

MEASURES APPROVED OVER GOVERNOR'S VETO

CHAPTER 508

HOUSE BILL NO. 1323

(Representative Hoverson, Magrum)
(Senator O. Larsen)

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to limitations on mask wearing requirements.

VETO

April 21, 2021

The Honorable Kim Koppelman
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND
Re: House Bill 1323

Dear Speaker Koppelman:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1323 and return it to the House.

North Dakota law assigns the governor the responsibility "to minimize or avert the adverse effects of a disaster or emergency." Likewise, the state health officer is responsible for issuing "any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease."

House Bill 1323 would prohibit a statewide elected official or the state health officer from mandating the use of a face mask, face shield or other face covering.

To strip future governors and their state health officers of any low-cost tool that might be used to save lives and livelihoods in a future pandemic or other emergency would be both irresponsible and an unnecessary risk to the future public health and well-being of North Dakota citizens.

North Dakota implemented the shortest statewide mask requirement in the country, lasting 65 days. This tool was used briefly and judiciously, in combination with other protocols, at a time when North Dakota's health care facilities and staff were overwhelmed with patients and pandemic-related deaths of North Dakota citizens

were peaking. These measures were followed by dramatic reductions in COVID-19 cases and hospitalizations.

The current pandemic has painfully demonstrated that viruses do not respect borders and localized protocols may, at peak times, not be adequate to mitigate infection rates and protect our most vulnerable citizens of all ages.

The statewide mask requirement was implemented in November only after officials in North Dakota's largest cities had already enacted local mask measures and they, along with an overwhelming majority of our health care leaders, doctors and medical professionals, were requesting a statewide mask requirement to help relieve the immense pressure on our overtaxed hospitals, long-term care facilities and exhausted frontline health care workers, and to slow the spread of COVID-19 and save lives. The statewide mask requirement was lifted on Jan. 18.

This bill removes a tool from the emergency toolkit that may be needed to help our state save lives and nimbly navigate future pandemics and their unknowable challenges. For the reasons stated above, House Bill 1323 is vetoed.

Sincerely,

Doug Burgum

Governor

Disapproved April 21, 2021

Filed April 27, 2021

NOTE: The Governor's veto of House Bill No. 1323 was not sustained. For the text of House Bill No. 1323 as approved, see chapter 198.

CHAPTER 509

SENATE BILL NO. 2290

(Senators Hogue, Holmberg, Wardner)
(Representative Delzer, Devlin, Pollert)

AN ACT to amend and reenact sections 54-16-04.1 and 54-16-04.2 of the North Dakota Century Code, relating to emergency commission and budget section approval to accept and disburse federal and other funds; and to declare an emergency.

VETO

April 26, 2021

The Honorable Brent Sanford
President of the Senate
North Dakota Senate Chambers
Bismarck, North Dakota

Dear President Sanford:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2290 and return it to the Senate unsigned.

Three years ago, the North Dakota Supreme Court affirmed the separation of powers and resolved a dispute between the legislative and executive branches in North Dakota Legislative Assembly v. Burgum, 2018 ND 189, 916 N.W.2d 83. In this opinion, the Court held the State Legislature "may not delegate to another body the power to make law - to legislate." The Constitution grants the Legislature the authority to create law and appropriate funds. These duties cannot be delegated to a subset of legislators, such as the Budget Section, comprised of 42 of the legislature's 141 members.

Senate Bill 2290 not only ignores the holding of Assembly v. Burgum, it attempts to expand the Budget Section's authority, allowing it to reject an Emergency Commission approval and issue a revised decision. SB 2290 states any changes made by the budget section are "deemed to be approved by the emergency commission." The power to reject an Emergency Commission decision "without the further action of the passage by both houses of the Legislature and signing by the Governor" violates the separation of powers doctrine and is an unconstitutional exercise of authority. 2007 N.D. Op. Atty. Gen. No. L-08.

Senate Bill 2290 also creates operational issues between sessions for state government by limiting the aggregate amount of approvals each biennium by the Emergency Commission to \$50 million.

The total state biennial budget is over \$14 billion, including general, special, and federal funds. One percent of this budget would be over \$140 million. SB 2290 has a cap of \$50 million per biennium that can be approved by the Emergency Commission and Budget Section, and amounts greater than this would require the governor to call a special session. The cap is set so low that even a variance of less than 1/2 of one percent over the two-year budget cycle would trigger the need for a special session.

Special sessions are for addressing special circumstances as they arise, not for receiving incremental amounts of federal dollars in the normal execution of state business.

North Dakota has received approximately \$1.25 billion in CARES Act funding in the last year. Receipt and disbursement of these funds was handled through requests to the Emergency Commission. This long-established framework worked well to quickly distribute aid for COVID-19 relief for citizens, businesses, education and health care, within the designated federal guidelines under the Coronavirus Relief Fund rules.

North Dakota stands to receive additional federal funds under President Biden's "American Rescue Plan." Coronavirus Relief Fund and American Rescue Plan dollars are specifically referenced in a number of 2021-2023 appropriations bills.

The significant expansion of powers in Senate Bill 2290 clearly violates the separation of powers doctrine and attempts, via an unconstitutional \$50 million trigger, to force the Governor to call a special session to authorize expenditures of known or foreseeable federal funds. It may further result in the Legislative Assembly circumventing its constitutionally authorized 80-day limit per biennium.

For the reasons explained herein, I return Senate Bill 2290 to the Senate, unsigned.

Regards,

Doug Burgum

Governor

Disapproved April 26, 2021

Filed April 29, 2021

NOTE: The Governor's veto of Senate Bill No. 2290 was not sustained. For the text of Senate Bill No. 2290 as approved, see chapter 401.