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May 9, 2023

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

Re: Senate Bill 2015

Dear President Miller:

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

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

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

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

Vetoing the change in Section 30 and maintaining the percentage at 7% will retain that $70.5 million in earnings in the Legacy Fund, helping the fund to grow at a faster pace while protecting the Legacy Fund's principal and utilizing better cash management to generate higher earnings – all while not affecting any specific appropriations in the 2023-25 budget.

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

Section 32.

Section 32 adds an unnecessary restriction on the authority of the Capital Grounds Planning Commission to use designated funds where they have the most impact.

This nine-member Commission includes the lieutenant governor, director of the State Historical Society, two citizen appointees, one licensed architect and four legislators, two from each chamber.

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

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

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

Section 53.

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

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

The tax revenue for the 2021 calendar year has already been collected and allocated by the proper political subdivisions, including local school districts, cities, counties, park districts and many other taxing districts, and there is no mechanism for these local governments to recover those funds. Thus, the only way to retroactively fulfill the tax exemption is for each local government to grant a 2021 rebate to the nonprofit directly from other tax dollars collected in 2022. However, some political subdivisions may not have the liquidity or systems to facilitate this transfer between taxpayers and certain nonprofits, making the claw-back provision of Section 53 especially onerous on those local governments, school districts and their constituents.

The hallmark of a strong and fair economy is a stable tax and regulatory environment. Passing retroactive tax laws sets a dangerous precedent. Local political subdivisions have been following existing tax laws, and it's unfair to them to change the tax rules to enable a claw-back after the taxable period has been closed for nearly 1½ years.

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

Sincerely,

Doug Burgum
Governor