

## JOURNAL OF THE SENATE

## Fifty-ninth Legislative Assembly

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Bismarck, January 31, 2005

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

The prayer was offered by Reverend Rich Wyatt, Living Hope Church of the Nazarene, Bismarck.

The roll was called and all members were present except Senator Espegard.

A quorum was declared by the President.

## CONSIDERATION OF AMENDMENTS

**SB 2058: SEN. BROWN (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ pages 203-204 be adopted and then be **REREFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2024: SEN. DEVER (Political Subdivisions Committee) MOVED** that the amendments on SJ page 203 be adopted and then be placed on the Eleventh order with **DO PASS**.

## REQUEST

**SEN. BOWMAN REQUESTED** a recorded roll call vote on the adoption of the amendments to SB 2024, which request was granted.

## ROLL CALL

The question being the adoption of the amendments to SB 2024, as printed on SJ page 203, the roll was called and there were 17 YEAS, 29 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Christmann; Cook; Dever; Erbele; Flakoll; Freborg; Hacker; Heitkamp; Kilzer; Klein; Kringstad; Lee, G.; Nething; Stenehjem; Wardner

**NAYS:** Bowman; Brown; Every; Fairfield; Fischer; Grindberg; Holmberg; Krauter; Krebsbach; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; O'Connell; Robinson; Schobinger; Seymour; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Warner

**ABSENT AND NOT VOTING:** Espegard

The proposed amendments to SB 2024 failed.

SB 2024 was placed on the Eleventh order on the calendar.

## CONSIDERATION OF AMENDMENTS

**SB 2101: SEN. WARNER (Transportation Committee) MOVED** that the amendments on SJ page 204 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2154: SEN. BERCIER (Transportation Committee) MOVED** that the amendments on SJ pages 204-205 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2202: SEN. BROWN (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 205 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2275: SEN. COOK (Finance and Taxation Committee) MOVED** that the amendments on SJ page 205 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SB 2294: SEN. HEITKAMP (Natural Resources Committee) MOVED** that the amendments on SJ page 205 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SB 2326: SEN. KLEIN (Agriculture Committee) MOVED** that the amendments on SJ page 206 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SCR 4003: SEN. TRENBEATH (Transportation Committee) MOVED** that the amendments on SJ page 206 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SCR 4005: SEN. TRENBEATH (Transportation Committee) MOVED** that the amendments on SJ page 206 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**MOTION**

**SEN. CHRISTMANN MOVED** that SB 2113, which is on the Sixth order, be laid over one legislative day, which motion prevailed.

**SECOND READING OF SENATE BILL**

**SB 2056:** A BILL for an Act to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax holiday for purchases of clothing or footwear for a period of one week during August of each year.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 14 YEAS, 32 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Bercier; Every; Fairfield; Heitkamp; Krauter; Lindaas; Mathern; Nelson; O'Connell; Seymour; Tallackson; Taylor; Triplett; Warner

**NAYS:** Andrist; Bowman; Brown; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hacker; Holmberg; Kilzer; Klein; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lyson; Mutch; Nething; Robinson; Schobinger; Stenehjerm; Syverson; Thane; Tollefson; Traynor; Trenbeath; Urlacher; Wardner

**ABSENT AND NOT VOTING:** Espegard

Engrossed SB 2056 lost.

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**SECOND READING OF SENATE BILL**

**SB 2149:** A BILL for an Act to create and enact a new subsection to section 50-01.2-03 of the North Dakota Century Code, relating to duties of county social service boards; and to amend and reenact sections 50-11-00.1 and 50-11-04, subsection 2 of section 50-11-06.6, section 50-11.1-02, subsection 5 of section 50-11.1-03, sections 50-11.1-04, 50-11.1-06, 50-11.1-07, and 50-11.1-07.1, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.4, 50-11.1-07.5, 50-25.1-02, 50-25.1-06, and 50-25.1-06.1, and subsection 3 of section 50-25.1-11 of the North Dakota Century Code, relating to authorized agents of the department of human services for foster care licensing, child care licensing, and child abuse and neglect services.

**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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

Engrossed SB 2149 passed and the title was agreed to.

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**MOTION**

**SEN. STENEHJEM MOVED** that the Senate reconsider its action whereby Reengrossed SB 2041 failed to pass, which motion prevailed on a verification vote.

**MOTION**

**SEN. STENEHJEM MOVED** that the Senate reconsider its action whereby the amendments to Engrossed SB 2041 were adopted, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

The question being the adoption of the amendments to Engrossed SB 2041, printed on SJ page 182, the amendments failed on a voice vote.

Reengrossed SB 2041 was placed on the Eleventh order on the calendar.

**SECOND READING OF SENATE BILL**

**SB 2041:** A BILL for an Act to create and enact a new subsection to section 20.1-01-02 and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to hunting on Indian land; and to amend and reenact sections 20.1-04-06 and 20.1-05-03 of the North Dakota Century Code, relating to transportation of game and fish taken on Indian lands.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 40 YEAS, 6 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bowman; Brown; Christmann; Dever; Erbele; Every; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Schobinger; Seymour; Stenehjem; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**NAYS:** Bercier; Cook; Fairfield; Fischer; Robinson; Syverson

**ABSENT AND NOT VOTING:** Espegard

Reengrossed SB 2041 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2166:** A BILL for an Act to amend and reenact subsection 2 of section 19-03.3-01 and sections 19-03.3-02, 19-03.3-03, 19-03.3-04, and 19-03.3-05 of the North Dakota Century Code, relating to treatment and care for pain.

**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 45 YEAS, 0 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner

**ABSENT AND NOT VOTING:** Espegard; Warner

Engrossed SB 2166 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2219:** A BILL for an Act to create and enact a new subsection to section 62.1-04-03 of the North Dakota Century Code, relating to concealed weapon permit information.

**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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

Engrossed SB 2219 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2260:** A BILL for an Act to create and enact a new chapter to title 15.1 of the North Dakota Century Code, relating to early childhood education.

**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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

Engrossed SB 2260 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2298:** A BILL for an Act to provide for bone marrow donor education and leave of absence for state employees donating an organ or bone marrow.

**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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

Engrossed SB 2298 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2302:** A BILL for an Act to amend and reenact section 28-20-34 of the North Dakota Century Code, relating to postjudgment interest.

**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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

Engrossed SB 2302 passed and the title was agreed to.

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**SECOND READING OF SENATE CONCURRENT RESOLUTION**

**SCR 4009:** A concurrent resolution directing the Legislative Council to study school district and library funding sources to determine if a method can be found to provide an incentive to reduce school district and library property tax levies.

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

Engrossed SCR 4009 was declared adopted, and the title was agreed to on a voice vote.

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**SECOND READING OF SENATE BILL**

**SB 2211:** A BILL for an Act to amend and reenact section 48-05-11 of the North Dakota Century Code, relating to guaranteed energy savings contracts in public buildings.

**ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 45 YEAS, 1 NAY, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**NAYS:** Dever

**ABSENT AND NOT VOTING:** Espegard

SB 2211 passed and the title was agreed to.

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**MOTION**

**SEN. CHRISTMANN MOVED** that SB 2099, which is on the Eleventh order, be laid over one legislative day, which motion prevailed.

**SECOND READING OF SENATE BILL**

**SB 2102:** A BILL for an Act to amend and reenact subsection 3 of section 39-08-01 of the North Dakota Century Code, relating to driving under the influence of intoxicating liquor repeat offenders and impounding motor vehicle license plates.

**ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 41 YEAS, 5 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fischer; Flakoll; Freborg; Grindberg; Hacker; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad;

Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; Robinson; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**NAYS:** Bercier; Fairfield; Heitkamp; O'Connell; Schobinger

**ABSENT AND NOT VOTING:** Espegard

SB 2102 passed and the title was agreed to.

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#### **SECOND READING OF SENATE BILL**

**SB 2135:** A BILL for an Act to amend and reenact sections 39-02-03, 39-04-02.1, and 39-04-10 of the North Dakota Century Code and section 9 of chapter 331 of the 2001 Session Laws, relating to motor vehicle branch office fees, address corrections, renewal of amateur radio license plates, and Lewis and Clark license plates; and to repeal section 8 of chapter 331 of the 2001 Session Laws, relating to the expiration of authority to issue Lewis and Clark license plates.

#### **ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

SB 2135 passed and the title was agreed to.

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#### **SECOND READING OF SENATE BILL**

**SB 2165:** A BILL for an Act to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the unauthorized use of the name or logo of a bank, trust company, savings association, savings bank, or affiliated entity; and to provide a penalty.

#### **ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

SB 2165 passed and the title was agreed to.

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#### **SECOND READING OF SENATE BILL**

**SB 2237:** A BILL for an Act to amend and reenact sections 11-28.2-01 and 11-28.2-04 of the North Dakota Century Code, relating to requirements for establishment of a recreation service district and the powers of a recreation service district.

**ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

SB 2237 passed and the title was agreed to.

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**REQUEST**

**SEN. CHRISTMANN REQUESTED** that the Senate desk hold SB 2041 for possible reconsideration, which request was granted.

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate stand in recess for a few minutes, which motion prevailed.

**THE SENATE RECONVENED** pursuant to recess taken, with President Dalrymple presiding.

**MOTION**

**SEN. STENEHJEM MOVED** that a committee of two be appointed to escort the Honorable Senator Byron Dorgan to the rostrum, which motion prevailed. The President appointed Sens. Grindberg and Every.

**REMARKS OF THE HONORABLE BYRON DORGAN, UNITED STATES SENATOR**

Mr. Lt. Governor and Senators, first of all thank you for inviting me once again. I am always honored to come by when you are in session and have the opportunity to say hello. I know from working in the Capitol how frenetic it is. You, unlike the U.S. Congress in which bills are introduced and never heard, never seen again, you have to deal with bills and run them through the committees, vote on them, bring them through the committees, it is indeed very impressive.

The U.S. Congress by contrast, starts slow and slows down. We are at the start of a new Congress. We have a lot to confront us. Let me also begin, no matter how one feels about foreign policy and what is happening around the world, the expression yesterday by the Iraqis' to go to the polls; should give all of us who participate in a democracy an enormous amount of pride. The dignity of a person casting a vote anywhere in this world as a matter of self expression and especially the courage it took for some people to show up at the polls yesterday in Iraq is really something extraordinary. I think all of us should take great pride.

Perhaps in all of the time that I have had the privilege of coming to visit with you during my service in the US House and the US Senate, we have never had the major and, I think, unusual challenges that now confront our state. Let me describe a few of these to you.

First on February 7, the President will give us his presidential budget for the next fiscal year. In the past year, our fiscal policy deficit is 567 billion dollars, that is serious. It has been a record that is serious and we have to get our fiscal policy back on track. The President's budget from all that we are hearing will propose significant and major spending for law enforcement, water development, agriculture. The most important to the State Legislature here in Bismarck is Medicaid because the federal government funds about 2/3 of the Medicaid payment here in North Dakota. We have about 55,000 low income people in this state and children who benefit from Medicaid payments. By the way, the issue of how much we spend to fund Medicaid is very very important to our state. My expectation is that is going to be a big issue.

The second is base closing. May 16 Secretary Rumsfeld offers his version of what bases are to be closed in this country. They indicate that we have a 25 percent over capacity in military bases. A twenty-five percent over capacity and Secretary Rumsfeld expects this round to equal the closures in the previous four rounds combined. This will be a very aggressive base closing round. We have two great air force bases in North Dakota, one in Minot and one in Grand Forks, and we have the best Air National Guard Unit, I think, in the country, the Happy Hooligans in Fargo. The communities have done all they can, they have worked very hard. I

will be in Minot meeting with the base retention group there. I commend all three communities, the congressional delegation, the governor, the state legislators, we have all worked together to be as prepared as we can for this base closing round. This happens very quickly. This will happen from May to September. The reason we have so much at stake here in North Dakota are the consequences of closing a base. Some studies suggest regional unemployment of 20% to 30%. This will play out from May 16 through September 8. I fervently hope that we can get through this round of closings.

Third, No Child Left Behind could have significant consequences for you. It's just a slogan of course, but it is a slogan that represents the title to some legislation. None of you have ever heard the other view, representing leaving a child behind. This slogan of No Child Left Behind is a slogan of accountability. We spend a lot of money on education and all of us aspire to see that there will be accountability for it. My great concern, however, having voted for the legislation, is that a. there is not sufficient funding for it and b. no flexibility. You can't put a template over a school in downtown New York that is identical to one over a school in Newtown or Mott. We need flexibility. The day after tomorrow, I am meeting with the assistant secretary of education on the subject, for example, what is "highly qualified" for elementary teachers in North Dakota? They have made an initial determination, that here in North Dakota, despite the fact that 3800 elementary school teachers have a license to teach, have a bachelor's degree, and are teaching in their major, which is elementary education, and have experience in the classroom, they are not necessarily "highly qualified". In my judgement that defies common sense. We have put some kids out of those classrooms with some of the highest scores in the world on tests. In fact, in one embassy we would have the second highest scores in the world. So you can't tell me that teachers that are teaching those kids are not highly qualified. And despite the fact that I voted for that law, I will say this that if we don't get some common sense in it's application, then I intend to introduce legislation to repeal it.

Finally, let me talk just one moment about Social Security. I know the President is coming to North Dakota on Thursday. I welcome him, it is an honor. Air Force One touches down in North Dakota and we welcome him. I have great respect for the President on this issue. I want to tell you with great respect, while I don't agree that there should be private accounts, I believe our responsibility is to strengthen and preserve social security systems as the core insurance for retirement and to further incentivize private investment accounts. Such as 401k's, IRA's, and private pension plans. There aren't many states that have more at stake in this debate than North Dakota. We have the fifth oldest population in America. We have a higher percentage of persons 85 years or older than any other state. I feel very strongly, the program that has lifted many thousands of people out of poverty over many years, a program according to the congressional budget office will remain solvent until the year 2052, a program without major surgery and without major change will be solvent for the long term, a program that does need some adjustment because people are living healthier, longer lives, which is good news. I believe, very strongly, with respect to retirement security you need a foundation. The foundation for us has been social security insurance retirement programs. The second and third stories are to substantially incentivize pensions, 401's, IRA's, and private accounts. While I think what we ought to do, is preserve and strengthen social security as a core insurance program, I also feel strongly that we ought to create second and third stories of retirement security and create a retirement investment bonus plan that further strengthens and further incentivizes those who are putting away money for their retirement with tax credits that are aggressive in which we now use. It is worthy to have a great debate, and I commend the President for it, but there are very strong feelings on both sides of the aisle and sometimes mixing feelings on both sides of the aisle. I feel that it is in our state's and country's interest to preserve and strengthen social security and to build upon it through tax incentives private investment account.

Finally, let me mention the issue of the Red River Valley Research Corridor. About 4 years ago, I called a meeting in Fargo and invited the presidents of most of our colleges to attend. I had Governor Hoeven attend and we had a good meeting. Instead of sending our best and brightest kids to work on world class research and cutting edge research in California, New York, Texas and Massachusetts, I suggested we create world class opportunities here in our state. I think we made significant progress in just a matter of several years. You are a part of that progress, you created some funding at the state level, and I believe that working together, we can do something very significant. I remember, in the back of these Chambers, when there was discussion about something John Odegaard wanted to do. My late friend John Odegaard wanted to build the Harvard of the skies here in North Dakota to have one of the world class centers of aviation. People called him about half goofy for suggesting that could happen up here in the center of the country. A small state, a small population. Do you know what he did, John Odegaard built a world class center for aviation science and we have one of the finest in the entire world right here. I went to meet with the President of Taiwan, and he said our university trains their air pilots. Around the world they know what we created here. The fact is we can create something else, a research corridor that instead of having our kids leave, they can stay here and work here in areas of microtechnology and the new areas of nanotechnology



and carbon nanotubes. We should be able to look back in ten years and see that we have done something extraordinary, not for just our two major universities, but the tentacles reach out to our other colleges.

Finally, last Thursday I went to visit a young soldier at Walter Reed Hospital in Washington, D.C. He is a young man that I nominated for West Point about ten years ago. He is a Captain in the Army and was in Iraq and was injured severely. He lost his leg and is in critical condition and was airvacced out of Iraq. He is still in intensive care. I went to see his family and they said they wanted me to look in on him. I looked in the doorway and his eyes were only half opened and he has tubes hanging all over him and I gave him the thumbs up sign and he saluted me. He, like so many in this country, have answered the call and don't complain, they represent the best in America. I think even as we agree and disagree in this democracy, we ought to always think about those who made the sacrifice for America's freedom. I encourage you to work on veterans' issues as we will continue to work in Congress because there are men and women who are in intensive care, some on the critical list, some on the battlefield, some just starting training who are willing to stand up and be counted for. Thank you very much.

#### MOTION

**SEN. CHRISTMANN MOVED** that the remarks of the Honorable Byron Dorgan be printed in the Journal, which motion prevailed.

#### SECOND READING OF SENATE BILL

**SB 2311:** A BILL for an Act to amend and reenact subsection 2 of section 54-02-01 of the North Dakota Century Code, relating to unlawful use of the great seal.

#### ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

SB 2311 passed and the title was agreed to.

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#### SECOND READING OF SENATE BILL

**SB 2334:** A BILL for an Act to amend and reenact subsection 13 of section 20.1-02-05 of the North Dakota Century Code, relating to hunting by nonresident students.

#### ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Espegard

SB 2334 passed and the title was agreed to.

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#### MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

**MR. SPEAKER:** The Senate has passed and your favorable consideration is requested on: SB 2046, SB 2077, SB 2086, SB 2130, SB 2132, SB 2212, SB 2220, SB 2244, SB 2271, SB 2277, SB 2293, SB 2297, SCR 4010, SCR 4011.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has passed, the emergency clause carried, and your favorable consideration is requested on: SB 2265, SB 2288.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has passed and your favorable consideration is requested on: HB 1027.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has passed, the emergency clause carried, and your favorable consideration is requested on: HB 1283.

**MOTION**

**SEN. CHRISTMANN MOVED** that the absent member be excused, which motion prevailed.

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate be on the Fifth, Ninth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Tuesday, February 1, 2005, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

**SB 2150: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2150 was placed on the Sixth order on the calendar.

Page 3, line 1, after "~~these~~" insert "construction or implementation of the authorized projects and"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2161: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2161 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2178: Finance and Taxation Committee (Sen. Urlacher, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2178 was placed on the Sixth order on the calendar.

Page 1, line 9, after "operation" insert "in this state that is owned by the taxpayer"

Page 2, replace lines 1 through 6 with:

- "4. If the taxpayer is a passthrough entity consisting of a partnership, S corporation, or a limited liability company treated like a partnership for purposes of this chapter, the total amount of the credit must be determined at the passthrough entity level. The total amount of the credit must be allowed to the passthrough entity's owners in proportion to their respective interests in the passthrough entity. For this purpose, subsections 1, 2, and 3 do not apply to the passthrough entity but do apply to any passthrough entity owner that is not a passthrough entity."

Page 2, replace lines 10 through 17 with:

- "6. The first taxable year in which the credit is allowed is the taxable year in which the taxpayer purchased the eligible machinery, equipment, and structural materials."

Page 2, line 18, replace "8." with "7."

Page 3, after line 9, insert:

- "d. "Qualified investment" or "investment" means the purchase of machinery, equipment, and structural materials used directly and exclusively in a dairy farm milking operation. It includes the purchase

of replacement machinery, equipment, and construction materials used for the same purpose."

Page 3, line 10, replace "d." with "e."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2185: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2185 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2193: Finance and Taxation Committee (Sen. Urlacher, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2193 was placed on the Sixth order on the calendar.

Page 1, line 7, after the boldfaced period insert "A pension payer required to withhold federal taxes under section 3405 of the Internal Revenue Code [26 U.S.C. 3405] on a pension payment to a resident of this state must deduct and withhold state income taxes payable on the payment. The pension payer shall withhold using the percentage of federal liability method prescribed by the tax commissioner. The recipient of a pension payment may elect not to have taxes withheld under this section. The election must be in the form prescribed by the tax commissioner. A pension payer must comply with section 57-38-60 and is subject to section 57-38-60.1. This section does not apply to pension payments exempt from state taxation under federal or state law."

Page 1, remove lines 8 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 7

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2198: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **DO NOT PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2198 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2218: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2218 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2239: Judiciary Committee (Sen. Traynor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2239 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "develop the potential to"

Page 1, line 11, remove "of the potential"

Page 1, line 12, replace "energy" with "option"

Page 2, line 2, remove "of the potential"

Page 2, line 8, remove "or potential production"

Page 2, line 13, remove "of the potential"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2262: Political Subdivisions Committee (Sen. Cook, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2262 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2263: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2263 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2280: Agriculture Committee (Sen. Flakoll, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2280 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "seventeen" with "eighteen"

Page 6, line 8, remove "no fewer than", remove the overstrike over "or", and remove "nor more than"

Page 7, line 8, remove "county"

Page 7, line 9, overstrike "county" and remove the overstrike over "~~weed board~~"

Page 8, after line 29, insert:

"3. Employ additional personnel to assist with noxious weed control and eradication efforts."

Page 10, line 4, after "If" insert "the governing body of" and remove "council"

Page 10, line 5, replace "council" with "governing body", remove "no fewer than", and replace "nor more" with "or"

Page 10, line 6, remove "than"

Page 10, line 12, after "The" insert "governing body of the" and remove "council"

Page 10, line 14, after "the" insert "governing body of the" and remove "council"

Page 10, line 20, after "The" insert "governing body of the" and remove "council"

Page 10, line 29, remove the second "city"

Page 10, line 30, replace "city" with "weed board"

Page 11, after line 23, insert:

"3. Employ additional personnel to assist with noxious weed control and eradication efforts."

Page 14, line 4, after "actual" insert "cost-share"

Page 14, line 6, overstrike "appropriation"

Page 14, line 8, after the first "a" insert "commissioner in consultation with the", remove the overstrike over "~~county weed board determines a~~" and insert immediately thereafter "noxious", and remove the overstrike over "~~weed is seriously endangering areas of a~~"

Page 14, line 9, remove the overstrike over "~~county or the state~~"

Page 14, line 13, remove "specifically provides for a higher percentage"

Page 14, line 14, after "4-" insert "3."

Page 14, after line 21, insert:

"4. If a program for the control or eradication of noxious weeds involves landowner participation, the landowner must contribute an amount equal to at least twenty percent of the total cost."

Page 14, line 25, after "The" insert "governing body of the" and remove "council"

Page 14, line 28, after "the" insert "governing body of the" and remove "council"

Page 15, line 1, after "The" insert "governing body of the" and remove "council"

Page 15, line 4, after "The" insert "governing body of the" and remove "council"

Page 15, line 15, after "actual" insert "cost-share"

Page 15, line 16, replace the second "appropriation" with "commissioner in consultation with the city weed board determines a noxious weed is seriously endangering areas of a city."

Page 15, remove line 17

Page 15, after line 23, insert:

"4. If a program for the control or eradication of noxious weeds involves landowner participation, the landowner must contribute an amount equal to at least twenty percent of the total cost."

Page 16, line 13, after "control" insert "or eradicate"

Page 16, line 24, after the second "control" insert "or eradication"

Page 16, line 25, replace "council" with "governing body"

Page 17, line 7, after the third "the" insert "noxious"

Page 17, line 8, after the second "the" insert "noxious"

Page 17, line 26, after "**township**" insert "roads and"

Page 17, line 28, after "township" insert "roads and" and overstrike "within the county"

Page 19, line 10, overstrike "of the state"

Page 19, line 19, overstrike "an individual county" and insert immediately thereafter "a"

Page 19, line 20, overstrike the first "by" and insert immediately thereafter "to do so through a", overstrike "county", and overstrike the second "of the"

Page 19, line 21, overstrike "county" and insert immediately thereafter "having jurisdiction over the area"

Page 19, line 29, overstrike "state" and after "highway" insert ", street, or road"

Page 20, line 1, overstrike "**Noxious weed**" and insert immediately thereafter "Weed-free"

Page 20, line 5, overstrike the first "noxious" and overstrike the second "noxious" and insert immediately thereafter "to which"

Page 20, line 7, overstrike "county"

Page 20, line 10, overstrike "noxious"

Page 20, line 11, overstrike "county"

Page 20, line 19, remove "noxious"

Page 20, line 28, replace "County weed" with "Weed"

Page 21, line 3, remove "3.", overstrike "State agencies", after "~~the~~" insert "3. Each", and remove the overstrike over "~~state~~" and insert immediately thereafter "agency"

Page 21, line 5, remove "any", overstrike "lands", after "~~of~~" insert "any land", and replace "their" with "its"

Page 21, line 13, overstrike "A" and insert immediately thereafter "Each"

Page 21, line 18, remove "county"

Page 21, line 25, overstrike "county"

Page 22, line 22, remove "and"

Page 22, line 24, after "pests" insert "; and"

- c. Employ additional personnel to assist with pest control and eradication efforts

Page 24, line 10, replace "Highways" with "Roads and highways"

Page 24, line 11, after "township" insert "roads and"

Page 24, line 16, replace "A" with "The governing body of a" and remove "council"

Page 24, line 27, remove "and"

Page 24, line 29, after "pests" insert "; and"

- c. Employ additional personnel to assist with pest control and eradication efforts

Page 26, after line 12, insert:

**"SECTION 35.** A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

City weed board - Pest control or eradication - Roads and highways. The city weed board shall control or eradicate pests along streets, roads, and highways within the city and any expenses incurred in the control or eradication must be paid from funds as provided in section 19 of this Act."

Page 26, line 27, remove the first "county" and replace "for the county" with "having jurisdiction over the area"

Page 26, line 30, remove "county"

Page 27, line 4, remove "county"

Page 27, line 10, remove "county"

Page 27, line 20, overstrike "fifty" and insert immediately thereafter "eighty"

Page 27, line 21, overstrike "two" and insert immediately thereafter "four" and overstrike "five hundred"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2292: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2307: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2307 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2309: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2309 was placed on the Sixth order on the calendar.

Page 1, line 15, remove "Any unpaid capital credits"

Page 1, remove line 16

Page 1, line 17, remove "credits are paid to the member, the member's estate, or the member's beneficiaries."

Page 1, line 18, after the underscored period insert "Unpaid capital credits accrue interest at the rate of three percent per annum compounded annually until the capital credits are paid to the member's estate or the member's beneficiaries."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2322: Agriculture Committee (Sen. Flakoll, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2322 was placed on the Sixth order on the calendar.

Page 1, line 18, remove "and"

Page 1, line 20, after the underscored right bracket insert "; and

e. The agricultural landholding includes a dairy operation"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2354: Judiciary Committee (Sen. Traynor, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2354 was placed on the Eleventh order on the calendar.

#### FIRST READING OF SENATE CONCURRENT RESOLUTIONS

Sens. Traynor, Hacker, Nelson, Syverson, Trenbeath, Triplett introduced:

**SCR 4031:** A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting the Uniform Trust Code.

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

Sens. Traynor, Hacker, Nelson, Syverson, Trenbeath, Triplett introduced:

**SCR 4032:** A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting Revised Article 1 of the Uniform Commercial Code, General Provisions.

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

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

**William R. Horton, Secretary**

