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**MOTION**

**SEN. KLEIN MOVED** that the Senate stand in recess until 5:00 p.m., which motion prevailed.

**THE SENATE RECONVENED** pursuant to recess taken, with President Sanford presiding.

**VETO MEASURE**

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 legislature 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 ignore 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 approve by the emergency commission." The power to reject an Emergency Commission decision "with out 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 general funds. Once 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