

TUESDAY, MARCH 10, 1987

1413

JOURNAL OF THE SENATE

Fiftieth Legislative Assembly

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FORTY-FOURTH DAY

The Senate convened at 1:00 p.m., with President Pro Tem Redlin presiding. Bismarck, March 10, 1987

The prayer was offered by Senator Stanley Wright.

Dear Heavenly Father, show us the way, the truth, and the life.

Give us courage, give us wisdom, give us strength and guide us to serve the people of North Dakota in the way that You would want us to do.

We know that You want to care for all of our needs at all times. Open our eyes and allow us to be Your instruments to help others in times of need as well as in times of plenty.

We are 53 persons elected to serve some 600,000 people. Help us all to be receptive to Your presence, open our inner ears, and let us hear what You have to say. In Jesus' name, Amen.

ROLL CALL

The roll was called and all Senators were present, except Senators Reiten and Satrom.

A quorum was declared by the President Pro Tem.

CORRECTION AND REVISION OF THE JOURNAL

MADAM PRESIDENT: Your Committee on Correction and Revision of the Journal has carefully examined the Journal of the Forty-third Day and finds the same to be correct.

SEN. J. MEYER, Chairman

SEN. NALEWAJA MOVED that the report be adopted, which motion prevailed.

MESSAGES FROM THE HOUSE

HOUSE CHAMBER

MADAM PRESIDENT: I have the honor to inform you that the House has concurred in the Senate amendments to HB 1163 and HB 1343 and subsequently passed the same.

ROY GILBREATH, Chief Clerk

HOUSE CHAMBER

MADAM PRESIDENT: I have the honor to return herewith the following which the House has passed unchanged:

SB 2049, SB 2067, SB 2104, SB 2117, SB 2140, SB 2157,
SB 2187, SB 2203, SB 2236, SB 2237, SB 2258, SB 2260,
SB 2261, SB 2300, SB 2325, SB 2359, SB 2362, SB 2440,
SB 2443, SB 2462, SB 2481, SCR 4003, SCR 4048, SCR 4064

ROY GILBREATH, Chief Clerk

HOUSE CHAMBER

MADAM PRESIDENT: I have the honor to return herewith the following which the House has failed to pass:

SB 2084, SB 2199

ROY GILBREATH, Chief Clerk

HOUSE CHAMBER

MADAM PRESIDENT: I have the honor to return herewith SB 2278, SB 2338, and SB 2422 which the House has amended and subsequently passed:

HOUSE AMENDMENTS TO SB 2278

On page 2, line 14, delete the words "Advisory council" means the laboratory advisory council" and overstrike the period

On page 2, line 15, overstrike the numeral "2."

On page 2, line 18, overstrike the numeral "3." and insert immediately thereafter the numeral "2."

On page 2, line 26, delete the words "- Laboratory advisory"

On page 2, line 27, delete the word "council"

On page 3, line 1, delete the words ". The state health officer shall appoint a state laboratory"

On page 3, delete lines 2 through 24

On page 3, line 25, delete the words "attending advisory council meetings"

On page 22, line 35, delete the words "a laboratory"

On page 23, line 1, delete the words "advisory council,"

On page 23, line 9, delete the first underscored comma and insert in lieu thereof the word "and" and delete the words ", and such" and insert in lieu thereof an underscored period

On page 23, delete lines 10 and 11

And renumber the lines, sections, and pages accordingly

HOUSE AMENDMENTS TO ENGROSSED SB 2338

On page 2 of the engrossed bill, line 16, after the comma insert the words "township officer, rural fire protection district board member,"

And renumber the lines, sections, and pages accordingly

HOUSE AMENDMENTS TO ENGROSSED SB 2422

On page 1 of the engrossed bill, line 19, delete the word "agree" and insert in lieu thereof the word "agreed"

And renumber the lines, sections, and pages accordingly

ROY GILBREATH, Chief Clerk

HOUSE CHAMBER

MADAM PRESIDENT: I have the honor to transmit herewith the following which the Speaker has signed and your signature is respectfully requested:

HB 1025, HB 1106, HB 1126, HB 1157, HB 1195, HB 1199,
HB 1218, HB 1225, HB 1232, HB 1248, HB 1302, HB 1307,
HB 1313, HB 1469, HB 1483, HB 1489, HB 1516, HB 1546,
HB 1612

ROY GILBREATH, Chief Clerk

SIGNING OF BILLS AND RESOLUTIONS

THE SECRETARY ANNOUNCED that the President Pro Tem signed the following:

HB 1014, HB 1094, HB 1097, HB 1137, HB 1138, HB 1139,
HB 1200, HB 1301, HB 1311, HB 1380, HB 1540

PERRY GROTEBERG, Secretary

MESSAGE TO THE HOUSE

SENATE CHAMBER

MR. SPEAKER: I have the honor to return herewith the following which the President Pro Tem has signed:

HB 1014, HB 1094, HB 1097, HB 1137, HB 1138, HB 1139,
HB 1200, HB 1301, HB 1311, HB 1380, HB 1540

PERRY GROTEBERG, Secretary

SIGNING OF BILLS AND RESOLUTIONS

THE SECRETARY ANNOUNCED that the President Pro Tem signed the following:

SB 2144, SB 2151, SB 2163, SB 2177, SB 2180, SB 2182,
SB 2207, SB 2284, SB 2342, SB 2384, SB 2420, SB 2446,
SB 2452, SB 2459, SB 2493, SB 2505, SB 2534, SCR 4006,
SCR 4015, SCR 4018, SCR 4020, SCR 4036, SCR 4045

PERRY GROTEBERG, Secretary

MESSAGES TO THE HOUSE
SENATE CHAMBER

MR. SPEAKER: I have the honor to transmit herewith the following which the President Pro Tem has signed and your signature is respectfully requested:

SB 2144, SB 2151, SB 2163, SB 2177, SB 2180, SB 2182,
SB 2207, SB 2284, SB 2342, SB 2384, SB 2420, SB 2446,
SB 2452, SB 2459, SB 2493, SB 2505, SB 2534, SCR 4006,
SCR 4015, SCR 4018, SCR 4020, SCR 4036, SCR 4045

PERRY GROTEBERG, Secretary

SENATE CHAMBER

MR. SPEAKER: I have the honor to return herewith the following which the Senate has passed unchanged:

HB 1093, HB 1119, HB 1164, HB 1175, HB 1205, HB 1219,
HB 1244, HB 1317, HB 1318, HB 1370, HB 1389, HB 1400,
HB 1415, HB 1419, HB 1425, HB 1432, HB 1501, HB 1522,
HB 1531, HCR 3002, HCR 3008, HCR 3012, HCR 3022

PERRY GROTEBERG, Secretary

SENATE CHAMBER

MR. SPEAKER: I have the honor to return herewith the following which the Senate has failed to pass:

HB 1144, HCR 3045

PERRY GROTEBERG, Secretary

SENATE CHAMBER

MR. SPEAKER: I have the honor to return herewith the following which the Senate has amended, and subsequently passed:

HB 1223, HB 1596, HCR 3025

PERRY GROTEBERG, Secretary

REPORTS OF STANDING COMMITTEES

MADAM PRESIDENT: Your Committee on Judiciary to which was referred HB 1271 has had the same under consideration and recommends by a vote of 6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING that the same BE AMENDED AS FOLLOWS and when so amended, recommends the same DO PASS:

On page 1, line 28, after the word "office" insert the words ", of aiding the circulation of statewide initiative or referendum petitions," and delete the word "an" and insert in lieu thereof the words "a statewide"

On page 3, line 9, after the word "of" insert the words "aiding the circulation of statewide initiative or referendum petitions or of"

On page 3, line 10, after the word "any" insert the word "statewide"

On page 3, line 29, after the word "appears" insert the words "or would have appeared"

On page 4, line 11, after the first word "of" insert the words "aiding the circulation of statewide initiative or referendum petitions or of" and delete the word "an" and insert in lieu thereof the words "a statewide"

And renumber the lines, sections, and pages accordingly
SEN. LASHKOWITZ, Chairman

HB 1271 was placed on the Sixth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Finance and Taxation to which was referred HB 1274 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same BE AMENDED AS FOLLOWS and when so amended, recommends the same DO PASS:

On page 2, line 16, remove the overstrike over the comma and the words "~~7-but not including~~" and delete the words ". \"Gross receipts\""

On page 2, line 17, delete the words "does not include" and delete the words "the sale of"

On page 2, delete line 18

On page 2, line 26, after the second word "government" insert the words "nor does it include any revenue derived from the sale of byproducts as herein defined to a maximum of fifteen percent of the gross receipts as defined by this subsection"

On page 3, line 17, after the numerals "1987" delete the comma and word ", and"

On page 3, line 18, delete the words "ending before July 1, 1989, and is thereafter ineffective"

And renumber the lines, sections, and pages accordingly
SEN. SATROM, Chairman

HB 1274 was placed on the Sixth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HB 1471 has had the same under consideration and recommends by a vote of 5 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING that the same DO PASS and BE PLACED ON THE CONSENT CALENDAR.

SEN. D. MEYER, Chairman

HB 1471 was placed on the Tenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HCR 3004 has had the same under consideration and recommends by a vote of 5 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING that the same DO PASS and BE PLACED ON THE CONSENT CALENDAR.

SEN. D. MEYER, Chairman

HCR 3004 was placed on the Tenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HCR 3047 has had the same under consideration and recommends by a vote of 5 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING that the same DO PASS and BE PLACED ON THE CONSENT CALENDAR.

SEN. D. MEYER, Chairman

HCR 3047 was placed on the Tenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HCR 3051 has had the same under consideration and recommends by a vote of 5 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING that the same DO PASS and BE PLACED ON THE CONSENT CALENDAR.

SEN. D. MEYER, Chairman

HCR 3051 was placed on the Tenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HCR 3056 has had the same under consideration and recommends by a vote of 5 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING that the same DO PASS and BE PLACED ON THE CONSENT CALENDAR.

SEN. D. MEYER, Chairman

HCR 3056 was placed on the Tenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HB 1031 has had the same under consideration and recommends by a vote of 6 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

SEN. D. MEYER, Chairman

HB 1031 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HB 1082 has had the same under consideration

and recommends by a vote of 6 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

SEN. D. MEYER, Chairman

HB 1082 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on State and Federal Government to which was referred HB 1109 has had the same under consideration and recommends by a vote of 6 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

SEN. D. MEYER, Chairman

HB 1109 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Judiciary to which was referred HB 1168 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same DO NOT PASS.

SEN. LASHKOWITZ, Chairman

HB 1168 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Judiciary to which was referred HB 1220 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same DO NOT PASS.

SEN. LASHKOWITZ, Chairman

HB 1220 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HB 1235 has had the same under consideration and recommends by a vote of 5 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HB 1235 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HB 1243 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HB 1243 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HB 1310 has had the same under consideration

and recommends by a vote of 6 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HB 1310 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HB 1366 has had the same under consideration and recommends by a vote of 6 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HB 1366 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HB 1379 has had the same under consideration and recommends by a vote of 6 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HB 1379 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HB 1488 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HB 1488 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HB 1622 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HB 1622 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Judiciary to which was referred HB 1626 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LASHKOWITZ, Chairman

HB 1626 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Finance and Taxation to which was referred HB 1637 has had the same under consideration and

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recommends by a vote of 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same DO PASS.

SEN. SATROM, Chairman

HB 1637 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Judiciary to which was referred HCR 3001 has had the same under consideration and recommends by a vote of 5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LASHKOWITZ, Chairman

HCR 3001 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HCR 3006 has had the same under consideration and recommends by a voice vote that the same DO PASS.

SEN. LANGLEY, Chairman

HCR 3006 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HCR 3010 has had the same under consideration and recommends by a voice vote that the same DO PASS.

SEN. LANGLEY, Chairman

HCR 3010 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HCR 3023 has had the same under consideration and recommends by a voice vote that the same DO PASS.

SEN. LANGLEY, Chairman

HCR 3023 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Judiciary to which was referred HCR 3031 has had the same under consideration and recommends by a vote of 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LASHKOWITZ, Chairman

HCR 3031 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HCR 3049 has had the same under consideration and recommends by a voice vote that the same DO PASS.

SEN. LANGLEY, Chairman

HCR 3049 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HCR 3050 has had the same under consideration and recommends by a voice vote that the same DO PASS.

SEN. LANGLEY, Chairman

HCR 3050 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MADAM PRESIDENT: Your Committee on Industry, Business and Labor to which was referred HCR 3077 has had the same under consideration and recommends by a vote of 4 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING that the same DO PASS.

SEN. LANGLEY, Chairman

HCR 3077 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

CONSIDERATION OF AMENDMENTS

SEN. HILKEN MOVED that the amendments to HB 1073 as recommended by the Committee on Transportation as printed on page 1392 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HB 1073 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SEN. DOTZENROD MOVED that the amendments to HB 1297 as recommended by the Committee on Political Subdivisions as printed on page 1392 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HB 1297 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SEN. LANGLEY MOVED that the amendments to HB 1359 as recommended by the Committee on Industry, Business and Labor as printed on page 1393 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HB 1359 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

MOTIONS

SEN. MAIXNER MOVED that HB 1420 be moved to the foot of the Sixth order of the calendar, which motion prevailed.

SEN. LANGLEY MOVED that HB 1303, which is on the Fourteenth order, be rereferred to the Committee on Industry, Business and Labor, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SEN. J. MEYER MOVED that the amendments to HB 1533 as recommended by the Committee on Human Services and Veterans Affairs as printed on page 1395 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HB 1533 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SEN. HILKEN MOVED that the amendments to HB 1568 as recommended by the Committee on Transportation as printed on page 1395 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HB 1568 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SEN. W. MEYER MOVED that the amendments to HB 1582 as recommended by the Committee on Agriculture as printed on pages 1395-1396 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HB 1582 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SEN. KRAUTER MOVED that the amendments to HCR 3007 as recommended by the Committee on Natural Resources as printed on pages 1396-1397 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HCR 3007 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SEN. DOTZENROD MOVED that the amendments to HB 1420 as recommended by the Committee on Political Subdivisions as printed on pages 1393-1395 of the Senate Journal be adopted, and when so adopted, recommends the same DO PASS, which motion prevailed.

HB 1420 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SECOND READING OF HOUSE BILL

HB 1561: A BILL for an Act to amend and reenact subsection 4 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for gross receipts from an annual educational, religious, or charitable activity held in a publicly owned facility.

Which has been read and has committee recommendation of DO PASS.

ROLL CALL

The question being on the final passage of the bill, as amended, the roll was called and there were 52 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING.

YEAS: Adams; Axtman; Bakewell; David; Dotzenrod; Freborg; Heigaard; Heinrich; Hilken; Holmberg; Ingstad; Keller; Kelly; Kelsh; Krauter; Langley; Lashkowitz; Lips; Lodoen; Maixner; Mathern; Maxson; Meyer, D.; Meyer, J.; Meyer, W.; Moore; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; Olson; Peterson; Redlin; Richard; Satrom; Schoenwald; Shea; Stenehjem; Streibel; Stromme; Tallackson; Tennefos; Thane; Todd; Tweten; Vosper; Waldera; Wogsland; Wright; Yockim

NAYS: None

ABSENT AND NOT VOTING: Reiten

HB 1561 passed and the title was agreed to.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3016: A concurrent resolution urging the creation of a state centennial band.

Which has been read and has committee recommendation of DO PASS.

The question being on the final adoption of the resolution, as amended.

HCR 3016 was declared adopted and the title was agreed to on a voice vote.

SECOND READING OF HOUSE BILL

HB 1121: A BILL for an Act to create and enact a new subsection to section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol; and to amend and reenact section 39-21-46 of the North Dakota Century Code, relating to brake and equipment requirements.

Which has been read and has committee recommendation of DO PASS.

ROLL CALL

The question being on the final passage of the bill, as amended, the roll was called and there were 52 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING.

YEAS: Adams; Axtman; Bakewell; David; Dotzenrod; Freborg; Heigaard; Heinrich; Hilken; Holmberg; Ingstad; Keller; Kelly; Kelsh; Krauter; Langley; Lashkowitz; Lips;

Lodoen; Maixner; Mathern; Maxson; Meyer, D.; Meyer, J.; Meyer, W.; Moore; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; Olson; Peterson; Redlin; Richard; Satrom; Schoenwald; Shea; Stenehjelm; Streibel; Stromme; Tallackson; Tennefos; Thane; Todd; Tweten; Vosper; Waldera; Wogsland; Wright; Yockim

NAYS: None

ABSENT AND NOT VOTING: Reiten

HB 1121 passed and the title was agreed to.

MOTION

SEN. SATROM MOVED that SB 2550 be amended as follows:

On page 1, line 1, after the first word "to" insert the following language: "rescind legislative approval of mandatory income tax withholding, as approved by the fiftieth legislative assembly; to create and enact section 57-38-58.1 of the North Dakota Century Code, relating to definitions for purposes of withholding from wages of nonresident employees; to amend and reenact sections 57-38-59, 57-38-60, 57-38-60.1, 57-38-61, and 57-38-62 of the North Dakota Century Code, as contained in sections 3 through 7 of House Bill No. 1901, as approved by the fiftieth legislative assembly, relating to income tax withholding, and payment of estimated tax for income tax purposes;"

On page 1, after line 6, insert the following sections:

"SECTION 1. LEGISLATIVE INTENT. This Act rescinds legislative action whereby House Bill No. 1901 as approved by the fiftieth legislative assembly provided for mandatory income tax withholding.

SECTION 2. AMENDMENT. Section 57-38-58.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-58.1. Definitions. As used in sections 57-38-59 through 57-38-64 unless the context or subject matter otherwise requires:

1. "Calendar quarter" means the period of three consecutive months ending March thirty-first, June thirtieth, September thirtieth, or December thirty-first.
2. "Employee" means every individual, except persons employed as farm or domestic workers, performing services for an employer, the performance of

which constitutes, establishes, and determines the relationship between the parties as that of employer and employee, and includes officers of corporations, individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof, or the state of North Dakota or any county, city, municipality, or political subdivision thereof.

3. "Employer" means a person or organization transacting business in or deriving any income from sources within the state of North Dakota for whom an individual performs or performed any services, of whatever nature, and who has control of the payment of wages for such services, or an officer, agent, or employee of the person or organization having control of the payment of wages. "Employer" includes any officer or department of state or federal governments, or any political subdivision or agency thereof.
4. "Nonresident" means any person who did not file an individual income tax return with the state tax commissioner for or during the preceding year and who has not continuously maintained a domicile in North Dakota for a period of one full calendar year from January first to December thirty-first, and that person is deemed a nonresident of North Dakota until that person has filed an individual income tax return with the state tax commissioner for the preceding year and until that person has continuously maintained a domicile in North Dakota for a full calendar year.
5. "Payroll period" means a period for which a payment of wages is ordinarily made to the employee by the employee's employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannually, or annual payroll period.
6. "Wages" means "wages" as defined in the Internal Revenue Code of 1954, as amended, for the purpose of collection of income tax at the source, on wages.

SECTION 3. AMENDMENT. Section 57-38-59 of the North Dakota Century Code as contained in section 3 of House Bill No. 1901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

57-38-59. Withholding from wages of nonresident employees - Penalty.

1. Every employer making payment of wages to nonresident employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of 1986, ~~and 1954~~, as ~~hereafter~~ amended, as will approximate the income taxes due the state, provided, that no employer is required to deduct and withhold any amount on the first six hundred dollars of annual wages paid to a nonresident employee unless that employee is employed for a period of sixty days or more within any one year. The amount of tax withheld shall be computed without regard to any other amount required to be withheld thereunder, but the tax withheld shall as closely as possible pay any tax liability imposed by this chapter.
2. In the event that the tax deducted and withheld under the provisions of subsection 1 should prove to be disproportionate to the tax liability, the tax commissioner may adjust the percentage which, when withheld, will, as closely as may be possible, pay the income tax liability imposed by this chapter.
3. The tax commissioner may, in lieu of the requirement above for deducting and withholding tax based upon a percentage of federal income tax withheld, adopt by regulation tax tables which, when the tax provided for in the tables is withheld, will, as closely as possible, pay the income tax liability imposed by this chapter. When adopted by the tax commissioner said tables shall be followed by every employer required to deduct and withhold any tax imposed by this chapter.
4. Every employer shall deduct and withhold from every nonresident employee's wages the amounts required to be deducted and withheld from a nonresident employee's wages until such time as the employee has filed with the employee's employer a signed certificate, in such form as the tax commissioner shall provide, that such employee entitled to wages is a resident of the state of North Dakota as defined for withholding purposes. The certificate must contain a written declaration that it is made under the penalties

provided in section 12.1-11-02. Once filed, a certificate remains in effect with the employer with whom it is filed, until the employee's status has changed to that of a nonresident as defined in subsection 4 of section 57-38-58. The employee shall give written notice to the employee's employer within fifteen days after that change in status. The employer upon receiving that written notice shall deduct and withhold from the employee's wages as provided in this section until the employee files with the employer the signed certificate referred to in this subsection. Any employee willfully failing to give written notice to the employee's employer of the employee's change in status as required in this subsection within the time prescribed is subject to the penalty provided for in subsection 3 of section 57-38-45. Employers are required to make the certificate of residence available to the tax commissioner upon request.

SECTION 4. AMENDMENT. Section 57-38-60 of the North Dakota Century Code as contained in section 4 of House Bill No. 1901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

57-38-60. Employer's returns and remittances.

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all nonresident employees during the preceding calendar quarter under the provisions of section 57-38-59; provided, that the tax commissioner may alter the time or period for making reports and payment when in his opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.
2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under the provisions of this section which shall show the total amount of wages paid to the employer's nonresident employees, the amount of federal income tax deducted and withheld during the period covered by the return, the amount of tax imposed under the provisions of this chapter that was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.

3. Every employer shall make an annual return to the tax commissioner on forms provided and approved by him, summarizing the total compensation paid, the federal income tax deducted and withheld, and the state tax deducted and withheld, for each nonresident employee during the calendar year and shall file the same with the tax commissioner on or before the thirty-first day of January of the year following that for which the report is made. Every employer shall also, in accordance with such regulations as may be prescribed by the tax commissioner, provide each nonresident employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance with the provisions of section 57-38-59, and said statement shall be made available to the employee on or before the thirty-first day of January of the year following that for which the report is made.
4. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts he shall be considered the taxpayer.
5. Every employer who deducts and withholds any amounts under the provisions of section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.
6. As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this

state for a period of one full year from January first to December thirty-first, shall be required, and any other employer, at the discretion of the tax commissioner may be required, to either make a cash deposit or post with him a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota in such amount as is reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages, but not to exceed five thousand dollars.

SECTION 5. AMENDMENT. Section 57-38-60.1 of the North Dakota Century Code as contained in section 5 of House Bill No. 1901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

57-38-60.1. Corporate officer liability. If a corporation is an employer, as defined in subsection 3 of section 57-38-58.1, and fails for any reason to file the required returns or to pay the tax due, the chairman, president, or chief operating officer, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 6. AMENDMENT. Section 57-38-61 of the North Dakota Century Code as contained in section 6 of House Bill No. 1901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

57-38-61. Provisions of chapter applicable. The provisions of sections 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections 57-38-58.1, 57-38-59, 57-38-60, and 57-38-60.1. The term "employer" as used in sections 57-38-58.1, 57-38-59, 57-38-60, and 57-38-60.1 also means "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to adopt rules includes the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in this state.

SECTION 7. AMENDMENT. Section 57-38-62 of the North Dakota Century Code as contained in section 7 of

House Bill No. 1901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

57-38-62. Declaration of estimated income.

1. All individuals, estates, and trusts that are required to file a federal declaration of estimated tax shall nonresident individual taxpayers shall, and resident individual taxpayers may, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by rules, if their estimated tax due the state from all sources, including wages, salaries, bonuses, or other emoluments, not subject to withholding, exceeds two can reasonably be expected to exceed one hundred dollars and, except for nonresidents who have not filed a return in this state for the previous year, their previous year's state income tax liability exceeded two hundred dollars.
2. All corporate taxpayers shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year containing such information as the tax commissioner may prescribe by rules and regulations, if the taxpayer's estimated tax due the state from sources or business done in this state can reasonably be expected to exceed five thousand dollars and if their previous year's state income tax liability exceeded five thousand dollars.
3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration of estimated tax as required by this chapter, or if a declaration of estimated tax for any quarter is understated or underpaid by more than ten percent. No penalty is due if the total amount of all payments for estimated tax made on or before the due date for that installment equals or exceeds the total amount that would have been required to be paid on or before that date if the estimated tax equaled the tax shown on the taxpayer's return for the preceding taxable year.
4. For purposes of this section, "estimated tax" means the amount that a person estimates to be income tax under this chapter for the taxable year less the amount of any credits allowable, including tax withheld."

On page 7, line 18, delete the words and numeral "section 2 of"
And renumber the lines, sections, and pages accordingly

MOTION

SEN. OLSON MOVED that SB 2550, which is on the Eleventh order, be rereferred to the Committee on Finance and Taxation.

REQUEST

SEN. OLSON REQUESTED a recorded roll call vote on the motion to rerefer SB 2550 to the Committee on Finance and Taxation, which request was granted.

ROLL CALL

The question being on the motion to rerefer SB 2550 to the Committee on Finance and Taxation, the roll was called and there were 25 YEAS, 27 NAYS, 1 ABSENT AND NOT VOTING.

YEAS: Adams; Bakewell; David; Freborg; Holmberg; Ingstad; Kelly; Lips; Lodoen; Moore; Mutch; Naaden; Nalewaja; Nelson; Nething; Olson; Peterson; Stenehjelm; Streibel; Tennefos; Thane; Todd; Tweten; Vosper; Wright

NAYS: Axtman; Dotzenrod; Heigaard; Heinrich; Hilken; Keller; Kelsh; Krauter; Langley; Lashkowitz; Maixner; Mathern; Maxson; Meyer, D.; Meyer, J.; Meyer, W.; Mushik; Redlin; Richard; Satrom; Schoenwald; Shea; Stromme; Tallackson; Waldera; Wogsland; Yockim

ABSENT AND NOT VOTING: Reiten

The motion to rerefer SB 2550 to the Committee on Finance and Taxation failed.

MOTION

SEN. SATROM MOVED that the proposed amendments to SB 2550 be adopted, which motion lost.

REQUEST

SEN. MAIXNER REQUESTED a verification vote on the motion to adopt the proposed amendments to SB 2550, which request was granted.

The proposed amendments to SB 2550 were adopted on a verification vote.

MOTIONS

SEN. SATROM MOVED that SB 2550 be further amended as follows:

On page 1, line 9, delete the numerals "57-38-01.7,"

On page 2, line 13, delete the comma after the word "minus"

On page 4, line 24, delete the word "The" and insert the words
"Except for the credits allowed under 57-38-01.7, the"

And renumber the lines, sections, and pages accordingly

SEN. SATROM MOVED that the proposed amendments be adopted,
which motion prevailed.

SEN. SATROM MOVED that SB 2550 be further amended as follows:

On page 1, line 9, after the word "years." insert the numeral
"1."

On page 1, line 11, delete the word "sections" and insert the
words "and section"

On page 1, line 12, delete the numerals ", 57-38-67, 57-38-68,
57-38-69, 57-38-70, 57-38-71,"

On page 1, line 13, delete the numerals and word "57-38-72,
57-38-73, and 57-38-74"

On page 1, after line 14, insert the following new subsection:

"2. Sections 57-38-67, 57-38-68, 57-38-69, 57-38-70,
57-38-71, 57-38-72, 57-38-73, 57-38-74, and,
notwithstanding the provisions of subsection 1 of
this section, subdivisions m and n of
subsection 1 of section 57-38-01.2 shall be
effective under this Act for taxable years
beginning after December 31, 1986 through taxable
year 1991."

On page 2, line 13, delete the comma after the word "minus"

On page 5, after line 8, insert the following new subdivisions:

"c. Reduced by any beginning farmer deductions
allowable under subsection 2 of section 1 of
this Act.

d. Reduced by any beginning businessman
deductions allowable under subsection 2 of
section 1 of this Act."

On page 5, after line 33, insert the following new subdivisions:

"c. Reduced by any beginning farmer deductions
allowable under subsection 2 of section 1 of
this Act.

d. Reduced by any beginning businessman
deductions allowable under subsection 2 of
section 1 of this Act."

On page 5, line 34, delete the letter "c." at the beginning of the line and insert in lieu thereof the letter "e."

And renumber the lines, sections, and pages accordingly

SEN. SATROM MOVED that the proposed amendments be adopted, which motion prevailed.

MESSAGE FROM THE HOUSE
HOUSE CHAMBER

MADAM PRESIDENT: I have the honor to inform you that the House has refused to concur in the Senate amendments to HB 1068 and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1068: Reps. Belter, Knell, O'Connell

ROY GILBREATH, Chief Clerk

POINT OF PERSONAL PRIVILEGE

SEN. BAKEWELL: Madam President: I rise to a point of personal privilege and request that my remarks be printed in the Journal.

Mr. President and members of the Senate: This is a major piece of legislation. I have been sitting around here: The questions that are being asked by the senators that do serve on the tax committee, the answers that we are getting, the delay on the answers because we have to run and ask someone else to testify; I think these are matters that should be brought up in front of the committee. I am sitting down here and I do not even know how to vote on the amendments. I know that definitely I will vote against the bill, because I am so confused I am going to vote against it. I wish that I, at least, knew how to vote on the amendments. I do not know whether to vote up or down because I do not think we are getting an explanation. Thank you.

MOTIONS

SEN. SATROM MOVED that SB 2550 be further amended as follows:

On page 2, line 13, delete the comma after the word "minus"

On page 5, after line 8, insert the following new subdivision:

"c. Reduced by any ACRS deduction allowable under subdivision b of subsection 3 of section 57-38-01 if the taxpayer utilized this deduction for the taxable year 1986."

On page 5, after line 33, insert the following new subdivision:

"c. Reduced by any ACRS deduction allowable under subdivision b of subsection 3 of section

57-38-01 if the taxpayer utilized this deduction for the taxable year 1986."

On page 5, line 34, delete the letter "c." at the beginning of the line and insert in lieu thereof the letter "d."

And renumber the lines, sections, and pages accordingly

SEN. SATROM MOVED that the proposed amendments be adopted, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2550: A BILL for an Act to rescind legislative approval of mandatory income tax withholding, as approved by the fiftieth legislative assembly; to create and enact section 57-38-58.1 of the North Dakota Century Code, relating to definitions for purposes of withholding from wages of nonresident employees; to amend and reenact sections 57-38-59, 57-38-60, 57-38-60.1, 57-38-61, and 57-38-62 of the North Dakota Century Code, as contained in sections 3 through 7 of House Bill No. 1901, as approved by the fiftieth legislative assembly, relating to income tax withholding, and payment of estimated tax for income tax purposes; create and enact a new section to chapter 57-38 and a new chapter 57-38.4 of the North Dakota Century Code, relating to income tax on individuals, estates, and trusts; and to provide an effective date.

Which has been read and has committee recommendation of DO PASS.

ROLL CALL

The question being on the final passage of the bill, as amended, the roll was called and there were 27 YEAS, 25 NAYS, 1 ABSENT AND NOT VOTING.

YEAS: Axtman; Dotzenrod; Heigaard; Heinrich; Hilken; Keller; Kelsh; Krauter; Langley; Lashkowitz; Maixner; Mathern; Maxson; Meyer, D.; Meyer, J.; Meyer, W.; Mushik; Redlin; Richard; Satrom; Schoenwald; Shea; Stromme; Tallackson; Waldera; Wogsland; Yockim

NAYS: Adams; Bakewell; David; Freborg; Holmberg; Ingstad; Kelly; Lips; Lodoen; Moore; Mutch; Naaden; Nalewaja; Nelson; Nething; Olson; Peterson; Stenehjelm; Streibel; Tennefos; Thane; Todd; Tweten; Vosper; Wright

ABSENT AND NOT VOTING: Reiten

SB 2550 passed and the title was agreed to.

MOTION

SEN. MAIXNER MOVED that the vote by which SB 2550 passed be reconsidered and the motion to reconsider be laid on the table, which motion prevailed on a verification vote.

MESSAGE FROM THE HOUSE
HOUSE CHAMBER

MADAM PRESIDENT: I have the honor to return herewith the following which the Speaker has signed:

SB 2144, SB 2151, SB 2163, SB 2177, SB 2180, SB 2182,
SB 2207, SB 2284, SB 2342, SB 2384, SB 2420, SB 2446,
SB 2452, SB 2459, SB 2493, SB 2505, SB 2534, SCR 4006,
SCR 4015, SCR 4018, SCR 4020, SCR 4036, SCR 4045

ROY GILBREATH, Chief Clerk

DELIVERY OF ENROLLED RESOLUTIONS

THE PRESIDENT PRO TEM ANNOUNCED that the following resolutions were delivered to the Secretary of State for his filing at the hour of 10:00 a.m., March 10, 1987:

SCR 4022, SCR 4023

MOTIONS

SEN. MAIXNER MOVED that the absent Senators be excused, which motion prevailed.

SEN. MAIXNER MOVED that the Senate be on the Fifth order of business, and at the conclusion of the Fifth order of business, be on the Sixteenth order of business, and at the conclusion of the Sixteenth order of business, and after the reading of HB 1031, HB 1073, HB 1082, HB 1109, HB 1168, HB 1220, HB 1235, HB 1243, HB 1297, HB 1310, HB 1359, HB 1366, HB 1379, HB 1420, HB 1471, HB 1488, HB 1533, HB 1568, HB 1582, HB 1622, HB 1626, HB 1637, HCR 3001, HCR 3004, HCR 3006, HCR 3007, HCR 3010, HCR 3023, HCR 3031, HCR 3047, HCR 3049, HCR 3050, HCR 3051, HCR 3056, and HCR 3077, the Senate adjourn and convene at 12:30 p.m., Wednesday, March 11, 1987, which motion prevailed.

FIRST READING OF HOUSE BILL

HB 1673: A BILL for an Act to provide temporary authority to the highway commissioner to reduce the period of advertising for bids and to designate the time of opening of bids for certain highway department construction contracts; to provide an expiration date; and to declare an emergency.
Was read the first time and referred to the Committee on Transportation.

FIRST READING OF HOUSE CONCURRENT RESOLUTION

HCR 3076: A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting administrative alternatives to the application of the exclusionary rule as it relates to search and seizure

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provisions of the North Dakota and United States
Constitutions.
Was read the first time and referred to the Committee on Joint
Constitutional Revision.

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

PERRY GROTEBERG, Secretary