

JOURNAL OF THE HOUSE

Fifty-fifth Legislative Assembly

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Bismarck, February 13, 1997

The House convened at 8:00 a.m., with Speaker Timm presiding.

The prayer was offered by Rep. Alice Olson.

The roll was called and all members were present except Representatives Brown, Kerzman, Koppelman, Kretschmar, and Wald.

A quorum was declared by the Speaker.

MOTION

REP. FREIER MOVED that the remarks of Rep. Wentz be printed in the Journal, which motion prevailed.

I have been asked by the leadership to make some remarks on behalf of the Republican Caucus in memory of Representative Clarence Martin, our friend who died suddenly this past Sunday. My appreciation is extended to Representative Roxanne Jensen who assisted me in preparing these comments.

Anyone who has served in the North Dakota House of Representatives for even a brief time has an anecdote about Clarence Martin. The tales of his unfailing kindnesses are legend. Everyone was important to him. No one, regardless of opinion or conduct, was ever treated with anything other than the utmost courtesy. Clarence treated everyone, regardless of experience or prestige, with respect. If one word could be a synonym for many words such as just, caring, honorable, gentle, loyal, and at least a dozen more, it would be the name Martin.

Clarence was a generous man. Many among us enjoyed the material gifts he so considerately bestowed upon us. Flowers for a housewarming, wine for a hostess, mementos to encourage one along the dismal and sometimes discouraging campaign trail. More than once, I received a phone call from Clarence urging me to keep on with the door to door, reminding me that the winning vote could be on the next block.

A big man in more than just physical size, he was loved by legislators on both sides of the aisle. Many of his closest friends were stalwarts of the Democrat Caucus. Everyone knew they could depend on him to do the right thing, regardless of which caucus it came from. His words of encouragement to "follow your conscience" will ring in my memory. I don't believe he ever voted against his conscience or against the welfare of those he served.

Clarence told me often how important the Legislature was to him in his life. Serving as Speaker of the House was a milestone for him - the fulfillment of a lifelong dream. I am grateful that I was among his many friends in this chamber who had the pleasure of sharing his joy upon winning that election. I am also grateful that I had the opportunity to serve in the Legislature when Clarence was Speaker of the House. He was ever fair, honest, and impartial.

The dichotomy of this big man was that he was not afraid to admire a thing of beauty. Indeed, it was often because of a reminder from him that I took the time to enjoy and wonder at the beauty of the winter sky or field of wheat. It was Clarence who admonished me to listen for the song of the meadowlark. That was a special time for him and one that signaled that Spring had indeed finally come. Perhaps he was eager for the meadowlark's appearance, since it also meant that his annual fishing trip would soon follow. Just last week, he was planning this excursion and looking forward to the shore lunches of freshly caught fish, to hearing the call of a loon that he loved so dearly, and to the always hopeful prospect of getting that trophy Northern which he was always seeking.

Clarence loved to play games. During the legislative session, there were almost nightly games of gin rummy at the Kelly Inn with his friends Representative Olson, Representative Brown, and Senator Urlacher. Representative Olson says he nearly always won.

Clarence loved to laugh and he loved a good story. He liked to tell this story on himself. Seems he was out on the campaign trail and he came to a farm where he knew he was not the favorite candidate. Nevertheless, he felt it his duty to call on every voter. There was no response to his knock on the front door; however, the inner door was open and the lights and

music were on. Thinking perhaps the family was in the garage, he pressed what he assumed was a doorbell on the side door to the garage. As he watched in horror, the overhead garage door slowly rose and a neat line of freshly scrubbed storm windows that had been piled against the inside of the door fell, one by one, with a resounding crash to the concrete floor. Every single window was broken. Clarence offered to pay the cost of replacing the broken glass, but his offer was tersely refused. He didn't think he got their votes that year.

Spring will come without Clarence this year. The meadowlark will sing without Clarence in its audience. And the loons will call on the Canadian lake without Clarence to hear their mournful cry. But, Clarence would be the first to encourage us to listen and savor it. He will be missed, but we can be comforted by the fond and loving memories we hold for this dear and gracious man. I will conclude with an excerpt from a book entitled "Dry Those Tears," by Robert Russell. The excerpt is authored by Raymond Rossiter.

"I am standing upon a busy wharf, a ship at my side spreads his white sails to the morning breeze and starts out upon the ocean. He is an object of beauty and strength and I stand there watching him, until at length he hangs like a speck of white cloud just where the blue sea and blue sky mingle with each other as one. Then, someone at my side says, 'There, he is gone.' Gone where? Gone from my sight, that is all. He is just as large in mast and hull and spar as he was when he left my side and just as able to bear his load of living freight to the place of his destination. His diminished size is in me, not in him. And just at the moment when someone is saying, 'There, he's gone,' there are other eyes watching his coming and other souls take up the glad shout, 'Here he comes!' and that is dying.

Life is eternal. Love is immortal. And death is only a horizon. And a horizon is nothing, save the limit of our sight."

Rest in peace, dear friend Clarence Martin.

MOTION

REP. FREIER MOVED that the prayer of Rep. Olson be printed in the Journal, which motion prevailed.

Let us take time today to remember the special qualities which we so much loved and appreciated in Clarence Martin's personality and life. Let us remember the special events in our lives that were full of joy and happiness. Let us offer thanks to God for all these blessings. Let us pour out our feelings of sadness and sorrow to God.

Let us pray:

Jesus, your own departure was such an ache; your going away left a hollow in hearts, a tension between the love of your friends and the welcome awaiting you in going home to the Father. You were leaving and sorely distressed. You were coming home and overjoyed.

To the very end you lived our humanity, that life where one must always let go and must pass through death to enter into the fullness of life, that life where joy never completely buries sadness, where we move through days that demand goodbyes and come to moments that leave us no choice but to bid farewell to our loved ones.

Remind us in this sad-heart time not to lose sight of that glorious moment of happy homecoming waiting for all of us. Send your Spirit to deepen our faith and to soften our sadness so that the vision of homecoming hopes will overpower the aches and struggles in all of life's farewells and goodbyes. Sustain us in this time of grief and comfort us as we experience this great loss in our lives.

We take our beloved friend by the hand and lead him to you, God of love. Accept our love and thanksgiving as we entrust him into your loving care. We ask that you fill us with motivation and energy in the days ahead when we feel discouraged and depressed; remind us often of our true homeland when we are caught up in the desolation of the journey. Help us to find joy in the people, events, and beauty of nature, which surround us.

Thank you for the gift of Clarence Martin in our lives. We want to believe that we will celebrate the treasure of our love again, when we are all in your presence forever. May this truth sustain us in the days to come. Comfort us, for we feel loneliness and emptiness today. This we pray. Amen.

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

MR. SPEAKER: The Senate has passed and your favorable consideration is requested on: SB 2015, SB 2113, SB 2148, SB 2197, SB 2294, SB 2365, SB 2393, SCR 4016.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM C. PARKER, SECRETARY)
MR. SPEAKER: The Senate has passed unchanged: HB 1020, HB 1070, HB 1105, HB 1107, HB 1120.

MOTION

REP. FREIER MOVED that the absent members be excused, which motion prevailed.

MOTION

REP. FREIER MOVED that the House be on the Fifth, Ninth, and Thirteenth orders of business and at the conclusion of those orders, the House stand adjourned until 8:30 a.m., Friday, February 14, 1997, which motion prevailed.

REPORT OF STANDING COMMITTEE

HB 1067: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1067 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "to provide for a continuing appropriation;"

Page 2, line 4, overstrike "49-21-06,"

Page 4, line 27, after "service" insert ", when offered as a separate and distinct service,"

Page 10, line 24, after "to" insert "retail" and remove "who are not"

Page 10, line 25, remove "telecommunications carriers"

Page 12, line 18, replace "The" with "Except for mediation or arbitration conducted under section 49-21-09, in which case the parties must share equally all necessary expenses, the"

Page 12, line 19, replace "bears" with "normally must bear" and replace "it would be manifestly unfair" with "the commission determines otherwise"

Page 17, line 12, remove "A retail price change for single"

Page 17, remove lines 13 through 16

Page 17, line 17, remove "effective date of the price change."

Page 17, after line 18, insert:

- "4. Upon request, a local exchange carrier that is not a rural telephone company shall provide to the commission the cost methodology and studies that the carrier uses to support its prices for residential and business essential telecommunications services for commission review. The method and studies must demonstrate the full cost of providing those services, including cost of capital and reasonable profit. If requested, the methodology and studies must be protected as trade secret by the commission. Before October 1, 1997, the commission shall report the results of its review and any recommendations to the regulatory reform review commission.
5. A price for residential or business essential telecommunications service may not exceed the full cost of providing the service, including cost of capital and reasonable profit.
6. A price increase for residential and business essential telecommunications service as determined by the public service commission to be allowable under subsection 4 must be divided into increments that do not exceed one-fourth of the total allowable increase. There may be no more than one increment per calendar year. The first increment may not be assessed before January 1, 1998.

Page 17, line 29, remove the overstrike over "~~There is a rebuttable presumption that prices for~~"

Page 17, line 30, remove the overstrike over "~~essential telecommunications services in effect on~~", after "~~1989~~" insert "August 1, 1997", remove the overstrike over "~~, are~~", and remove the overstrike over "~~reasonable.~~"

Page 18, line 4, remove "This section does not"

Page 18, remove line 5

Page 18, line 6, remove "complaint that the price is unreasonably high."

Page 18, line 8, after "service" insert "provided by the carrier"

Page 18, line 28, remove "a reasonable profit, including" and replace the second underscored comma with "and"

Page 18, line 29, remove ", and economic profit"

Page 18, remove lines 30 and 31

Page 19, remove lines 1 through 16

Page 20, line 6, after the period insert "A subscriber to retail telephone exchange service may complain to the commission or the commission on its own motion may complain and begin investigation whether a retail price or practice is unreasonably discriminatory. A telecommunications carrier that sells or purchases interconnection, services, or network elements to or from another telecommunications carrier under section 49-21-08.2, 49-21-09, or 49-21-09.2 may complain to the commission or the commission on its own motion may complain and begin investigation whether an interconnection, services, or network elements price or practice is unreasonably discriminatory."

Page 20, line 29, after "any" insert "essential"

Page 20, line 30, after "all" insert "essential"

Page 21, line 5, replace the second "telecommunications" with "telephone exchange"

Page 21, line 6, after the first "service" insert "or exchange access" and replace "offer essential" with "meet the requirements of section 214(e)(1) of the Act and of section 49-21-23 for designation as an eligible telecommunications carrier for that area before being permitted to provide the service. This subsection does not apply to:

- a. A service area served by a rural telephone company that has obtained an exemption, suspension, or modification under section 49-21-09.1 which effectively prevents a competitor from meeting the requirements of section 214(e)(1) of the Act; and
- b. A provider of commercial mobile services."

Page 21, remove lines 7 through 9

Page 25, line 11, after "statement" insert "describing the requested interconnection, services, or network elements, and describing the telecommunications services" and remove "essential services and the"

Page 25, remove lines 12 and 13

Page 25, line 14, remove the first "company" and after the underscored period insert "If the requesting party does not submit a notice of its request to the commission within seven days of submitting the request to the rural telephone company, the request is not bona fide."

Page 25, line 19, replace "essential" with "the telecommunications" and after "services" insert "described in its verified statement"

Page 25, remove lines 20 and 21

Page 25, line 22, remove "the rural telephone company"

Page 25, line 24, after the underscored period insert "If the requesting party intends to provide telephone exchange service or exchange access in a service area served by a rural telephone company, the requesting party must meet the requirements of section 214(e)(1) of the Act and of section 49-21-23 for designation as an eligible

telecommunications carrier for that area before being permitted to provide service. This requirement does not apply to:

- a. A service area served by a rural telephone company that has obtained an exemption, suspension, or modification under section 49-21-09.1 that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of the Act and of section 49-21-23; and
- b. A provider of commercial mobile services."

Page 27, line 6, remove "Costs incurred in compliance with a remedial action order may"

Page 27, line 7, remove "be reflected in the prices of services affected by the order."

Page 27, line 8, after "action" insert "order"

Page 27, line 9, replace "and" with an underscored comma

Page 27, line 10, after the underscored comma insert "and not due to any negligence or misconduct on the part of the carrier,"

Page 30, line 23, remove "- Continuing"

Page 30, line 24, remove "appropriation"

Page 31, line 10, after "the" insert "state treasurer for deposit in the"

Page 31, line 11, after "disbursed" insert "pursuant to an appropriation made by the legislative assembly to the commission for disbursement"

Page 31, line 14, remove "All moneys deposited in the"

Page 31, remove lines 15 through 18

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1068: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1068 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "taxes" with "tax exemptions"

Page 6, line 21, after the underscored semicolon insert "and"

Page 6, line 22, replace "; and" with an underscored period

Page 6, remove lines 23 and 24

Page 8, line 17, replace "**Credit for real property taxes**" with "**Continuing appropriation**"

Page 9, line 17, after "two" insert "and one-half"

Page 9, replace lines 23 through 31 with:

- "2. A telecommunications carrier's customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated as a standing and continuing appropriation to the tax commissioner for that purpose."

Page 10, line 12, after "company" insert "net"

Page 10, line 13, after "carriers" insert "in locally assessed property taxes and taxes assessed"

Page 10, line 15, after "carriers" insert "in locally assessed property taxes and taxes assessed"

Page 10, line 16, after "revenues" insert "of eight million four hundred thousand dollars per taxable year"

Page 10, line 18, after "section" insert "and any gross receipts tax revenues exceeding that appropriation in any taxable year must be deposited in the state general fund. If gross receipts tax revenues available for allocation in a taxable year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation for the taxable year, results in allocation of eight million four hundred thousand dollars to counties per taxable year"

Page 10, line 28, remove the overstrike over "~~proportion that~~"

Page 10, line 29, replace "basis on which the general property tax levy is" with "taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and each taxing district in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and all taxing districts in the county"

Page 10, line 30, remove "apportioned and distributed"

Page 11, line 31, remove the overstrike over "~~real and~~"

Page 12, line 1, remove the overstrike over "~~real or~~"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1364: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1364 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to park model trailer fees;"

Page 1, line 2, remove "and"

Page 1, line 3, after "date" insert "; and to provide an expiration date"

Page 1, after line 4, insert:

"SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

Park model trailer fee. The owner of a park model trailer, as defined in section 57-55-01, shall pay the department a fee of twenty dollars per calendar year to qualify for the exemption under section 57-55-10. The department shall issue a receipt for payment of the fee under this section but payment of the fee does not confer any rights to the owner of a park model trailer which are not otherwise provided by law. Fees collected under this section must be deposited in the highway tax distribution fund."

Page 1, line 12, after "trailer" insert "that is used only for seasonal or recreational living quarters, and which is located in a trailer park or campground and for which the owner has paid a park model trailer fee under section 1 of this Act"

Page 2, line 7, after "**DATE**" insert "**- EXPIRATION DATE**" and after "for" insert "the first two"

Page 2, line 8, after "1996" insert ", and is thereafter ineffective"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1340: Finance and Taxation Committee (Rep. Belter, Chairman) A **MAJORITY** of your committee (Reps. Belter, Rennerfeldt, Mickelson, Nicholas, Olson, Renner, Schmidt (refused to sign), Thompson, Wardner) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee**.

Page 1, line 3, after "expenses" insert "; to provide for a transfer"

Page 2, after line 17, insert:

"SECTION 3. TRANSFER. On or before July 1, 1998, the children's services coordinating committee shall transfer the sum of \$154,000 from its operating fund to the state treasurer for deposit in the state general fund to offset the state general fund revenue loss from adoption expense income tax deductions or credits provided by this Act for the biennium beginning July 1, 1997, and ending June 30, 1999."

ReNUMBER accordingly

REPORT OF STANDING COMMITTEE

HB 1340: Finance and Taxation Committee (Rep. Belter, Chairman) A **MINORITY** of your committee (Reps. Gulleeson, Warner) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee**.

The reports of the majority and the minority were placed on the Seventh order of business on the calendar for the succeeding legislative day.

REPORT OF STANDING COMMITTEE

HB 1373: Transportation Committee (Rep. Skarphol, Chairman) recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1373 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1376: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO NOT PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1376 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1459: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO NOT PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1459 was placed on the Eleventh order on the calendar.

FIRST READING OF HOUSE CONCURRENT RESOLUTION

Reps. Lloyd, Wald introduced:

HCR 3041: A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating the State Soil Conservation Committee, State Forest Service, Tourism Department, Parks and Recreation Department, Game and Fish Department, and the State Historical Society of North Dakota into a department of natural resources.

Was read the first time and referred to the **Government and Veterans Affairs Committee**.

FIRST READING OF SENATE BILLS

SB 2015: A BILL for an Act to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the state industrial commission; to provide a continuing appropriation; to authorize transfers; to create and enact section 54-17.4-09.1 of the North Dakota Century Code, relating to a fossil excavation and restoration fund; and to declare an emergency.

Was read the first time and referred to the **Appropriations Committee**.

SB 2113: A BILL for an Act to create and enact five new sections to chapter 43-32 of the North Dakota Century Code, relating to powers of the board of psychologist examiners, investigations, licensure renewal, and disciplinary hearings; to amend and reenact sections 43-32-01, 43-32-02, 43-32-03, 43-32-05, 43-32-08.1, 43-32-13, 43-32-14, 43-32-16, 43-32-19, 43-32-20, 43-32-21, 43-32-27, 43-32-29, and 43-32-30 of the North Dakota Century Code, relating to the board of psychologist examiners, licensure and regulation of psychologists, continuing education, and client records; and to repeal sections 43-32-18 and 43-32-28 of the North Dakota Century Code, relating to licensing of psychologists without examination and disciplinary hearings.

Was read the first time and referred to the **Human Services Committee**.

SB 2148: A BILL for an Act to amend and reenact subsections 3 and 4 of section 27-20-36 of the North Dakota Century Code, relating to time limitations on court orders for children in foster care.

Was read the first time and referred to the **Human Services Committee**.

SB 2197: A BILL for an Act to amend and reenact sections 26.1-36-09.3 and 54-52.1-04.6 of the North Dakota Century Code, relating to insurance coverage for treatment of temporomandibular joint disorder and craniomandibular disorder.

Was read the first time and referred to the **Human Services Committee**.

SB 2294: A BILL for an Act to amend and reenact sections 61-16.1-12.1, 61-16.1-18, 61-16.1-19, 61-21-13, and 61-21-14 of the North Dakota Century Code, relating to notice and approval of proposed water projects.

Was read the first time and referred to the **Natural Resources Committee**.

SB 2365: A BILL for an Act to create and enact section 1-03-12 of the North Dakota Century Code, relating to the designation of Four Chaplains Sunday.

Was read the first time and referred to the **Government and Veterans Affairs Committee**.

SB 2393: A BILL for an Act to create and enact sections 36-04-10.1 and 36-05-13.2 of the North Dakota Century Code, relating to violations of laws governing livestock dealers and livestock auction markets; to amend and reenact sections 36-04-02, 36-04-05.1, 36-04-10, 36-04-13, 36-05-02, 36-05-04.1, and 36-05-14 of the North Dakota Century Code, relating to the licensing of livestock dealers and livestock auction markets; and to provide a penalty.

Was read the first time and referred to the **Agriculture Committee**.

FIRST READING OF SENATE CONCURRENT RESOLUTION

SCR 4016: A concurrent resolution urging each member of the North Dakota Congressional Delegation to seek and promote federal legislation that provides for in-home adjustment services for the visually impaired older citizens of the state of North Dakota.

Was read the first time and referred to the **Human Services Committee**.

The House stood adjourned pursuant to Representative Freier's motion.

ROY GILBREATH, Chief Clerk