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LETTER OPINION
2025-L-02

Governor Kelly Armstrong
Office of the Governor
600 East Boulevard Ave
Bismarck, ND 58505-0100

Dear Governor Armstrong:

Thank you for your email requesting my opinion regarding your item veto within Section 7 of Senate Bill 2014.[1] You asked whether the legally operative scope of your veto was constituted by the May 19, 2025, detailed, written statement of your objections to the item[2] or, alternatively, by the red box and X placed over Section 7 on the copy of Senate Bill 2014[3] that was included with your written statement.

It is my opinion that the written statement of your objections unambiguously detailing the item to be vetoed is the constitutionally required and legally operative communication for purposes of defining the vetoed provision in accordance with principles of constitutional interpretation and longstanding practices. Any discrepancy between the written statement and the markings on the copy of Senate Bill 2014 that accompanied it does not alter the legal effect of your unambiguous veto detailed in that written statement.

ANALYSIS

The Governor's authority to veto items in an appropriations bill is rooted in N.D. Constitution. art. V, § 9, which provides:

> 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.

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[1] S.B. 2014, § 7, 2025 N.D. Leg.
[2] Letter from Kelly Armstrong, Governor, State of N.D., to The Honorable Michelle Strinden, President of the Senate (May 19, 2025).
[3] Letter from Kelly Armstrong, Governor, State of N.D., to The Honorable Michelle Strinden, President of the Senate (May 19, 2025), S.B. 2014, 2025 N.D. Leg., p. 4 § 7, attached as an exhibit to the letter.

> The governor shall return for reconsideration any vetoed item or bill, *with a written statement of the governor's objections*, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal.[4]

This veto authority, and the process by which it is exercised, have remained largely unchanged since the first Constitution of North Dakota was adopted in 1889.[5] While there have been North Dakota Supreme Court opinions and Attorney General opinions on whether certain legislative items may be vetoed, the question at the heart of this opinion – what portion of the constitutionally mandated veto package delivered to the house of origin delineates the precise verbiage vetoed by the Governor – appears to be one of first impression.[6]

My analysis begins with the plain meaning of the constitutional provision governing vetoes, in accord with the Supreme Court of North Dakota's direction for constitutional interpretation:

> When interpreting constitutional provisions, we apply general principles of statutory construction. We aim to give effect to the intent and purpose of the people who adopted the constitutional provision. We determine the intent and purpose of a constitutional provision, if possible, from the language itself. In interpreting clauses in a constitution we must presume that words have been employed in their *natural and ordinary meaning*.[7]

To effectuate a veto, the Constitution requires the Governor to "return" the "vetoed item or bill" to its house of origin "with a written statement of the [G]overnor's objections."[8] Together, those two

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[4] N.D. Const., art. V, § 9 (emphasis added).

[5] N.D. Const. § 80 (1889) ("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 he void, unless enacted in the following manner: If the legislative assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.")

[6] This may be because there has been a near universal understanding that a clerical error in an elective visual aid does not supersede a Governor's constitutionally mandated statement upon which there is no disagreement.

[7] *SCS Carbon Transp. LLC v. Malloy*, 2024 ND 109, ¶ 19, 7 N.W.3d 268, 276, *as amended* (Jan. 9, 2025) (quoting *Sorum v. State*, 2020 ND 175, ¶¶ 19-20, 947 N.W.2d 382 (cleaned up)) (emphasis added).

[8] N.D. Const. art. V, § 9.

documents comprise the constitutionally mandated veto package.[9] The ordinary meaning of the word "return" in the Constitution's veto provision is "to send back" or "to bring back (something, such as a writ or verdict) to an office or tribunal".[10] This meaning does not require a Governor to mark up the bill that is sent back to its house of origin. While our constitutional framers could easily have instructed that the language stricken by the Governor's clear written objections be crossed out in the bill or item returned to the house of origin, no such direction was given in our Constitution, and none can be appropriately inferred. The constitutional language only requires the Governor to send the vetoed item or bill back to the house of the Legislative Assembly in which it originated,[11] along with a written statement of his objections. Again, these two items constitute the entirety of the required veto package which you properly "returned." Your veto package also satisfied the constitutional requirement to provide a written statement of your objections to the President of the Senate, and your objections were unambiguous. By the delivery of those two documents, your item veto was legally effective.

When construing a similar provision in the Idaho Constitution, the Supreme Court of Idaho stated:

> The Constitution does not define the term 'return,' but Webster's American Dictionary of the English Language defines 'return' as 'to bring, carry, or send back; as, to *return* a borrowed book; to *return* a hired horse,' and, more specifically, '[i]n law, the rendering back or delivery . . . to the proper officer or court. . . .' N. Webster, An American Dictionary of the English Language (1828). Furthermore, we have held that 'the *act* of returning [the bill] with his objections is the veto of the bill.'[12]

Governors may return vetoed items or bills exactly as they were passed by the legislature (*i.e.*, without any markings) along with their written statements of objections, and the validity of the vetoes would not be impacted.[13] Any such markings on a returned bill or item are neither

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[9] The two-sentence cover note that the Governor elected to affix to the veto package was a courtesy with no legal effect.

[10] *Return, Merriam-Webster Dictionary,* (11th ed. 2019) https://www.merriam-webster.com.

[11] N.D. Const. art. V, § 9.

[12] *Coeur D'Alene Tribe v. Denney*, 387 P.3d 761, 772 (Idaho 2015) (citation omitted; emphasis and brackets original).

[13] In nondecisional dicta in a 1935 case involving completely distinct legal issues, the Supreme Court of North Dakota interpreted the word "disapproval" in a preexisting version of the Constitution's veto provision. *See Sandaker v. Olson,* 65 N.D. 561, 588, 260 N.W. 586, 588 (1935). Because it was not a matter of dispute in that case, the parties did not address the issue. Accordingly, there is no precedential value in the court indicating, without explanation or analysis, that evidence of a Governor's disapproval must be indicated on a bill "with reference to" the vetoed provision. It is not clear what the court meant by this phrase and whether the court was implying the Governor's objections needed to be written on the bill at issue. The purpose,

constitutionally mandated nor legally operative for purposes of determining the scope of the items that are vetoed. As such, the marked-up copy of the bill included in the veto package did not raise any operable ambiguity regarding your veto.

This is clear when one considers that drawings or other markings on a returned item or bill cannot effectuate a veto by themselves. Under the North Dakota Constitution, simply returning a copy of a bill with language stricken from it would be insufficient to veto anything. While this instance presents a matter of first impression in North Dakota, the Supreme Court of Colorado interpreted a similar provision in their Constitution and found that marking a copy of a bill with the words "disapproved and vetoed" was not a veto. The Court explained that the Governor's detailed written objections to the bill are necessary for a constitutionally sound veto:

> "[T]he purpose behind the provision requiring the executive to return a vetoed bill to the house of origin is to insure that the legislative branch shall have suitable opportunity to *consider the Governor's objections* to bills and on such consideration to pass them over his veto provided there are the requisite votes to do so."[14]

That reasoning is sound and informs my determination in this opinion.[15] To conclude otherwise defies the principles of constitutional construction and renders the mandate for "a written statement of the governor's objections" a nullity. This would enshrine an absurdity disfavored by our constitution. Here, your veto message very clearly sets forth your objections to the "$150,000 passthrough grant" within Section 7 of Senate Bill 2014.[16] Specifically, you identified the objectionable item to be vetoed as "a $150,000 passthrough grant from the Housing Incentive Fund to a Native American-focused organization for the purpose of funding a homelessness liaison position" and wrote "I cannot support *this provision within* Section 7."[17] There is no ambiguity about which item in Section 7 was vetoed. Regardless of any markings on the returned bill, it is

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according to the court, was to "mak[e] disapproval known to the legislative body so that this body may enact into legislation the items disapproved if it sees fit." *Id.* Moreover, the court looked to the Governor's intent and gave "great consideration to constructions [of constitutional provisions or statutes] by political departments of the government" when interpreting provisions involving political or quasi-political questions. *Id. (citations omitted).* Thus, the history, nondeterminative nature, and full context of the dicta make it inapposite to the issue at hand, but the court's purpose and process are consistent with this opinion.

[14] *Romer v. Colorado Gen. Assembly*, 840 P.2d 1081, 1083 (Colo. 1992) (en banc) (citation omitted; emphasis added).

[15] *See, e.g.*, *Kelsh v. Jaeger*, 2002 N.D. 53, ¶ 7, 641 N.W.2d 100, 104 (2002) (courts "must give effect and meaning" to every constitutional provision and construe constitutional provisions to avoid "absurd or ludicrous results") (internal citations omitted).

[16] Letter from Kelly Armstrong, Governor, State of N.D., to The Honorable Michelle Strinden, President of the Senate (May 19, 2025).

[17] *Id.* (Emphasis added).

clear from the plain language used in your full written statement of objections that you did not veto all of Section 7 of the bill. Based on the unambiguous written statement of objections, legislators can precisely identify the vetoed provision for purposes of considering the veto and, if necessary, voting on whether to override it.

Long-established North Dakota legislative practices also support the conclusion that elective markings on a returned bill do not supersede a governor's unambiguous written statement of objections delineating a vetoed item. For more than a century, legislative records have included written statements of objections as the official documentation of governors' vetoes. Only the written statements of objections are recorded in the official journals of the Legislative Assembly and the official Session Laws published after each legislative session.[18] They are also filed with the North Dakota Secretary of State.[19] Any electively marked up or otherwise annotated copies of the vetoed items or bills included in the veto packages have *not* been recorded for consideration of legislators. Consequently, the only way to ascertain the scope of previous item vetoes in the official legislative records is to read the written statement of the Governor's objections. And when the Legislative Assembly votes on whether to override a veto, the proceedings have historically only included readings of, and references to, the written statement of objections and the adopted version of the legislation without legislators being provided with any notations or markings that may have accompanied the Governor's written statement of objections.[20]

Similarly, the Session Laws codified after the end of a legislative session also document each veto by recording only the Governor's written statement of objections. Marked up or notated copies of vetoed items or bills that Governors may have included with written statements of objections are not included. In lieu of a notated copy of a bill, the Session Laws have included either a copy of the vetoed measure as it was originally adopted (*i.e.*, without any markup or excisions reflecting the

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[18] *See, eg.* H.B. 1012, 2007 N.D. Leg., 2007 N.D. Sess. Laws, ch. 576); H. Journal at. 1970-71 (2007); H. Journal, Post Sess. at 1970-71 (2007); H.B. 1514, 1993 N.D. Leg., 1993 Sess. Laws, ch. 651; 1993 H. Journal, at 2312-13 (1993); H. Journal, Post Sess. at 2312-13 (1993); H.B. 1019, 1987 N.D. Leg., 1987 N.D. Sess. Laws, ch. 767; H. Journal, at. page 3194 (1987); H.B. 501, 1961 N.D. Leg., 1961 N.D. Sess. Laws, ch. 46; S.B. 29, 1911 N.D. Leg., 1911 Sess. Laws, ch. 315. *Cf. Coeur D'Alene Tribe v. Denney*, 387 P.3d 761, 769 (Idaho 2015) (In analyzing whether a veto satisfied certain constitutional requirements, the court reviewed legislative journals and stated "[t]he object of the journals, principally, is to enable the people to ascertain that any and all laws were enacted in the manner required by the constitution, so as to determine whether such was constitutionally passed, and therefore valid and binding." Quoting *Cohn v. Kingsley*, 49 P. 985, 988, 996 (Idaho 1897).

[19] Senate & House Legis. Manual 2025-26, § 204(4), N.D.C.C. § 54-09-02.

[20] *See e.g.*, S. Journal 69-1201, Reg. Sess., at 1203-04 (N.D. 2025) (recording a copy of the Governor's written statement of objections, title of bill, recorded roll call vote, and result of consideration of Governor's veto of Senate Bill 2307) and accompanying video at https://video.ndlegis.gov/en/PowerBrowser/PowerBrowserV2/20250525/-1/34278?startposition=20250425124157.

veto) or a reference to the measure, such as its title.[21] This appears to be true for almost all vetoes dating back to 1903 with a few minor deviations in practice in 1907, not relevant to the question here.[22]

Giving effect solely to the Governor's written statement of objections over any perceived graphic discrepancy of the returned bill in the veto package is also consistent with the Legislative Assembly's analogous, longstanding method for reconciling divergent amendment instructions and amendment mark-ups (colloquially called the "m" versions or the "Christmas tree versions" of amendments). Until the 69th legislative assembly,[23] amendments to legislation were created by drafting specific instructions for making the intended changes to the underlying bill. As a convenient but purely elective visual aid, legislative drafters could prepare a color-coded mark-up of the bill to help legislators and others visualize the effect of the amendment instructions. Notably, the "m" version was not recorded in the journals; only the amendment instructions were. If there was a discrepancy between the amendment instructions and the "m" version, the amendment instructions superseded the conflicting, marked up visual aid.[24] In the present case, your written statement of objections operates like mandatory amendment instructions, while the red annotation on the returned version of Senate Bill 2014 is merely an elective marking. Any discrepancy between the latter and the former must be resolved in favor of the former, the written statement of objections.

Pursuant to the applicable constitutional analysis, after the vetoed item is removed, section 7 of Senate Bill 2014 reads:

> 1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $10,000,000, which the office of management and budget shall transfer to the housing incentive fund for homeless programs, during the biennium beginning July 1, 2025,

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[21] *See, e.g.*, 2023 N.D. Sess. Laws, ch. 589, (veto of Senate Bill 2231); 2023 N.D. Sess. Laws, ch. 591(items vetoed from Senate Bill No. 2015); and 2017 N.D. Sess. Laws., ch. 444 (item vetoed from House Bill 1015).

[22] *See, e.g.,* 1903 N.D. Sess. Laws, ch. 10 (parts vetoed from Senate Bill 103) https://ndlegis.gov/assembly/sessionlaws/1903/sl1903.pdf#pagemode=bookmarks.

[23] As of the 69th legislative assembly, the Legislative Council is no longer preparing amendment instructions.

[24] *See 2023 Legislative Drafting Seminar*, (Oct. 4, 2022) (Statement of Samantha Kramer, Senior Counsel and Assistant Code Revisor, at 10:57:38am) https://video.ndlegis.gov/en/PowerBrowser/PowerBrowserV2/20221004/-1/27969. ("Between the marked-up version and the instructions, the instructions are the most important part because they are printed in the journal. . . . [The Christmas tree version] is not an official version. . . . The official version of an amendment is the amendment instruction copy. So you can see it in context, but when they actually vote and what goes into the journal is the amendment instructions.")

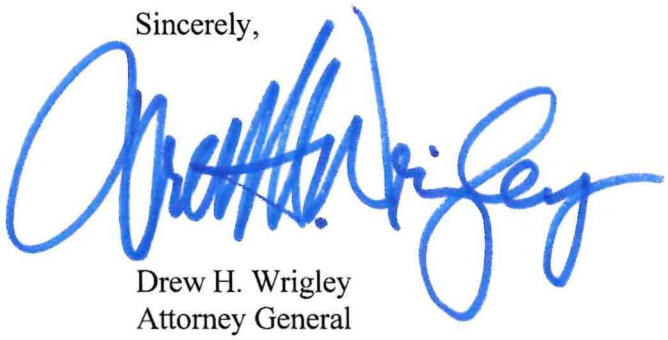
and ending June 30, 2027. The appropriation under this subsection is considered a one-time funding item.

2. The office of management and budget shall transfer the sum of $25,000,000 from the strategic investment and improvements fund to the housing incentive fund for housing projects and programs during the biennium beginning July 1, 2025, and ending June 30, 2027.

SUMMARY

Delivering the veto package consisting of your written statement of objections and the copy of Senate Bill 2014 to the Senate satisfied the constitutional criteria for an item veto, and the written statement of objections was clear and unambiguous. To the extent the electively marked-up copy of Senate Bill 2014 in the veto package arguably diverged from your written statement of objections, that discrepancy is constitutionally inoperative and neither nullifies nor modifies the veto as it was proclaimed in your written statement of objections. It is my opinion that the detailed, written statement of your objections is the legally operative document for purposes of discerning the language vetoed pursuant to N.D. Const. art. V, § 9.

Sincerely,



Drew H. Wrigley
Attorney General

DHW/CN/mjh

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.[25]

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