

JOURNAL OF THE SENATE

Fifty-fourth Legislative Assembly

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Bismarck, March 2, 1995

The Senate convened at 1:00 p.m., with President Myrdal presiding.

The prayer was offered by Pastor Ron Rich, Riverwood Baptist Church, Bismarck.

The roll was called and all members were present.

A quorum was declared by the President.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM C. PARKER, SECRETARY)

MR. SPEAKER: The Senate has passed and your favorable consideration is requested on: SCR 4036, SCR 4045, SCR 4052, SCR 4054, SCR 4057, SCR 4059, SCR 4062.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM C. PARKER, SECRETARY)

MR. SPEAKER: The Senate has passed unchanged: HB 1070, HB 1102, HB 1105, HB 1106, HB 1126, HB 1127, HB 1128, HB 1188, HB 1219, HB 1285.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM C. PARKER, SECRETARY)

MR. SPEAKER: The Senate has amended and subsequently passed: HB 1046, HB 1103, HB 1124.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM C. PARKER, SECRETARY)

MR. SPEAKER: The President has signed and your signature is respectfully requested on: SB 2107, SB 2108, SB 2117, SB 2138, SB 2139, SB 2145, SB 2148, SB 2156, SB 2157, SB 2167, SB 2175, SB 2178, SB 2196, SB 2205, SB 2208, SCR 4008.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has passed unchanged: SB 2214, SB 2217, SB 2253, SB 2257, SB 2260, SB 2293.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has amended and subsequently failed to pass: SB 2073, SCR 4005.

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2073

Page 1, line 11, remove "In any subsequent"

Page 1, remove lines 12 and 13

Renumber accordingly

HOUSE AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO. 4005

Page 1, line 20, after "members" insert "of the education committees from the Fifty-fourth Legislative Assembly"

Page 1, line 21, after "members" insert "of the education committees from the Fifty-fourth Legislative Assembly"

Renumber accordingly

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has amended, subsequently passed, and the emergency clause carried: SB 2089, SB 2418.

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2089

Page 1, line 4, remove the second "and"

Page 1, line 7, after "employees" insert "; and to declare an emergency"

Page 5, after line 5, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2418

Page 1, line 2, after "patients" insert "; and to declare an emergency"

Page 1, after line 11, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has amended and subsequently passed: SB 2118, SB 2130, SB 2159, SB 2223.

HOUSE AMENDMENTS TO SENATE BILL NO. 2118

Page 1, line 22, after "from" insert ", or at the direction of,"

Re-number accordingly

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2130

Page 2, line 9, remove "over a period of time, however short,"

Re-number accordingly

HOUSE AMENDMENTS TO SENATE BILL NO. 2159

Page 1, line 1, remove "15-34.2-03,"

Page 1, line 4, remove "family transportation,"

Page 1, remove lines 19 through 22

Page 2, remove lines 1 through 9

Re-number accordingly

HOUSE AMENDMENTS TO SENATE BILL NO. 2223

Page 1, line 19, after "is" insert "within a radius of fifty miles [80.47 kilometers]"

Page 1, line 20, remove "directly to a farm within a fifty-mile [80.47 kilometer]"

Page 1, remove lines 21 and 22

Page 2, line 1, remove "transported;"

Re-number accordingly

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The Speaker has signed and your signature is respectfully requested on: HB 1024, HB 1078, HB 1087, HB 1098, HB 1122, HB 1130, HB 1140, HB 1280, HB 1304, HB 1403.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM C. PARKER, SECRETARY)

MR. SPEAKER: The President has signed: HB 1024, HB 1078, HB 1087, HB 1098, HB 1122, HB 1130, HB 1140, HB 1280, HB 1304, HB 1403.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The Speaker has signed: SB 2078, SB 2092, SB 2120, SB 2129, SB 2144, SB 2162, SB 2197, SB 2201, SB 2222, SB 2266, SB 2287, SB 2299, SB 2364, SB 2431, SB 2479, SB 2493, SB 2523.

DELIVERY OF ENROLLED BILLS AND RESOLUTIONS

The following resolution was delivered to the Secretary of State for his filing at the hour of 8:42 a.m., March 2, 1995: SCR 4015.

DELIVERY OF ENROLLED BILLS AND RESOLUTIONS

The following bills were delivered to the Governor for his approval at the hour of 8:42 a.m., March 2, 1995: SB 2124, SB 2189, SB 2191, SB 2199, SB 2333.

DELIVERY OF ENROLLED BILLS AND RESOLUTIONS

The following bills were delivered to the Governor for his approval at the hour of 1:09 p.m., March 2, 1995: SB 2078, SB 2092, SB 2120, SB 2129, SB 2144, SB 2162, SB 2197, SB 2201, SB 2222, SB 2266, SB 2287, SB 2299, SB 2364, SB 2431, SB 2479, SB 2493, SB 2523.

COMMUNICATION FROM GOVERNOR EDWARD T. SCHAFER

This is to inform you that on March 1, 1995, I signed the following: SB 2077 and SB 2346.

CONSIDERATION OF AMENDMENTS

SCR 4060: SEN. THANE (Human Services Committee) MOVED that the amendments on SJ page 797 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

HB 1189, as engrossed: SEN. SCHOBINGER (Education Committee) MOVED that the amendments on SJ page 800 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

HB 1244, as engrossed: SEN. C. NELSON (Judiciary Committee) MOVED that the amendments on SJ page 800 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

HB 1275, as engrossed: SEN. KRINGSTAD (Finance and Taxation Committee) MOVED that the amendments on SJ page 800 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

HB 1371: SEN. W. STENEHJEM (Judiciary Committee) MOVED that the amendments on SJ page 801 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

HB 1069, as engrossed: SEN. C. NELSON (Judiciary Committee) MOVED that the amendments on SJ pages 798-799 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

SECOND READING OF HOUSE BILL

HB 1069: A BILL for an Act to create and enact a new section to chapter 14-03 of the North Dakota Century Code, relating to surnames; and to amend and reenact section 14-03-10 and subsection 3 of section 14-03-17 of the North Dakota Century Code, relating to residency requirements and applications for marriage licenses.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 48 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Andrist; Bowman; Christmann; DeMers; Freborg; Goetz; Grindberg; Heinrich; Heitkamp; Holmberg; Kelsh; Kinnoin; Krauter; Krebsbach; Kringstad; LaFountain; Langley; Lee; Lindaas; Mathern; Mushik; Mutch; Naaden; Nalewaja; Nelson, C.; Nelson, G.; Nething; O'Connell; Redlin; Robinson; Sand; Scherber; Schobinger; Solberg; St. Aubyn; Stenehjem, B.; Stenehjem, W.; Streibel; Tallackson; Tennefos; Thane; Tomac; Traynor; Urlacher; Wanzek; Watne; Wogsland; Yockim

ABSENT AND NOT VOTING: Lips

Engrossed HB 1069, as amended, passed and the title was agreed to.

SECOND READING OF SENATE CONCURRENT RESOLUTION

SCR 4049: A concurrent resolution directing the Legislative Council to study issues relating to child support.

The question being on the final adoption of the amended resolution, which has been read, and has committee recommendation of DO PASS.

Engrossed SCR 4049 was declared adopted on a voice vote, and the title was agreed to.

SECOND READING OF SENATE CONCURRENT RESOLUTION

SCR 4058: A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing out-of-home mental health services to severely emotionally disabled children without requiring the relinquishment of custody by parents.

The question being on the final adoption of the amended resolution, which has been read, and has committee recommendation of DO PASS.

Engrossed SCR 4058 was declared adopted on a voice vote, and the title was agreed to.

SECOND READING OF HOUSE BILL

HB 1094: A BILL for an Act to create and enact a new section to chapter 57-43.1 and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to additional motor vehicle fuels taxes and special fuels taxes to be imposed if additional federal highway matching funds become available; to repeal sections 1 and 2 of chapter 573 of the 1993 Session Laws, relating to additional motor vehicle and special fuels taxes; to provide an appropriation; to provide an effective date; and to provide an expiration date.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 27 YEAS, 21 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Andrist; Goetz; Grindberg; Heitkamp; Holmberg; Kinnoin; Krebsbach; Kringstad; Langley; Lee; Lindaas; Mutch; Nalewaja; Nelson, G.; Nething; Redlin; Robinson; Sand; St. Aubyn; Stenehjem, W.; Tallackson; Tennefos; Thane; Tomac; Traynor; Urlacher; Watne

AYES: Bowman; Christmann; DeMers; Freborg; Heinrich; Kelsh; Krauter; LaFountain; Mathern; Mushik; Naaden; Nelson, C.; O'Connell; Scherber; Schobinger; Solberg; Stenehjem, B.; Streibel; Wanzek; Wogsland; Yockim

ABSENT AND NOT VOTING: Lips

Engrossed HB 1094, as amended, passed and the title was agreed to.

ANNOUNCEMENT

SEN. G. NELSON ANNOUNCED that former Senator Richard Goldberg, who is now a Judge of the United States Court of International Trade, was present in the chambers and would address the Senate.

MOTION

SEN. G. NELSON MOVED that a committee of two be appointed to escort Judge Richard Goldberg to the rostrum, which motion prevailed.

THE PRESIDENT APPOINTED as such committee, Sens. Nething and Scherber.

REMARKS BY JUDGE RICHARD GOLDBERG

Madam President, members of the Senate. It is my high privilege and honor to be here this afternoon. I have a few things that I will announce beforehand. So nobody will get nervous, I will not take an hour and twenty-one minutes to deliver my remarks. I would like to compliment this deliberative body. I do not know of any other deliberative body in the United States of America, and certainly not at the federal level, where, if they are supposed to start at one o'clock, they start at one o'clock. All the senators are in place. They move through their business. They do not call each other names. They do not scream and yell at each other like they do in my adopted state of Virginia. They do not have 525 hours of debate on a constitutional amendment in the United States Congress. Those are things that just do not occur in North Dakota because you have a job to do. You have come here for sixty days. You get the job done. The state remains solvent. And you go home. In my way of thinking that is a pretty good deal.

I would also like to say that as I look out at the assembled senators today, there have been a few changes in the last twenty years since I left this wonderful body. Friday when I got on the airplane I was thinking a little bit about what I might talk about and as I look out over the group I notice there are some senators here that were here when I arrived in 1966 and other senators that arrived at the same time that I did. There are still other senators that trickled in during my brief tenure as a senator in North Dakota. So I have decided that term limits would probably not be a subject I would talk about this afternoon.

My court in New York is a nine-member judicial body involved in international trade disputes primarily dealing with imports. The example I like to use most often when I talk to law students, and others who are willing or forced as you are, to listen to what we do in our court, is the minivan case because it applies both in customs law and trade law. General Motors, Ford, and Chrysler told the Department of Commerce that the minivans being imported into this country from Japan were being sold at less than fair market value. The Commerce Department, in that case, decided that they were in fact being dumped, and it was unfair that they imposed a high level of duty on the minivans. The hearing then moved to the International Trade Commission who must decide, even if there is dumping, whether or not there is an injury to an industry. In the Commerce Department the International Trade Commission said, "Well, there may be dumping but you big three have 90 percent of the market and the Japanese minivans cost more money than the American-made minivans, so where is the beef?" That case goes to a judge on my court who will review the administrative record and hear the oral arguments from lawyers representing the government as well as the intervening parties in that kind of dispute.

On the Customs side of what we do, I'll use the vehicles example again. We decided the Commerce Department classified a Nissan Pathfinder, an imported vehicle you are probably familiar with; the Customs people said it was a truck and not a car. Now the difference is if it comes into this country as an automobile, as a car, as a passenger vehicle, there is a 2.5 percent duty imposed on it. If it comes in as a truck there is a 25 percent duty imposed on it. One of my colleagues said it is in fact a passenger vehicle entitled with 2.5 percent, and while you can use the Pathfinder off the highways, it is primarily designed to carry people. So that is the kind of thing that we do.

We are lifetime-appointed judges. We can sit by designation in district courts across the land. I have been privileged for the last three summers to sit in Fargo, my hometown, for the month of July, temporarily replacing Judge Webb, who gets a much-needed vacation when I sit in Fargo. It also gives me an opportunity to come back to civilization.

I would like to say that as far as world trade is concerned there are some very exciting things happening. I know there probably are some folks even in this body that do not entirely agree with everything that is happening, but I would like to talk in some general terms, not policy, about what I see happening globally. For example, in the capital markets of the world today, the largest agricultural lending bank in the United States is not an American bank. It is a European bank. It has more agricultural loans than any other bank in this country. People in this country and elsewhere that want to be financed by a bank from Singapore can be, under our new agreements and the opening of our markets. If the rates and the terms are more profitable or cheaper than in Singapore than they are in the United States, that is what they will do. The other side of the coin is United States banks, under the changes of the new GATT agreement, will be able to offer services in other countries where before they were unable to do so. In agriculture, for example, through the new GATT agreement, for the first time in history, the United States now can sell California-raised rice in the countries of Japan and Korea. Before the GATT agreement those markets were closed as well. So there are some good things happening in my view.

Our court does not look entirely with great enthusiasm on some of the dispute settlement processes within NAFTA and the GATT agreements, primarily because most of those disputes, at least in the dumping and countervailing duty cases, were handled in our particular court in the past. My understanding is that can still happen if it is the choice which happens to be made. I intentionally left out the durum Canadian wheat situation because I know that is a very sensitive issue in the state of North Dakota and justifiably so. That is the type of thing that we would, in our court, be involved. We were involved in the famous corn countervailing duty case with the Canadians a number of years ago. By definition countervailing duty is the same as dumping except it involves a subsidy. In other words, if a government, or usually governments, will subsidize foreign commodities coming into this country, then that is considered a subsidy; the net effect is the same as dumping, where you sell it for less than fair value. In other words, if a country makes up a subsidy and enables the exporters from that country to lower the price when they sell it in this country, that calls for a countervailing duty.

The United States, as you all know, is the world's largest exporter. It is also the world's largest importer. That is really a two-sided sword. Consumers in this country benefit by the increase in competition from imports, and exporters in the country benefit by widening markets. When the Uruguay round started there were about ninety nations involved, and by the time it was concluded recently there were over 120 nations involved. So I guess what I am trying to tell you is that for the better than 50 percent of agricultural products which go into export now from North Dakota, the advantages and opportunities should over the long haul be greater.

I would like to close by just saying a little bit about the North Dakota Legislature. I was not trying to be funny when I said that you started on time and that you did what you do, having been associated for the last eleven or twelve years as a so-called "inside the beltway" type. That is, people that do not really know what the real world is doing or ought to be doing. I do not know of any body which still requires open hearings on every single bill introduced, and every bill introduced must come on the floor, and senators are actually in attendance on the floor. They are not having quorum calls, coffee breaks, receptions, and whatever else might take their time. I think the state legislatures across the country are very much like North Dakota, but I do not know of any which are better, and most of them are not as good. The pay has to be the worst I have heard of anywhere in the country. In New York state, for example, I think state senators get \$80,000 a year. They also each get an office. They have a staff. They have a car and a driver. They just do such great things that the state is nearly broke. In Washington all the perks go on. There are still 38,000 people employed by the United States Congress to help 535 sort out what is happening in Washington. Look at the size of the staff in North Dakota. When my colleagues, a couple of whom have been former members of the New York legislature, ask about the office and staff I had when I was a Senator in North Dakota, I say, "Let me tell you how that works". Unless you happen to be a majority or minority leader in the Senate you do not have an office; your office is your desk, and you can sit there and eat your apple and your box lunch, and all the lobbyists and anybody else that wants to hound you can come right down there and raise the dickens with you about what you are doing or not doing. There is no place else in the United States where that happens. I just wanted to compliment you, because I do whenever I get a chance. I tell people what a wonderful state this is and why the legislative process is so good. I am not sure that everybody in North Dakota or the voters in North Dakota appreciate all you do.

It has been a real pleasure for me to be here today, and I want to thank Senator G. Nelson, Senator Nething, and others for allowing me to use a little of your time this afternoon and tell you what I think of you. Thank you very much.

MOTION

SEN. GOETZ MOVED that the remarks of the Honorable Richard Goldberg be printed in the Journal, which motion prevailed.

MOTION

SEN. GOETZ MOVED that 500 copies of Engrossed SB 2045 be reprinted, which motion prevailed.

MOTION

SEN. GOETZ MOVED that HB 1263, HB 1328, HB 1330, HB 1331, HB 1332, and HB 1339 be returned to the Senate floor from the **Industry, Business and Labor Committee** and be rereferred to the **Transportation Committee**, which motion prevailed. Pursuant to Sen. Goetz's motion, HB 1263, HB 1328, HB 1330, HB 1331, HB 1332, and HB 1339 were rereferred.

MOTION

SEN. GOETZ MOVED that the Senate be on the Fifth and Sixteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 12:30 p.m., Friday, March 3, 1995, which motion prevailed.

REPORT OF STANDING COMMITTEE

HB 1104: Agriculture Committee (Sen. Bowman, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1104 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1112, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1112 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1177, as engrossed: Agriculture Committee (Sen. Bowman, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1177 was rereferred to the Appropriations Committee.

REPORT OF STANDING COMMITTEE

HB 1199, as engrossed: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1199 was placed on the Sixth order on the calendar.

Page 5, line 1, replace "management" with "arrangement"

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1216: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1216 was placed on the Sixth order on the calendar.

Page 1, line 2, after "loans" insert "; and to declare an emergency"

Page 1, line 16, overstrike "An application for a loan" and insert immediately thereafter "A project"

Page 1, line 17, overstrike "the application" and insert immediately thereafter "a loan" and after "be" insert "issued under this section. An application for a loan must be"

Page 1, line 18, overstrike "board" and insert immediately thereafter "superintendent"

Page 3, after line 2, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1226: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1226 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1270: Education Committee (Sen. Freborg, Chairman) recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1270 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1312, as engrossed: Natural Resources Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1312 was placed on the Sixth order on the calendar for immediate second reading.

Page 1, line 1, after "section" insert "to chapter 49-02 and a new section"

Page 1, line 2, after "to" insert "environmental externality values and"

Page 1, line 3, after "increased" insert "; and to declare an emergency"

Page 1, after line 4, insert:

"SECTION 1. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Consideration of environmental externality values prohibited. The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted."

Page 1, line 10, after "quantified" insert "environmental" and after "values" insert ", as defined in section 1 of this Act,"

Page 1, line 11, after "resource" insert "selection"

Page 1, after line 11, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1372, as engrossed: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1372 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1383: Agriculture Committee (Sen. Bowman, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1383 was placed on the Fourteenth order on the calendar.

The Senate stood adjourned pursuant to Senator Goetz's motion.

William C. Parker, Secretary