Student mental health	308,100	(23,700)	284,400
Veterans' assistance grants	325,000	(47,125)	277,875
Commendation grants	4,486	(4,486)	0

Internal audit pool	280,350	(280,350)	0
Shared campus services	0	500,000	500,000
Two-year campus study	0	40,000	40,000
Education challenge grants	<u>0</u>	<u>2,000,000</u>	<u>2,000,000</u>
Total all funds	\$112,741,034	\$17,380,602	\$130,121,636
Less estimated income	<u>2,511,216</u>	<u>23,700,890</u>	<u>26,212,106</u>
Total general fund	\$110,229,818	(\$6,320,288)	\$103,909,530
Full-time equivalent positions	104.39	45.01	149.40

Subdivision 2.

BISMARCK STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$34,214,004	\$67,580,404	\$101,794,408
Capital assets	<u>67,732</u>	<u>1,854,829</u>	<u>1,922,561</u>
Total all funds	\$34,281,736	\$69,435,233	\$103,716,969
Less estimated income	<u>0</u>	<u>72,991,998</u>	<u>72,991,998</u>
Total general fund	\$34,281,736	(\$3,556,765)	\$30,724,971
Full-time equivalent positions	133.53	224.82	358.35

Subdivision 3.

LAKE REGION STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$14,143,353	\$22,356,652	\$36,500,005
Capital assets	<u>0</u>	<u>362,667</u>	<u>362,667</u>
Total all funds	\$14,143,353	\$22,719,319	\$36,862,672
Less estimated income	<u>0</u>	<u>24,111,092</u>	<u>24,111,092</u>
Total general fund	\$14,143,353	(\$1,391,773)	\$12,751,580
Full-time equivalent positions	50.19	79.42	129.61

Subdivision 4.

WILLISTON STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$9,191,151	\$17,797,826	\$26,988,977
Capital assets	<u>197,801</u>	<u>1,064,167</u>	<u>1,261,968</u>
Total all funds	\$9,388,952	\$18,861,993	\$28,250,945
Less estimated income	<u>0</u>	<u>19,855,598</u>	<u>19,855,598</u>
Total general fund	\$9,388,952	(\$993,605)	\$8,395,347
Full-time equivalent positions	49.96	50.79	100.75

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$146,572,961	\$712,782,489	\$859,355,450
Capital assets	<u>4,411,566</u>	<u>91,000,000</u>	<u>95,411,566</u>
Total all funds	\$150,984,527	\$803,782,489	\$954,767,016
Less estimated income	<u>0</u>	<u>819,870,450</u>	<u>819,870,450</u>

Total general fund	\$150,984,527	(\$16,087,961)	\$134,896,566
Full-time equivalent positions	630.20	1,587.87	2,218.07

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$144,323,680	\$588,884,780	\$733,208,460
Capital assets	2,732,244	82,571,860	85,304,104
Total all funds	\$147,055,924	\$671,456,640	\$818,512,564
Less estimated income	0	689,386,329	689,386,329
Total general fund	\$147,055,924	(\$17,929,689)	\$129,126,235
Full-time equivalent positions	537.10	1,358.56	1,895.66

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$40,916,239	\$50,918,458	\$91,834,697
Capital assets	0	1,012,379	1,012,379
Total all funds	\$40,916,239	\$51,930,837	\$92,847,076
Less estimated income	0	57,605,613	57,605,613
Total general fund	\$40,916,239	(\$5,674,776)	\$35,241,463
Full-time equivalent positions	168.30	176.74	345.04

Subdivision 8.

DICKINSON STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$24,527,233	\$22,608,359	\$47,135,592
Capital assets	0	409,078	409,078
One-time operations and debt repayment	0	7,409,626	7,409,626
Total all funds	\$24,527,233	\$30,427,063	\$54,954,296
Less estimated income	0	29,737,827	29,737,827
Total general fund	\$24,527,233	\$689,236	\$25,216,469
Full-time equivalent positions	120.26	48.64	168.90

Subdivision 9.

MAYVILLE STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$15,642,731	\$28,611,943	\$44,254,674
Capital assets	0	358,992	358,992
Total all funds	\$15,642,731	\$28,970,935	\$44,613,666
Less estimated income	0	30,307,148	30,307,148
Total general fund	\$15,642,731	(\$1,336,213)	\$14,306,518
Full-time equivalent positions	66.23	144.30	210.53

Subdivision 10.

MINOT STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$45,037,266	\$55,838,786	\$100,876,052
Capital assets	499,620	600,000	1,099,620
Total all funds	\$45,536,886	\$56,438,786	\$101,975,672
Less estimated income	0	62,058,916	62,058,916
Total general fund	\$45,536,886	(\$5,620,130)	\$39,916,756
Full-time equivalent positions	204.10	237.55	441.65

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$23,218,126	\$25,312,806	\$48,530,932
Capital assets	0	455,823	455,823
Total all funds	\$23,218,126	\$25,768,629	\$48,986,755
Less estimated income	0	28,470,657	28,470,657
Total general fund	\$23,218,126	(\$2,702,028)	\$20,516,098
Full-time equivalent positions	105.59	97.16	202.75

Subdivision 12.

DAKOTA COLLEGE AT BOTTINEAU

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$8,017,920	\$9,179,785	\$17,197,705
Capital assets	86,537	27,470	114,007
Total all funds	\$8,104,457	\$9,207,255	\$17,311,712
Less estimated income	0	9,629,173	9,629,173
Total general fund	\$8,104,457	(\$421,918)	\$7,682,539
Full-time equivalent positions	46.96	37.34	84.30

Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$53,166,247	\$158,723,654	\$211,889,901
Total all funds	\$53,166,247	\$158,723,654	\$211,889,901
Less estimated income	0	154,078,620	154,078,620
Total general fund	\$53,166,247	\$4,645,034	\$57,811,281
Full-time equivalent positions	184.58	251.17	435.75

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$6,228,620	\$8,729,827	\$14,958,447
Capital assets	101,210	17,518	118,728
Total all funds	\$6,329,830	\$8,747,345	\$15,077,175
Less estimated income	1,650,000	9,000,748	10,650,748

Total general fund	\$4,679,830	(\$253,403)	\$4,426,427
Full-time equivalent positions	28.96	(1.96)	27.00

Subdivision 15.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$681,876,059	(\$56,954,279)	\$624,921,780
Grand total special funds	4,161,216	2,030,805,059	2,034,966,275
Grand total all funds	\$686,037,275	\$1,973,850,780	\$2,659,888,055

SECTION 2. HEALTH INSURANCE INCREASE. Section 1 of this Act includes the sum of \$17,991,140, of which \$5,638,788 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Capital projects - general funds	\$99,167,288	\$0
Capital projects - other funds	44,848,194	168,505,000
Campus security pool	2,763,562	0
Core technology services projects	2,821,500	0
Open education resource training	107,250	0
Theodore Roosevelt center	800,000	0
Williston state college energy development impact	2,500,000	0
Dickinson state university leadership transition	2,000,000	0
Museum of art deferred maintenance	760,000	0
Deferred maintenance pool	8,482,500	0
School of medicine and health sciences residency positions	4,700,000	0
Health care workforce initiative	13,814,806	0
Desktop support services	81,750	0
Email retention	350,000	0
Dickinson state university Woods Hall renovation	11,500,000	0
Education challenge grants	22,124,500	2,000,000
Institution operations distributions	0	2,000,000
Dickinson state university operations and debt repayment	0	7,409,626
Two-year campus study	0	40,000
Midwestern higher education compact dues	0	230,000
Total all funds	\$216,821,350	\$180,184,626
Total other funds	60,848,194	168,505,000
Total general fund	\$155,973,156	\$11,679,626

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The North Dakota university system shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium July 1, 2017, and ending June 30, 2019.

SECTION 4. AMENDMENT. Section 15-10-48 of the North Dakota Century Code is amended and reenacted as follows:

15-10-48. Advancement of academics - Matching grants - University of North Dakota and North Dakota state university.

1. a. ~~During the period beginning July 1, 2015, and ending December 31, 2016~~Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of the university of North Dakota and North Dakota state university for projects dedicated exclusively to the advancement of academics.
- b. To be eligible for a matching grant, an institution must demonstrate that:
 - (1) Its foundation has raised at least fifty thousand dollars in cash or monetary pledges for a qualifying project; and
 - (2) The project has been approved by the grant review committee established in section 15-10-51.
- c. The board may award up to ~~seven million~~two hundred thousand dollars in matching grants to each institution. ~~The first two million dollars in matching grants awarded to each institution must be used for student scholarships that comply with section 15-10-53.~~
- d. Projects at the university of North Dakota school of medicine and health sciences are not eligible to receive a grant under this section.
2. a. If any available dollars have not been awarded by the board before January 1, ~~2017~~first of each odd-numbered year, in accordance with subsection 1, either the university of North Dakota or North Dakota state university may apply for an additional matching grant.
- b. An application submitted under this subsection must meet the same criteria as an original application.
- c. The board shall consider each application submitted under this subsection in chronological order.
- d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
3. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with administrative expenses incurred in the grant review process.

SECTION 5. AMENDMENT. Section 15-10-49 of the North Dakota Century Code is amended and reenacted as follows:

15-10-49. Advancement of academics - Matching grants - Two-year and four-year institutions of higher education.

1. a. ~~During the period beginning July 1, 2015, and ending December 31, 2016~~Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of Bismarck state college, Dakota college at Bottineau, Dickinson state university, Lake Region state college, Mayville state university, Minot state university, North Dakota state college of science, Valley City state university,

and Williston state college for projects dedicated exclusively to the advancement of academics.

- b. To be eligible for a matching grant, an institution must demonstrate that:
 - (1) Its foundation has raised at least twenty-five thousand dollars in cash or monetary pledges for a qualifying project; and
 - (2) The project has been approved by the grant review committee established in section 15-10-51.
- c. The board may award up to ~~one million~~ two hundred thousand dollars in matching grants to each institution.
2. a. If any available dollars have not been awarded by the board before January 4, 2017 first of each odd-numbered year, in accordance with subsection 1, any institution listed in subsection 1 may apply for an additional matching grant.
- b. An application submitted under this subsection must meet the same criteria as an original application.
- c. The board shall consider each application submitted under this subsection in chronological order.
- d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
3. a. ~~The board may award an additional five hundred thousand dollars in matching grants to institutions that have been awarded one million dollars in matching grants under subsection 1 and apply for an additional matching grant.~~
- b. ~~An application submitted under this subsection must meet the same criteria as an original application.~~
- c. ~~The board shall consider each application submitted under this subsection in chronological order.~~
- d. ~~If the funding provided under this subsection is insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.~~
4. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with administrative expenses incurred in the grant review process.

SECTION 6. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Capital project and capital lease requests - Maintenance reserve account.

1. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before the institution acquires any additional facility space to be used by the institution for any purpose, if the acquisition would result in additional operating costs funded from any source. This subsection does not apply to operating lease agreements that preclude the ownership of the leased facility.

2. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before an institution purchases, rents, occupies, or otherwise utilizes a building or any portion of a building for a purpose that directly or indirectly supports or relates to the institution's educational or administrative functions if the building is located more than ten miles from the campus of the institution. This subsection does not apply to buildings utilized by an institution to offer dual-credit courses, buildings utilized by the agricultural experiment station and research extension centers, and buildings utilized by the North Dakota state university extension service. For purposes of this section, "campus" means the campus of the institution under the Federal Clery Act [Pub. L. 105-244; 20 U.S.C. 1092(f)].
3. An institution under the control of the state board of higher education may undertake a facility renovation project only if the project will reduce the deferred maintenance amount of the facility by no less than seventy five percent of the total cost of the renovation. The institution shall maintain documentation that demonstrates the cost and scope of the deferred maintenance reduction that results directly from the renovation. This subsection does not apply to projects undertaken solely to correct building code deficiencies or to installations of infrastructure determined by the board to be essential to the mission of the institution.
4. Facility construction and renovation projects undertaken by an institution under the control of the state board of higher education must conform to campus master plan and space utilization requirements approved by the state board of higher education.
5. An institution that obtains legislative approval under subsection 1 must establish a maintenance reserve fund of three percent of the total construction cost or replacement value, whichever is greater, of the acquired space. The institution's plans for funding the maintenance reserve fund must be included in the request for legislative approval under subsection 1. Maintenance reserve funds must be deposited in an account under the control of the state board of higher education before the acquired space may be occupied, and the funds may be used for maintenance repairs after the total deferred maintenance of the space exceeds thirty percent of its replacement value. The funds may not be used for any other purpose. This subsection does not apply to additional space acquired through the sale of revenue bonds that require by covenant the establishment of maintenance reserve funds.

SECTION 7. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Nickel trophy.

To promote national recognition and statewide enthusiasm, the legislative assembly encourages the university of North Dakota and the North Dakota state university of agriculture and applied science to play for the nickel trophy during the course of a national collegiate athletic association football game. If the athletic director or president of either institution elects not to play for the nickel trophy, the nickel trophy must be permanently displayed in the heritage center.

SECTION 8. AMENDMENT. Section 15-18.2-05 of the North Dakota Century Code is amended and reenacted as follows:

15-18.2-05. Base funding - Determination of state aid.

1. Except as provided under subsection 2, in order to determine the state aid payment to which each institution under its control is entitled, the state board of higher education shall multiply the product determined under section 15-18.2-04 by a base amount of:
4. a. ~~\$72.63~~\$58.65 in the case of North Dakota state university and the university of North Dakota;

2. b. \$107.33\$86.95 in the case of Dickinson state university, Mayville state university, Minot state university, and Valley City state university; and
3. c. \$114.88\$93.03 in the case of Bismarck state college, Dakota college at Bottineau, Lake Region state college, North Dakota state college of science, and Williston state college.
2. An institution is entitled to an amount equal to seventy-five percent of the product determined under subsection 1 for credits completed by students receiving a tuition waiver pursuant to section 11 of this Act.

SECTION 9. AMENDMENT. Section 15-18.2-06 of the North Dakota Century Code is amended and reenacted as follows:

15-18.2-06. (Effective through June 30, 20172019) Base funding - Minimum amount payable.

Notwithstanding any calculations required by this chapter, during each fiscal year, ~~beginning with 2014-15~~biennium, an institution may not receive less than ninety-six percent of the state aid to which the institution was entitled under this chapter during the previous fiscal year~~biennium~~.

SECTION 10. AMENDMENT. Section 54-10-22.1 of the North Dakota Century Code is amended and reenacted as follows:

54-10-22.1. State auditor's access to information relating to operations of governmental entities subject to audit.

Notwithstanding any other specific sections of law, the state auditor and persons employed by the state auditor, when necessary in conducting an audit, shall have access to all information relating to operations of all governmental units or component units subject to audit except active investigatory work product of the attorney general as defined in section 44-04-19.1 and financial records and estate planning records a donor provides to a nonprofit organization affiliated with an institution under the control of the state board of higher education which provides support to and is organized and operated for the benefit of the institution. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, the state auditor may inspect any state agency's books, papers, accounts, or records that may be relevant to an ongoing audit of any other state agency or computer system audit. The state auditor and persons employed by the state auditor examining any information, which is confidential by law, shall guard the secrecy of such information except when otherwise directed by judicial order or as is otherwise provided by law.

SECTION 11. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Law enforcement officer tuition and fees waiver.

1. To the extent the annual cap under this section has not been met, an individual who is employed as a full-time law enforcement officer in this state, who has a minimum of two years of employment, and who is licensed under chapter 12-63, is entitled to a waiver of twenty-five percent of resident tuition and fees of any institution of higher education under the control of the state board of higher education if the law enforcement officer:
 - a. Maintains satisfactory performance with the officer's law enforcement agency;
 - b. Obtains authorization to participate in the waiver program and a certificate of verification from the law enforcement officer's superior officer which attests to the officer's satisfactory performance;
 - c. Meets all admission requirements of the institution; and
 - d. Pursues studies leading to a degree from an associate degree program or a baccalaureate degree program.

2. The law enforcement officer may receive the waiver for up to five years from the date the law enforcement officer first receives a waiver under this section.
3. The institution of higher education shall waive twenty-five percent of the officer's tuition and fees after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible law enforcement officer during the time the officer is enrolled. To remain eligible for the waiver, the officer shall comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.
4. The law enforcement officer shall include the certificate of verification when applying for enrollment to the institution of higher education.
5. The total amount of waivers granted each academic year by institutions under the control of the state board of higher education may not exceed five hundred thousand dollars.
6. The attorney general shall adopt the rules necessary to implement this section.

SECTION 12. AMENDMENT. Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-11. (Effective through July 31, 20172019) Office of management and budget to cancel unexpended appropriations - When they may continue.

Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

(Effective after July 31, 20172019) Office of management and budget to cancel unexpended appropriations - When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to

the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

SECTION 13. REPEAL. Chapter 15-10.2 of the North Dakota Century Code is repealed.

SECTION 14. ADDITIONAL FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION. All funds, in addition to those appropriated in section 1 of this Act, from federal, private, and other sources for competitive grants or other funds that the legislative assembly has not indicated the intent to reject, including tuition revenue, received by the state board of higher education and the institutions and entities under the control of the state board of higher education, are appropriated to the board and those institutions and entities, for the biennium beginning July 1, 2017, and ending June 30, 2019. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2017, and ending June 30, 2019, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board.

SECTION 15. CAMPUS CAPITAL PROJECTS - PROJECT MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, each capital project authorized by the state board of higher education must have adequate project management oversight by either an institution official or a representative of an external entity. An institution may seek assistance from the North Dakota university system office for project management oversight of a capital project.

SECTION 16. STUDENT LOAN TRUST FUND - LEGISLATIVE INTENT. Subdivision 1 of section 1 of this Act includes the sum of \$1,504,744, or so much of the sum as may be necessary, from the student loan trust fund of which \$465,307 is for the professional student exchange program, \$500,000 is for grants to tribally controlled community colleges, and \$539,437 is for connectND campus solution positions, for the biennium beginning July 1, 2017, and ending June 30, 2019.

Subdivision 13 of section 1 of this Act includes the sum of \$13,806,856, or so much of the sum as may be necessary, from the student loan trust fund for residency positions at the university of North Dakota school of medicine and health sciences, for the biennium beginning July 1, 2017, and ending June 30, 2019. It is the intent of the sixty-fifth legislative assembly that funding for the residency positions becomes part of ongoing base funding in future budget requests of the school.

SECTION 17. STATEWIDE MEMBERSHIP DUES. Subdivision 1 of section 1 of this Act includes the sum of \$294,000 for membership dues for the western interstate commission for higher education. Subdivision 1 of section 1 of this Act includes the sum of \$230,000 of one-time funding for membership dues of the midwestern higher education compact.

SECTION 18. DICKINSON STATE UNIVERSITY - USES OF FUNDS.

1. The one-time operations and debt repayment line item included in subdivision 8 of section 1 of this Act includes the sum of \$7,409,626, or so much of the sum as may be necessary, which must be used by Dickinson state university as follows:
 - a. \$3,100,000 must be used to repay any outstanding debt of the Biesiot activities center. The funds provided under this subdivision may be used only if the funding provided under this subdivision will result in final satisfaction of any debt associated with the facility; and
 - b. \$4,309,626 must be used for the operations of the institution.
2. Dickinson state university shall utilize up to \$2,000,000 of funding from campus reserves for any additional funding needed to maintain the operations of the institution during the biennium beginning July 1, 2017, and ending June 30, 2019.
3. Dickinson state university may not discontinue any portion of its department of nursing academic program during the biennium beginning July 1, 2017, and ending June 30, 2019.
4. The appropriations identified under this section are considered one-time funding items.

SECTION 19. STATE TREASURER - REALLOCATION OF OIL AND GAS TAX DISTRIBUTIONS.

Notwithstanding any other provision of law, during the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall withhold fifty percent of the amounts allocated to the city of Dickinson under subdivision a of subsection 1 of section 57-51-15, up to a maximum of \$2,500,000 of withholdings, and shall deposit the amounts withheld in the state general fund.

Notwithstanding any other provision of law, during the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall withhold fifty percent of the amounts allocated to Stark County under subdivision a of subsection 5 of section 57-51-15, up to a maximum of \$375,000 of withholdings, and shall deposit the amounts withheld in the state general fund.

SECTION 20. TRANSFER AUTHORITY - LEGISLATIVE MANAGEMENT REPORT.

Notwithstanding section 54-16-04, the state board of higher education may transfer appropriation authority from the operations to the capital assets line items within subdivisions 2 through 14 of section 1 of this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The board shall report any transfer of funds under this section to the office of management and budget and the legislative management.

SECTION 21. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS. Notwithstanding any other provisions of law, the state board of higher education may adjust full-time equivalent positions as needed, subject to the availability of funds, for institutions and entities under its control during the biennium beginning July 1, 2017, and ending June 30, 2019. The North Dakota university system shall report any adjustments to the office of management and budget as part of the submission of the 2019-21 biennium budget request.

SECTION 22. UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES OPERATIONS. The operations line item in subdivision 5 of section 1 of this Act includes a funding allocation from the higher education per student credit-hour funding formula attributable to inflation during the biennium beginning July 1, 2017, and ending June 30, 2019. Based on the recommendation of the commissioner of higher education, a portion of the allocation must be transferred by the state board of higher education to the university of North Dakota school of medicine and health sciences.

SECTION 23. BOND ISSUANCE AUTHORIZATION - PURPOSES. The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of projects authorized in this section, declared to be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this section and ending June 30, 2019. Evidences of indebtedness issued pursuant to this section are not a general

obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated in section 1 of this Act for the following capital projects:

North Dakota state university - New residence hall	\$39,505,000
North Dakota state university - University village replacement	<u>10,000,000</u>
Total special funds	\$49,505,000

SECTION 24. EXEMPTION - THEODORE ROOSEVELT CENTER PROJECT. Except as provided in this section, the amounts appropriated for the Theodore Roosevelt center project in section 3 of chapter 34 of the 2013 Session Laws and section 4 of chapter 49 of the 2013 Session Laws are not subject to section 54-44.1-11 and any unexpended funds from these sections are available during the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

1. Of the unexpended appropriations available under this section, up to \$750,000 may be used for the operations of the Theodore Roosevelt presidential library. Any remaining funds may be used only for the planning, design, and construction of the Theodore Roosevelt presidential library building and may not be used for operations, exhibits, or replica structures.
2. Any expenditure of funds continued under this section, including funds used to match state funds, must be approved in advance by an employee of the office of commissioner of higher education designated by the state board of higher education.
3. The director of the office of management and budget shall cancel any appropriation authority continued under this section on December 31, 2018, unless Dickinson state university has certified to the director that:
 - a. Construction commenced on the presidential library building prior to December 31, 2018;
 - b. A North Dakota architect was used to design the presidential library building;
 - c. The cost of constructing the building, including planning and design costs, will exceed fourteen million dollars; and
 - d. Except as provided in subsection 1, no state appropriated funds designated for the Theodore Roosevelt presidential library building project nor any funds used to match the state funding are being used for purposes other than for planning, design, and construction costs of the building.

SECTION 25. EXEMPTION - HIGHER EDUCATION CHALLENGE GRANTS - TRANSFER. The unexpended amount remaining for the education challenge fund line item in section 1 of chapter 34 of the 2013 Session Laws is not subject to section 54-44.1-11 and the state board of higher education shall transfer any unexpended funds in this line item to Dickinson state university for the operations of the institution during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 26. EXEMPTION - STUDENT FINANCIAL ASSISTANCE GRANTS. Of the \$25,634,276 appropriated from the general fund in the student financial assistance grants line item in subdivision 1 of section 1 of chapter 3 of the 2015 Session Laws, \$5,000,000 is not subject to section 54-44.1-11 and must be canceled by the office of management and budget on the effective date of this section.

SECTION 27. TUITION RATE INCREASE LIMITATIONS - BUDGET SECTION APPROVAL.

1. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2017-18 academic year by more than four percent as compared to the tuition rate in effect during the 2017 spring semester unless the board receives prior budget section approval.

2. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2018-19 academic year by more than four percent as compared to the tuition rate in effect during the 2018 spring semester unless the board receives prior budget section approval.
3. This section does not apply to tuition rates charged for graduate level programs, including programs offered through the university of North Dakota school of medicine and health sciences, the university of North Dakota school of law, or the North Dakota state university school of pharmacy.
4. This section does not apply to tuition rates for nonresident students attending institutions of higher education under the control of the state board of higher education. For purposes of this section, the residency of students for tuition purposes must be determined under section 15-10-19.1.
5. This section does not apply to tuition rates determined under tuition reciprocity agreements entered into by the state board of higher education with other states or state education compacts.
6. For purposes of this section, an institution must calculate a resident tuition rate increase based on the tuition rate paid by an average full-time resident student. The state board of higher education may exclude adjustments to a tuition rate resulting from a change in an institution's method of charging tuition, including the consolidation of existing fees into tuition rates or charging tuition based on a per-credit rate, from tuition rate calculations under this section.

SECTION 28. USE OF EXTRAORDINARY REPAIRS FUNDING - MATCHING FUNDS. The capital assets line items in subdivisions 2 through 12 of section 1 of this Act include funding from the general fund for institution extraordinary repairs. An institution shall provide two dollars of matching funds from operations or other sources for each one dollar of extraordinary repairs funding used for a project.

SECTION 29. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, shall convey certain real property consisting of approximately 0.8 acres parallel and adjacent to the BNSF railway company right-of-way in Cass County, North Dakota, known as parcel number 01-3504-08500-000 in the records of Cass County, North Dakota, to BNSF railway company, if determined appropriate by the state board of higher education and the commissioner of university and school lands. The terms of the conveyance must be determined jointly by the state board of higher education or a designee of the board and the commissioner of university and school lands. North Dakota Century Code sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 30. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, may convey certain real property known as Dakota hall or airport addition, 1015 north forty-third street, lot h, replat of lot 1 and 2, b 3 block 3 and part northwest quarter of northwest quarter section 6-151-60 in the records of the city of Grand Forks, if determined appropriate by the state board of higher education. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined jointly by the state board of higher education or a designee of the board and the commissioner of university and school lands. North Dakota Century Code sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 31. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, may convey certain real property known as Ray Richard's golf course or Ray Richard's golf course addition, 3801 demers avenue, lot 1, block 1, and Ray Richard's golf course addition, 3501 demers avenue, lot 2, block 1, in the records of the city of Grand Forks, if determined appropriate by the state board of higher education. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined by the

state board of higher education or a designee of the board. North Dakota Century Code sections 54-01-5.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 32. TRANSFER OF DAKOTA INSTITUTE INVENTORY. The parks and recreation department shall transfer the name Dakota institute and all rights, title, interests, and copyrights and up to eighty percent of any remaining inventory of any Dakota institute publication, book, or other document or production, regardless of format, to Bismarck state college. Bismarck state college may transfer any rights, title, interests, copyrights, inventory of any of the Dakota institute's publications, books, or other documents or productions, regardless of format, to the author or producer of the document or production.

SECTION 33. RESEARCH NETWORKS - REPORT TO THE LEGISLATIVE MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, the state board of higher education, in association with the research institutions under its control, shall consider opportunities for collaboration on high-performance computing, data analytics, and connectivity to Minnesota research networks to improve access, increase capacity, and create efficiencies. The board may utilize appropriations and reserves designated for the northern tier network to accommodate continued use of existing research networks and to expand network capabilities. The board shall consider developing policies and procedures to authorize private entities to utilize the research network. During the 2017-18 interim, the state board of higher education shall provide a report to the legislative management regarding the status of efforts to collaborate with Minnesota entities for research network purposes.

SECTION 34. LEGISLATIVE MANAGEMENT STUDY - UNIVERSITY OF NORTH DAKOTA ENERGY AND ENVIRONMENTAL RESEARCH CENTER RELATIONSHIP WITH THE UNIVERSITY OF NORTH DAKOTA. During the 2017-18 interim, the Legislative Management shall consider studying the relationship between the University of North Dakota and the Energy and Environmental Research Center. The study, if conducted, must include a review of the working relationship between the entities including financial responsibilities and expectations of each entity including potential alternative administrative reporting lines and business models. The Legislative Management shall report its findings and recommendations, including any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 35. STATE BOARD OF HIGHER EDUCATION - STUDY OF THE REORGANIZATION OF TWO-YEAR INSTITUTIONS - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the period beginning July 1, 2017, and ending December 31, 2018, the state board of higher education shall study the reorganization of the two-year institutions under its control into a community and technology college system that addresses workforce and education needs of the state. As part of the study, the board shall consider:

1. Shared administration;
2. Shared courses, including a common course catalog;
3. Articulation agreements linking elementary and secondary education, career academies, and career and technical education to postsecondary certificates and associate's degrees;
4. Centralized processing of student admissions, housing applications, financial aid, and advising; and
5. Centralized services, including bookstore operations, food services, marketing, procurement, accounting, and human resources.

The state board of higher education shall approve and present a plan to implement the recommendations of its study to reorganize two-year institutions, including drafts of legislation necessary to implement the recommendations, to the appropriations committees of the sixty-sixth legislative assembly.

SECTION 36. STATE BOARD OF HIGHER EDUCATION - STUDY OF NURSING PROGRAMS - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the period beginning July 1, 2017, and ending December 31, 2018, the state board of higher education shall study the reorganization of nursing programs at institutions under its control. As part of the study, the board shall review the number of institutions offering nursing programs, the level of programs offered, and the locations of programs. The board shall consider options to develop collaborations among institutions to offer programs in an efficient and effective manner to address the workforce needs of the state.

The state board of higher education shall approve and present a plan to implement the recommendations of its study to reorganize nursing programs, including drafts of legislation necessary to implement the recommendations, to the appropriations committees of the sixty-sixth legislative assembly.

SECTION 37. STATE BOARD OF HIGHER EDUCATION DATA AND REPORTING INCONSISTENCIES - REPORT TO LEGISLATIVE MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, the state board of higher education shall evaluate the following data and reporting inconsistency issues at institutions and entities under its control and develop policies and procedures to correct:

1. Inconsistent employee classifications and human resources reporting;
2. Inconsistent employee leave policies;
3. Inconsistent practices for awarding tuition waivers; and
4. Inconsistent practices regarding the charging of student fees.

The state board of higher education shall provide a report to and consult with the legislative management during the 2017-18 interim regarding the status of the inconsistencies, including policies and procedures being developed to address the inconsistencies.

SECTION 38. REDUCTION IN EMPLOYEES - LEGISLATIVE INTENT - REPORT TO LEGISLATIVE MANAGEMENT. It is the intent of the sixty-fifth legislative assembly that if the number of full-time equivalent positions is reduced at institutions under the control of the state board of higher education, any reduction be applied among all classifications of employees with emphasis on senior administrative positions. During the 2017-18 interim, the state board of higher education shall provide reports to the legislative management regarding the total number of employee positions reduced at each institution, the number of administrative positions reduced at each institution, and whether any former administrative staff employees are still employed by the institution in a different position.

SECTION 39. LEGISLATIVE INTENT - NORTH DAKOTA STATE UNIVERSITY - LEASE ARRANGEMENT AND OTHER SAVINGS. It is the intent of the sixty-fifth legislative assembly that future general fund appropriations in support of the North Dakota state university department of nursing program in Bismarck be adjusted for savings resulting from facility lease negotiations and for credit-hours completed at the school.

SECTION 40. EFFECTIVE DATE. Section 13 of this Act become effective on June 30, 2017.

SECTION 41. EMERGENCY. Sections 13, 23, 24, 26, 28, and 40 and the capital assets line items in section 1 of this Act are declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2003 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 2 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 71 Nays 18 Absent 5

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1020
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide an appropriation to the industrial commission; to amend and reenact section 57-51.1-07, subsection 10 of section 61-02-02, section 61-02-08, subsection 1 of section 61-02-78, section 61-02-79, the new section to chapter 61-03, as created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, and sections 61-29-06, 61-40-05, and 61-40-11 of the North Dakota Century Code, relating to the oil extraction tax development fund, the definition of water conveyance project, the state water commission chairman and vice chairman, the infrastructure revolving loan fund, a Bank of North Dakota line of credit, economic analyses for certain water projects, management of the Little Missouri scenic river, the authority of the western area water supply authority, and water rates of the western area water supply authority; to provide for budget section approval; to provide for a state engineer study; to provide for an industrial commission study; to provide for a legislative management study; to provide for reports; to provide a statement of legislative intent; to designate funding; to provide for a transfer; to provide exemptions; to provide a contingent effective date; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the state water commission for the purpose of defraying the expenses of the state water commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administrative and support services	\$5,535,618	\$97,568	\$5,633,186
Water and atmospheric resources	863,400,218	(146,859,929)	716,540,289
Total all funds	\$868,935,836	(\$146,762,361)	\$722,173,475
Full-time equivalent positions	97.00	(4.00)	93.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$257,498 of other funds, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION APPROVAL. In addition to the amounts appropriated in section 1 of this Act, any additional amounts in the resources trust fund and water development trust fund which become available are appropriated, subject to budget section approval, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY. Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the water and atmospheric resources line item in section 1 of this Act. However, this exclusion is only in effect for two years after June 30, 2019. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

SECTION 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS - TRANSFERS - BUDGET SECTION APPROVAL.

1. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act from funds available in the resources trust fund and water development trust fund, \$298,875,000 is designated as follows:
 - a. \$120,125,000 for water supply;
 - b. \$27,000,000 for rural water supply;
 - c. \$136,000,000 for flood control; and
 - d. \$15,750,000 for general water.
2. The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, subject to budget section approval and upon notification to the legislative management's water topics overview committee.

SECTION 6. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT FUNDING.

Except for funding provided during bienniums prior to the 2017-19 biennium, it is the intent of the sixty-fifth legislative assembly that the state provide no more than \$193,000,000 of state funding for Mouse River flood control projects within the city limits of Minot. It is the intent of the sixty-fifth legislative assembly that the \$193,000,000 be made available during the 2017-19, 2019-21, 2021-23, and 2023-25 bienniums.

SECTION 7. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT - BUDGET SECTION APPROVAL. It is the intent of the sixty-fifth legislative assembly that the state water commission provide, in the form of a grant, up to \$30,000,000, of which \$17,000,000 is for the completion of the planning and permitting process and \$13,000,000 is to initiate construction of phase one prioritized project features identified in accordance with subsection 2 of section 8 of this Act, to the Garrison diversion conservancy district for the Red River valley water supply project, for the biennium beginning July 1, 2017, and ending June 30, 2019. The Garrison diversion conservancy district must receive budget section approval prior to changing any funding between designations identified in this section.

SECTION 8. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL. Any funding received by the Garrison diversion conservancy district from the state water commission for the Red River valley water supply project during the biennium beginning July 1, 2017, and ending June 30, 2019, is subject to the following requirements:

1. Any funding received for the completion of the planning and permitting process of the Red River valley water supply project must result in the following accomplishments:
 - a. The completed Red River valley water supply plan document that will be the basis and justification for project construction and must include alternative selection, water supply needs, projected project costs, easement acquisitions, environmental regulation compliance to include the Boundary Waters Treaty of 1909, and an implementation schedule;
 - b. Acquisition of all state and federal permits required for the construction of any project features intended to be constructed with funding provided during the 2017-19 biennium;
 - c. A signed bureau of reclamation water service contract agreeing to a minimum of one hundred sixty-five cubic feet per second over a minimum of forty years or equivalent to ensure an adequate water source for the project's needs;
 - d. Prioritized project features for phase one construction; and

- e. A recommendation for funding options for all phases of the Red River valley water supply project.
2. Any funding received to initiate construction of phase one prioritized project features identified in subsection 1 may be spent and construction of phase one may begin only after the budget section receives and approves certification from the state water commission and the state engineer that all items listed in subsection 1 have been accomplished.
3. Quarterly progress reports on the Red River valley water supply project from the Garrison diversion conservancy district to the water topics overview committee of the legislative management, during the 2017-18 interim.

SECTION 9. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH DAKOTA LOAN - REPORTS. Notwithstanding section 5 of chapter 500 of the 2011 Session Laws, the Bank of North Dakota shall consolidate the \$40,000,000 loan to the western area water supply authority authorized in section 5 of chapter 20 of the 2013 Session Laws, the \$50,000,000 loan to the western area water supply authority authorized in section 2 of chapter 500 of the 2011 Session Laws, and the \$25,000,000 loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws. The terms and conditions of the consolidation loan must be negotiated by the western area water supply authority and the Bank of North Dakota. The western area water supply authority is not obligated to repay principal on loans from the resources trust fund for the period beginning July 1, 2017, and ending June 30, 2018. The interest rate on the \$10,000,000 loan to the western area water supply authority authorized in section 4 of chapter 500 of the 2011 Session Laws must be 2.5 percent on any outstanding balance remaining after the effective date of this Act. The Bank of North Dakota shall report the terms of the consolidation loan upon its completion to the legislative management's water topics overview committee during the 2017-18 interim. The western area water supply authority shall provide its monthly financial statements and industrial sales to the legislative council for the legislative management's water topics overview committee's review during the 2017-18 interim.

SECTION 10. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE SHORTFALL - BUDGET SECTION APPROVAL. If the western area water supply authority defaults on its payment of the principal or interest on the consolidation loan provided for in section 9 of this Act or the revenue bonds or other financing provided for in section 12 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.

SECTION 11. APPROPRIATION - INDUSTRIAL COMMISSION STUDY - WESTERN AREA WATER SUPPLY AUTHORITY - REPORT TO LEGISLATIVE MANAGEMENT. There is appropriated out of any moneys in the resources trust fund, in the state treasury, the sum of \$150,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of conducting an independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the western area water supply authority, for the period beginning with the effective date of this Act, and ending June 30, 2019. The study must provide information regarding the financial impact to the western area water supply authority, its members and customers, the financial viability of the authority, and options available to the authority for debt servicing. The industrial commission may form a nonvoting advisory committee chaired by the state engineer to provide input regarding the scope of the study and to receive reports on the status of the study. The industrial commission shall report to the legislative management's interim water topics overview committee on the results of the study by June 1, 2018.

SECTION 12. ACTIONS RESULTING FROM THE WESTERN AREA WATER SUPPLY AUTHORITY STUDY.

1. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is feasible and desirable to lease or sell the industrial water supply assets of the western

area water supply authority, the industrial commission shall develop a timeline to complete the lease or the sale of the industrial water assets of the western area water supply authority and report to the legislative management's interim water topics overview committee.

2. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is not feasible and desirable to lease or sell the industrial water supply assets of the western area water supply authority, notwithstanding section 5 of chapter 500 of the 2011 Session Laws, the western area water supply authority shall, with the assistance of the industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds or other financing options acceptable to the industrial commission and Bank of North Dakota.

SECTION 13. STATE ENGINEER - FLOOD HAZARD RISK MANAGEMENT STUDY - ADDITIONAL INCOME - APPROPRIATION. The water and atmospheric resources line item in section 1 of this Act includes \$30,000 of which \$15,000 is from the resources trust fund and \$15,000 of other funds received from Ward County, for the purpose of conducting a flood hazard risk management framework study and demonstration in section 14 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek funding from federal, local, and private sector co-funding partnerships. Any fees collected from data users and partners and any other funds from public or private sources, including federal grants and county revenue contributions, are appropriated to the state engineer for the study and for expanding the project to additional counties for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. LEGISLATIVE MANAGEMENT STUDY - FLOOD HAZARD RISK MANAGEMENT. During the 2017-18 interim, the legislative management shall study issues related to the state's development of a statewide flood hazard risk management framework by granting authority to the state engineer to perform a study and proof of concept demonstration to implement statewide flood risk management capabilities for assessing, managing, and reducing property-specific flood risk.

1. In performing the study and proof of concept demonstration, the state engineer may leverage, coordinate, and partner with the North Carolina floodplain mapping program and with Ward County to conduct the study and proof of concept demonstration. The state engineer shall acquire and leverage data necessary to support the study and proof of concept demonstration including:
 - a. Footprints and elevations from current and future light detection and ranging data collections that meet federal emergency management agency risk mapping, assessment, and planning standards;
 - b. First floor elevations and elevation certificates from local planning and zoning offices or light detection and ranging data;
 - c. Parcel, address, and imagery data necessary for individual property flood hazard identification, assessment, and reduction; and
 - d. Any other data the state engineer deems necessary to meet the objectives in creating the database.
2. To complete the pilot project, the state engineer shall:
 - a. Construct and maintain flood hazard and risk data in a spatial, relational database;
 - b. Disseminate flood hazard and risk data through a digital display environment prompted through dynamic querying;
 - c. Coordinate, incentivize, and partner with a least one county to obtain the necessary parcel data and other data needed for this study and serve as the repository for the property flood risk dataset;

- d. Establish a technical committee consisting of federal, state, local, and private sector stakeholders and providers to the greatest extent possible to allow data sharing, coordination, synergy, and partnering;
 - e. Work with the North Carolina floodplain mapping program to incorporate the property risk dataset into the multistate flood risk information system maintained by North Carolina, augment the dataset with federal emergency management agency digital flood insurance data, and assess any data or other gaps preventing this state's full use of the system;
 - f. Make the data publicly available on the state water commission's website in an easily accessible and useable format;
 - g. Provide technical assistance to data users, including reports and analysis as needed; and
 - h. Work with the federal emergency management agency and the study county to enable the communities and property owners to use the elevation, light detection and ranging, and other data provided on the website to submit letters of map amendment or revision to the federal emergency management agency.
3. The state engineer shall report to the legislative management as requested by the legislative management. At the conclusion of the study, the state engineer shall provide the following information to the legislative management:
 - a. A description of the engineer's current cooperative technical flood mapping partnership with the federal emergency management agency and any additional authority, staffing, and funding required to create a fully independent and self-sustaining state flood mapping program in lieu of the federal emergency management agency program, including the processing of letters of map change;
 - b. A detailed estimate of overall program costs and flood risk reductions of a self-sustaining state flood mapping program; and
 - c. A county assessment of the private, county, state, and federal data and resources that are currently available as compared to the resources that would be required to fully use North Carolina's flood risk information system for flood risk management, including recommendations for improvement or the statewide expansion of the project established under this study and suggested funding mechanisms and alternatives for data dissemination, which may include a one-state online repository or the provision of data by local planning and zoning offices.

SECTION 15. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. ~~Five~~Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to

exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed ~~one million~~ two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:

- a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
 - c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
 4. Thirty percent must be allocated and credited to the state's general fund.

SECTION 16. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed one million two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the

capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.

- c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent must be allocated and credited to the state's general fund.

SECTION 17. AMENDMENT. Subsection 10 to section 61-02-02 of the North Dakota Century Code as amended by section 3 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

10. "Water conveyance project" means any surface ~~or subsurface~~ drainage works, bank stabilization, or snagging and clearing of water courses.

SECTION 18. AMENDMENT. Section 61-02-08 of the North Dakota Century Code as amended by section 6 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

61-02-08. Meetings of commission.

The commission shall hold at least one meeting every two months at places as it, by resolution, may provide. The governor shall serve as chairman, and the commission shall select a member of the commission to serve as vice chairman. The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, ~~as chairman, or governor's appointed representative~~ shall preside at all meetings of the commission ~~and in case of the governor's, and in case of the absence or disability of the governor and governor's appointed representative,~~ the vice chairman shall preside. ~~The seven appointed members of the commission shall select an appointed member to serve as vice chairman of the commission.~~

SECTION 19. AMENDMENT. Subsection 1 of section 61-02-78 of the North Dakota Century Code is amended and reenacted as follows:

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund, not to exceed a total deposit from oil extraction moneys of twenty-six million dollars, are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.

SECTION 20. AMENDMENT. Section 61-02-79 of the North Dakota Century Code is amended and reenacted as follows:

61-02-79. Bank of North Dakota - Line of credit.

The Bank of North Dakota shall extend a line of credit not to exceed ~~two hundred seventy-five million dollars~~ at a rate ~~that of one and one-half percent over the three month London interbank offered rate, but may not exceed one and three-quarters~~ three percent to the state water commission. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the

legislative assembly for ~~water supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the 2015 session laws, and water supply projects approved before June 30, 2017~~2019, and flood control projects that have approval for funding before June 30, ~~2017~~2019.

SECTION 21. The new section to chapter 61-03 of the North Dakota Century Code created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

Economic analysis process required for certain projects.

The state engineer shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than ~~seven hundred fifty thousand~~one million dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the state engineer shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

SECTION 22. AMENDMENT. Section 61-29-06 of the North Dakota Century Code is amended and reenacted as follows:

61-29-06. Management.

Channelization, reservoir construction, or diversion other than for agricultural ~~or~~ recreational, or temporary use purposes and the dredging of waters within the confines of the Little Missouri scenic river and all Little Missouri River tributary streams are expressly prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri River. Diking and riprapping for bank erosion control shall be permitted within the confines of the Little Missouri scenic river. The construction of impoundments for any purpose on the Little Missouri mainstream shall be prohibited.

This chapter shall in no way affect or diminish the rights of owners of the land bordering the river to use the waters for domestic purposes, including livestock watering, or any other rights of riparian landowners.

SECTION 23. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the

acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
11. Borrow money as provided in this chapter.
12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.

14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
16. Accept, apply for, and hold water allocation permits.
17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 61-40-11.
18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.
21. Issue revenue bonds to repay its loan obligations to the Bank of North Dakota. For the purpose of issuing such revenue bonds, the provisions of chapters 40-35 and 40-36 apply to the extent necessary and consistent with section 12 of this Act.

SECTION 24. AMENDMENT. Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

61-40-11. Water rates.

~~The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect.~~The industrial commission may authorize the authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales. The authority shall provide a report on the rates to the commission and legislative management's water topics overview committee on a regular basis. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales.

SECTION 25. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO RESOURCES TRUST FUND. On July 1, 2017, the state treasurer shall transfer any oil extraction moneys exceeding \$26,000,000 which have been deposited in the infrastructure revolving loan fund from the infrastructure revolving loan fund to the resources trust fund.

SECTION 26. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS INDUSTRIAL WATER USE. During the 2017-18 interim, the legislative management shall study industrial water use of the oil and gas industry. The study must include the recapture of water used in fracking, the recycling of water used in fracking, and other oil and gas activities, fracking methods which do not require the use of water, and taxes or fees other states charge for water used in the oil and gas industry.

SECTION 27. STATE WATER COMMISSION - 2019-21 BIENNIUM BUDGET. The state water commission, in accordance with section 54-44.1-04, shall prepare its 2019-21 biennium budget request and the office of management and budget shall prepare the draft appropriations Act under section 54-44.1-16 for the state water commission for consideration by the sixty-sixth legislative assembly with funding provided separately in a salaries and wages line item, operating expenses line item, capital assets line item, project carryover line item, new projects line item, and any additional line items as determined necessary by the commission or the office of management and budget. The state water commission shall present funding for projects in a manner consistent with the funding designations identified in section 5 of this Act, for the 2019-21 biennium.

SECTION 28. EFFECTIVE DATE - EXPIRATION DATE. Section 15 of this Act becomes effective on August 1, 2017, is effective through July 31, 2019, and after that date is ineffective. Section 16 of this Act becomes effective on August 1, 2019. Sections 17, 18, and 21 of this Act become effective on August 1, 2017.

SECTION 29. CONTINGENT EFFECTIVE DATE. Section 23 of this Act is contingent on certification by the industrial commission to the legislative council that the industrial commission has determined the western area water supply authority shall, with the assistance of the industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds, as provided under subsection 2 of section 12 of this Act.

SECTION 30. EMERGENCY. Sections 9, 10, 11, 12, 22, 23, and 29 of this Act are declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1020 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 76 Nays 11 Absent 7

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2013
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide an appropriation to the state treasurer; to provide for transfers; to provide for distributions from permanent funds; to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the energy impact fund; to amend and reenact subsection 5 of section 57-51-01 and sections 57-51-15 and 57-51.1-07.6 of the North Dakota Century Code, relating to oil and gas gross production tax definitions and allocations and the political subdivision allocation fund; to repeal section 57-51.1-07.6 of the North Dakota Century Code, relating to the political subdivision allocation fund; to provide exemptions; to provide for reports; to provide statements of legislative intent; to provide for a legislative management study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund, the strategic investment and improvements fund, the energy impact fund, and the oil and gas impact grant fund in the state treasury, to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,123,516	(\$117,966)	\$6,005,550
Operating expenses	2,019,637	(243,914)	1,775,723
Capital assets	0	3,600,000	3,600,000
Grants	99,300,000	(59,300,000)	40,000,000
Contingencies	100,000	0	100,000
Energy infrastructure and impact office	<u>700,000</u>	<u>(700,000)</u>	0
Total special funds	\$108,243,153	(\$56,761,880)	\$51,481,273
Full-time equivalent positions	33.00	(2.00)	31.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes \$84,948 from special funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Oil and gas impact grants - airports	\$0	\$25,000,000
Other grants - airports	0	15,000,000
Information technology project	<u>0</u>	<u>3,600,000</u>
Total special funds	\$0	\$43,600,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. APPROPRIATION - STATE TREASURER - DISTRIBUTIONS TO NON-OIL-PRODUCING COUNTIES. There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$8,000,000, or so much of the sum as may be necessary, and out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$8,100,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing distributions to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county, for the biennium beginning July 1, 2017, and ending June 30, 2019. In August 2017, the state treasurer shall distribute \$16,100,000, or so much of the sum as may be necessary, to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county. The distribution to each non-oil-producing county must provide for an allocation of \$10,000 to each organized and unorganized township within the county. The amount allocated to organized townships under this section must be paid by the county treasurer to each organized township. The amount allocated to unorganized townships under this section must be credited by the county treasurer to a special fund for unorganized township roads. The distributions under this section must be used for the maintenance and improvement of township paved and unpaved roads and bridges. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads. For purposes of this subsection, a "non-oil-producing county" means a county that received no allocation of funding or a total allocation under subsection 2 of section 57-51-15 of less than \$5,000,000 for the period beginning September 1, 2015, and ending August 31, 2016. For the purposes of calculating the unobligated balance of the state disaster relief fund under section 57-51.1-07.5, the moneys appropriated in this section from the state disaster relief fund may not be considered an obligation of the state disaster relief fund until after July 31, 2017. The funding appropriated in this section is considered a one-time funding item.

SECTION 5. TRANSFER - POLITICAL SUBDIVISION ALLOCATION FUND TO ENERGY IMPACT FUND. The state treasurer shall transfer \$8,000,000 from the political subdivision allocation fund to the energy impact fund during August 2017.

SECTION 6. TRANSFER - POLITICAL SUBDIVISION ALLOCATION FUND TO STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. After the transfer in section 5 of this Act, the state treasurer shall transfer any amount remaining in the political subdivision allocation fund from the political subdivision allocation fund to the strategic investment and improvements fund during August 2017.

SECTION 7. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO ENERGY IMPACT FUND. The state treasurer shall transfer \$3,000,000 from the strategic investment and improvements fund to the energy impact fund during August 2017.

SECTION 8. DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2017, and ending June 30, 2019, the following amounts, from the permanent funds managed for the benefit of the following entities:

Commons schools	\$288,264,000
North Dakota state university	4,738,000
University of North Dakota	3,662,000
Youth correctional center	1,422,000
School for the deaf	1,598,000
North Dakota state college of science	1,446,286
State hospital	1,370,286
Veterans' home	622,286
Valley City state university	808,000
North Dakota vision services - school for the blind	840,286
Mayville state university	542,000
Dakota college at Bottineau	186,286
Dickinson state university	186,286

Minot state university	186,286
Total	\$305,872,002

SECTION 9. ONE-TIME ADJUSTMENT TO DISTRIBUTIONS TO STATE INSTITUTIONS.

Pursuant to article IX of the Constitution of North Dakota and in addition to the distributions in section 4 of this Act, the board of university and school lands shall distribute during the biennium beginning July 1, 2017, and ending June 30, 2019, the following one-time corrections resulting from the misallocation of prior mineral revenues, from the permanent funds managed for the benefit of the following entities:

North Dakota state college of science	\$89,698
State hospital	89,698
Veterans' home	89,698
North Dakota vision services - school for the blind	89,698
Dakota college at Bottineau	89,698
Dickinson state university	89,698
Minot state university	89,698
Youth correctional center	(621,186)
Total	\$6,700

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of chapter 13 of the 2015 Session Laws and for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2017, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. EXEMPTION - FLOOD-IMPACTED POLITICAL SUBDIVISION INFRASTRUCTURE DEVELOPMENT GRANTS. Up to \$1,325,500 appropriated from the general fund in section 10 of chapter 579 of the 2011 Session Laws for flood-impacted political subdivision infrastructure development grants, which was awarded but not yet reimbursed to the city of Minot for a landfill expansion project, is not subject to section 54-44.1-11, and any unexpended funds are available to reimburse the city of Minot during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 12. INFORMATION TECHNOLOGY PROJECT - BUDGET SECTION APPROVAL - LEGISLATIVE INTENT - AGENCY EFFICIENCIES. The capital assets line item and the total special funds line item in section 1 of this Act include \$3,600,000 from the state lands maintenance fund for an information technology project. Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section. It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the governor and the commissioner of university and school lands achieve efficiencies and budgetary savings within the department of trust lands through the use of innovative ideas and through alternative solutions relating to information technology.

SECTION 13. OIL AND GAS IMPACT GRANT FUND - AIRPORT GRANTS. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$25,000,000 from the oil and gas impact grant fund for grants to airports, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the \$25,000,000, the board of university and school lands shall award a grant of \$20,000,000 to the Williston airport and a grant of \$5,000,000 to the Dickinson airport. A grant may be awarded to the Williston airport only when any related federal funding is committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 14. ENERGY IMPACT FUND - WILLISTON AIRPORT GRANT. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$15,000,000 from the energy impact fund for a grant to the Williston airport, for the biennium beginning July 1, 2017, and ending June 30, 2019. A grant may be awarded to the Williston airport only when any related federal funding is

committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 15. AMENDMENT. Subsection 5 of section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~"Hub city" means, for the period beginning September 1, 2015, and ending August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one percent of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota. "Hub city" means, after August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one percent of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota.~~ "Hub city" means, after August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one~~one~~two percent of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota.

SECTION 16. AMENDMENT. Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. Gross production tax allocation.

The gross production tax must be allocated monthly as follows:

1. ~~First the~~The tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer ~~who shall.~~ The state treasurer shall allocate the funding in the following order:
 - a. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city, which is located in a county that received an allocation under subsection 2, a monthly amount that will provide a total allocation of three hundred seventy-five thousand dollars per fiscal year for each full or partial percentage point of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~To each hub city, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of three hundred seventy-five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota; For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:
 - (1) Thirty-three percent for the city of Williston;
 - (2) Seventeen percent for the city of Dickinson; and
 - (3) Four percent for the city of Minot.
 - b. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city, which is located in a county that did not receive an allocation under subsection 2, a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~To each hub city, which is located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point, excluding the first two

~~percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota;~~

- c. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city school district, which is located in a county that received an allocation under subsection 2, a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point of the hub city's private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~ To each hub city school district, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of the hub city's private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota, provided that hub, Hub city school districts, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subdivision; For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:
- (1) Thirty-three percent for the city of Williston;
 - (2) Seventeen percent for the city of Dickinson; and
 - (3) Four percent for the city of Minot.
- d. ~~Allocate to~~ To each county that received more than five million dollars but less than thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year 2014, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year to be added by the state treasurer be added to the allocations to school districts under subdivision b of subsection 5;
- e. ~~Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding one hundred forty million dollars per biennium for the 2015-17 biennium, and not in an amount exceeding one hundred million dollars per biennium thereafter;~~
- f. ~~Credit eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars in a state fiscal year and not in an amount exceeding forty million dollars per biennium;~~
- g. ~~Credit four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars in a state fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars; and~~
- h. ~~Allocate the remaining revenues under subsection 3, as follows:~~
- (1) To each county that received more than five million dollars but not exceeding ten million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.

- (2) To each county that received more than ten million dollars but not exceeding fifteen million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million two hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (3) To each county that received more than fifteen million dollars but not exceeding twenty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (4) To each county that received more than twenty million dollars but not exceeding twenty-five million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of seven hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (5) To each county that received more than twenty-five million dollars but not exceeding thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
- e. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding ten million dollars per biennium. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.
- (2) After August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars per fiscal year.
- f. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding four million dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.
- (2) After August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.
- g. For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:
- (1) Up to twenty-five million dollars to the oil and gas impact grant fund.
 - (2) Any remaining revenues under subsection 3.

- h. After August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:
 - (1) Up to five million dollars per biennium to the oil and gas impact grant fund. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.
 - (2) Any remaining revenues under subsection 3.
- i. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
- 2. a. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received less than five million dollars of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:
 - (1) The first five million dollars of collections received each fiscal year is allocated to the county.
 - (2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.
- b. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:
 - (1) The first five million dollars of collections received each fiscal year is allocated to the county. From the first five million dollars allocated to the county, the state treasurer shall allocate an amount from each county to the energy impact fund to provide a total allocation of two million per fiscal year to the fund. The amount allocated from each county to the energy impact fund under this paragraph must be proportional to the county's monthly oil and gas gross production tax revenue collected relative to the total monthly oil and gas gross production tax revenue collected from all the counties under this subdivision. The state treasurer shall allocate the amount remaining from this paragraph to the county under subsection 5. For the purposes of determining the counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year under this section, any amounts withheld from the county for allocations to the energy impact fund are considered allocations to the county.
 - (2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.
- c. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated after August 31, 2019, as follows:
 - a.(1) The first five million dollars is allocated to the county.

- b.(2) Of all annual revenue exceeding five million dollars, thirty percent is allocated to the county.
- d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.
4. For a county that received less than five million dollars of allocations under subsection 2 in statethe most recently completed even-numbered fiscal year 2014, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
- a. Forty-five percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
- b. Thirty-five percent must be distributed to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.
- c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.
- d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
5. For a county that received five million dollars or more of allocations under subsection 2 in statethe most recently completed even-numbered fiscal year 2014, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
- a. Sixty percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
- b. Five percent must be distributed to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.

- c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.
 - d. Three percent must be allocated among the organized and unorganized townships of the county. The state treasurer shall allocate the funds available under this subdivision among townships in proportion to each township's road miles relative to the total township road miles in the county. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.
 - e. Three percent must be allocated among the organized and unorganized townships in all the counties that received five million dollars or more of allocations under subsection 2 in the most recently completed state even-numbered fiscal year. The amount available under this subdivision must be allocated by the state treasurer in an equal amount to each eligible organized and unorganized township. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.
 - f. Nine percent must be distributed among hub cities. Sixty percent of funds available under this subdivision must be distributed to the hub city receiving the highest percentage of allocations to hub cities under subdivision a of subsection 1 for the quarterly period, thirty percent of funds available under this subdivision must be distributed to the hub city receiving the second highest percentage of such allocations, and ten percent of funds available under this subdivision must be distributed to the hub city receiving the third highest percentage of such allocations. Hub cities, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subsection. If fewer than three hub cities are eligible for the allocations under this subdivision, the state treasurer shall allocate the available funds in proportion to the amounts the eligible hub cities received under subdivision a of subsection 1.
 - g. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:
 - a. The county's statement of revenues and expenditures;
 - b. The county's ending fund balances;
 - c. The amounts allocated under this section to the county's general fund, the amounts expended from these allocations, and the purposes of the expenditures; and
 - d. The amounts allocated under this section to or for the benefit of townships within the county, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

7. Within thirty days after the end of each fiscal year ended June thirtieth, each school district that has received an allocation under this section shall file a report for the fiscal year ended June thirtieth with the commissioner, in a format prescribed by the commissioner, including:
 - a. The school district's statement of revenue and expenditures;
 - b. The school district's ending fund balances; and
 - c. The amounts allocated under this section to the school district, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

SECTION 17. A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Energy impact fund.

There is created in the state treasury the energy impact fund. The fund consists of all moneys deposited in the fund under section 57-51-15. The moneys in the fund may be spent pursuant to legislative appropriations.

SECTION 18. AMENDMENT. Section 57-51.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

~~57-51.1-07.6. Political subdivision allocation fund –Oil and gas tax revenue allocations to political subdivisions–State treasurer–Continuing appropriation.~~

~~There is created in the state treasury the political subdivision allocation fund. The fund consists of oil and gas tax revenue deposited in the fund pursuant to this chapter. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of allocations to political subdivisions in oil-producing counties.~~

- ~~1. If the balance of the fund exceeds ten million dollars on March first of each odd-numbered year, within thirty-one days, the state treasurer shall allocate all moneys in the fund to eligible political subdivisions in oil-producing counties based on each political subdivision's oil and gas gross production tax allocations under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year. The allocation to each eligible political subdivision must be proportional to each political subdivision's total oil and gas gross production tax allocation under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year relative to the combined total of all oil and gas gross production tax allocations under subsection 4 and subsection 5 of section 57-51-15 in the most recently completed formula allocation year. For purposes of this subsection, "formula allocation year" means the period beginning September first of an odd-numbered year and ending August thirty-first of the following even-numbered year.~~
- ~~2. If the balance of the fund exceeds ten million dollars on August first of each odd-numbered year, within thirty-one days, the state treasurer shall allocate all moneys in the fund to eligible political subdivisions in oil-producing counties based on each political subdivision's oil and gas gross production tax allocations under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year. The allocation to each eligible political subdivision must be proportional to each political subdivision's total oil and gas gross~~

~~production tax allocation under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year relative to the combined total of all oil and gas gross production tax allocations under subsection 4 and subsection 5 of section 57-51-15 in the most recently completed formula allocation year. For purposes of this subsection, "formula allocation year" means the period beginning September first of an odd-numbered year and ending August thirty-first of the following even-numbered year.~~

SECTION 19. REPEAL. Section 57-51.1-07.6 of the North Dakota Century Code is repealed.

SECTION 20. LEGISLATIVE INTENT - ENCOURAGEMENT OF ENERGY INFRASTRUCTURE INVESTMENT - COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS - USE OF TERMS. It is the intent of the sixty-fifth legislative assembly that the state of North Dakota encourage the continued development of energy infrastructure that will help reduce instances of natural gas flaring and increase the market value received for oil and gas produced within the state generally and from state-owned lands specifically which will increase the value of royalties paid to the funds under the control of the board of university and school lands. Consistent with this intent, the commissioner of university and school lands shall continue to interpret the terms "gross production," "market value," and "gross proceeds of sale" in its lease form to mean a value determined at the producing well or associated production facility, or in the surrounding field or area, where the oil and gas was produced, before any post-production activities undertaken by the lessee, operator, or purchaser after the oil and gas has been transported from the producing well and associated production facility. These values must be determined by the amount received by the lessee in an arm's length contract, or in the absence of an arm's length contract, either a comparable sales method or a work-back calculation methodology consistent with state law.

SECTION 21. STUDY OF OIL AND GAS VALUATION - REPORT TO ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE.

1. During the 2017 18 interim, the tax department, in consultation with the board of university and school lands, the industrial commission, and other state agencies as necessary, shall study the valuation of oil and gas as used to determine mineral royalty payments and tax liability. The study must include consideration of the following:
 - a. The methods used to calculate the value of oil and gas, including changes in custody, the basis for the value, any deductions or incentives applied to the value, and the point at which the value is determined.
 - b. The impact of state and federal regulations, including gas capture requirements.
 - c. The market competition for gas processing, including the possibility of rate setting by the public service commission.
 - d. The reporting of any deductions or incentives applied to the value as included on mineral royalty statements and tax reporting documents.
2. The tax department shall report to the energy development and transmission committee by September 30, 2018, regarding the results and recommendations of the study.

SECTION 22. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS TAX REVENUE ALLOCATIONS TO HUB CITIES AND HUB CITY SCHOOL DISTRICTS.

1. During the 2017-18 interim, the legislative management shall consider studying oil and gas tax revenue allocations to hub cities and hub city school districts. The study must include consideration of the following:
 - a. The current and historical oil and gas tax revenue allocations to hub cities and hub city school districts.

- b. Other state funding provided to hub cities and hub city school districts, including grants from the oil and gas impact grant fund, distributions from the strategic investment and improvements fund, state school aid payments, and payments from the state aid distribution fund and highway tax distribution fund.
 - c. Local taxing and revenue levels in hub cities compared to cities in non-oil-producing counties, including mill levies, property tax values, local sales and use taxes, and other revenue sources.
 - d. The appropriate level of oil and gas tax revenue allocations to hub cities and hub city school districts based on infrastructure and other needs.
 - e. The estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to transition hub cities and hub city school districts from allocations under subsection 1 of section 57-51-15 to allocations under subsections 4 and 5 of section 57-51-15.
 - f. The estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to discontinue the allocations to hub cities and hub city school districts under subsection 1 of section 57-51-15.
2. The membership of the committee assigned the responsibility of the study must proportionately reflect the state's population distribution between oil-producing counties and non-oil-producing counties and must include members from the finance and taxation committees and the appropriations committees.
 3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 23. EFFECTIVE DATE. Sections 15 and 16 of this Act are effective for taxable events occurring after June 30, 2017. Section 19 of this Act becomes effective September 1, 2017. House Bill No. 1300, as approved by the sixty-fifth legislative assembly, becomes effective January 1, 2018.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2013.

Senate Vote: Yeas 42 Nays 5 Absent 0

House Vote: Yeas 58 Nays 32 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State



— State of —
North Dakota
Office of the Governor

Doug Burgum
Governor

May 1, 2017

Honorable Brent Sanford
President of the Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9, I have signed Senate Bill 2018, the appropriations bill for the commerce department, with an item veto in Section 12.

The portion of Section 12 that reads: "\$300,000 to an organization that provides workplace safety," is vetoed.

This earmark appeared in the final commerce appropriations bill from conference committee. It was added without the benefit of full transparency and scrutiny afforded appropriations that proceed through the public hearing process and full legislative review.

The remaining language in Section 12 gives clear direction to the commerce department to establish guidelines and procedures for awarding grants and vouchers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Burgum".

Doug Burgum
Governor

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2018
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide exemptions; to provide for transfers; to provide for a report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of commerce for the purpose of defraying the expenses of the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$13,015,999	(\$20,211)	\$12,995,788
Operating expenses	16,384,623	(907,001)	15,477,622
Grants	48,134,795	6,375,621	54,510,416
Discretionary funds	784,152	1,415,848	2,200,000
Flood impact grants/loans	0	5,201,752	5,201,752
Agricultural products utilization commission	3,118,611	34,304	3,152,915
North Dakota trade office	2,556,694	(556,694)	2,000,000
Partner programs	2,173,829	(233,984)	1,939,845
Entrepreneurship grants and vouchers	<u>1,500,000</u>	<u>750,000</u>	<u>2,250,000</u>
Total all funds	\$87,668,703	\$12,059,635	\$99,728,338
Less estimated income	<u>53,809,604</u>	<u>14,576,054</u>	<u>68,385,658</u>
Total general fund	\$33,859,099	(\$2,516,419)	\$31,342,680
Full-time equivalent positions	69.40	(3.00)	66.40

SECTION 2. HEALTH INSURANCE INCREASE. The salaries line item in section 1 of this Act includes the sum of \$172,554, of which \$135,102 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Workforce enhancement fund	\$960,069	\$0
Flood impact grants/loans	12,859,869	5,201,752
Research North Dakota	4,353,542	0
Unmanned aircraft system	2,662,105	2,000,000
Base retention grants	1,500,000	600,000
Tourism large infrastructure grants	586,000	0
Enhanced use lease grant	7,500,000	3,000,000
Child care facility grants	2,131,267	0
Homeless shelter grants	1,500,000	0
Tribal community college grants	2,837,130	0
Workforce recruitment campaign	300,000	0
Tourism midwest markets	848,481	0
Entrepreneurship grants and vouchers	1,716,830	0

Tourism international	227,836	0
Educators and industry externships	<u>40,000</u>	<u>0</u>
Total all funds	\$40,023,129	\$10,801,752
Less estimated income	<u>21,359,869</u>	<u>9,801,752</u>
Total general fund	\$18,663,260	\$1,000,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of commerce shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. EXEMPTION. The amount appropriated for the agricultural products utilization commission in section 1 of chapter 18 of the 2015 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item for grants are available for grants during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 5. EXEMPTION. The amount appropriated for the discretionary funds line item in section 1 of chapter 18 of the 2015 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 6. EXEMPTION. Of the amount appropriated for the unmanned aircraft systems program in section 1 of chapter 18 of the 2015 Session Laws up to \$1,000,000 is not subject to section 54-44.1-11 and unexpended funds from this amount are available and may be spent during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 7. TRANSFER - INTERNSHIP FUND. The office of management and budget shall transfer \$950,000 of the amount appropriated in the operating expenses line item in section 1 of this Act to the internship fund for the purpose of administering the operation intern program, for the period beginning with the effective date of this Act and ending June 30, 2019.

SECTION 8. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - BASE RETENTION GRANT PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$600,000 from the strategic investment and improvements fund for a base retention grant program to be developed by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. The grant program must award direct grants and not cost reimbursement grants. The department may award grants of \$200,000 to each community with an air force base or air national guard facilities.

SECTION 9. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - UNMANNED AIRCRAFT SYSTEMS PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$2,000,000 from the strategic investment and improvements fund for operations of the unmanned aircraft systems test site, for the biennium beginning July 1, 2017, and ending June 30, 2019. The department of commerce shall consult with the aeronautics commission regarding test site operational costs and support services and best practices related to the unmanned aircraft systems test site.

SECTION 10. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ENHANCED USE LEASE GRANT PROGRAM. The grants line item and the estimated income line item in section 1 of this Act include the sum of \$3,000,000, of which \$1,000,000 is from the general fund and \$2,000,000 is from the strategic investment and improvements fund for an enhanced use lease grant program, for the biennium beginning July 1, 2017, and ending June 30, 2019. Grants must be awarded for initiatives related to the unmanned aircraft system industry in North Dakota, including for the purposes of infrastructure, research, development, the creation of software, and the purchase of equipment benefiting the unmanned aircraft system. The department of commerce shall require grant recipients to provide matching funds in the form of cash, property, or in-kind consideration, totaling \$1,000,000 for the grants awarded under this program.

SECTION 11. TRADE OFFICE - MATCHING FUND REQUIREMENT. The North Dakota trade office line item and the general fund appropriation in section 1 of this Act include \$2,000,000 of funding relating to the North Dakota trade office. The department of commerce may spend sixty percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2017, and ending June 30, 2019. Matching funds may include money spent by businesses or organizations to pay salaries to export assistants, provide training to export assistants, or buy computer equipment as part of the North Dakota trade office's export assistance program.

SECTION 12. ENTREPRENEURSHIP GRANTS AND VOUCHER PROGRAM - EXEMPTION. Section 1 of this Act includes the sum of \$2,250,000, of which \$600,000 is from the general fund and \$1,650,000 is from special funds, for an entrepreneurship grants and voucher program to be developed and administered by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the amount appropriated, \$900,000 is to be distributed equally to entrepreneurial centers located in Bismarck, Fargo, and Grand Forks, ~~\$300,000 to an organization that provides workplace safety~~, and \$300,000 for biotechnology grants. The department shall establish guidelines to provide grants to entrepreneurial centers certified by the department. The department also shall establish guidelines to award vouchers to entrepreneurs to procure business development assistance from certified entrepreneurial centers or to provide grants to entrepreneurs working with an entrepreneurial center. The amount appropriated for entrepreneurship grants in section 1 of this Act is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 13. ENERGY AND ENVIRONMENTAL RESEARCH CENTER GRANT - MATCHING REQUIREMENT. The grants line item in section 1 of this Act includes \$500,000 from the research North Dakota fund which the department of commerce shall provide as a grant to the energy and environmental research center at the university of North Dakota. The grant must be utilized for economic development and diversification of the North Dakota economy and may be provided only to the extent the energy and environmental research center provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. ESTIMATED INCOME - RESEARCH NORTH DAKOTA FUND. Notwithstanding section 54-65-08, the estimated income line item in section 1 of this Act includes \$3,500,000 from the research North Dakota fund to the department of commerce for department programs. Of this amount, \$500,000 is for the North Dakota tourism program, \$1,000,000 is for discretionary funds, \$1,500,000 is for entrepreneurship grants and vouchers, and \$500,000 is for providing a grant to the energy and environmental research center at the university of North Dakota.

SECTION 15. TRANSFER - RESEARCH NORTH DAKOTA FUND TO THE GENERAL FUND. Notwithstanding section 54-65-08, the office of management and budget shall transfer \$4,000,000 from the research North Dakota fund to the general fund, during the biennium beginning July 1, 2017, and ending June 30, 2019.

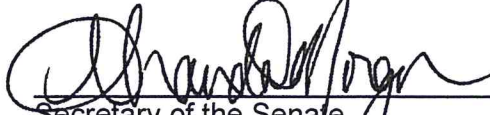
SECTION 16. EMERGENCY. Funding of \$950,000 in the operating expenses line item in sections 1 and 7 of this Act, relating to the operation intern program, are declared to be an emergency measure.



President of the Senate



Speaker of the House




Secretary of the Senate



Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2018 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 44 Nays 3 Absent 0



President of the Senate



Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 63 Nays 25 Absent 6



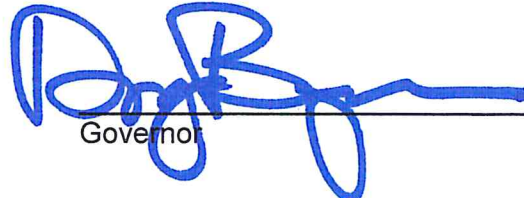
Speaker of the House



Chief Clerk of the House

Received by the Governor at 11:58A M. on April 27, 2017.

Approved at 8:42P M. on May 1, 2017.



Governor

Filed in this office this 3 day of May, 2017,
at 8⁵⁰ o'clock A M.



Secretary of State



— State of —
North Dakota
Office of the Governor

Doug Burgum
Governor

May 2, 2017

The Honorable Brent Sanford
President of the Senate
North Dakota Senate Chambers
North Dakota State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed Senate Bill 2003, but vetoed items in Sections 18, 24, 32, 39 and all of Section 6. SB 2003 is the North Dakota University System appropriations bill.

Section 6.

Article VIII, § 6 of the North Dakota Constitution gives the State Board of Higher Education “full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control.” and “control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this state.” ND Const. art. VIII, § 6(b)(e). The restrictions in Section 6 intrude upon the operations of the Board and violate the separation of governmental powers established by the North Dakota Constitution.

Section 18.

That portion of paragraph 3, Section 18 that reads “any portion of” is vetoed. The ambiguity of the vetoed language will cause unintended confusion and uncertainty. The remaining language in paragraph 3 achieves the intent of the legislative assembly.

Section 24.

Paragraph 3 (c) of Section 24 is vetoed. This paragraph requiring Dickinson State University to certify that “a North Dakota architect was used to design the presidential library” is hereby vetoed. For example, this condition would preclude the hiring of one of the many North Dakota State University architecture graduates who work at firms across the United States.

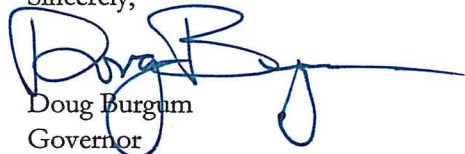
Section 32.

The second sentence under Section 32 is vetoed. We have instructed the President of Bismarck State College to work collaboratively with the parks and recreation department director, the state historical society and other stakeholders to develop a plan for the optimum use or sale of the Dakota Institute property as identified in Section 32.

Section 39.

The portion of paragraph 39 that reads “and for credit hours completed at the school” is hereby vetoed. Reducing general fund appropriations based upon credit hours is contrary to the legislatively approved higher education funding formula.

Sincerely,


Doug Burgum
Governor

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

**SENATE BILL NO. 2003
(Appropriations Committee)**

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to create and enact two new sections to chapter 15-10 and a new section to chapter 54-12 of the North Dakota Century Code, relating to approval of capital projects requested by institutions under the control of the state board of higher education, the nickel trophy, and tuition and fee waivers for law enforcement officers; and to amend and reenact sections 15-10-48, 15-10-49, 15-18.2-05, 15-18.2-06, 54-10-22.1, and 54-44.1-11 of the North Dakota Century Code, relating to matching grants for institutions under the control of the state board of higher education, state aid to institutions, the minimum amount payable through the higher education funding formula, protecting donor records from audits of university and college foundations, and the cancellation of unexpended appropriations; to repeal chapter 15-10.2 of the North Dakota Century Code, relating to the midwestern higher education compact; to provide for the transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide exemptions; to provide for the reallocation of oil and gas tax distributions; to authorize the conveyance of real property owned by the state of North Dakota; to provide for studies; to provide for legislative management reports; to provide legislative intent; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board of higher education and to the entities and institutions under the supervision of the board, for the purpose of defraying the expenses of the state board of higher education and the entities and institutions under the control of the board, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets - bond payments	\$6,901,461	(\$296,135)	\$6,605,326
Competitive research programs	6,588,225	(560,475)	6,027,750
System governance	7,212,636	1,180,602	8,393,238
Title II	1,006,472	0	1,006,472
Core technology services	41,325,593	20,201,754	61,527,347
Student financial assistance grants	23,886,160	(1,968,854)	21,917,306
Professional student exchange program	3,941,754	(242,412)	3,699,342
Academic and technical education scholarship	13,134,096	(1,117,347)	12,016,749
Two-year campus marketing	747,600	(747,600)	0
Scholars program	2,113,584	(306,469)	1,807,115
Native American scholarship	649,267	(93,944)	555,323
Tribally controlled community college grants	967,250	(367,250)	600,000
Education incentive programs	3,349,000	(485,607)	2,863,393
Student mental health	308,100	(23,700)	284,400
Veterans' assistance grants	325,000	(47,125)	277,875
Commendation grants	4,486	(4,486)	0

Internal audit pool	280,350	(280,350)	0
Shared campus services	0	500,000	500,000
Two-year campus study	0	40,000	40,000
Education challenge grants	0	<u>2,000,000</u>	<u>2,000,000</u>
Total all funds	\$112,741,034	\$17,380,602	\$130,121,636
Less estimated income	<u>2,511,216</u>	<u>23,700,890</u>	<u>26,212,106</u>
Total general fund	\$110,229,818	(\$6,320,288)	\$103,909,530
Full-time equivalent positions	104.39	45.01	149.40

Subdivision 2.

BISMARCK STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$34,214,004	\$67,580,404	\$101,794,408
Capital assets	<u>67,732</u>	<u>1,854,829</u>	<u>1,922,561</u>
Total all funds	\$34,281,736	\$69,435,233	\$103,716,969
Less estimated income	0	<u>72,991,998</u>	<u>72,991,998</u>
Total general fund	\$34,281,736	(\$3,556,765)	\$30,724,971
Full-time equivalent positions	133.53	224.82	358.35

Subdivision 3.

LAKE REGION STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$14,143,353	\$22,356,652	\$36,500,005
Capital assets	0	<u>362,667</u>	<u>362,667</u>
Total all funds	\$14,143,353	\$22,719,319	\$36,862,672
Less estimated income	0	<u>24,111,092</u>	<u>24,111,092</u>
Total general fund	\$14,143,353	(\$1,391,773)	\$12,751,580
Full-time equivalent positions	50.19	79.42	129.61

Subdivision 4.

WILLISTON STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$9,191,151	\$17,797,826	\$26,988,977
Capital assets	<u>197,801</u>	<u>1,064,167</u>	<u>1,261,968</u>
Total all funds	\$9,388,952	\$18,861,993	\$28,250,945
Less estimated income	0	<u>19,855,598</u>	<u>19,855,598</u>
Total general fund	\$9,388,952	(\$993,605)	\$8,395,347
Full-time equivalent positions	49.96	50.79	100.75

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$146,572,961	\$712,782,489	\$859,355,450
Capital assets	<u>4,411,566</u>	<u>91,000,000</u>	<u>95,411,566</u>
Total all funds	\$150,984,527	\$803,782,489	\$954,767,016
Less estimated income	0	<u>819,870,450</u>	<u>819,870,450</u>

Total general fund	\$150,984,527	(\$16,087,961)	\$134,896,566
Full-time equivalent positions	630.20	1,587.87	2,218.07

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$144,323,680	\$588,884,780	\$733,208,460
Capital assets	<u>2,732,244</u>	<u>82,571,860</u>	<u>85,304,104</u>
Total all funds	\$147,055,924	\$671,456,640	\$818,512,564
Less estimated income	<u>0</u>	<u>689,386,329</u>	<u>689,386,329</u>
Total general fund	\$147,055,924	(\$17,929,689)	\$129,126,235
Full-time equivalent positions	537.10	1,358.56	1,895.66

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$40,916,239	\$50,918,458	\$91,834,697
Capital assets	<u>0</u>	<u>1,012,379</u>	<u>1,012,379</u>
Total all funds	\$40,916,239	\$51,930,837	\$92,847,076
Less estimated income	<u>0</u>	<u>57,605,613</u>	<u>57,605,613</u>
Total general fund	\$40,916,239	(\$5,674,776)	\$35,241,463
Full-time equivalent positions	168.30	176.74	345.04

Subdivision 8.

DICKINSON STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$24,527,233	\$22,608,359	\$47,135,592
Capital assets	<u>0</u>	<u>409,078</u>	<u>409,078</u>
One-time operations and debt repayment	<u>0</u>	<u>7,409,626</u>	<u>7,409,626</u>
Total all funds	\$24,527,233	\$30,427,063	\$54,954,296
Less estimated income	<u>0</u>	<u>29,737,827</u>	<u>29,737,827</u>
Total general fund	\$24,527,233	\$689,236	\$25,216,469
Full-time equivalent positions	120.26	48.64	168.90

Subdivision 9.

MAYVILLE STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$15,642,731	\$28,611,943	\$44,254,674
Capital assets	<u>0</u>	<u>358,992</u>	<u>358,992</u>
Total all funds	\$15,642,731	\$28,970,935	\$44,613,666
Less estimated income	<u>0</u>	<u>30,307,148</u>	<u>30,307,148</u>
Total general fund	\$15,642,731	(\$1,336,213)	\$14,306,518
Full-time equivalent positions	66.23	144.30	210.53

Subdivision 10.

MINOT STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$45,037,266	\$55,838,786	\$100,876,052
Capital assets	<u>499,620</u>	<u>600,000</u>	<u>1,099,620</u>
Total all funds	\$45,536,886	\$56,438,786	\$101,975,672
Less estimated income	<u>0</u>	<u>62,058,916</u>	<u>62,058,916</u>
Total general fund	\$45,536,886	(\$5,620,130)	\$39,916,756
Full-time equivalent positions	204.10	237.55	441.65

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$23,218,126	\$25,312,806	\$48,530,932
Capital assets	<u>0</u>	<u>455,823</u>	<u>455,823</u>
Total all funds	\$23,218,126	\$25,768,629	\$48,986,755
Less estimated income	<u>0</u>	<u>28,470,657</u>	<u>28,470,657</u>
Total general fund	\$23,218,126	(\$2,702,028)	\$20,516,098
Full-time equivalent positions	105.59	97.16	202.75

Subdivision 12.

DAKOTA COLLEGE AT BOTTINEAU

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$8,017,920	\$9,179,785	\$17,197,705
Capital assets	<u>86,537</u>	<u>27,470</u>	<u>114,007</u>
Total all funds	\$8,104,457	\$9,207,255	\$17,311,712
Less estimated income	<u>0</u>	<u>9,629,173</u>	<u>9,629,173</u>
Total general fund	\$8,104,457	(\$421,918)	\$7,682,539
Full-time equivalent positions	46.96	37.34	84.30

Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$53,166,247	\$158,723,654	\$211,889,901
Total all funds	\$53,166,247	\$158,723,654	\$211,889,901
Less estimated income	<u>0</u>	<u>154,078,620</u>	<u>154,078,620</u>
Total general fund	\$53,166,247	\$4,645,034	\$57,811,281
Full-time equivalent positions	184.58	251.17	435.75

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$6,228,620	\$8,729,827	\$14,958,447
Capital assets	<u>101,210</u>	<u>17,518</u>	<u>118,728</u>
Total all funds	\$6,329,830	\$8,747,345	\$15,077,175
Less estimated income	<u>1,650,000</u>	<u>9,000,748</u>	<u>10,650,748</u>

Total general fund	\$4,679,830	(\$253,403)	\$4,426,427
Full-time equivalent positions	28.96	(1.96)	27.00

Subdivision 15.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$681,876,059	(\$56,954,279)	\$624,921,780
Grand total special funds	4,161,216	2,030,805,059	2,034,966,275
Grand total all funds	\$686,037,275	\$1,973,850,780	\$2,659,888,055

SECTION 2. HEALTH INSURANCE INCREASE. Section 1 of this Act includes the sum of \$17,991,140, of which \$5,638,788 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Capital projects - general funds	\$99,167,288	\$0
Capital projects - other funds	44,848,194	168,505,000
Campus security pool	2,763,562	0
Core technology services projects	2,821,500	0
Open education resource training	107,250	0
Theodore Roosevelt center	800,000	0
Williston state college energy development impact	2,500,000	0
Dickinson state university leadership transition	2,000,000	0
Museum of art deferred maintenance	760,000	0
Deferred maintenance pool	8,482,500	0
School of medicine and health sciences residency positions	4,700,000	0
Health care workforce initiative	13,814,806	0
Desktop support services	81,750	0
Email retention	350,000	0
Dickinson state university Woods Hall renovation	11,500,000	0
Education challenge grants	22,124,500	2,000,000
Institution operations distributions	0	2,000,000
Dickinson state university operations and debt repayment	0	7,409,626
Two-year campus study	0	40,000
Midwestern higher education compact dues	0	230,000
Total all funds	\$216,821,350	\$180,184,626
Total other funds	60,848,194	168,505,000
Total general fund	\$155,973,156	\$11,679,626

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The North Dakota university system shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium July 1, 2017, and ending June 30, 2019.

SECTION 4. AMENDMENT. Section 15-10-48 of the North Dakota Century Code is amended and reenacted as follows:

15-10-48. Advancement of academics - Matching grants - University of North Dakota and North Dakota state university.

1. a. ~~During the period beginning July 1, 2015, and ending December 31, 2016~~Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of the university of North Dakota and North Dakota state university for projects dedicated exclusively to the advancement of academics.
- b. To be eligible for a matching grant, an institution must demonstrate that:
 - (1) Its foundation has raised at least fifty thousand dollars in cash or monetary pledges for a qualifying project; and
 - (2) The project has been approved by the grant review committee established in section 15-10-51.
- c. The board may award up to ~~seven million~~two hundred thousand dollars in matching grants to each institution. ~~The first two million dollars in matching grants awarded to each institution must be used for student scholarships that comply with section 15-10-53.~~
- d. Projects at the university of North Dakota school of medicine and health sciences are not eligible to receive a grant under this section.
2. a. If any available dollars have not been awarded by the board before January 1, ~~2017~~first of each odd-numbered year, in accordance with subsection 1, either the university of North Dakota or North Dakota state university may apply for an additional matching grant.
- b. An application submitted under this subsection must meet the same criteria as an original application.
- c. The board shall consider each application submitted under this subsection in chronological order.
- d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
3. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with administrative expenses incurred in the grant review process.

SECTION 5. AMENDMENT. Section 15-10-49 of the North Dakota Century Code is amended and reenacted as follows:

15-10-49. Advancement of academics - Matching grants - Two-year and four-year institutions of higher education.

1. a. ~~During the period beginning July 1, 2015, and ending December 31, 2016~~Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of Bismarck state college, Dakota college at Bottineau, Dickinson state university, Lake Region state college, Mayville state university, Minot state university, North Dakota state college of science, Valley City state university,

- and Williston state college for projects dedicated exclusively to the advancement of academics.
- b. To be eligible for a matching grant, an institution must demonstrate that:
 - (1) Its foundation has raised at least twenty-five thousand dollars in cash or monetary pledges for a qualifying project; and
 - (2) The project has been approved by the grant review committee established in section 15-10-51.
 - c. The board may award up to ~~one million~~ two hundred thousand dollars in matching grants to each institution.
2.
 - a. If any available dollars have not been awarded by the board before January 1, ~~2017~~ first of each odd-numbered year, in accordance with subsection 1, any institution listed in subsection 1 may apply for an additional matching grant.
 - b. An application submitted under this subsection must meet the same criteria as an original application.
 - c. The board shall consider each application submitted under this subsection in chronological order.
 - d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
 3.
 - a. ~~The board may award an additional five hundred thousand dollars in matching grants to institutions that have been awarded one million dollars in matching grants under subsection 1 and apply for an additional matching grant.~~
 - b. ~~An application submitted under this subsection must meet the same criteria as an original application.~~
 - c. ~~The board shall consider each application submitted under this subsection in chronological order.~~
 - d. ~~If the funding provided under this subsection is insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.~~
 4. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with administrative expenses incurred in the grant review process.

~~SECTION 6. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:~~

~~**Capital project and capital lease requests - Maintenance reserve account.**~~

- ~~1. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before the institution acquires any additional facility space to be used by the institution for any purpose, if the acquisition would result in additional operating costs funded from any source. This subsection does not apply to operating lease agreements that preclude the ownership of the leased facility.~~

- ~~2. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before an institution purchases, rents, occupies, or otherwise utilizes a building or any portion of a building for a purpose that directly or indirectly supports or relates to the institution's educational or administrative functions if the building is located more than ten miles from the campus of the institution. This subsection does not apply to buildings utilized by an institution to offer dual-credit courses, buildings utilized by the agricultural experiment station and research extension centers, and buildings utilized by the North Dakota state university extension service. For purposes of this section, "campus" means the campus of the institution under the Federal Clergy Act [Pub. L. 105-244; 20 U.S.C. 1092(f)].~~
- ~~3. An institution under the control of the state board of higher education may undertake a facility renovation project only if the project will reduce the deferred maintenance amount of the facility by no less than seventy five percent of the total cost of the renovation. The institution shall maintain documentation that demonstrates the cost and scope of the deferred maintenance reduction that results directly from the renovation. This subsection does not apply to projects undertaken solely to correct building code deficiencies or to installations of infrastructure determined by the board to be essential to the mission of the institution.~~
- ~~4. Facility construction and renovation projects undertaken by an institution under the control of the state board of higher education must conform to campus master plan and space utilization requirements approved by the state board of higher education.~~
- ~~5. An institution that obtains legislative approval under subsection 1 must establish a maintenance reserve fund of three percent of the total construction cost or replacement value, whichever is greater, of the acquired space. The institution's plans for funding the maintenance reserve fund must be included in the request for legislative approval under subsection 1. Maintenance reserve funds must be deposited in an account under the control of the state board of higher education before the acquired space may be occupied, and the funds may be used for maintenance repairs after the total deferred maintenance of the space exceeds thirty percent of its replacement value. The funds may not be used for any other purpose. This subsection does not apply to additional space acquired through the sale of revenue bonds that require by covenant the establishment of maintenance reserve funds.~~

SECTION 7. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Nickel trophy.

To promote national recognition and statewide enthusiasm, the legislative assembly encourages the university of North Dakota and the North Dakota state university of agriculture and applied science to play for the nickel trophy during the course of a national collegiate athletic association football game. If the athletic director or president of either institution elects not to play for the nickel trophy, the nickel trophy must be permanently displayed in the heritage center.

SECTION 8. AMENDMENT. Section 15-18.2-05 of the North Dakota Century Code is amended and reenacted as follows:

15-18.2-05. Base funding - Determination of state aid.

1. ~~Except as provided under subsection 2, in order to determine the state aid payment to which each institution under its control is entitled, the state board of higher education shall multiply the product determined under section 15-18.2-04 by a base amount of:~~
4. a. ~~\$72.63~~\$58.65 in the case of North Dakota state university and the university of North Dakota;

- 2- b. ~~\$107.33~~\$86.95 in the case of Dickinson state university, Mayville state university, Minot state university, and Valley City state university; and
- 3- c. ~~\$114.88~~\$93.03 in the case of Bismarck state college, Dakota college at Bottineau, Lake Region state college, North Dakota state college of science, and Williston state college.
2. An institution is entitled to an amount equal to seventy-five percent of the product determined under subsection 1 for credits completed by students receiving a tuition waiver pursuant to section 11 of this Act.

SECTION 9. AMENDMENT. Section 15-18.2-06 of the North Dakota Century Code is amended and reenacted as follows:

15-18.2-06. (Effective through June 30, ~~2017~~2019) Base funding - Minimum amount payable.

Notwithstanding any calculations required by this chapter, during each fiscal year, ~~beginning with 2014-15~~biennium, an institution may not receive less than ninety-six percent of the state aid to which the institution was entitled under this chapter during the previous ~~fiscal year~~biennium.

SECTION 10. AMENDMENT. Section 54-10-22.1 of the North Dakota Century Code is amended and reenacted as follows:

54-10-22.1. State auditor's access to information relating to operations of governmental entities subject to audit.

Notwithstanding any other specific sections of law, the state auditor and persons employed by the state auditor, when necessary in conducting an audit, shall have access to all information relating to operations of all governmental units or component units subject to audit except active investigatory work product of the attorney general as defined in section 44-04-19.1 and financial records and estate planning records a donor provides to a nonprofit organization affiliated with an institution under the control of the state board of higher education which provides support to and is organized and operated for the benefit of the institution. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, the state auditor may inspect any state agency's books, papers, accounts, or records that may be relevant to an ongoing audit of any other state agency or computer system audit. The state auditor and persons employed by the state auditor examining any information, which is confidential by law, shall guard the secrecy of such information except when otherwise directed by judicial order or as is otherwise provided by law.

SECTION 11. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Law enforcement officer tuition and fees waiver.

1. To the extent the annual cap under this section has not been met, an individual who is employed as a full-time law enforcement officer in this state, who has a minimum of two years of employment, and who is licensed under chapter 12-63, is entitled to a waiver of twenty-five percent of resident tuition and fees of any institution of higher education under the control of the state board of higher education if the law enforcement officer:
 - a. Maintains satisfactory performance with the officer's law enforcement agency;
 - b. Obtains authorization to participate in the waiver program and a certificate of verification from the law enforcement officer's superior officer which attests to the officer's satisfactory performance;
 - c. Meets all admission requirements of the institution; and
 - d. Pursues studies leading to a degree from an associate degree program or a baccalaureate degree program.

2. The law enforcement officer may receive the waiver for up to five years from the date the law enforcement officer first receives a waiver under this section.
3. The institution of higher education shall waive twenty-five percent of the officer's tuition and fees after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible law enforcement officer during the time the officer is enrolled. To remain eligible for the waiver, the officer shall comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.
4. The law enforcement officer shall include the certificate of verification when applying for enrollment to the institution of higher education.
5. The total amount of waivers granted each academic year by institutions under the control of the state board of higher education may not exceed five hundred thousand dollars.
6. The attorney general shall adopt the rules necessary to implement this section.

SECTION 12. AMENDMENT. Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-11. (Effective through July 31, 20172019) Office of management and budget to cancel unexpended appropriations - When they may continue.

Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

(Effective after July 31, 20172019) Office of management and budget to cancel unexpended appropriations - When they may continue. The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to

the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

SECTION 13. REPEAL. Chapter 15-10.2 of the North Dakota Century Code is repealed.

SECTION 14. ADDITIONAL FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION. All funds, in addition to those appropriated in section 1 of this Act, from federal, private, and other sources for competitive grants or other funds that the legislative assembly has not indicated the intent to reject, including tuition revenue, received by the state board of higher education and the institutions and entities under the control of the state board of higher education, are appropriated to the board and those institutions and entities, for the biennium beginning July 1, 2017, and ending June 30, 2019. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2017, and ending June 30, 2019, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board.

SECTION 15. CAMPUS CAPITAL PROJECTS - PROJECT MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, each capital project authorized by the state board of higher education must have adequate project management oversight by either an institution official or a representative of an external entity. An institution may seek assistance from the North Dakota university system office for project management oversight of a capital project.

SECTION 16. STUDENT LOAN TRUST FUND - LEGISLATIVE INTENT. Subdivision 1 of section 1 of this Act includes the sum of \$1,504,744, or so much of the sum as may be necessary, from the student loan trust fund of which \$465,307 is for the professional student exchange program, \$500,000 is for grants to tribally controlled community colleges, and \$539,437 is for connectND campus solution positions, for the biennium beginning July 1, 2017, and ending June 30, 2019.

Subdivision 13 of section 1 of this Act includes the sum of \$13,806,856, or so much of the sum as may be necessary, from the student loan trust fund for residency positions at the university of North Dakota school of medicine and health sciences, for the biennium beginning July 1, 2017, and ending June 30, 2019. It is the intent of the sixty-fifth legislative assembly that funding for the residency positions becomes part of ongoing base funding in future budget requests of the school.

SECTION 17. STATEWIDE MEMBERSHIP DUES. Subdivision 1 of section 1 of this Act includes the sum of \$294,000 for membership dues for the western interstate commission for higher education. Subdivision 1 of section 1 of this Act includes the sum of \$230,000 of one-time funding for membership dues of the midwestern higher education compact.

SECTION 18. DICKINSON STATE UNIVERSITY - USES OF FUNDS.

1. The one-time operations and debt repayment line item included in subdivision 8 of section 1 of this Act includes the sum of \$7,409,626, or so much of the sum as may be necessary, which must be used by Dickinson state university as follows:
 - a. \$3,100,000 must be used to repay any outstanding debt of the Biesiot activities center. The funds provided under this subdivision may be used only if the funding provided under this subdivision will result in final satisfaction of any debt associated with the facility; and
 - b. \$4,309,626 must be used for the operations of the institution.
2. Dickinson state university shall utilize up to \$2,000,000 of funding from campus reserves for any additional funding needed to maintain the operations of the institution during the biennium beginning July 1, 2017, and ending June 30, 2019.
3. Dickinson state university may not discontinue ~~any portion of~~ its department of nursing academic program during the biennium beginning July 1, 2017, and ending June 30, 2019.
4. The appropriations identified under this section are considered one-time funding items.

SECTION 19. STATE TREASURER - REALLOCATION OF OIL AND GAS TAX DISTRIBUTIONS.

Notwithstanding any other provision of law, during the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall withhold fifty percent of the amounts allocated to the city of Dickinson under subdivision a of subsection 1 of section 57-51-15, up to a maximum of \$2,500,000 of withholdings, and shall deposit the amounts withheld in the state general fund.

Notwithstanding any other provision of law, during the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall withhold fifty percent of the amounts allocated to Stark County under subdivision a of subsection 5 of section 57-51-15, up to a maximum of \$375,000 of withholdings, and shall deposit the amounts withheld in the state general fund.

SECTION 20. TRANSFER AUTHORITY - LEGISLATIVE MANAGEMENT REPORT.

Notwithstanding section 54-16-04, the state board of higher education may transfer appropriation authority from the operations to the capital assets line items within subdivisions 2 through 14 of section 1 of this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The board shall report any transfer of funds under this section to the office of management and budget and the legislative management.

SECTION 21. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS. Notwithstanding any other provisions of law, the state board of higher education may adjust full-time equivalent positions as needed, subject to the availability of funds, for institutions and entities under its control during the biennium beginning July 1, 2017, and ending June 30, 2019. The North Dakota university system shall report any adjustments to the office of management and budget as part of the submission of the 2019-21 biennium budget request.

SECTION 22. UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES OPERATIONS. The operations line item in subdivision 5 of section 1 of this Act includes a funding allocation from the higher education per student credit-hour funding formula attributable to inflation during the biennium beginning July 1, 2017, and ending June 30, 2019. Based on the recommendation of the commissioner of higher education, a portion of the allocation must be transferred by the state board of higher education to the university of North Dakota school of medicine and health sciences.

SECTION 23. BOND ISSUANCE AUTHORIZATION - PURPOSES. The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of projects authorized in this section, declared to be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this section and ending June 30, 2019. Evidences of indebtedness issued pursuant to this section are not a general

obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated in section 1 of this Act for the following capital projects:

North Dakota state university - New residence hall	\$39,505,000
North Dakota state university - University village replacement	<u>10,000,000</u>
Total special funds	\$49,505,000

SECTION 24. EXEMPTION - THEODORE ROOSEVELT CENTER PROJECT. Except as provided in this section, the amounts appropriated for the Theodore Roosevelt center project in section 3 of chapter 34 of the 2013 Session Laws and section 4 of chapter 49 of the 2013 Session Laws are not subject to section 54-44.1-11 and any unexpended funds from these sections are available during the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

1. Of the unexpended appropriations available under this section, up to \$750,000 may be used for the operations of the Theodore Roosevelt presidential library. Any remaining funds may be used only for the planning, design, and construction of the Theodore Roosevelt presidential library building and may not be used for operations, exhibits, or replica structures.
2. Any expenditure of funds continued under this section, including funds used to match state funds, must be approved in advance by an employee of the office of commissioner of higher education designated by the state board of higher education.
3. The director of the office of management and budget shall cancel any appropriation authority continued under this section on December 31, 2018, unless Dickinson state university has certified to the director that:
 - a. Construction commenced on the presidential library building prior to December 31, 2018;
 - ~~b. A North Dakota architect was used to design the presidential library building;~~
 - c. The cost of constructing the building, including planning and design costs, will exceed fourteen million dollars; and
 - d. Except as provided in subsection 1, no state appropriated funds designated for the Theodore Roosevelt presidential library building project nor any funds used to match the state funding are being used for purposes other than for planning, design, and construction costs of the building.

SECTION 25. EXEMPTION - HIGHER EDUCATION CHALLENGE GRANTS - TRANSFER. The unexpended amount remaining for the education challenge fund line item in section 1 of chapter 34 of the 2013 Session Laws is not subject to section 54-44.1-11 and the state board of higher education shall transfer any unexpended funds in this line item to Dickinson state university for the operations of the institution during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 26. EXEMPTION - STUDENT FINANCIAL ASSISTANCE GRANTS. Of the \$25,634,276 appropriated from the general fund in the student financial assistance grants line item in subdivision 1 of section 1 of chapter 3 of the 2015 Session Laws, \$5,000,000 is not subject to section 54-44.1-11 and must be canceled by the office of management and budget on the effective date of this section.

SECTION 27. TUITION RATE INCREASE LIMITATIONS - BUDGET SECTION APPROVAL.

1. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2017-18 academic year by more than four percent as compared to the tuition rate in effect during the 2017 spring semester unless the board receives prior budget section approval.

2. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2018-19 academic year by more than four percent as compared to the tuition rate in effect during the 2018 spring semester unless the board receives prior budget section approval.
3. This section does not apply to tuition rates charged for graduate level programs, including programs offered through the university of North Dakota school of medicine and health sciences, the university of North Dakota school of law, or the North Dakota state university school of pharmacy.
4. This section does not apply to tuition rates for nonresident students attending institutions of higher education under the control of the state board of higher education. For purposes of this section, the residency of students for tuition purposes must be determined under section 15-10-19.1.
5. This section does not apply to tuition rates determined under tuition reciprocity agreements entered into by the state board of higher education with other states or state education compacts.
6. For purposes of this section, an institution must calculate a resident tuition rate increase based on the tuition rate paid by an average full-time resident student. The state board of higher education may exclude adjustments to a tuition rate resulting from a change in an institution's method of charging tuition, including the consolidation of existing fees into tuition rates or charging tuition based on a per-credit rate, from tuition rate calculations under this section.

SECTION 28. USE OF EXTRAORDINARY REPAIRS FUNDING - MATCHING FUNDS. The capital assets line items in subdivisions 2 through 12 of section 1 of this Act include funding from the general fund for institution extraordinary repairs. An institution shall provide two dollars of matching funds from operations or other sources for each one dollar of extraordinary repairs funding used for a project.

SECTION 29. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, shall convey certain real property consisting of approximately 0.8 acres parallel and adjacent to the BNSF railway company right-of-way in Cass County, North Dakota, known as parcel number 01-3504-08500-000 in the records of Cass County, North Dakota, to BNSF railway company, if determined appropriate by the state board of higher education and the commissioner of university and school lands. The terms of the conveyance must be determined jointly by the state board of higher education or a designee of the board and the commissioner of university and school lands. North Dakota Century Code sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 30. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, may convey certain real property known as Dakota hall or airport addition, 1015 north forty-third street, lot h, replat of lot 1 and 2, b 3 block 3 and part northwest quarter of northwest quarter section 6-151-60 in the records of the city of Grand Forks, if determined appropriate by the state board of higher education. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined jointly by the state board of higher education or a designee of the board and the commissioner of university and school lands. North Dakota Century Code sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 31. TRANSFER OF LAND AUTHORIZED. The state of North Dakota, by and through the state board of higher education, may convey certain real property known as Ray Richard's golf course or Ray Richard's golf course addition, 3801 demers avenue, lot 1, block 1, and Ray Richard's golf course addition, 3501 demers avenue, lot 2, block 1, in the records of the city of Grand Forks, if determined appropriate by the state board of higher education. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined by the

state board of higher education or a designee of the board. North Dakota Century Code sections 54-01-5.2 and 54-01-05.5 do not apply to the transfer authorized by this section.

SECTION 32. TRANSFER OF DAKOTA INSTITUTE INVENTORY. The parks and recreation department shall transfer the name Dakota institute and all rights, title, interests, and copyrights and up to eighty percent of any remaining inventory of any Dakota institute publication, book, or other document or production, regardless of format, to Bismarck state college. ~~Bismarck state college may transfer any rights, title, interests, copyrights, inventory of any of the Dakota institute's publications, books, or other documents or productions, regardless of format, to the author or producer of the document or production.~~

SECTION 33. RESEARCH NETWORKS - REPORT TO THE LEGISLATIVE MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, the state board of higher education, in association with the research institutions under its control, shall consider opportunities for collaboration on high-performance computing, data analytics, and connectivity to Minnesota research networks to improve access, increase capacity, and create efficiencies. The board may utilize appropriations and reserves designated for the northern tier network to accommodate continued use of existing research networks and to expand network capabilities. The board shall consider developing policies and procedures to authorize private entities to utilize the research network. During the 2017-18 interim, the state board of higher education shall provide a report to the legislative management regarding the status of efforts to collaborate with Minnesota entities for research network purposes.

SECTION 34. LEGISLATIVE MANAGEMENT STUDY - UNIVERSITY OF NORTH DAKOTA ENERGY AND ENVIRONMENTAL RESEARCH CENTER RELATIONSHIP WITH THE UNIVERSITY OF NORTH DAKOTA. During the 2017-18 interim, the Legislative Management shall consider studying the relationship between the University of North Dakota and the Energy and Environmental Research Center. The study, if conducted, must include a review of the working relationship between the entities including financial responsibilities and expectations of each entity including potential alternative administrative reporting lines and business models. The Legislative Management shall report its findings and recommendations, including any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 35. STATE BOARD OF HIGHER EDUCATION - STUDY OF THE REORGANIZATION OF TWO-YEAR INSTITUTIONS - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the period beginning July 1, 2017, and ending December 31, 2018, the state board of higher education shall study the reorganization of the two-year institutions under its control into a community and technology college system that addresses workforce and education needs of the state. As part of the study, the board shall consider:

1. Shared administration;
2. Shared courses, including a common course catalog;
3. Articulation agreements linking elementary and secondary education, career academies, and career and technical education to postsecondary certificates and associate's degrees;
4. Centralized processing of student admissions, housing applications, financial aid, and advising; and
5. Centralized services, including bookstore operations, food services, marketing, procurement, accounting, and human resources.

The state board of higher education shall approve and present a plan to implement the recommendations of its study to reorganize two-year institutions, including drafts of legislation necessary to implement the recommendations, to the appropriations committees of the sixty-sixth legislative assembly.

SECTION 36. STATE BOARD OF HIGHER EDUCATION - STUDY OF NURSING PROGRAMS - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. During the period beginning July 1, 2017, and ending December 31, 2018, the state board of higher education shall study the reorganization of nursing programs at institutions under its control. As part of the study, the board shall review the number of institutions offering nursing programs, the level of programs offered, and the locations of programs. The board shall consider options to develop collaborations among institutions to offer programs in an efficient and effective manner to address the workforce needs of the state.

The state board of higher education shall approve and present a plan to implement the recommendations of its study to reorganize nursing programs, including drafts of legislation necessary to implement the recommendations, to the appropriations committees of the sixty-sixth legislative assembly.

SECTION 37. STATE BOARD OF HIGHER EDUCATION DATA AND REPORTING INCONSISTENCIES - REPORT TO LEGISLATIVE MANAGEMENT. During the biennium beginning July 1, 2017, and ending June 30, 2019, the state board of higher education shall evaluate the following data and reporting inconsistency issues at institutions and entities under its control and develop policies and procedures to correct:

1. Inconsistent employee classifications and human resources reporting;
2. Inconsistent employee leave policies;
3. Inconsistent practices for awarding tuition waivers; and
4. Inconsistent practices regarding the charging of student fees.


The state board of higher education shall provide a report to and consult with the legislative management during the 2017-18 interim regarding the status of the inconsistencies, including policies and procedures being developed to address the inconsistencies.

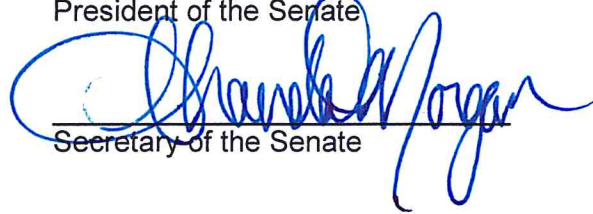
SECTION 38. REDUCTION IN EMPLOYEES - LEGISLATIVE INTENT - REPORT TO LEGISLATIVE MANAGEMENT. It is the intent of the sixty-fifth legislative assembly that if the number of full-time equivalent positions is reduced at institutions under the control of the state board of higher education, any reduction be applied among all classifications of employees with emphasis on senior administrative positions. During the 2017-18 interim, the state board of higher education shall provide reports to the legislative management regarding the total number of employee positions reduced at each institution, the number of administrative positions reduced at each institution, and whether any former administrative staff employees are still employed by the institution in a different position.

SECTION 39. LEGISLATIVE INTENT - NORTH DAKOTA STATE UNIVERSITY - LEASE ARRANGEMENT AND OTHER SAVINGS. It is the intent of the sixty-fifth legislative assembly that future general fund appropriations in support of the North Dakota state university department of nursing program in Bismarck be adjusted for savings resulting from facility lease negotiations ~~and for credit hours completed at the school.~~

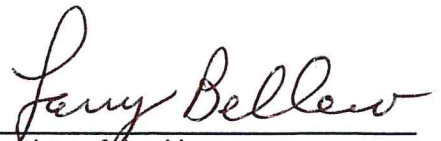
SECTION 40. EFFECTIVE DATE. Section 13 of this Act become effective on June 30, 2017.


SECTION 41. EMERGENCY. Sections 13, 23, 24, 26, 28, and 40 and the capital assets line items in section 1 of this Act are declared to be an emergency measure.



President of the Senate


Secretary of the Senate




Speaker of the House


Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2003 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 2 Absent 0



President of the Senate



Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 71 Nays 18 Absent 5




Speaker of the House



Chief Clerk of the House

Received by the Governor at 3:05P M. on April 27, 2017.

Approved at 9:50P M. on May 2, 2017.



Governor

Filed in this office this 3 day of May, 2017,

at 8:50 o'clock A M.



Secretary of State



May 2, 2017

— State of —
North Dakota
Office of the Governor

Doug Burgum
Governor

The Honorable Larry Bellew
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bellew:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed the last sentence of paragraph 2, Section 5 and all of Section 27 of House Bill 1020, the appropriations bill for the State Water Commission.

The portion of Section 5 that reads: “subject to budget section approval and upon notification to the legislative management’s water topics overview committee.” is vetoed. This sentence requires the Commission to seek budget section approval before transferring funding between the projects identified under paragraph 1, Section 5.

In *Kelsch v. Jaeger*, the North Dakota Supreme Court concluded the legislature may not delegate legislative powers to a subset of its members. 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 5 will interfere with the duties and responsibilities of the State Water Commission as defined under North Dakota law. NDCC § 61-02-04.

Section 27 of House Bill 1020 requires the Commission budget for the 2019-2021 biennium comply with NDCC §§ 54-44.1-16 and include line items for salaries and wages, operating expenses, capital assets, project carryover, new projects “and any additional line items as determined necessary by the commission or office of management and budget.” NDCC § 54-44.1-04.

While well intentioned, these requirements will impair the duties and responsibilities of the Commission. Many water projects fit into multiple line item categories. Certain projects proceed slowly, delayed by legal, environmental, cost share and other factors driven by outside parties. The simpler budgeting format previously adopted and approved by the legislature gives the Commission a flexible and efficient model from which to work and should be retained.

As Chair of the State Water Commission, I will ensure our governing board prioritizes public transparency of project expenditures through regular and detailed reporting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Burgum".

Doug Burgum
Governor

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1020
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide an appropriation to the industrial commission; to amend and reenact section 57-51.1-07, subsection 10 of section 61-02-02, section 61-02-08, subsection 1 of section 61-02-78, section 61-02-79, the new section to chapter 61-03, as created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, and sections 61-29-06, 61-40-05, and 61-40-11 of the North Dakota Century Code, relating to the oil extraction tax development fund, the definition of water conveyance project, the state water commission chairman and vice chairman, the infrastructure revolving loan fund, a Bank of North Dakota line of credit, economic analyses for certain water projects, management of the Little Missouri scenic river, the authority of the western area water supply authority, and water rates of the western area water supply authority; to provide for budget section approval; to provide for a state engineer study; to provide for an industrial commission study; to provide for a legislative management study; to provide for reports; to provide a statement of legislative intent; to designate funding; to provide for a transfer; to provide exemptions; to provide a contingent effective date; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the state water commission for the purpose of defraying the expenses of the state water commission, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administrative and support services	\$5,535,618	\$97,568	\$5,633,186
Water and atmospheric resources	<u>863,400,218</u>	<u>(146,859,929)</u>	<u>716,540,289</u>
Total all funds	\$868,935,836	(\$146,762,361)	\$722,173,475
Full-time equivalent positions	97.00	(4.00)	93.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes the sum of \$257,498 of other funds, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION APPROVAL. In addition to the amounts appropriated in section 1 of this Act, any additional amounts in the resources trust fund and water development trust fund which become available are appropriated, subject to budget section approval, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 4. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY. Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the water and atmospheric resources line item in section 1 of this Act. However, this exclusion is only in effect for two years after June 30, 2019. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

SECTION 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS - TRANSFERS - BUDGET SECTION APPROVAL.

1. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act from funds available in the resources trust fund and water development trust fund, \$298,875,000 is designated as follows:
 - a. \$120,125,000 for water supply;
 - b. \$27,000,000 for rural water supply;
 - c. \$136,000,000 for flood control; and
 - d. \$15,750,000 for general water.
2. The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, ~~subject to budget section approval and upon notification to the legislative management's water topics overview committee.~~

SECTION 6. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT FUNDING.

Except for funding provided during bienniums prior to the 2017-19 biennium, it is the intent of the sixty-fifth legislative assembly that the state provide no more than \$193,000,000 of state funding for Mouse River flood control projects within the city limits of Minot. It is the intent of the sixty-fifth legislative assembly that the \$193,000,000 be made available during the 2017-19, 2019-21, 2021-23, and 2023-25 bienniums.

SECTION 7. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT - BUDGET SECTION APPROVAL. It is the intent of the sixty-fifth legislative assembly that the state water commission provide, in the form of a grant, up to \$30,000,000, of which \$17,000,000 is for the completion of the planning and permitting process and \$13,000,000 is to initiate construction of phase one prioritized project features identified in accordance with subsection 2 of section 8 of this Act, to the Garrison diversion conservancy district for the Red River valley water supply project, for the biennium beginning July 1, 2017, and ending June 30, 2019. The Garrison diversion conservancy district must receive budget section approval prior to changing any funding between designations identified in this section.

SECTION 8. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL. Any funding received by the Garrison diversion conservancy district from the state water commission for the Red River valley water supply project during the biennium beginning July 1, 2017, and ending June 30, 2019, is subject to the following requirements:

1. Any funding received for the completion of the planning and permitting process of the Red River valley water supply project must result in the following accomplishments:
 - a. The completed Red River valley water supply plan document that will be the basis and justification for project construction and must include alternative selection, water supply needs, projected project costs, easement acquisitions, environmental regulation compliance to include the Boundary Waters Treaty of 1909, and an implementation schedule;
 - b. Acquisition of all state and federal permits required for the construction of any project features intended to be constructed with funding provided during the 2017-19 biennium;
 - c. A signed bureau of reclamation water service contract agreeing to a minimum of one hundred sixty-five cubic feet per second over a minimum of forty years or equivalent to ensure an adequate water source for the project's needs;
 - d. Prioritized project features for phase one construction; and

- e. A recommendation for funding options for all phases of the Red River valley water supply project.
2. Any funding received to initiate construction of phase one prioritized project features identified in subsection 1 may be spent and construction of phase one may begin only after the budget section receives and approves certification from the state water commission and the state engineer that all items listed in subsection 1 have been accomplished.
3. Quarterly progress reports on the Red River valley water supply project from the Garrison diversion conservancy district to the water topics overview committee of the legislative management, during the 2017-18 interim.

SECTION 9. WESTERN AREA WATER SUPPLY AUTHORITY - BANK OF NORTH DAKOTA LOAN - REPORTS. Notwithstanding section 5 of chapter 500 of the 2011 Session Laws, the Bank of North Dakota shall consolidate the \$40,000,000 loan to the western area water supply authority authorized in section 5 of chapter 20 of the 2013 Session Laws, the \$50,000,000 loan to the western area water supply authority authorized in section 2 of chapter 500 of the 2011 Session Laws, and the \$25,000,000 loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws. The terms and conditions of the consolidation loan must be negotiated by the western area water supply authority and the Bank of North Dakota. The western area water supply authority is not obligated to repay principal on loans from the resources trust fund for the period beginning July 1, 2017, and ending June 30, 2018. The interest rate on the \$10,000,000 loan to the western area water supply authority authorized in section 4 of chapter 500 of the 2011 Session Laws must be 2.5 percent on any outstanding balance remaining after the effective date of this Act. The Bank of North Dakota shall report the terms of the consolidation loan upon its completion to the legislative management's water topics overview committee during the 2017-18 interim. The western area water supply authority shall provide its monthly financial statements and industrial sales to the legislative council for the legislative management's water topics overview committee's review during the 2017-18 interim.

SECTION 10. WESTERN AREA WATER SUPPLY AUTHORITY DEBT SERVICE SHORTFALL - BUDGET SECTION APPROVAL. If the western area water supply authority defaults on its payment of the principal or interest on the consolidation loan provided for in section 9 of this Act or the revenue bonds or other financing provided for in section 12 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.

SECTION 11. APPROPRIATION - INDUSTRIAL COMMISSION STUDY - WESTERN AREA WATER SUPPLY AUTHORITY - REPORT TO LEGISLATIVE MANAGEMENT. There is appropriated out of any moneys in the resources trust fund, in the state treasury, the sum of \$150,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of conducting an independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the western area water supply authority, for the period beginning with the effective date of this Act, and ending June 30, 2019. The study must provide information regarding the financial impact to the western area water supply authority, its members and customers, the financial viability of the authority, and options available to the authority for debt servicing. The industrial commission may form a nonvoting advisory committee chaired by the state engineer to provide input regarding the scope of the study and to receive reports on the status of the study. The industrial commission shall report to the legislative management's interim water topics overview committee on the results of the study by June 1, 2018.

SECTION 12. ACTIONS RESULTING FROM THE WESTERN AREA WATER SUPPLY AUTHORITY STUDY.

1. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is feasible and desirable to lease or sell the industrial water supply assets of the western

area water supply authority, the industrial commission shall develop a timeline to complete the lease or the sale of the industrial water assets of the western area water supply authority and report to the legislative management's interim water topics overview committee.

2. If the industrial commission determines, based on the study directed in section 11 of this Act, that it is not feasible and desirable to lease or sell the industrial water supply assets of the western area water supply authority, notwithstanding section 5 of chapter 500 of the 2011 Session Laws, the western area water supply authority shall, with the assistance of the industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds or other financing options acceptable to the industrial commission and Bank of North Dakota.

SECTION 13. STATE ENGINEER - FLOOD HAZARD RISK MANAGEMENT STUDY - ADDITIONAL INCOME - APPROPRIATION. The water and atmospheric resources line item in section 1 of this Act includes \$30,000 of which \$15,000 is from the resources trust fund and \$15,000 of other funds received from Ward County, for the purpose of conducting a flood hazard risk management framework study and demonstration in section 14 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019. The state engineer may seek funding from federal, local, and private sector co-funding partnerships. Any fees collected from data users and partners and any other funds from public or private sources, including federal grants and county revenue contributions, are appropriated to the state engineer for the study and for expanding the project to additional counties for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 14. LEGISLATIVE MANAGEMENT STUDY - FLOOD HAZARD RISK MANAGEMENT. During the 2017-18 interim, the legislative management shall study issues related to the state's development of a statewide flood hazard risk management framework by granting authority to the state engineer to perform a study and proof of concept demonstration to implement statewide flood risk management capabilities for assessing, managing, and reducing property-specific flood risk.

1. In performing the study and proof of concept demonstration, the state engineer may leverage, coordinate, and partner with the North Carolina floodplain mapping program and with Ward County to conduct the study and proof of concept demonstration. The state engineer shall acquire and leverage data necessary to support the study and proof of concept demonstration including:
 - a. Footprints and elevations from current and future light detection and ranging data collections that meet federal emergency management agency risk mapping, assessment, and planning standards;
 - b. First floor elevations and elevation certificates from local planning and zoning offices or light detection and ranging data;
 - c. Parcel, address, and imagery data necessary for individual property flood hazard identification, assessment, and reduction; and
 - d. Any other data the state engineer deems necessary to meet the objectives in creating the database.
2. To complete the pilot project, the state engineer shall:
 - a. Construct and maintain flood hazard and risk data in a spatial, relational database;
 - b. Disseminate flood hazard and risk data through a digital display environment prompted through dynamic querying;
 - c. Coordinate, incentivize, and partner with a least one county to obtain the necessary parcel data and other data needed for this study and serve as the repository for the property flood risk dataset;

- d. Establish a technical committee consisting of federal, state, local, and private sector stakeholders and providers to the greatest extent possible to allow data sharing, coordination, synergy, and partnering;
 - e. Work with the North Carolina floodplain mapping program to incorporate the property risk dataset into the multistate flood risk information system maintained by North Carolina, augment the dataset with federal emergency management agency digital flood insurance data, and assess any data or other gaps preventing this state's full use of the system;
 - f. Make the data publicly available on the state water commission's website in an easily accessible and useable format;
 - g. Provide technical assistance to data users, including reports and analysis as needed; and
 - h. Work with the federal emergency management agency and the study county to enable the communities and property owners to use the elevation, light detection and ranging, and other data provided on the website to submit letters of map amendment or revision to the federal emergency management agency.
3. The state engineer shall report to the legislative management as requested by the legislative management. At the conclusion of the study, the state engineer shall provide the following information to the legislative management:
- a. A description of the engineer's current cooperative technical flood mapping partnership with the federal emergency management agency and any additional authority, staffing, and funding required to create a fully independent and self-sustaining state flood mapping program in lieu of the federal emergency management agency program, including the processing of letters of map change;
 - b. A detailed estimate of overall program costs and flood risk reductions of a self-sustaining state flood mapping program; and
 - c. A county assessment of the private, county, state, and federal data and resources that are currently available as compared to the resources that would be required to fully use North Carolina's flood risk information system for flood risk management, including recommendations for improvement or the statewide expansion of the project established under this study and suggested funding mechanisms and alternatives for data dissemination, which may include a one-state online repository or the provision of data by local planning and zoning offices.

SECTION 15. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. ~~Five~~Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to

exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed ~~one million~~ two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:

- a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
 - c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
 3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
 4. Thirty percent must be allocated and credited to the state's general fund.

SECTION 16. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed one million two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the

capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.

- c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent must be allocated and credited to the state's general fund.

SECTION 17. AMENDMENT. Subsection 10 to section 61-02-02 of the North Dakota Century Code as amended by section 3 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

10. "Water conveyance project" means any surface ~~or~~ subsurface drainage works, bank stabilization, or snagging an clearing of water courses.

SECTION 18. AMENDMENT. Section 61-02-08 of the North Dakota Century Code as amended by section 6 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

61-02-08. Meetings of commission.

The commission shall hold at least one meeting every two months at places as it, by resolution, may provide. The governor shall serve as chairman, and the commission shall select a member of the commission to serve as vice chairman. The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, ~~as chairman, or governor's appointed representative~~ shall preside at all meetings of the commission ~~and in case of the governor's, and in case of the absence or disability of the governor and governor's appointed representative,~~ the vice chairman shall preside. ~~The seven appointed members of the commission shall select an appointed member to serve as vice chairman of the commission.~~

SECTION 19. AMENDMENT. Subsection 1 of section 61-02-78 of the North Dakota Century Code is amended and reenacted as follows:

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund, not to exceed a total deposit from oil extraction moneys of twenty-six million dollars, are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.

SECTION 20. AMENDMENT. Section 61-02-79 of the North Dakota Century Code is amended and reenacted as follows:

61-02-79. Bank of North Dakota - Line of credit.

The Bank of North Dakota shall extend a line of credit not to exceed ~~two hundred seventy-five million dollars~~ at a rate ~~that of one and one-half percent over the three month London interbank offered rate, but may not exceed one and three-quarters~~ three percent to the state water commission. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the

legislative assembly for ~~water supply projects in suspense, water supply projects identified in section 19 of chapter 54 of the 2015 session laws, and water supply projects approved before June 30, 2017~~2019, and flood control projects that have approval for funding before June 30, ~~2017~~2019.

SECTION 21. The new section to chapter 61-03 of the North Dakota Century Code created by section 12 of House Bill No. 1374, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

Economic analysis process required for certain projects.

The state engineer shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than ~~seven hundred fifty thousand~~one million dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the state engineer shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

SECTION 22. AMENDMENT. Section 61-29-06 of the North Dakota Century Code is amended and reenacted as follows:

61-29-06. Management.

Channelization, reservoir construction, or diversion other than for agricultural ~~or~~ recreational, or temporary use purposes and the dredging of waters within the confines of the Little Missouri scenic river and all Little Missouri River tributary streams are expressly prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri River. Diking and riprapping for bank erosion control shall be permitted within the confines of the Little Missouri scenic river. The construction of impoundments for any purpose on the Little Missouri mainstream shall be prohibited.

This chapter shall in no way affect or diminish the rights of owners of the land bordering the river to use the waters for domestic purposes, including livestock watering, or any other rights of riparian landowners.

SECTION 23. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the

acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
11. Borrow money as provided in this chapter.
12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.

14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
16. Accept, apply for, and hold water allocation permits.
17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 61-40-11.
18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.
21. Issue revenue bonds to repay its loan obligations to the Bank of North Dakota. For the purpose of issuing such revenue bonds, the provisions of chapters 40-35 and 40-36 apply to the extent necessary and consistent with section 12 of this Act.

SECTION 24. AMENDMENT. Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

61-40-11. Water rates.

~~The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot and lateral rate adjustment must have approval of the industrial commission before going into effect.~~The industrial commission may authorize the authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales. The authority shall provide a report on the rates to the commission and legislative management's water topics overview committee on a regular basis. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales.

SECTION 25. TRANSFER - INFRASTRUCTURE REVOLVING LOAN FUND TO RESOURCES TRUST FUND. On July 1, 2017, the state treasurer shall transfer any oil extraction moneys exceeding \$26,000,000 which have been deposited in the infrastructure revolving loan fund from the infrastructure revolving loan fund to the resources trust fund.

SECTION 26. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS INDUSTRIAL WATER USE. During the 2017-18 interim, the legislative management shall study industrial water use of the oil and gas industry. The study must include the recapture of water used in fracking, the recycling of water used in fracking, and other oil and gas activities, fracking methods which do not require the use of water, and taxes or fees other states charge for water used in the oil and gas industry.

~~**SECTION 27. STATE WATER COMMISSION - 2019-21 BIENNIUM BUDGET.** The state water commission, in accordance with section 54-44.1-04, shall prepare its 2019-21 biennium budget request and the office of management and budget shall prepare the draft appropriations Act under section 54-44.1-16 for the state water commission for consideration by the sixty-sixth legislative assembly with funding provided separately in a salaries and wages line item, operating expenses line item, capital assets line item, project carryover line item, new projects line item, and any additional line items as determined necessary by the commission or the office of management and budget. The state water commission shall present funding for projects in a manner consistent with the funding designations identified in section 5 of this Act, for the 2019-21 biennium.~~

SECTION 28. EFFECTIVE DATE - EXPIRATION DATE. Section 15 of this Act becomes effective on August 1, 2017, is effective through July 31, 2019, and after that date is ineffective. Section 16 of this Act becomes effective on August 1, 2019. Sections 17, 18, and 21 of this Act become effective on August 1, 2017.

SECTION 29. CONTINGENT EFFECTIVE DATE. Section 23 of this Act is contingent on certification by the industrial commission to the legislative council that the industrial commission has determined the western area water supply authority shall, with the assistance of the industrial commission and the Bank of North Dakota, repay its obligations to the Bank of North Dakota through the issuance of revenue bonds, as provided under subsection 2 of section 12 of this Act.

SECTION 30. EMERGENCY. Sections 9, 10, 11, 12, 22, 23, and 29 of this Act are declared to be an emergency measure.

Larry Bellon
Speaker of the House

[Signature]
President of the Senate

Bill J. Reith
Chief Clerk of the House

[Signature]
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1020 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 76 Nays 11 Absent 7

Larry Bellon
Speaker of the House

Bill J. Reith
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

Received by the Governor at 1:00P M. on April 27, 2017.

Approved at 6:15P M. on May 2, 2017.

[Signature]
Governor

Filed in this office this 3 day of May, 2017,
at 8:30 o'clock A M.

[Signature]
Secretary of State



— State of —
North Dakota
Office of the Governor

Doug Burgum
Governor

May 2, 2017

The Honorable Brent Sanford
President of the Senate
North Dakota Senate
State Capitol
Bismarck, ND 58505

Dear President Sanford,

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 4, Section 20 and a portion of Section 12 of Senate Bill 2013, the appropriations bill for the Department of University and School Lands.

Section 4 was amended in conference committee and approved by the legislature without the scrutiny or transparency of the full legislative public hearing process. This section directs the State Treasurer to transfer \$16,100,000 – \$8.0 million from the strategic investment and improvements fund and \$8.1 million from the state disaster relief fund – to appropriate the sum of \$10,000 to each of approximately 1,610 organized and unorganized townships in non-oil producing counties. At a time when North Dakota is dealing with an unprecedented revenue shortfall, nearly every state agency and department has made substantial cuts in budgets based upon limited reserves and/or new initiatives that streamline state government. Without demonstrated evidence of differentiated need or want, this exactly equal, across-the-board appropriation is both arbitrary and an inefficient use of our scarce financial resources. Further, given how depleted all of our reserves and ending balances have become, it would be risky to reduce the state disaster relief fund by \$8.1 million.

The portion of Section 12 that reads: “Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section.” is vetoed. This sentence requires the Department of University and School Lands to seek budget section approval before spending funds approved by the full legislative assembly. In *Kelsch v. Jaeger*, the North Dakota Supreme Court stated: “as otherwise provided in the constitution, the legislature may not delegate legislative powers to others, including a subset of its members.” 641 N.W.2d 100 (ND 2002). If enacted, the vetoed portion of Section 12 would interfere with proper management of this state agency. The specific language addressed to the Governor and the Commissioner in Section 12 “to achieve efficiencies and budgetary savings...through the use of innovative ideas and through alternative solutions relating to information technology” remains. Our office, in conjunction with our state CIO, will monitor this IT project closely in terms of scope, budget, spending, and outcomes and work closely with the Commissioner of University and School Lands to accomplish the project goals.

Section 20 of Senate Bill 2013 directs the Commissioner of University and School Lands to apply a specific interpretation to the terms “gross production,” “market value” and “gross proceeds of sale” as stated in its mineral lease form. The North Dakota Attorney General acts as legal counsel to the Commissioner of University and School Lands, including providing legal advice related to its minerals leases and other contracts. The restrictions set forth in Section 20 are an encroachment upon the Attorney General’s authority to provide legal advice to this state agency and a violation of the separation of governmental powers established by the North Dakota Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Burgum".

Doug Burgum
Governor

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2013
(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide an appropriation to the state treasurer; to provide for transfers; to provide for distributions from permanent funds; to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the energy impact fund; to amend and reenact subsection 5 of section 57-51-01 and sections 57-51-15 and 57-51.1-07.6 of the North Dakota Century Code, relating to oil and gas gross production tax definitions and allocations and the political subdivision allocation fund; to repeal section 57-51.1-07.6 of the North Dakota Century Code, relating to the political subdivision allocation fund; to provide exemptions; to provide for reports; to provide statements of legislative intent; to provide for a legislative management study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund, the strategic investment and improvements fund, the energy impact fund, and the oil and gas impact grant fund in the state treasury, to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2017, and ending June 30, 2019, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,123,516	(\$117,966)	\$6,005,550
Operating expenses	2,019,637	(243,914)	1,775,723
Capital assets	0	3,600,000	3,600,000
Grants	99,300,000	(59,300,000)	40,000,000
Contingencies	100,000	0	100,000
Energy infrastructure and impact office	<u>700,000</u>	<u>(700,000)</u>	<u>0</u>
Total special funds	\$108,243,153	(\$56,761,880)	\$51,481,273
Full-time equivalent positions	33.00	(2.00)	31.00

SECTION 2. HEALTH INSURANCE INCREASE. The appropriation in section 1 of this Act includes \$84,948 from special funds for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Oil and gas impact grants - airports	\$0	\$25,000,000
Other grants - airports	0	15,000,000
Information technology project	<u>0</u>	<u>3,600,000</u>
Total special funds	\$0	\$43,600,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

~~**SECTION 4. APPROPRIATION - STATE TREASURER - DISTRIBUTIONS TO NON-OIL-PRODUCING COUNTIES.**~~

~~There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$8,000,000, or so much of the sum as may be necessary, and out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$8,100,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing distributions to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county, for the biennium beginning July 1, 2017, and ending June 30, 2019. In August 2017, the state treasurer shall distribute \$16,100,000, or so much of the sum as may be necessary, to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county. The distribution to each non-oil-producing county must provide for an allocation of \$10,000 to each organized and unorganized township within the county. The amount allocated to organized townships under this section must be paid by the county treasurer to each organized township. The amount allocated to unorganized townships under this section must be credited by the county treasurer to a special fund for unorganized township roads. The distributions under this section must be used for the maintenance and improvement of township paved and unpaved roads and bridges. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads. For purposes of this subsection, a "non-oil-producing county" means a county that received no allocation of funding or a total allocation under subsection 2 of section 57-51-15 of less than \$5,000,000 for the period beginning September 1, 2015, and ending August 31, 2016. For the purposes of calculating the unobligated balance of the state disaster relief fund under section 57-51.1-07.5, the moneys appropriated in this section from the state disaster relief fund may not be considered an obligation of the state disaster relief fund until after July 31, 2017. The funding appropriated in this section is considered a one-time funding item.~~

SECTION 5. TRANSFER - POLITICAL SUBDIVISION ALLOCATION FUND TO ENERGY IMPACT FUND. The state treasurer shall transfer \$8,000,000 from the political subdivision allocation fund to the energy impact fund during August 2017.

SECTION 6. TRANSFER - POLITICAL SUBDIVISION ALLOCATION FUND TO STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. After the transfer in section 5 of this Act, the state treasurer shall transfer any amount remaining in the political subdivision allocation fund from the political subdivision allocation fund to the strategic investment and improvements fund during August 2017.

SECTION 7. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO ENERGY IMPACT FUND. The state treasurer shall transfer \$3,000,000 from the strategic investment and improvements fund to the energy impact fund during August 2017.

SECTION 8. DISTRIBUTIONS TO STATE INSTITUTIONS. Pursuant to article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2017, and ending June 30, 2019, the following amounts, from the permanent funds managed for the benefit of the following entities:

Commons schools	\$288,264,000
North Dakota state university	4,738,000
University of North Dakota	3,662,000
Youth correctional center	1,422,000
School for the deaf	1,598,000
North Dakota state college of science	1,446,286
State hospital	1,370,286
Veterans' home	622,286
Valley City state university	808,000
North Dakota vision services - school for the blind	840,286
Mayville state university	542,000
Dakota college at Bottineau	186,286
Dickinson state university	186,286

Minot state university	186,286
Total	\$305,872,002

SECTION 9. ONE-TIME ADJUSTMENT TO DISTRIBUTIONS TO STATE INSTITUTIONS.

Pursuant to article IX of the Constitution of North Dakota and in addition to the distributions in section 4 of this Act, the board of university and school lands shall distribute during the biennium beginning July 1, 2017, and ending June 30, 2019, the following one-time corrections resulting from the misallocation of prior mineral revenues, from the permanent funds managed for the benefit of the following entities:

North Dakota state college of science	\$89,698
State hospital	89,698
Veterans' home	89,698
North Dakota vision services - school for the blind	89,698
Dakota college at Bottineau	89,698
Dickinson state university	89,698
Minot state university	89,698
Youth correctional center	(621,186)
Total	\$6,700

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of chapter 13 of the 2015 Session Laws and for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2017, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 11. EXEMPTION - FLOOD-IMPACTED POLITICAL SUBDIVISION INFRASTRUCTURE DEVELOPMENT GRANTS. Up to \$1,325,500 appropriated from the general fund in section 10 of chapter 579 of the 2011 Session Laws for flood-impacted political subdivision infrastructure development grants, which was awarded but not yet reimbursed to the city of Minot for a landfill expansion project, is not subject to section 54-44.1-11, and any unexpended funds are available to reimburse the city of Minot during the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 12. INFORMATION TECHNOLOGY PROJECT - BUDGET SECTION APPROVAL - LEGISLATIVE INTENT - AGENCY EFFICIENCIES. The capital assets line item and the total special funds line item in section 1 of this Act include \$3,600,000 from the state lands maintenance fund for an information technology project. ~~Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section.~~ It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the governor and the commissioner of university and school lands achieve efficiencies and budgetary savings within the department of trust lands through the use of innovative ideas and through alternative solutions relating to information technology.

SECTION 13. OIL AND GAS IMPACT GRANT FUND - AIRPORT GRANTS. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$25,000,000 from the oil and gas impact grant fund for grants to airports, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the \$25,000,000, the board of university and school lands shall award a grant of \$20,000,000 to the Williston airport and a grant of \$5,000,000 to the Dickinson airport. A grant may be awarded to the Williston airport only when any related federal funding is committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 14. ENERGY IMPACT FUND - WILLISTON AIRPORT GRANT. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$15,000,000 from the energy impact fund for a grant to the Williston airport, for the biennium beginning July 1, 2017, and ending June 30, 2019. A grant may be awarded to the Williston airport only when any related federal funding is

committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 15. AMENDMENT. Subsection 5 of section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~"Hub city" means, for the period beginning September 1, 2015, and ending August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one percent of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota. "Hub city" means, after August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one percent of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota.~~ "Hub city" means, after August 31, 2017, a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which has more than one two percent of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota.

SECTION 16. AMENDMENT. Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. Gross production tax allocation.

The gross production tax must be allocated monthly as follows:

1. ~~First the~~The tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer ~~who shall.~~ The state treasurer shall allocate the funding in the following order:
 - a. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city, which is located in a county that received an allocation under subsection 2, a monthly amount that will provide a total allocation of three hundred seventy five thousand dollars per fiscal year for each full or partial percentage point of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~To each hub city, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of three hundred seventy-five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota; For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:
 - (1) Thirty-three percent for the city of Williston;
 - (2) Seventeen percent for the city of Dickinson; and
 - (3) Four percent for the city of Minot.
 - b. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city, which is located in a county that did not receive an allocation under subsection 2, a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point of its private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~To each hub city, which is located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point, excluding the first two

percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota;

- c. ~~Allocate, for the period beginning September 1, 2015, and ending August 31, 2017, to each hub city school district, which is located in a county that received an allocation under subsection 2, a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point of the hub city's private covered employment engaged in oil and gas-related employment, according to annual data compiled by job service North Dakota and after August 31, 2017, allocate to~~ To each hub city school district, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of the hub city's private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota, provided that hub. Hub city school districts, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subdivision; For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:
 - (1) Thirty-three percent for the city of Williston;
 - (2) Seventeen percent for the city of Dickinson; and
 - (3) Four percent for the city of Minot.
- d. ~~Allocate to~~ To each county that received more than five million dollars but less than thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year 2014, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year to be added by the state treasurer be added to the allocations to school districts under subdivision b of subsection 5;
- e. ~~Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding one hundred forty million dollars per biennium for the 2015-17 biennium, and not in an amount exceeding one hundred million dollars per biennium thereafter;~~
- f. ~~Credit eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars in a state fiscal year and not in an amount exceeding forty million dollars per biennium;~~
- g. ~~Credit four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars in a state fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars; and~~
- h. ~~Allocate the remaining revenues under subsection 3, as follows:~~
 - (1) To each county that received more than five million dollars but not exceeding ten million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.

- (2) To each county that received more than ten million dollars but not exceeding fifteen million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million two hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (3) To each county that received more than fifteen million dollars but not exceeding twenty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (4) To each county that received more than twenty million dollars but not exceeding twenty-five million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of seven hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
 - (5) To each county that received more than twenty-five million dollars but not exceeding thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.
- e. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding ten million dollars per biennium. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.
- (2) After August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars per fiscal year.
- f. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding four million dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.
- (2) After August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.
- g. For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:
- (1) Up to twenty-five million dollars to the oil and gas impact grant fund.
 - (2) Any remaining revenues under subsection 3.

- h. After August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:

 - (1) Up to five million dollars per biennium to the oil and gas impact grant fund. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.
 - (2) Any remaining revenues under subsection 3.
- i. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
- 2. a. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received less than five million dollars of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:

 - (1) The first five million dollars of collections received each fiscal year is allocated to the county.
 - (2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.
- b. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:

 - (1) The first five million dollars of collections received each fiscal year is allocated to the county. From the first five million dollars allocated to the county, the state treasurer shall allocate an amount from each county to the energy impact fund to provide a total allocation of two million per fiscal year to the fund. The amount allocated from each county to the energy impact fund under this paragraph must be proportional the county's monthly oil and gas gross production tax revenue collected relative to the total monthly oil and gas gross production tax revenue collected from all the counties under this subdivision. The state treasurer shall allocate the amount remaining from this paragraph to the county under subsection 5. For the purposes of determining the counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year under this section, any amounts withheld from the county for allocations to the energy impact are considered allocations to the county.
 - (2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.
- c. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated after August 31, 2019, as follows:

 - a.(1) The first five million dollars is allocated to the county.

- ~~b.~~(2) Of all annual revenue exceeding five million dollars, thirty percent is allocated to the county.
- d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.
4. For a county that received less than five million dollars of allocations under subsection 2 in statethe most recently completed even-numbered fiscal year 2014, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
- a. Forty-five percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
 - b. Thirty-five percent must be distributed to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.
 - c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.
 - d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
5. For a county that received five million dollars or more of allocations under subsection 2 in statethe most recently completed even-numbered fiscal year 2014, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
- a. Sixty percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
 - b. Five percent must be distributed to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.

- c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.
 - d. Three percent must be allocated among the organized and unorganized townships of the county. The state treasurer shall allocate the funds available under this subdivision among townships in proportion to each township's road miles relative to the total township road miles in the county. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.
 - e. Three percent must be allocated among the organized and unorganized townships in all the counties that received five million dollars or more of allocations under subsection 2 in the most recently completed state even-numbered fiscal year. The amount available under this subdivision must be allocated by the state treasurer in an equal amount to each eligible organized and unorganized township. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.
 - f. Nine percent must be distributed among hub cities. Sixty percent of funds available under this subdivision must be distributed to the hub city receiving the highest percentage of allocations to hub cities under subdivision a of subsection 1 for the quarterly period, thirty percent of funds available under this subdivision must be distributed to the hub city receiving the second highest percentage of such allocations, and ten percent of funds available under this subdivision must be distributed to the hub city receiving the third highest percentage of such allocations. Hub cities, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subsection. If fewer than three hub cities are eligible for the allocations under this subdivision, the state treasurer shall allocate the available funds in proportion to the amounts the eligible hub cities received under subdivision a of subsection 1.
 - g. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:
- a. The county's statement of revenues and expenditures;
 - b. The county's ending fund balances;
 - c. The amounts allocated under this section to the county's general fund, the amounts expended from these allocations, and the purposes of the expenditures; and
 - d. The amounts allocated under this section to or for the benefit of townships within the county, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

7. Within thirty days after the end of each fiscal year ended June thirtieth, each school district that has received an allocation under this section shall file a report for the fiscal year ended June thirtieth with the commissioner, in a format prescribed by the commissioner, including:
 - a. The school district's statement of revenue and expenditures;
 - b. The school district's ending fund balances; and
 - c. The amounts allocated under this section to the school district, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

SECTION 17. A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Energy impact fund.

There is created in the state treasury the energy impact fund. The fund consists of all moneys deposited in the fund under section 57-51-15. The moneys in the fund may be spent pursuant to legislative appropriations.

SECTION 18. AMENDMENT. Section 57-51.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

~~57-51.1-07.6. Political subdivision allocation fund –Oil and gas tax revenue allocations to political subdivisions – State treasurer – Continuing appropriation.~~

~~There is created in the state treasury the political subdivision allocation fund. The fund consists of oil and gas tax revenue deposited in the fund pursuant to this chapter. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of allocations to political subdivisions in oil-producing counties.~~

- ~~1. If the balance of the fund exceeds ten million dollars on March first of each odd-numbered year, within thirty one days, the state treasurer shall allocate all moneys in the fund to eligible political subdivisions in oil-producing counties based on each political subdivision's oil and gas gross production tax allocations under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year. The allocation to each eligible political subdivision must be proportional to each political subdivision's total oil and gas gross production tax allocation under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year relative to the combined total of all oil and gas gross production tax allocations under subsection 4 and subsection 5 of section 57-51-15 in the most recently completed formula allocation year. For purposes of this subsection, "formula allocation year" means the period beginning September first of an odd-numbered year and ending August thirty first of the following even-numbered year.~~
- ~~2. If the balance of the fund exceeds ten million dollars on August first of each odd-numbered year, within thirty one days, the state treasurer shall allocate all moneys in the fund to eligible political subdivisions in oil-producing counties based on each political subdivision's oil and gas gross production tax allocations under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year. The allocation to each eligible political subdivision must be proportional to each political subdivision's total oil and gas gross~~

production tax allocation under subsection 4 or subsection 5 of section 57-51-15 in the most recently completed formula allocation year relative to the combined total of all oil and gas gross production tax allocations under subsection 4 and subsection 5 of section 57-51-15 in the most recently completed formula allocation year. For purposes of this subsection, "formula allocation year" means the period beginning September first of an odd-numbered year and ending August thirty first of the following even-numbered year.

SECTION 19. REPEAL. Section 57-51.1-07.6 of the North Dakota Century Code is repealed.

~~**SECTION 20. LEGISLATIVE INTENT - ENCOURAGEMENT OF ENERGY INFRASTRUCTURE INVESTMENT - COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS - USE OF TERMS.** It is the intent of the sixty-fifth legislative assembly that the state of North Dakota encourage the continued development of energy infrastructure that will help reduce instances of natural gas flaring and increase the market value received for oil and gas produced within the state generally and from state-owned lands specifically which will increase the value of royalties paid to the funds under the control of the board of university and school lands. Consistent with this intent, the commissioner of university and school lands shall continue to interpret the terms "gross production," "market value," and "gross proceeds of sale" in its lease form to mean a value determined at the producing well or associated production facility, or in the surrounding field or area, where the oil and gas was produced, before any post-production activities undertaken by the lessee, operator, or purchaser after the oil and gas has been transported from the producing well and associated production facility. These values must be determined by the amount received by the lessee in an arm's length contract, or in the absence of an arm's length contract, either a comparable sales method or a work-back calculation methodology consistent with state law.~~

SECTION 21. STUDY OF OIL AND GAS VALUATION - REPORT TO ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE.


1. During the 2017-18 interim, the tax department, in consultation with the board of university and school lands, the industrial commission, and other state agencies as necessary, shall study the valuation of oil and gas as used to determine mineral royalty payments and tax liability. The study must include consideration of the following:
 - a. The methods used to calculate the value of oil and gas, including changes in custody, the basis for the value, any deductions or incentives applied to the value, and the point at which the value is determined.
 - b. The impact of state and federal regulations, including gas capture requirements.
 - c. The market competition for gas processing, including the possibility of rate setting by the public service commission.
 - d. The reporting of any deductions or incentives applied to the value as included on mineral royalty statements and tax reporting documents.
2. The tax department shall report to the energy development and transmission committee by September 30, 2018, regarding the results and recommendations of the study.

SECTION 22. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS TAX REVENUE ALLOCATIONS TO HUB CITIES AND HUB CITY SCHOOL DISTRICTS.


1. During the 2017-18 interim, the legislative management shall consider studying oil and gas tax revenue allocations to hub cities and hub city school districts. The study must include consideration of the following:
 - a. The current and historical oil and gas tax revenue allocations to hub cities and hub city school districts.

- b. Other state funding provided to hub cities and hub city school districts, including grants from the oil and gas impact grant fund, distributions from the strategic investment and improvements fund, state school aid payments, and payments from the state aid distribution fund and highway tax distribution fund.
 - c. Local taxing and revenue levels in hub cities compared to cities in non-oil-producing counties, including mill levies, property tax values, local sales and use taxes, and other revenue sources.
 - d. The appropriate level of oil and gas tax revenue allocations to hub cities and hub city school districts based on infrastructure and other needs.
 - e. The estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to transition hub cities and hub city school districts from allocations under subsection 1 of section 57-51-15 to allocations under subsections 4 and 5 of section 57-51-15.
 - f. The estimated fiscal impact to hub cities, hub city school districts, other political subdivisions, and the state if the oil and gas tax revenue allocation formula would be changed to discontinue the allocations to hub cities and hub city school districts under subsection 1 of section 57-51-15.
2. The membership of the committee assigned the responsibility of the study must proportionately reflect the state's population distribution between oil-producing counties and non-oil-producing counties and must include members from the finance and taxation committees and the appropriations committees.
 3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

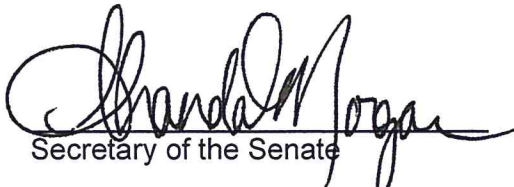
SECTION 23. EFFECTIVE DATE. Sections 15 and 16 of this Act are effective for taxable events occurring after June 30, 2017. Section 19 of this Act becomes effective September 1, 2017. House Bill No. 1300, as approved by the sixty-fifth legislative assembly, becomes effective January 1, 2018.



President of the Senate



Speaker of the House



Secretary of the Senate

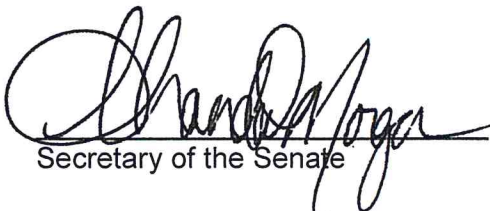


Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2013.

Senate Vote: Yeas 42 Nays 5 Absent 0

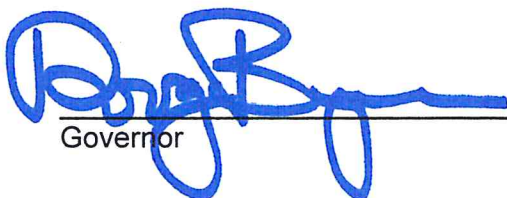
House Vote: Yeas 58 Nays 32 Absent 4



Secretary of the Senate

Received by the Governor at 8:15A M. on April 27, 2017.

Approved at 10:20P M. on May 2, 2017.



Governor

Filed in this office this 3 day of May, 2017,

at 850 o'clock A M.



Secretary of State

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.

Jim W. Smith
Director

ATTACH:2

**LETTER OPINION
2017-L-04**

June 19, 2017

The Honorable Rich Wardner
State Senate
1042 12th Ave W
Dickinson, ND 58601-3654

The Honorable Al Carlson
House of Representatives
2548 Rose Creek Parkway S
Fargo, ND 58104-6699

Dear Senator Wardner and Representative Carlson:

Thank you for your letter asking whether the Governor has authority to veto section 6 and portions of sentences in sections 18 and 39 of S.B. 2003, 2017 N.D. Leg., a portion of a sentence in section 12 of S.B. 2018, 2017 N.D. Leg., a portion of a sentence in section 5 of H.B. 1020, 2017 N.D. Leg., and section 12 of S.B. 2013, 2017 N.D. Leg.

You also ask if the Legislative Assembly may create statutory interim committees to study issues related to state employee health insurance and to monitor state revenues and state economic activity.

ANALYSIS

The North Dakota Constitution provides “[t]he governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.”¹

The leading North Dakota case regarding the veto authority of the Governor is *State ex rel. Link v. Olson* which involved a partial veto exercised by Governor Art Link.² In the *Link* case, the Court held that “the governor . . . may only veto items or parts in appropriation bills that are related to the vetoed appropriation and are so separate and distinct that, after

¹ N.D. Const. art. V, § 9.

² *State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979).

removing them, the bill can stand as workable legislation which comports with the fundamental purpose the legislature intended to effect when the whole was enacted. He may not veto conditions or restrictions on appropriations without vetoing the appropriation itself.”³

The Supreme Court concluded that the partial veto by Governor Link was not authorized by the Constitution and had no effect because the vetoed section of the bill was not a separate and distinct provision which could be removed without affecting the other provisions of the measure because the remaining parts of the bill were not workable legislation and the primary purpose of the bill was destroyed.⁴

The other instructive analysis regarding governors’ vetoes is found in a 2001 Attorney General’s opinion.⁵ That opinion addressed the question of whether the Governor has authority to veto an item in an appropriation bill when the vetoed item contains no appropriation, condition, or restriction on an appropriation. The item was a general substantive provision that was not related to any appropriation.⁶

The opinion stated, “[t]o permit the Legislature to include general substantive provisions in appropriation bills, but not permit the Governor to veto those provisions, would disrupt an essential check and balance and violate the principle of separation of powers.”⁷ This opinion concluded, “it is my opinion the Governor’s item veto power includes the power to veto portions of an appropriation bill not dealing with appropriations.”⁸

You ask whether several vetoes issued by Governor Burgum after the 2017 legislative session adjourned exceed the veto authority of the Governor found in section 9 of art. V of the North Dakota Constitution. I will examine the vetoes in the four bills you asked about.

Governor Burgum vetoed three parts of S.B. 2003, 2017 N.D. Leg. (the budget of the North Dakota University System): all of section 6, a portion of a sentence in section 18, and a portion of a sentence in section 39.

Section 6 of S.B. 2003, 2017 N.D. Leg., which was vetoed in its entirety, reads as follows:

SECTION 6. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

³ *Id.* at 270- 271.

⁴ *Id.*

⁵ N.D.A.G. 2001-F-04.

⁶ See N.D.A.G. 2001-F-04.

⁷ N.D.A.G. 2001-F-04.

⁸ *Id.*

Capital project and capital lease requests - Maintenance reserve account.

1. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before the institution acquires any additional facility space to be used by the institution for any purpose, if the acquisition would result in additional operating costs funded from any source. This subsection does not apply to operating lease agreements that preclude the ownership of the leased facility.
2. Notwithstanding any existing agreements, an institution under the control of the state board of higher education shall obtain approval from the legislative assembly before an institution purchases, rents, occupies, or otherwise utilizes a building or any portion of a building for a purpose that directly or indirectly supports or relates to the institution's educational or administrative functions if the building is located more than ten miles from the campus of the institution. This subsection does not apply to buildings utilized by an institution to offer dual credit courses, buildings utilized by the agricultural experiment station and research extension centers, and buildings utilized by the North Dakota state university extension service. For purposes of this section, "campus" means the campus of the institution under the Federal Clery Act [Pub. L. 105-244; 20 U.S.C. 1092(f)].
3. An institution under the control of the state board of higher education may undertake a facility renovation project only if the project will reduce the deferred maintenance amount of the facility by no less than seventy five percent of the total cost of the renovation. The institution shall maintain documentation that demonstrates the cost and scope of the deferred maintenance reduction that results directly from the renovation. This subsection does not apply to projects undertaken solely to correct building code deficiencies or to installations of infrastructure determined by the board to be essential to the mission of the institution.

4. Facility construction and renovation projects undertaken by an institution under the control of the state board of higher education must conform to campus master plan and space utilization requirements approved by the state board of higher education.
5. An institution that obtains legislative approval under subsection 1 must establish a maintenance reserve fund of three percent of the total construction cost or replacement value, whichever is greater, of the acquired space. The institution's plans for funding the maintenance reserve fund must be included in the request for legislative approval under subsection 1. Maintenance reserve funds must be deposited in an account under the control of the state board of higher education before the acquired space may be occupied, and the funds may be used for maintenance repairs after the total deferred maintenance of the space exceeds thirty percent of its replacement value. The funds may not be used for any other purpose. This subsection does not apply to additional space acquired through the sale of revenue bonds that require by covenant the establishment of maintenance reserve funds.

Subsections 1 and 2 direct that an institution under the control of the State Board of Higher Education obtain legislative approval before it acquires, purchases, rents or utilizes a building. Subsection 5 states that an institution that obtains legislative approval under subsection 1 must establish a maintenance reserve fund. If not vetoed, the language in subsections 1, 2, and 5 requiring legislative approval would apply on and after July 1, 2017, and would not have applied to any appropriations made during the 2017 legislative session, because that session was adjourned on April 27, 2017. Thus, subsections 1, 2, and 5 do not deal with any appropriation in S.B. 2003, 2017 N.D. Leg. Based on N.D.A.G. 2001-F-04, subsections 1, 2, and 5 were properly vetoed by the Governor.⁹

In contrast to subsections 1, 2, and 5, subsections 3 and 4 do not require legislative approval. Subsection 3 authorizes an institution to “undertake a facility renovation project” only if certain requirements are met. Subsection 4 states that “[f]acility construction and renovation projects” must meet certain other requirements. If not vetoed, this language in subsections 3 and 4 establishes certain requirements for facility construction and renovation projects that would become effective July 1, 2017.

⁹ These subsections would not have taken effect until the next legislative session, if at all.

According to the Office of Management and Budget, S.B. 2003 does make appropriations for facility construction and renovation projects and the Legislature intended for subsections 3 and 4 to apply to those projects. The \$168,505,000 appropriated for capital projects in S.B. 2003 is for renovation of two buildings at the University of North Dakota and three North Dakota State University projects for new buildings and renovations. Therefore, the conditions and restrictions in subsections 3 and 4 are tied to a specific appropriation in S.B. 2003.

The Governor's veto of subsections 3 and 4 constitutes an attempt to veto conditions or restrictions on appropriations in the bill without vetoing the appropriations themselves. Therefore, based on the *Link* case, the veto of subsections 3 and 4 in section 6 of S.B. 2003, 2017 N.D. Leg., in my opinion, is not effective.

Governor Burgum also vetoed language in section 18 of S.B. 2003, as underlined below:

3. Dickinson state university may not discontinue any portion of its department of nursing academic program during the biennium beginning July 1, 2017, and ending June 30, 2019. (emphasis added).

Section 18 is entitled "Dickinson State University – Uses of Funds" which is a list of the Legislature's conditions that Dickinson State University must follow in order to receive appropriations. This language in subsection 3 relates to the nursing program at Dickinson State University and is a condition tied to the funds appropriated in section 1 of S.B. 2003. Therefore, based on the *Link* case, the Governor's veto of a portion of a sentence in section 18 of S.B. 2003, 2017 N.D. Leg., was not effective because it is an attempt to veto a condition or restriction without vetoing the corresponding appropriation.

Finally, section 39 of S.B. 2003 was vetoed as indicated below by the underlined portion:

SECTION 39. LEGISLATIVE INTENT – NORTH DAKOTA STATE UNIVERSITY – LEASE ARRANGEMENT AND OTHER SAVINGS. It is the intent of the sixty-fifth legislative assembly that future general fund appropriations in support of the North Dakota state university department of nursing program in Bismarck be adjusted for savings resulting from facility lease negotiations and for credit-hours completed at the school. (emphasis added).

Section 39 merely states legislative intent regarding future general fund appropriations. Thus, it has nothing to do with an appropriation made in S.B. 2003. Future legislative assemblies would be free to disregard that statement of legislative intent or not, as it is a fundamental constitutional principle that one legislative assembly may not in any way

restrict or bind future legislative action.¹⁰ Therefore, the veto of a portion of a sentence in section 39 of S.B. 2003, 2017 N.D. Leg., was authorized based on N.D.A.G. 2001-F-04.

Governor Burgum also vetoed the language underlined below in section 12 of S.B. 2018, 2017 N.D. Leg.:

SECTION 12. ENTREPRENEURSHIP GRANTS AND VOUCHER PROGRAM - EXEMPTION. Section 1 of this Act includes the sum of \$2,250,000, of which \$600,000 is from the general fund and \$1,650,000 is from special funds, for an entrepreneurship grants and voucher program to be developed and administered by the department of commerce, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the amount appropriated, \$900,000 is to be distributed equally to entrepreneurial centers located in Bismarck, Fargo, and Grand Forks, \$300,000 to an organization that provides workplace safety, and \$300,000 for biotechnology grants. The department shall establish guidelines to provide grants to entrepreneurial centers certified by the department. The department also shall establish guidelines to award vouchers to entrepreneurs to procure business development assistance from certified entrepreneurial centers or to provide grants to entrepreneurs working with an entrepreneurial center. The amount appropriated for entrepreneurship grants in section 1 of this Act is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2019, and ending June 30, 2021. (emphasis added).

By directing that \$300,000 of a \$2,250,000 appropriation be used for a particular purpose, the Legislature, in effect, appropriated \$300,000 for that purpose. Removal of the \$300,000 appropriation for “an organization that provides workplace safety” is sufficiently separate and distinct that the “entrepreneurship grants and voucher program” in the bill remains workable legislation and still comports with the fundamental purpose the Legislature intended. It is my opinion that the veto of a portion of section 12 of S.B. 2018, 2017 N.D. Leg., was authorized by the Constitution.

Governor Burgum vetoed H.B. 1020, 2017 N.D. Leg., as indicated below by the underlined portion:

¹⁰ N.D.A.G. 82-75; N.D.A.G. 87-16.

SECTION 5. STATE WATER COMMISSION PROJECT FUNDING DESIGNATIONS – TRANSFERS- BUDGET SECTION APPROVAL.

1. Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act from funds available in the resources trust fund and water development trust fund, \$298,875,000 is designated as follows:
 - a. \$120,125,000 for water supply;
 - b. \$27,000,000 for rural water supply;
 - c. \$136,000,000 for flood control; and
 - d. \$15,750,000 for general water.

2. The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, subject to budget section approval and upon notification to the legislative management's water topics overview committee. (emphasis added).

This is a veto of a restriction on an appropriation. A governor may veto a restriction or condition on an appropriation only if he also vetoes the appropriation.¹¹ Here, the corresponding appropriation was not vetoed, so the veto of a portion of section 5 of H.B. 1020, 2017 N.D. Leg., would not be effective.

Although this veto is not effective, there remains the question of whether the condition regarding budget section approval imposed in H.B. 1020 is itself constitutional. In past opinions, this office has questioned the constitutionality of the Budget Section's involvement.¹² I will address this issue further after I discuss the veto related to S.B. 2013, 2017 N.D. Leg., as the constitutionality of the Budget Section's approval is also raised by S.B. 2013.

Finally, a portion of section 12 of S.B. 2013, 2017 N.D. Leg., was vetoed by Governor Burgum as indicated by underlining below:

SECTION 12. INFORMATION TECHNOLOGY PROJECT - BUDGET SECTION APPROVAL - LEGISLATIVE INTENT - AGENCY EFFICIENCIES. The capital assets line item and the total special funds line item in section 1 of this Act include \$3,600,000 from the state lands

¹¹ *State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979), N.D.A.G. 93-F-05.

¹² See N.D.A.G. 2007-L-08, N.D.A.G. 93-F-05, N.D.A.G. Letter to Treadway (Nov. 6, 1991), N.D.A.G. Letter to Rayl (Sept. 25, 1987).

maintenance fund for an information technology project. **Of the \$3,600,000, \$1,800,000 may be spent only upon approval of the budget section.** It is the intent of the sixty-fifth legislative assembly that during the 2017-18 interim, the governor and the commissioner of university and school lands achieve efficiencies and budgetary savings within the department of trust lands through the use of innovative ideas and through alternative solutions relating to information technology. (emphasis added).

The approval of the Budget Section is a restriction on spending \$1,800,000 of the \$3,600,000 appropriation. A governor may veto a restriction on an appropriation only if he also vetoes the appropriation.¹³ Here, the Governor did not veto the appropriation restricted by the second sentence in section 12. Therefore, it is my opinion the vetoed sentence in section 12 of S.B. 2013, 2017 N.D. Leg., would not be effective.

However, the vetoed language gives authority to the Budget Section of the Legislative Assembly to, in effect, veto a \$1,800,000 appropriation of the Legislature. The Budget Section is given the authority to determine if this money should be spent or not, with no procedural safeguards or standards.¹⁴ This appears, once again, to raise the question whether the role delegated to the Budget Section by the Legislature is constitutional.

The North Dakota Supreme Court has not considered whether the Legislature's delegation to the Budget Section approval constitutes a violation of the constitutional separation of powers doctrine. Because it is the Attorney General's role to defend statutory enactments from constitutional attacks, this office is ordinarily reluctant to issue an opinion questioning the constitutionality of a legislative enactment. As I explained in past opinions:

It is presumed when construing a statute that the Legislature intended to comply with the constitutions of North Dakota and of the United States and any doubt must be resolved in favor of a statute's validity. Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 197 (N.D. 1994); Snortland v. Crawford, 306 N.W.2d 614, 626 (N.D. 1981); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 359 (N.D. 1945); N.D.C.C. § 1-02-38(1). This presumption is conclusive unless the statute clearly contravenes the state or federal constitutions. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987); State ex rel. Lesmeister v. Olson, 354 N.W.2d 690, 694 (N.D. 1984).

¹³ *State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979), N.D.A.G. 93-F-05.

¹⁴ See N.D.A.G. 2007-L-08 citing N.D.A.G. 92-15 ("North Dakota follows 'the modern view of the delegation doctrine which recognizes that, in a complex area, it may be necessary and appropriate for the legislature to delegate in broad and general terms, as long as there are adequate procedural safeguards and adequate standards'").

Also, a statute will only be found unconstitutional upon concurrence of four of the five justices of the North Dakota Supreme Court. N.D. Const. art. VI, § 4. “One who attacks a statute on constitutional grounds, defended as that statute is by a strong presumption of constitutionality, should bring up his heavy artillery or forego the attack entirely.” S. Valley Grain Dealers Ass’n v. Bd. of County Comm’rs of Richland County, 257 N.W.2d 425, 434 (N.D. 1977).¹⁵

However, this office has considered this issue on three different occasions over the last 30 years.

In 1987, the Attorney General issued an opinion relating to a law that delegated authority to the Budget Section to make budgetary cutbacks caused by initiative or referred measures.¹⁶ The Attorney General stated “there is considerable doubt that the Budget Section has any Constitutional Authority in the process [of reducing the budgets] in light of relevant United States Supreme Court decisions.”¹⁷

A 1991 Attorney General opinion concluded that “when the Budget Section, which is an agent of the Legislature, acts in an executive capacity, as it did by approving the issuance of bonds for UND’s project, it violates the Separation of Powers Doctrine.”¹⁸ The opinion explained that the Budget Section of the Legislative Council cannot fill the void of the Legislature when it is not in session and that the Budget Section’s approval action was “inappropriate because it violates the separation of powers doctrine.”¹⁹

In the most recent opinion in 2007, I examined a bill that granted the Budget Section of the Legislative Council authority to veto the decision made by the Emergency Commission in approving one of the three correctional facility building options.²⁰ In that opinion, I explained the application of the separation of powers doctrine as it applied to the Budget

¹⁵ N.D.A.G. 2003-L-21 and N.D.A.G. 2007-L-08.

¹⁶ N.D.A.G. Letter to Rayl (Sept. 25, 1987) (“[T]he director of the budget shall reduce the moneys available to all departments, agencies, and institutions for which moneys have been appropriated or are otherwise available from the affected fund for the current biennial period. The director of the budget shall reduce affected budgets by a percentage sufficient to cover the estimated losses caused by the initiative or referendum action, *subject to the approval of the budget section of the legislative council*”) (emphasis added).

¹⁷ *Id.* The two United States Supreme Court decisions examined in N.D.A.G. Letter to Rayl (Sept. 25, 1987) are *I.N.S. v. Chadha*, 462 U.S. 919 (1983) and *Bowsher v. Synar*, 106 S.Ct. 3181 (1986).

¹⁸ N.D.A.G. Letter to Treadway (Nov. 6, 1991).

¹⁹ *Id.*

²⁰ N.D.A.G. 2007-L-08.

Section as an agent of the Legislature.²¹ I determined that if a court were to rule on the matter, it would determine that the provision in the law that authorized the Budget Section of Legislative Management²² to approve or reject a plan to construct or model state correctional facilities would be unconstitutional as a violation of the separation of powers doctrine.²³

Once again, we have two bills that delegate authority to the Budget Section of Legislative Management. House Bill 1020, 2017 N.D. Leg., requires the State Water Commission to secure approval from the Budget Section before it may transfer funding among four listed water related items. The bill does not include any guidelines or direction to be used by the Budget Section when considering the transfers. Likewise, the Budget Section is given authority in S.B. 2013, 2017 N.D. Leg., to spend \$1.8 million of a \$3.6 million appropriation to the Commissioner of University and School Lands for an information technology project, without any guidelines, procedural safeguards or adequate standards.

Specific direction by the Legislature is important in determining whether a power is delegable or non-delegable. Generally, except as otherwise provided in the Constitution, the Legislature may not delegate legislative powers to others, including a subset of its members, or to private citizens.²⁴ The North Dakota Supreme Court explained:

[T]he true distinction between a delegable and non-delegable power was whether the power granted gives the authority to make a law or whether that power pertains only to the execution of a law which was enacted by the Legislature. The power to ascertain certain facts which will bring the provisions of a law into operation by its own terms is not an unconstitutional delegation of legislative powers. However, the law must set forth reasonably clear guidelines to enable the appropriate body to ascertain the facts.²⁵

²¹ See generally N.D.A.G. 2007-L-08.

²² H.B. 1436, 2009 N.D. Leg., replaced “Legislative Council” with “Legislative Management.” See 2009 N.D. Sess. Laws, ch. 482.

²³ N.D.A.G. 2007-L-08.

²⁴ *Kelsh v. Jaeger*, 641 N.W.2d 100 (N.D. 2002) (citation omitted). See *MCI Telecomms. Corp. v. Heitkamp*, 523 N.W.2d 548, 554 (N.D.1994); *Eklund v. Eklund*, 538 N.W.2d 182, 189 (N.D. 1995) (Sandstrom, J., concurring) (under our constitutional system, the legislature may not delegate to itself, or to a subset of its members, executive or judicial functions; neither may the legislature delegate legislative power to a subset of its members).

²⁵ *Kelsh*, 641 N.W.2d at 109.

In *Kelsh*, the Court found that a statute gave “unfettered discretion to a single person to stop an election for state senator in District 26 in 2002.”²⁶ Here, neither H.B. 1020 nor S.B. 2013, 2017 N.D. Leg., provides any guidelines for the Budget Section to follow when determining whether or how to spend significant amounts of money.

These significant budgetary decisions delegated to the Budget Section by the Legislature, in H.B. 1020 and S.B. 2013, are rightly within the function of the executive branch.²⁷ As this office has explained in past opinions, “[t]he North Dakota Legislature, like Congress, is given broad authority to enact legislation.²⁸ To properly exercise that authority however, the constitutional procedures must be followed. This requires the approval by a majority of the members-elect of each house.²⁹ Furthermore, N.D. Const. art. V, § 9, like the federal Constitution, provides that legislative acts must be presented to the Chief Executive Officer.”³⁰

If a court were to rule on these two bills, it is my opinion that it would determine it is a violation of the separation of powers doctrine to authorize the Budget Section of the Legislative Management to approve or disapprove any transfer of funds by the State Water Commission and spend \$1.8 million of a \$3.6 million appropriation for an information technology project.

In summary, it is my opinion the Governor’s vetoes of subsections 1, 2, and 5 of section 6 and portions of sections 18 and 39 in S.B. 2003, 2017 N.D. Leg., as well as a portion of section 12 of S.B. 2018, 2017 N.D. Leg., are authorized by law. The Governor’s veto of subsections 3 and 4 of section 6 of S.B. 2003, 2017 N.D. Leg., is not authorized by the Constitution and is not effective. However, although the Governor’s vetoes of a portion of section 5 of H.B. 1020, 2017 N.D. Leg., and a portion of section 12 of S.B. 2013, 2017 N.D. Leg., are not authorized by the Constitution, the vetoed language, in my opinion, would be found by a court to violate the separation of powers doctrine.

The last question you have is whether it is a violation of section 26 of Article XI of the Constitution of North Dakota for the Legislative Assembly to create statutory interim committees to study issues related to state employee health insurance and to monitor state revenues and state economic activity.

While there is no constitutional restriction on the Governor’s authority to veto language regarding a particular study, Legislative Management nonetheless has broad statutory

²⁶ *Id.*

²⁷ See N.D.A.G. 2007-L-08.

²⁸ N.D. Const. art. IV, § 12.

²⁹ *State ex rel. Wattam v. Poindexter*, 183 N.W. 852 (N.D. 1921).

³⁰ N.D.A.G. Letter to Treadway (Nov. 6, 1991).

power to conduct studies during the interim to study and recommend future legislation. Specifically, the law states that Legislative Management has the power:

To study, consider, accumulate, compile, and assemble information on any subject upon which the legislative assembly may legislate, and upon such subjects as the legislative assembly may by concurrent or joint resolution authorize or direct, or any subject requested by a member of the legislative assembly; provided, that the legislative management may screen and prioritize studies assigned by concurrent or joint resolution to maintain its workload within the limitations of time and legislative appropriations.³¹

As I explained in 2007, courts have consistently held that legislatures may validly hold committee hearings and conduct investigations.³² There is a long-recognized power of the Legislature to form study committees and ascertain facts.³³ Therefore, it is my opinion it is not a violation of section 26 of Article XI of the Constitution of North Dakota for the Legislative Assembly to create statutory interim committees to study issues related to state employee health insurance and to monitor state revenues and state economic activity.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.³⁴

³¹ N.D.C.C. § 54-35-02(1).

³² N.D.A.G. 2007-O-10.

³³ *Id.*

³⁴ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

North Dakota Legislative Assembly,)
Senator Ray Holmberg, Representative Al Carlson,)
Senator Rich Wardner, Senator Joan Heckaman,) Supreme Court
and Representative Corey Mock,) Case No: _____
)
Petitioners,)
)
v.)
)
North Dakota Governor Doug Burgum,)
)
Respondent.)

ADMISSION OF SERVICE

I, Doug Burgum, in my official capacity as Governor of the State of North Dakota, hereby admit personal service upon me within the City of Bismarck, County of Burleigh, State of North Dakota of that certain *Petition for Declaratory Judgment, or in the Alternative, for Writ of Mandamus* dated December 8, 2017 in the above-captioned matter on the date written below. I preserve my right to assert any and all applicable defenses and to otherwise respond to said petition.

Date served: Dec. 8, 2017



Doug Burgum,
Governor of the State of North Dakota