STATE OF SOUTH DAKOTA

OFFICE OF THE GOVERNOR

KRISTI NOEM | GOVERNOR

March 25, 2022

Dear Mr. Speaker and Members of the House of Representatives,

I respectfully return to you House Bill 1281 with my VETO. House Bill 1281 is an act to clarify the contents of the general appropriations act for fiscal year 2023, pertaining to certain federal moneys and to declare an emergency.

South Dakota is one of the most financially sound states in the country. Our state is top-3 in the nation for fiscal stability, we have a AAA credit rating, we have passed a balanced budget for 133 consecutive years, and our state pension plan was 102% funded at the end of February 2022.

Financial success and stability of that magnitude and longevity is not an accident, and it is further enhanced by our sound budgeting and accounting principles. We do not use accounting gimmicks or tricks to balance our budget, we never use one-time money for ongoing expenses, and we have an annual appropriations process with a part-time, citizen Legislature.

South Dakota has built our firm financial standing over the decades through a partnership between the executive branch and the legislative branch, in particular through a close working relationship between the Bureau of Finance and Management, the Joint Appropriations committee, and the Legislative Research Council's fiscal staff.

Over the past two years, our state has received an unprecedented level of federal funding due to the passage of several COVID-19 pandemic relief bills. I share many of your concerns with the billions of dollars in taxpayer money being thrown around by the federal government. I believe strongly that the state should use those funds to strengthen our economy for the long term.

I do not want the unique federal activity over the last two years to upset our state's long-standing, commonsense approach to budgeting – an approach that has led to 133 consecutive years of balanced budgets. House Bill 1281 marks a stark departure from that process.

I recognize the desire of some legislators to have a greater level of involvement in the allocation of these federal relief funds. However, House Bill 1281 includes a number of logistical and technical deficiencies. While House Bill 1281 may seem simple in principle, it is unworkable in practice and would have many unintended consequences. For instance, House Bill 1281:

1. Lacks clarity on which agencies are impacted, when they are impacted, and the amount of budget impact;

2. Increases bureaucracy with unnecessary accounting and budget transfers;

3. Reduces transparency by forcing budget transfers that do not accurately reflect the true base budget;

4. Fails to recognize that because highway construction is continuously appropriated and not part of the base budget, construction projects could instead be considered a "new program" under this bill that requires approval by the Joint Committee on Appropriations. As of March 14, 2022, the Department of Transportation has over $350 million of transportation projects under construction, contract, or advertised for letting. Expenditures for these nearly 300 projects will likely cross over the federal fiscal year, the state fiscal year, and the calendar year; and

5. Duplicates hearings adding additional Joint Appropriations Committee hearings where statutory directives already require existing public boards to hold such hearings.

The bottom line is this: House Bill 1281 creates a complicated, at times duplicative, new process that makes it more difficult to understand and account for the operations of state government. In doing so, it places unnecessary burdens on legislators, LRC staff, and agencies.

I am concerned about legal weaknesses that arise when a legislative proposal is not put through the usual public hearing process. Due process in the legislative session means South Dakota taxpayers are given advance notice of a hearing and a meaningful opportunity to be heard. That did not happen with House Bill 1281. The public will not be able to find even one recorded public hearing on the final language of House Bill 1281.

Within House Bill 1281, legal deficiencies are evident throughout. Section 10 of House Bill 1281 deserves special mention due to three significant legal defects:

1. Improperly allows the Joint Interim Committee on Appropriations to undo the majority of the Legislature's vote on the Fiscal Year 2023 budget bill. The bill does so by granting that Committee the authority to appropriate (or refuse to appropriate) funds, even when the authority to spend was already addressed in the general appropriations bill passed by the entire Legislature;

2. Increases the scope and authority of the Joint Interim Appropriations Committee, even beyond what the Legislature has authorized it to do in Joint Rule 7-12. This unnecessarily complicates the process and weakens the authority of the other 87 Legislators who are not serving on the Joint Interim Appropriations Committee; and

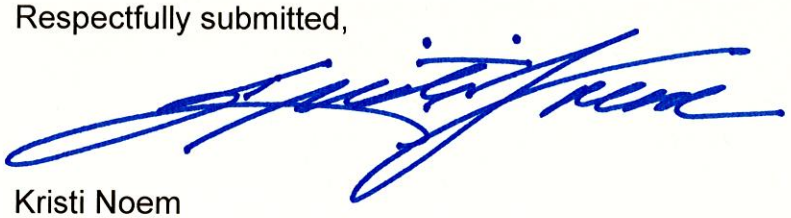
3. Improperly seeks to give the Joint Interim Committee on Appropriations authority over the issuance of federal funds that are required, by state law, to be held in trust for airport sponsors and administered in accordance with the terms of federal mandates. See SDCL 50-4-4 through 50-4-6.

Given these practical implementation problems and legal impediments, I have chosen to veto House Bill 1281, and I ask you to sustain my veto. I commit to engage with the Legislature to create a system by which we can achieve the goals that motivate House Bill 1281. I want conversation and input to continue on these extraordinary federal relief funds before any new programs are rolled out.

As part of this commitment, I have asked incoming Bureau of Finance and Management Commissioner Jim Terwilliger to establish a new protocol to communicate with the Legislature as any new COVID grants or relief funds are received. I do not believe legislation is necessary to achieve these goals, so long as we are all willing to work together based on common trust and good faith.

That is my commitment to the Legislature, and I ask you to sustain my veto.

Respectfully submitted,



Kristi Noem
Governor