



February 24, 2023

The Honorable Albert Sommers
Speaker of the Wyoming House of Representatives
Wyoming House of Representatives
200 West 24th Street, Capitol Building, E201
Cheyenne, WY 82002

Re: Line-item vetoes on HB0001/HEA No. 37

Dear Speaker Sommers,

During my State of the State address to the 67th Legislature, I emphasized that the way we handle our finances this year will affect our people and our future significantly and for a long time to come. My budget proposal also highlighted how important it was to set aside excess funds for leaner times ahead, even while we needed to address the concerns of our most vulnerable and those living on fixed incomes today. I would like to thank the Legislature for passing a budget that reflects this shared approach. You have done a great deal for the citizens of Wyoming, from offering property tax relief, to investing in Wyoming's energy industry, to setting aside funds to diversify the economy. This is a good budget.

I would like to congratulate both chambers on passing a budget in record time – all while increasing transparency. The budgeting process is not yet as transparent as it needs to be, and I commit to work with the Legislature on continuous improvement towards that common goal. I remain frustrated that while we are taking significant steps to modernize the way our state funds can be invested to bring them more in line with an “endowment” model, we have not simultaneously established the independent, non-political controls true endowments must have to avoid profligate spending. In the coming years, I intend to work diligently to establish these controls so that we avoid establishing opaque slush funds that are vulnerable to political manipulation. Our permanent funds are indeed off-limits to political whim, and as such represent a true resource for future generations.

Before I get to the specific purpose of this letter, line-item vetoes, I want to commend the Legislature on the many successes of this budget. Of those, there are two I wish to specifically highlight: one that will have a long-term positive effect, and the other an

immediate positive benefit. These exemplify the balance that is needed in any budget – the balance between the current and future needs of our state and her people.

The first of these is that for every dollar of state revenue spent, the supplemental budget saves roughly \$3.50. My budget proposal recommended more than \$600 million in permanent savings, and would have increased the LSRA (Wyoming’s rainy-day fund) to nearly \$2 billion. I support the Legislature’s work to reallocate a substantial portion of what would have gone to the LSRA to the various permanent trust funds, which are an inviolate form of savings and can be invested more beneficially. The earnings from these permanent-savings trusts help to secure Wyoming’s future by providing Wyoming millions of dollars through higher investment returns. Income from these accounts is typically among the top three revenue sources for the State, and care must be taken to ensure their continued growth in order to offset inflation to the greatest extent possible. Your actions in this area will help to keep taxes low while the future additional revenue from these savings will help pay for the necessary services that Wyoming’s people need and expect.

Second, I appreciate the Legislature’s continued support for market adjustments in compensation for state employees and teachers. Our highly valued and dedicated public employees work hard to fulfill their varied and vital core missions. High vacancy and turnover rates have challenged the ability of state agencies, schools, colleges and our university to perform essential and critical functions. The work of the Legislature to consider and enact most of my recommendations on this issue will help improve employee retention and recruit the necessary and much-needed reinforcements. Wyoming employees remain one of the most committed workforces anywhere; they live in our communities and shop locally. They are a key component of our economy and deserve all of our respect. Thank you.

There are other good things to be found in this supplemental budget, but I need to get to the purpose of this letter. In the following paragraphs, I provide a brief explanation of my reasons for each veto, as well as some thoughts on other aspects of this budget. My vetoes represent honest disagreements on a few details and in no way detract from the Legislature’s hard work and its collective efforts to put a solid and clean budget on my desk worthy of the Governor’s signature.

Let me begin by recognizing the approach the Legislature took with regard to the Attorney General’s budget request. It provides a good example of how each branch should exercise its respective duty in this supplemental budget. In acknowledging a need to give that agency the

additional resources it found appropriate while also eschewing a temptation to stray into the role of the Executive Branch, the Legislature acted in accordance with the respective duties outlined in Wyoming's Constitution. Accordingly, I have reciprocated with my signature of House Bill 001, House Enrolled Act 37, with the following line-item vetoes:

Section 001 Office of the Governor Footnote 9

While I appreciate the Legislature's willingness to allow my office the discretion to spend up to \$1M for special contingencies that are not defined as public welfare emergencies, this footnote appears to contradict W. S. 9-2-1014.3. Therefore I am removing reference to this statute and will propose in the standard budget that this funding not come from the legislatively allocated \$20M for public welfare emergencies.

Section 006 Administration and Information Footnote 1

This footnote provides a woefully insufficient amount of funding to conduct not one, but two studies. One involves a survey of all state employees, the second a feasibility study of providing childcare services to state employees. Additionally, a footnote that requires a detailed study does not comply with the constitutional requirement that the budget bill be for appropriations for the ordinary expenses of state government. This type of provision should be placed in a standalone bill. There are other examples of this in the budget; however, I left those provisions but intended to call this to your attention for the Legislature to consider going forward.

Section 006 Administration and Information Footnote 3

Wyoming's Capitol is glorious and a true treasure of our state's heritage. I am glad every time I meet someone walking its hallways and take time to expound on the history this building holds. While I do not oppose having the Capitol open on weekends, I do not believe we have enough information about the cost, probable visitation, or potential security vulnerabilities to determine if weekend hours for the Capitol are the best (or even adequate) use of state funds. The Department would use these appropriated funds to implement a pilot program to determine the actual need and cost before entertaining a request for ongoing funding. Initially, under the pilot program, the Capitol would be open on Saturdays with similar hours to the Wyoming State Museum during peak tourist season. If the pilot program

indicates significant visitors and manageable costs, then the program can be expanded with an appropriation sufficient to pay for the extended hours. The Department can provide updates on the successes and challenges of keeping the Capitol open on the weekends to the Joint Appropriations Committee over the interim so that a more informed decision can be made regarding options for Capitol weekend hours.

Section 011 Department of Revenue Footnote 1

The funding in this footnote is one of the most beneficial acts of this session. It provides meaningful relief to the rising costs Wyoming people face in relation to their property taxes. With my line-item veto, this footnote provides another \$5M in property tax relief for Wyoming citizens. The program established under W. S. 39-13.109(c)(v) and expanded in HB 99 is a means targeted tax relief for those who need it. The language referring to the other remaining bill is unnecessary and it will survive or fail on its own merits.

Section 020 Department of Environmental Quality Footnote 2

Over the past four years, we have developed a good working relationship, and while I appreciate the purpose and intent of this footnote, I note the Legislature needs to recognize that the budget is not intended to direct day-to-day control of an agency. This footnote raises separation of powers issues by directing the hiring and resource allocations for an executive branch agency. This would have directed the Department to hire a specific position and would not leave the management of the agency to the Executive Branch. The purpose of the footnote can be accomplished without this overreach into the Executive Branch powers.

Section 020 Department of Environmental Quality Footnote 3

Thank you for this added funding. It will positively benefit the Department of Environmental Quality's permitting opportunities. Nevertheless, remembering the discipline you exercised elsewhere, simply outlining a budget increase tied to overall purpose would have resulted in the same outcome without raising a separation of powers issue by directing the Department specifically on how to accomplish that purpose. This is arguably controlling and managing the day-to-day operations of the Executive Branch. I believe that spending these funds towards contracting is the right action, and the proper expenditure of these funds is my responsibility.

Section 037 State Engineer Footnote 2

As Wyoming faces the mounting pressures of an ongoing drought, additional resources to the State Engineer's Office are essential. I support this funding, but again point out that this provision raises separation of powers issues by specifically directing how an Executive Branch agency functions when it comes to making staffing, workforce, and resource allocation decisions to accomplish the overall purpose of the appropriation. We acknowledge the purpose of this appropriation and note it was a part of my recommendation to the Legislature.

Section 045 Department of Transportation Footnote 4

Funding for WyoLink's operation, maintenance and infrastructure has been an ongoing trial for all of us. Ever since 9/11, we have struggled to find ways to deal with interoperable communication between jurisdictions across Wyoming's vast expanses. I believe this footnote is overfunding the program and I expect that highway funds or MRG funds can be reverted because of this, but in the next standard budget I will propose to move all operations and maintenance costs from the existing three funding sources to only General Funds. My line-item veto is meant to demonstrate that this system is used by many entities from across the state and highlight the Legislature's intent that the State should pay for all users, from municipalities and private companies, to hospitals, school bus drivers and local first responders.

Section 048 Department of Health Footnote 18

This footnote strikes language that was directing the Department to contract for a study that must be done by an outside or non-agency entity. I do not believe \$20,000 is enough funding for a private study, but this line-item would allow the Department to do an RFP and test that hypothesis. If no one is willing to do this work for that cost, then the Department is more than competent to do the study internally.

Section 048 Department of Health Footnote 19

This provision is too prescriptive. I concur with the purpose but believe we can trust the Department to do this correctly without spelling out the details of the methodology.

Section 067 University of Wyoming Footnote 11

As we have seen in many State entities, hiring is challenging at current pay rates, so I understand the Legislature's intent, but did not need this footnote to understand that. I believe the vetoed language is overly prescriptive in directing how the University functions when it comes to making compensation allocation decisions. The language encroached upon the inherent prerogative of the Executive Branch in how it implements the policies set by the Legislature. This footnote specifically controls the annual salary and specific sequence of those increases for specific classifications of Executive Branch employees, which creates a separation of powers issue.

Section 067 University of Wyoming Footnote 14

The USGS and other federal agencies partnered to contract and pay for a survey of Wyoming using unique lidar technology. Much of the data collected and mapped is now available online for free through the federal agency's website. This appropriation could add more value to that lidar data and my line-item veto is meant to open the possible uses of this funding to ensure that industries, citizens, counties and state agencies have more input into whether or not this is the best use of the funds, or if there is another option that can improve either the use of, or the ability to deploy these funds to collect, host and disseminate data to the public.

I ask UW to consider broadly optimal ways to organize and disseminate these data and how these funds can be spent to best meet and benefit the needs of Wyoming's industries and people.

Section 072 Retirement System Footnote 1

As I mentioned in my veto letter last year, this footnote raises separation of powers issues by controlling and capping the annual salary for a specific classification of Executive Branch employees. Since the Retirement System is an executive branch agency, I believe the Governor retains a proper role in authorizing compensation for Executive Branch employees.

Section 101 Supreme Court Footnote 4

This veto is purely a technical correction. There are currently 26 district court judges.

Section 101 Supreme Court Footnote 5

This footnote raises separation of powers issues by specifically controlling and capping the annual salary of a Judicial Branch employee. This practice encroaches upon the inherent prerogative of the Judicial Branch. This line-item veto is exercised with the corroboration of the Judicial Branch.

I will note there is similar language in the budget of another, separately elected, constitutional office and, in respecting the wishes of that office, I did not line-item veto the prescriptive language in that budget.

Section 321 Energy Matching Funds

Last year, the Legislature wisely established the Governor's Energy Matching Fund to enable my office to support our energy industry. This fund is available on a matching basis to take advantage of federal and private opportunities. In the Supplemental Budget the Legislature added "lithium mining, processing and separation" to the types of projects eligible for funding. Some in the Legislature have suggested that the lithium market in Wyoming could be enhanced through opportunities such as the X-prize competition. As written, the language is limited to lithium mining, processing and separation. I have suggested that mining be deleted so the section reads, "lithium, processing and separation." This would allow more flexibility in the use of the fund while not precluding mining. I believe this modification conforms with the intent of the Legislature.

The Legislature has increased reporting responsibilities concerning the additional funds in the matching fund, which is appropriate; however, the Legislature should note the high priority my office has made to communicate openly, transparently, and actively with the other branches of government and the people of Wyoming. My office will report to legislative committees within a reasonable timeframe before expending any of these funds, but the 30-day time frame is an unnecessary and cumbersome restriction.

Section 325 Appropriation to Match Federal Infrastructure Grants

As stated above, my office has striven to communicate as well as possible. I maintain that commitment to notify the Legislature in advance. I make this line-item veto to make sure that if the 30-day time period is not possible Wyoming does not miss a potential opportunity.

Section 327 Supplemental Appropriation - Governor's Project Contingencies

Same explanation as for Section 325.

Section 328 Enterprise Inflation (b)

My Budget Department worked with all state agencies, the University and the community colleges to analyze the impacts of inflation and provide legislators with a conservative and fact-based estimate of those costs. In a letter dated December 5, 2022, the Community College Commission provided their estimate by college. Unfortunately, this was late and as you know, my budget had already been submitted. In my budget letter #4 of December 14, 2023 to the Joint Appropriations Committee, I included a figure for the community colleges of \$693,000. That amount is already funded and will cover the inflationary costs for colleges, which also receive additional funds from the increase in mineral revenues. The additional funding of \$3.5M in Section 328 treats the colleges differently than other agencies. While I support the colleges and their mission, and can support some increase in inflationary funding above the already allocated \$693,000, I believe that \$3.5M is too much and not a balanced approach to dealing with inflation and have reduced this amount to \$500,000. This will allocate a total to community colleges of over \$1.1 million in additional state aid in the supplemental budget. I note that the assessed valuation for community colleges is at its highest in the last 10 years and will result in additional local revenue to the community college districts.

Section 328 Enterprise Inflation (c)

As referenced above, the conservative inflation estimates provided in budget letter #4 of December 14, 2023 to the Joint Appropriations Committee are absolutely necessary to deal with the climbing costs of food, fuel, electricity and healthcare. Those are the costs the enterprise inflation funding covers. Sadly, inflation, while it may be slowing, is not going away and these costs do need to be added to the succeeding fiscal biennium budget. It is my intent that they be included.

Section 332 Capitol Square Improvements

This appropriation is necessary to make our Capitol function better for the public and for those who work here. There are many who work here during, before, and after any given Legislative session. Arguably, the issues that are to be considered in this request affect more than just the work that is done during the relatively brief legislative session. Accordingly, I use this line-item veto to provide more flexibility and discretion for the state Construction Department and to allow for acoustic improvements in other meeting rooms. The ceremonial conference room and those in some of the executive branch offices also suffer from excessive HVAC and mechanical background noise that impair visitors' ability to communicate.

Again, I compliment the Legislature on delivering a solid and clean supplemental budget that closely follows and in some ways enhances my initial recommendation. The relatively few and mostly minor flaws and occasional honest differences in our views of our respective constitutional powers and obligations, speaks to the quality of our working experience and the diligence of each branch. This is a strong budget and I appreciate your review of this letter. I thank everyone who voted for it and worked to improve it. We can be proud of saving \$1.4 billion while also addressing many of the needs of Wyoming's people. It is a feat done in a single year that I hope other legislatures and governors will aspire to in the future; but it is also wise as the coming years may well challenge Wyoming again in ways that our efforts today can help cushion. I am proud to sign it.

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

Sincerely,



Mark Gordon
Governor

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cc: The Honorable Chuck Gray, Secretary of State
The Honorable Ogden Driskill, President of the Senate
Chief Clerk, Wyoming Senate
Chief Clerk, Wyoming House of Representatives