



March 10, 2022

The Honorable Dan Dockstader
President of the Wyoming Senate
Wyoming Senate
200 West 24th Street, Capitol Building, E201
Cheyenne, WY 82002

Re: Line-item vetoes on SF0001/SEA No. 12.

Dear President Dockstader,

During my State of the State address to the 66th Legislature, I mentioned that folks here in Wyoming have had a hard pull over the past couple of years. I would argue that the Legislature has faced a similar challenge over the past four weeks. You have endured long days and tough conversations, and put your hearts and souls into ensuring you are doing right by Wyoming's people.

When I released my budget proposal in November, I noted that it was purposely frugal. I would like to thank the Legislature for passing a budget that reflects that same approach, including a shared desire to maintain funding for education and avoid any further cuts to the state entities that made big reductions last year. This is a clean, transparent budget that was achieved by adopting an approach of mutual respect as the chambers worked through any disagreements. Other states can look to Wyoming for a lesson in how to conduct cordial budget negotiations.

I am deeply grateful for the Legislature's support for my number one priority of market adjustments for state employees. This essential adjustment is a positive step towards ensuring that all of our dedicated and hardworking employees are paid at current market rates. If we are committed to truly addressing this issue going forward we should seek to budget all state positions at market rates and address inflation.

For each of the vetoes I have put forth, I have included brief comments explaining my rationale. Thank you for all of your hard work and your approach to legislating. I have reciprocated with my signature of Senate File 001, Senate Enrolled Act 12 with the following line item vetoes:

Section 004 State Treasurer Footnote 6

This footnote raises separation of powers issues by specifically controlling and capping the annual salary for a specific classification of Executive Branch employees. As such, this provision encroaches on the inherent prerogatives of the Executive Branch.

Section 004 State Treasurer Footnote 7

This footnote appears to be an attempt to help solve a significant problem for the state, and in particular, the State Treasurer's Office (STO) related to its inability to produce timely, properly reconciled accounting for the \$25 billion in the care of the Treasurer's Office. These problems systemically affect all government agencies, our towns and counties, and our schools. Nevertheless, this footnote raises a separation of powers concern. This line-item veto addresses that concern while approving a position Treasurer Meier requested with some considerations remaining that partially reflect the intent of the Legislature.

As a former Treasurer, I am well acquainted with the challenges of the Office and the complexities the STO must address to meet them. To be sure the duties of the STO have evolved markedly since statehood, and even more so in the last decade. Not only has the portfolio expanded, but the number of accounts and legislatively directed fund transfers have as well.

The dedicated staff of the STO has done their level best to meet the demands of the range of activities that have been assigned. Four years ago, when I left the Treasurer's Office, I remember our efforts to deliver year-end numbers so that a proper audit could be completed. The resulting document is referred to as an Annual Consolidated Financial Report (ACFR) and it is the definitive statement of a State's financial health, as well as a transparent look into the operations of every State entity.

The current Treasurer has requested and received additional resources for the office. Salaries have been increased and incentive compensation has been provided to acknowledge investment performance. Lacking though, has been the ability to address the correlative challenge of accounting for and properly recording the increased volume of financial transactions. Not being able to know definitively what that performance actually is, or what monies Wyoming has received across the spectrum of tasks in the STO has proven difficult for state agencies. To be clear, accounting in this office is not a simple bookkeeping exercise. Currently billions of dollars are being tracked on a dozen spreadsheets in thousands of cells. Some of these spreadsheets may have first been used when the investment function was housed in the Office of State Lands and Investments in the 1990s. The tasks are daunting, done on outdated software platforms that do not synchronize, and consequently the capacities of the office are overstretched. These

circumstances are why the Legislature and the Governor's Office supported employing an outside consulting firm from March of 2020 to March of 2021 to catch the STO up and help reconcile numerous security transactions across multiple funds. The office must also track deposits, federal mineral royalties, payments in lieu of taxes, and direct disbursements to multiple destinations.

Even after the consultant's contract expired, many of the STO's problems inherently remained, arising from having to continue the accounting tasks with antiquated technology and investment activity continuing to outstrip the ability of the Office to concurrently track it. Importantly, this issue of antiquated systems is not the fault of STO staff – the technology is simply either in development or not available.

It is imperative that state government be transparent and provide all necessary information to all branches of government and our constituents. But the STO's inability to properly account for the State's funds hinders this transparency. The problems include:

- Balances, reconciliations and other information are due to the State Auditor's Office and the State's external auditor in October of each year per the audit timeline. This information was provided 5 months late for the 2021 fiscal year.
- Financial information about state government for fiscal year 2021 – a period that started 21 months ago – is incomplete.
- The fiscal year 2020 audit resulted in several findings of material weaknesses in the STO related to a lack of internal controls.
- The STO conducted numerous in-kind transfers during fiscal years 2019, 2020, and 2021 which were not properly accounted for, resulting in overstated income.

I believe these concerns inspired this footnote. Recognizing that there remain deficiencies which have this year become more pronounced, the Legislature was anxious to encourage the ongoing efforts of the STO to remedy perennial problems with timely reconciliations. Without timely and accurate reconciliations, an ACFR is not possible.

Without an ACFR, government transparency is compromised and agencies cannot be certain of what monies they have or if their budget is correct. There are additional considerations as well. These include detrimental impacts to the State's credit rating and delays to separate audits conducted on several state agencies. It could also impact the ability of state agencies including the Department of Health, the Office of State Lands and the Attorney General's Office to apply for and receive federal funds. These are serious concerns.

Past ACFRs are available under "Publications" on the State Auditor's website. Wyoming has not had an incomplete ACFR in modern history, but a worry is that this may occur in the next

few years if these continuing problems in the STO's accounting functions are not urgently and effectively addressed. As of this writing, this year's ACFR has not been posted. While this delay can occur when agencies are belated in reporting, this year the bulk of the delay can be attributed to the inability of the STO to reconcile investment activities in this overly complex and antiquated system. It is a hole that is getting deeper and wider. It is a concern that has been studied carefully by the Legislature over the past several years and worked on by members of the State Loan and Investment Board (SLIB).

I understand why the Legislature might have wanted to have this new officer report to the SLIB. The SLIB is comprised of the five constitutional executive officers. It is charged with ultimate authority over the investment policy, the approval of managers, the terms of contractual investment agreements, and retains the ability to fire managers. In these duties, it avails itself of advice from the Treasurer and an Investment Funds Committee (IFC) made up of qualified and experienced investors chosen by representatives of each executive office. Furthermore, it retains its own investment consultant to track performance. The SLIB, like the State Board of Land Commissioners and the State Building Commission, was devised along lines suggested in our Constitution to ensure adequate checks and balances were in place. Our founders were as cautious about separating powers within the branches of government as they were between those same branches, as demonstrated by the State Canvassing Board. I believe it was in this spirit that the Legislature sought to embed a senior officer in the STO, but have it report to the SLIB, which has the extensive authority over investments activities described above. Nevertheless, the architecture outlined is overly prescriptive, not well defined, and meddlesome in the affairs of the STO.

I believe the result of my stricken language is to give the Treasurer a CEO or COO position similar to the one he requested in his initial biennium budget request, only now hiring that position after receiving the recommendation of the IFC. The resulting language also suggests that the IFC will notify the SLIB of their recommendation. It is my hope that this position and those found elsewhere in the budget, like those the Legislature has provided to the STO previously, as well as the extraordinary accommodation for STO staff salary already approved for portions of the Office, will help to float a boat still taking on water.

Section 020 Department of Environmental Quality Footnote 1

The provision creates an unfunded mandate for a feasibility study. In particular, the provision mandates the use of \$150,000 for the feasibility study but does not increase the Department's budget by the same amount. Instead, the Legislature has directed that the Department find the funds in the 2023 -2024 budget. This is not attainable. However, I am mindful of the importance of this study and I will seek the funding for the study through other means.

Section 027 State Construction Department Footnote 2

This footnote provides funding for an acoustics study and implementation of remedies for the capitol building and extension to and under the Herschler Building. This provision does not embrace appropriations for the ordinary expenses of state government and should be placed in a standalone bill.

Section 048 Department of Health Footnote 11

This provision requires the Department to work with the Wyoming Congressional Delegation and to enter into negotiations to extend any temporary federal medical assistance percentage incentives for current Medicaid benefits. My administration is interested in exploring options to save the State money and this footnote is not necessary for these discussions and negotiations to take place.

Section 072 Wyoming Retirement System Footnote 1

This footnote is similar to the footnote in the Treasurer's Office. This footnote raises separation of powers issues by specifically controlling and capping the annual salary for a specific classification of Executive Branch employees. As such, this provision encroaches on the inherent prerogatives of the Executive Branch.

Section 310 - Limitation on Salary Increase

My concerns with this budget language are only expanding. The intent of this section is something that is already done. My designees to review proposed salary increases are the Directors of the Departments of Administration & Information and Budget. They review the proposed salary increases to make sure they do not create systemic inequities and that the agency has adequate funds in their budgets. Any increase above what the Legislature has authorized would result in an exception request to the Legislature. As this provision is an infringement on the separation of powers and encroaches upon the inherent prerogative of the executive branch. This is contrary to my budget recommendation authority as it removes my discretionary power relating to the next biennial budget.

Section 318 - National Board Certification of Teachers

I vetoed this footnote in 2020 and I will continue to veto this language if it appears in future budgets. National Board Certified teachers are committed educators who have spent five years

engaged in a rigorous process to earn this advanced teaching credential. To change the incentive for these teachers' hard work in the middle of the program, or in the years after certification is reneging on a commitment. I recognize this program may run out of funding sooner as a result, but Wyoming does not welch on her promises. Teachers who undertook this course of action did so with an understanding they would receive these funds for each year their certification was valid. Reductions in compensation for this program should be contemplated for new teachers entering the program, not those halfway through it. Additionally, this provision creates substantive law by amending 21-7-501(f)(i). To create certainty for teachers any changes to this program should be done in separate legislation.

Section 323 Wyoming Education Trust Fund Earnings

The Wyoming Education Trust Fund earnings are used to provide grants to school districts to create innovative educational opportunities (i.e. curriculum development activities; operational initiatives; applied science and tech programs; and child development programs). After the new computer science standards were passed, high priority was given to programs associated with computer science to aid with staff training. This footnote would divert these funds to the Public School Foundation Program Account. This provision creates substantive law by amending 21-22-101(b). Changes to this program need to be done in a standalone bill.

Section 326 Cash Based Budgeting

The concept of moving to cash based budgeting was proposed in HB 0147, a bill that did not pass the Senate Committee of the Whole. The subjects and directives in this provision are beyond appropriations for ordinary expenses of state government. This concept needs to be discussed in further detail with several Executive Branch agencies before being placed in a separate bill to be considered. It is my understanding that the Select Committee on Capital Financing and Investments proposed an interim topic for Biennial/Annual Cash Budgeting. I would be happy to engage in that process.

In my 2020 budget veto letter, I noted that there were a few items that I did not veto, but would not support in future budgets. While I still believe programs like We The People, Wyoming Agriculture in the Classroom, and Centennial Farm and Ranch all have merit and should be able to stand on their own, I am well aware of the struggles so many have endured over these past two years. Due to these hardships, I am willing to give these programs a grace period. I again would urge others to donate to these programs, enabling them to carry on independently in the future.

This year once again there are some sections of the budget bill that I will not be vetoing, but wanted to bring to your attention as items that are inappropriate in the budget bill. These items

deal with footnotes that require extensive reporting requirements such as Section 001 Footnotes 1 and 7. My office will be happy to provide you updates on the expenditures and grants secured with this funding. We are also willing to provide you intended outputs and outcomes of the Wyoming Innovation Partnership. There are several agencies that have similar requirements such as the Treasurer's Office, Wyoming Tourism Board, University of Wyoming, and Department of Corrections. I was glad to see that many of these reporting requirements made their way into HB0146 General Government Reports, as that is where they belong. I appreciate the efforts you have put forth to get these reporting requirements in a standalone bill and look forward to the continuation of and further improvement to this practice.

Thank you again for your diligence and service to our wonderful State.

Sincerely,



Mark Gordon
Governor

MG:rm:kh

cc: The Honorable Edward Buchanan, Secretary of State
The Honorable Eric Barlow, Speaker of the House
Chief Clerk, Wyoming Senate
Chief Clerk, Wyoming House of Representatives