



M. J. "MIKE" FOSTER, JR.
GOVERNOR

State of Louisiana

OFFICE OF THE GOVERNOR

Baton Rouge

70804-9004

POST OFFICE BOX 94004
(225) 342-7015

July 14, 2000

VETO

MESSAGES

Mr. Alfred W. Speer
Clerk of the House of Representatives
State Capitol
Baton Rouge, Louisiana 70804

Mr. Michael S. Baer, III
Secretary of the Senate
State Capitol
Baton Rouge, Louisiana 70804

RE: **House Bill No. 1** of the 2000 2nd Special Session of the Legislature

An Act making appropriations for the ordinary expenses of the executive branch of state government, pensions, public schools, public roads, public charities, and state institutions and providing with respect to the expenditure of said appropriations.

Gentlemen:

As authorized by Article III, Section 18(B), and more particularly, Article IV, Section 5(G)(1) of the Constitution of Louisiana, I have exercised my right to veto 6 items or provisions of the General Appropriation Bill.

VETO MESSAGE NO. 1:

Page 21, Lines 46 through 47

This language amendment provides that no monies appropriated in the Executive Office budget shall be used for the "expenses of a representative in Washington, D.C." This item appears to attempt to make substantive law in the appropriations bill. Furthermore, the language would not only disallow any expenses to be paid for a representative of the state that is domiciled in Washington D.C., but would also not allow the payment for expenses incurred by the Governor or any of the staff of the Executive Office who must travel to Washington D.C. to conduct state business. For these reasons, I find it necessary to veto this item.

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VETO MESSAGE NO. 2:

Page 102, Lines 10 through 12

This item in the preamble to the Department of Health and Hospitals appropriation utilizes language to exempt small rural hospitals from reductions initiated by the Secretary for expenditure control in the Medicaid program. Other language in the preamble directs the Secretary to utilize various cost containment measures to ensure that the Medicaid program does not expend more than it is appropriated during Fiscal Year 2000-2001. By excluding any funds allocated to small rural hospitals from expenditure reductions associated with cost containment measures, this language would seriously limit the Department's ability to maintain a balanced budget in the Medicaid program. Thus, I find no alternative but to veto this automatic exemption.

VETO MESSAGE NO. 3:

Page 102, Lines 48 through 51

This item in the preamble to the Department of Health and Hospitals appropriation stipulates that if it is determined that funds become available in Fiscal Year 2000-2001, then such funds shall be utilized first for the re-basing of the reimbursement rates paid to nursing homes. If sufficient funds are not available for a full re-basing, then partial re-basing is required. The additional funding provided by this item for increased payments to nursing homes is contingent upon the availability of any excess revenues generated by the Department of Health and Hospitals above its appropriation. Such a contingent appropriation appears to fly in the face of the Louisiana Constitution. However, the same result is possible, as Section 2 of the bill allows for the expenditure of additional revenues with the approval of the commissioner of administration and the Joint Legislative Committee on the Budget. Therefore, as a mechanism exists to utilize additional revenues as they become available and such revenues should be appropriated to address needs which exist at the time these revenues materialize, I am vetoing this item.

VETO MESSAGE NO. 4:

Page 117, Lines 35 through 37

The intent of this amendment, in the Medical Vendor Payments appropriation, was to restore the amounts paid to independent pharmacies to 89.5% of the Average Wholesale Price (AWP). However, the amendment, as written, is flawed and would direct the Department to pay only 10.5% of the AWP not the AWP less 10.5%. When considering the intent of this amendment, there is another serious issue beyond the flaw in the language that must be addressed. The Department was able to obtain passage of an emergency rule to pay the independent pharmacies 85% of AWP and the chain pharmacies 83.5% of AWP in Fiscal Year 2000 and part of Fiscal Year 2001. By directing the Department to pay the higher percentage to the independent pharmacies, this action will most certainly result in a lawsuit by the chain pharmacies that DHH is likely to lose. To avoid a suit, DHH will have to equalize the payments to chains and independents costing the state an additional \$20 to \$25 million. This would create a shortfall in the

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pharmacy program, which would result in a decrease of services to Medicaid recipients. Thus, both the language and the intent of this amendment are problematic and a veto is necessary to avoid the implications of either.

VETO MESSAGE NO. 5:

Page 157, Lines 10 through 13

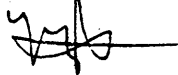
This item provides that out of the Legal Support Funds appropriated in the Office of Mineral Resources, \$206,000 shall be utilized for the testing of water and watershed systems in rural areas of the state through contracts issued by the Office of Rural Development with rural water associations. Whereas R.S. 30:136.2(C) provides that the monies in the Legal Support Fund shall be appropriated solely for the purpose of auditing and collections of the Office of Mineral Resources, for paying legal and auditing costs, and defraying the costs of expert witnesses, consultants, and contract legal counsel. As this item is in direct conflict with general substantive law, I find it necessary to veto it.

VETO MESSAGE NO. 6:

Page 229, Lines 55 through 58

This item authorizes the Superintendent of Education to transfer up to 2.5% of total State General Fund (Direct) appropriation between the State Activities and Subgrantee Assistance budget units within the Department of Education. No other departmental appropriation includes language providing unilateral authority to transfer funds within a department. Since Section 4 of the bill provides an appropriate level of oversight by allowing the commissioner of administration and the Joint Legislative Committee on the Budget to approve transfers within a department, adequate budget flexibility already exists and as I do not agree with this approach for any department, I am vetoing this item.

Sincerely,



M. J. "Mike" Foster, Jr.

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