State of
North Dakota
Office of the Governor

Jack Dalrymple
Governor

May 12, 2015

The Honorable Drew Wrigley
President, ND Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2003

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 6 and Section 8 of Senate Bill 2003.

Section 6 requires a district court to pay the expenses incurred by an expert witness, including a witness from the state crime laboratory. The section also tends to encourage witnesses to testify via interactive video by exempting district courts from any costs associated with their testimony in this situation. Section 6 is vetoed because the district courts did not receive funding for this purpose from either the Executive Budget or through legislative appropriations. Additionally, the language was never presented to the appropriations committees in either the House or Senate when they considered the proposed budget for the judicial system.

Further, it is doubtful that witnesses would be able to take meaningful advantage of the cost-saving opportunity for interactive video testimony because North Dakota Supreme Court Administrative Rule 52(4)(B)(2) provides "A witness may not testify by reliable electronic means unless the defendant knowingly and voluntarily waives the right to have the witness testify in person."

It is also questionable whether it is appropriate for the district court to pay the costs of expert witnesses. In addition, section 6 contains an incorrect reference to North Dakota Century Code section 44-04-04, which pertains to "Aliens convicted of felony or adjudged mentally ill."

I have also vetoed Section 8 of this legislation. Managing the volume of work and available staff time required to respond to requests for Attorney General Opinions must

remain a management decision made at the discretion of the Attorney General. The proposed timeline for producing opinions increases the likelihood that an excessive volume of requests could make it impossible to effectively prioritize the use of staff and resources.

For these reasons, I have vetoed section 6 and 8 of Senate Bill 2003.

Sincerely,

Jack Dalrymple

Jack Dalrymple
Governor

Received by: _____ Date: 5/14/15 Time: 2:15pm.

Received by _____ 5/14/15 2:18 p.m.
Secretary of State

Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2003
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to provide exemptions; to create and enact a new section to chapter 27-05 and two new sections to chapter 54-12 of the North Dakota Century Code, relating to the responsibility for expert witness expenses, attorney general opinions, and the criminal justice data information sharing system; to amend and reenact sections 53-12.1-09, 54-12-08, 54-12-11, and 54-27-25 of the North Dakota Century Code, relating to the salary of the attorney general, assistant and special assistant attorneys general, the lottery operating fund, and the tobacco settlement trust fund; to repeal section 54-59-21 of the North Dakota Century Code, relating to the criminal justice data information sharing system; to provide a report to the budget section; to provide for a legislative management study; 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 attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 2015, and ending June 30, 2017, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	$34,806,462	$8,709,679	$43,516,141
Accrued leave payments	1,057,247	(1,057,247)	0
Operating expenses	26,994,056	(1,002,737)	25,991,319
Capital assets	2,165,077	506,110	2,671,187
Grants	2,373,947	(611,288)	1,762,659
Criminal justice information sharing	0	5,401,701	5,401,701
Law enforcement	0	3,887,386	3,887,386
Litigation fees	50,000	0	50,000
Abortion litigation fees	400,000	0	400,000
Medical examinations	660,000	0	660,000
North Dakota lottery	4,133,821	1,148,957	5,282,778
Arrest and return of fugitives	10,000	0	10,000
Gaming commission	7,368	122	7,490
Total all funds	$72,657,978	$16,982,683	$89,640,661
Less estimated income	35,382,450	518,335	35,900,785
Total general fund	$37,275,528	$16,464,348	$53,739,876
Full-time equivalent positions	212.50	36.50	249.00

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIFTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-third legislative assembly for the 2013-15 biennium and the 2015-17 one-time funding items included in the appropriation in section 1 of this Act:

One-Time Funding Description	2013-15	2015-17
BCI vehicles	$198,000	$132,000
BCI surveillance vehicles	0	200,000
Criminal justice information sharing	0	1,250,000
Target equity criminal investigators	0	1,276,301

Target equity gaming audit staff	0	270,000
Computerized business projects FTE	178,100	0
Total all funds	$376,100	$3,128,301
Total special funds	0	653,333
Total general fund	$376,100	$2,474,968

The 2015-17 one-time funding amounts are not a part of the entity's base budget for the 2017-19 biennium. The attorney general shall report to the appropriations committees of the sixty-fifth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2015, and ending June 30, 2017.

SECTION 3. TARGETED MARKET EQUITY FUNDING - LIMITATIONS - SALARY SAVINGS - REPORT TO BUDGET SECTION. Of the funds appropriated in the salaries and wages line item in section 1 of this Act, $270,000 is one-time funding from the attorney general refund fund for providing targeted market equity to gaming audit staff and $1,276,301 is one-time targeted market equity funding for criminal investigators, including $250,000 provided from carryover funds due to the exemption in section 5 of this Act, and up to $1,026,301 from the general fund. The attorney general may spend the general fund amount under this section only to the extent that salary savings resulting from vacant positions and employee turnover are not sufficient to provide the $1,026,301 authorized for targeted market equity from the general fund. The attorney general shall report to the office of management and budget and the office of management and budget must report to budget section in September 2015 and September 2016 regarding the amount of salary savings used to reduce funding needed from the general fund and to report on the number and duration of vacant full-time equivalent positions.

SECTION 4. ATTORNEY GENERAL REFUND TRANSFER TO THE GENERAL FUND - EXEMPTION. Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund that would otherwise be transferred to the general fund on June 30, 2015.

SECTION 5. EXEMPTION - GRANTS TO LAW ENFORCEMENT AGENCIES. The amount appropriated to the attorney general from the strategic investment and improvements fund for awarding grants to law enforcement agencies, for crime-related needs of the attorney general's office, and for development of a uniform law enforcement and custody manual, as contained in section 11 of chapter 471 of the 2013 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general to award grants to law enforcement agencies, for crime-related needs of the attorney general's office, and for development of a uniform law enforcement and custody manual during the biennium beginning July 1, 2015, and ending June 30, 2017.

SECTION 6. A new section to chapter 27-05 of the North Dakota Century Code is created and enacted as follows:

State crime laboratory expert witness travel costs responsibility of district court - Exception.

In any case before the district court involving an offense other than a class AA felony in which a staff member from the state crime laboratory is subpoenaed to testify as an expert witness, the district court shall pay the mileage and travel expenses incurred by the expert witness as provided under sections 44-04-04 and 54-06-09. If the district court permits the expert witness to testify via the state's interactive video network service or other interactive computer service, the district court is not responsible for any costs related to the testimony of a subpoenaed state crime laboratory expert witness.

SECTION 7. AMENDMENT. Section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds.

There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a lottery promotion, prize on a winning ticket paid by a retailer, and a retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated operating revenue and expenditures for the current biennium and projected operating revenue and expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;

2. Notwithstanding section 53-12.1-10, payment of a marketing expense that is directly offset by cosponsorship funds collected;

3. Payment of a gaming system or related service expense, retailer record and credit check fees, game group dues, and retailer commissions; and

4. Transfer of net proceeds:

   a. ~~Fifty~~Eighty thousand dollars must be transferred to the state treasurer each quarter for deposit in the compulsive gambling prevention and treatment fund;

   b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association;

   c. Starting July 1, 2007, one hundred five thousand six hundred twenty-five dollars must be transferred to the state treasurer each quarter for deposit in the attorney general multijurisdictional drug task force grant fund; and

   d. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

~~**SECTION 8.** A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:~~

~~**Attorney general opinions - Notification of receipt of request - Delivery.**~~

~~Within thirty days of receipt of a request for a written opinion under section 54-12-01 or 44-04-21.1, the attorney general shall notify the individual who requested the opinion that the request has been received and that a written opinion will be delivered to the requester within one hundred eighty days of the receipt of the request or that the attorney general has determined that a written opinion will not be provided to the requester. If the attorney general determines that an opinion will not be written in response to the request, the attorney general shall inform the requester of the basis for that determination.~~

SECTION 9. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Criminal justice data information sharing system.

1. The attorney general shall maintain a criminal justice data information sharing system within the bureau of criminal investigation for the exchange of criminal justice data information by judicial, law enforcement, and emergency services agencies, and the department of transportation. Only an authorized individual employed by a criminal justice agency as defined in section 12-60-16.1, the department of transportation, a state court, or the department of emergency services or any other individual approved by the attorney general may access the system. To be eligible for access to the criminal justice data information sharing system, an individual shall undergo a criminal history background check, including a fingerprint check.

2. The criminal justice data information sharing system may be accessed only in accordance with rules adopted under this section. Any law enforcement record in the possession of the attorney general through the criminal justice data information sharing system is an exempt record. Criminal justice data information about an offense committed by a child if the offense has not been transferred under section 27-20-34 to another court having jurisdiction of the offense and information about a child victim or witness is confidential.

3. The attorney general shall provide staff to maintain the criminal justice data information system and provide administrative support for the advisory board.

4. A criminal justice information advisory board must be appointed, consisting of:

   a. The chief justice of the supreme court or the chief justice's designee.

   b. The director of the department of emergency services or the director's designee.

   c. The director of the department of corrections and rehabilitation or the director's designee.

   d. The superintendent of the state highway patrol or the superintendent's designee.

   e. The chief of the bureau of criminal investigation, who is the chairman of the advisory board.

   f. The chief information officer of the state or the chief information officer's designee.

   g. The director of the department of transportation or the director's designee.

   h. A representative of a city police department, appointed by the attorney general from a list of two or more nominees from the North Dakota chiefs of police association.

   i. A representative of a county sheriff's office, appointed by the attorney general from a list of two or more nominees from the North Dakota sheriffs and deputies association.

   j. A state's attorney, appointed by the attorney general from a list of two or more nominees from the North Dakota state's attorney's association.

   k. A city government representative, appointed by the attorney general from a list of two or more nominees from the league of cities.

   l. A county government representative, appointed by the attorney general from a list of two or more nominees from the association of counties.

5. Advisory board members who are not permanent full-time state employees are entitled to compensation of seventy-five dollars per day and mileage and expenses as provided by law for state employees. With the exception of the chief of the bureau of criminal investigation, advisory board members appointed under this section serve staggered three year terms.

6. The attorney general, after consultation with the advisory board, shall adopt rules to establish eligibility for access to the criminal justice data information sharing system; to implement the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions; and to address the operation of the advisory board.

SECTION 10. AMENDMENT. Section 54-12-08 of the North Dakota Century Code is amended and reenacted as follows:

54-12-08. Assistant and special assistant attorneys general - Appointment - Revocation - Compensation.

1. After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. Workforce safety and insurance, the department of transportation, the state tax commissioner, the public service commission, the insurance commissioner, ~~the board of higher education,~~ and the securities commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. The attorney general may revoke the appointment only for good cause or upon the request of the entity. Good cause means an inadequate level of experience, competence, or ethical standards.

2. The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, unless the powers are limited specifically by the terms of the appointment. Except as otherwise provided by this section, an appointment is revocable at the pleasure of the attorney general. The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, the compensation must be paid out of the funds appropriated therefor.

3. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, and the state hospital.

4. Any assistant and special assistant attorney general, appointed to represent the state board of higher education or an institution under the control of the state board of higher education may access and examine any record under the control of the state board of higher education. For purposes of reviewing records under the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal privacy law, the assistant and special assistant attorneys general must be considered a state educational official authorized to access student records for legal purposes.

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

54-12-11. Salary of attorney general.

The annual salary of the attorney general is one hundred ~~forty-three~~fifty-two thousand ~~six~~four hundred ~~eighty-five~~thirty-six dollars through June 30, ~~2014~~2016, and one hundred ~~forty-seven~~fifty-seven thousand ~~nine hundred ninety-six~~nine dollars thereafter.

SECTION 12. AMENDMENT. Section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

54-27-25. Tobacco settlement trust fund - Interest on fund - Uses.

1. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under subsection IX(c)(1) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Except as provided in subsection 2, moneys received by the state under subsection IX(c)(1) must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund may be appropriated to the attorney general for the purpose of enforcing the master settlement agreement and any disputes with the agreement. All remaining principal and interest of the fund must be allocated as follows:

   a. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ten percent of total annual transfers from the tobacco settlement trust fund of which a minimum of eighty percent must be used for tobacco prevention and control.

   b. Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.

   c. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.

2. There is created in the state treasury a tobacco prevention and control trust fund. The fund consists of the tobacco settlement dollars obtained by the state under section IX(c)(2) of the agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund must be credited to the fund and deposited in the fund. Moneys received into the fund are to be administered by the executive committee for the purpose of creating and implementing the comprehensive plan. If in any biennium, the tobacco prevention and control trust fund does not have adequate dollars to fund a comprehensive plan, the treasurer shall transfer money from the water development trust fund to the tobacco prevention and control trust fund in an amount equal to the amount determined necessary by the executive committee to fund a comprehensive plan.

3. Transfers to the funds under this section must be made within thirty days of receipt by the state.

SECTION 13. CAMPUS ASSESSMENTS - REPORT TO BUDGET SECTION. The attorney general shall report to the budget section by September 30, 2016, regarding any fees charged to a campus in excess of the campus assessments listed below for legal fees charged by the attorney general.

Bismarck state college	$38,377
Lake region state college	17,796
Williston state college	12,530
University of North Dakota	0
North Dakota state university	0
North Dakota state college of science	39,346
Dickinson state university	17,615
Mayville state university	16,949
Minot state university	39,709
Valley City state university	17,494
Dakota college at Bottineau	11,804
Total	$211,620

SECTION 14. LEGISLATIVE MANAGEMENT STUDY - MEDICAID FRAUD UNIT. During the 2015-16 interim, the legislative management shall consider studying the feasibility and desirability of establishing a medicaid fraud unit in the state. The study must include a review of the requirements for and the estimated costs and benefits of developing a medicaid fraud unit as well as any statutory requirements and changes necessary for the realization of the full benefit of a medicaid fraud unit. As part of the study, the legislative management shall seek input from the medical community, the department of human services, and any other relevant professions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

SECTION 15. REPEAL. Section 54-59-21 of the North Dakota Century Code is repealed.

SECTION 16. EMERGENCY. Section 4 and subsection 4 of section 10 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-fourth 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 47 Nays 0 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 87 Nays 2 Absent 5

Speaker of the House

Chief Clerk of the House

Received by the Governor at 4:18 P.M. on May 4, 2015.

Approved at 4:22 P.M. on May 12, 2015.

Governor

Filed in this office this 14th day of May, 2015,

at 2:18 o'clock P M.

Secretary of State