

## JOURNAL OF THE SENATE

## Sixty-first Legislative Assembly

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Bismarck, April 30, 2009

The Senate convened at 8:00 a.m., with President Dalrymple presiding.

The prayer was offered by Reverend Gary Heaton, Medcenter One Hospital, Bismarck.

The roll was called and all members were present.

A quorum was declared by the President.

## MOTION

**SEN. CHRISTMANN MOVED** that the Senate stand in recess until 8:12 a.m., which motion prevailed.

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

## CONSIDERATION OF AMENDMENTS

**HB 1020, as engrossed: SEN. FISCHER (Appropriations Committee) MOVED** that the amendments on SJ pages 1601-1603 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

## SECOND READING OF HOUSE BILL

**HB 1020:** A BILL for an Act to provide an appropriation for defraying the expenses of the state water commission; to provide legislative intent; to provide exemptions; to provide a line of credit; and to declare an emergency.

## ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1020, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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## CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. FLAKOLL MOVED** that the conference committee report on Engrossed SB 2038 as printed on SJ pages 1603-1604 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2038, as amended, was placed on the Eleventh order.

## SECOND READING OF SENATE BILL

**SB 2038:** A BILL for an Act to amend and reenact sections 15-10-12, 54-44.1-04, 54-44.1-06, and 54-44.1-11 of the North Dakota Century Code, relating to the appropriation of higher education institutions' special revenue funds; budget requests and block grant appropriations for the North Dakota university system; cancellation of unexpended appropriations of the North Dakota university system; to provide for a report; to provide for legislative council studies of higher education; to provide legislative intent for higher education accountability measures; and to provide an effective date.

## ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg;

Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Reengrossed SB 2038 passed and the title was agreed to.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. KREBSBACH MOVED** that the conference committee report on SB 2008 as printed on SJ page 1603 be adopted, which motion prevailed on a voice vote.

SB 2008, as amended, was placed on the Eleventh order.

#### SECOND READING OF SENATE BILL

**SB 2008:** A BILL for an Act to provide an appropriation for defraying the expenses of the department of financial institutions.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed SB 2008 passed and the title was agreed to.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. NETHING MOVED** that the conference committee report on SB 2178 as printed on SJ pages 1604-1605 be adopted, which motion prevailed on a voice vote.

SB 2178, as amended, was placed on the Eleventh order.

#### SECOND READING OF SENATE BILL

**SB 2178:** A BILL for an Act to provide an appropriation to the department of corrections and rehabilitation for community service supervision grants.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 45 YEAS, 2 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Christmann; Kilzer

Engrossed SB 2178 passed and the title was agreed to.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. KRAUTER MOVED** that the conference committee report on Engrossed HB 1007 as printed on SJ page 1574 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1007, as amended, was placed on the Fourteenth order.

#### SECOND READING OF HOUSE BILL

**HB 1007:** A BILL for an Act to provide an appropriation for defraying the expenses of the labor commissioner.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1007, as amended, passed and the title was agreed to.

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**MOTION**

**SEN. CHRISTMANN MOVED** that HB 1216 be moved to the top of the Seventh order, which motion prevailed.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. LYSON MOVED** that the conference committee report on HB 1216 as printed on SJ page 1575 be adopted, which motion prevailed on a voice vote.

HB 1216 was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1216:** A BILL for an Act to amend and reenact subsection 1 of section 20.1-03-07 and section 20.1-03-07.1 of the North Dakota Century Code, relating to nonresident small game hunting and nonresident waterfowl hunting licenses.

**ROLL CALL**

The question being on the final passage of the bill, which has been read, the roll was called and there were 24 YEAS, 23 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Behm; Christmann; Dotzenrod; Erbele; Freborg; Hogue; Holmberg; Horne; Klein; Krauter; Krebsbach; Lee, J.; Lindaas; Lyson; Marcellais; Nodland; O'Connell; Oehlke; Pomeroy; Potter; Wardner; Warner

**NAYS:** Bakke; Bowman; Cook; Dever; Fiebiger; Fischer; Flakoll; Grindberg; Heckaman; Kilzer; Lee, G.; Mathern; Miller; Nelson; Nething; Olafson; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek

HB 1216 passed and the title was agreed to.

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**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. FISCHER MOVED** that the conference committee report on Engrossed HB 1305 as printed on SJ page 1575 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1305, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1305:** A BILL for an Act to provide an appropriation to the state water commission for water project grants; and to declare an emergency.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1305, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. DEVER MOVED** that the conference committee report on Engrossed HB 1090 as printed on SJ page 1575 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1090, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1090:** A BILL for an Act to create and enact a new chapter to title 50 of the North Dakota Century Code, relating to child care assistance; and to provide a penalty.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebig; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1090, as amended, passed and the title was agreed to.

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**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: SB 2267, SB 2371, SB 2373, SB 2391.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report, subsequently passed, and the emergency clause carried: SB 2012.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2199.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: SB 2199.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: SB 2002, SB 2006, SB 2016, SB 2017, SB 2097, SB 2195, SB 2201, SB 2230.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The President has signed: SB 2199.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The President has signed: HB 1011, HB 1017, HB 1035, HB 1151, HB 1295, HB 1304, HB 1425, HB 1436.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following bill was delivered to the Governor for approval on April 30, 2009: SB 2199.

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate stand in recess until 12:30 p.m., which motion prevailed.

**THE SENATE RECONVENED** pursuant to recess taken, with President Pro Tem Fischer presiding.

**CORRECTION AND REVISION OF THE JOURNAL**

**MR. PRESIDENT:** Your **Committee on Correction and Revision of the Journal (Sen. Andrist, Chairman)** has carefully examined the Journal of the Seventy-fifth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 1610, line 43, after "if" insert "this language is not provided for in the lease or easement, payments at least equal to"

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

#### **MOTION**

**SEN. STENEHJEM MOVED** that the Senate be on the Fifteenth order of business for the purpose of electing an Interim President Pro Tempore, which motion prevailed.

#### **NOMINATIONS FOR INTERIM PRESIDENT PRO TEM**

**SEN. CHRISTMANN:** Our colleague, Senator Jerry Klein, was elected to the Senate from the Fourteenth District in 1995. He has served with distinction on the Industry, Business, and Labor Committee and the Agriculture Committee, the last two sessions as Chairman of Industry, Business, and Labor. He also serves on the Executive Committee of the National Conference of Insurance Legislators. When I think back to his first experience of carrying a bill on the floor of the Senate, I have to acknowledge that then I did not envision him ever presiding. For those of you who do not recall what I am referring to, Senator Klein proceeded to start getting out charts and diagrams in true Washington, DC form before immediately being called to order by the Senate President. It was a shaky start. The good news though is that from that day forward he has proven to be one of the most conscientious and effective members of this body. He has proven that by the cordial relationship he has built with his Senate colleagues and he has proven it by attracting overwhelming approval from his constituents, all the way from the outskirts of the capital city to some of the most remote rural landscapes in North Dakota. The North Dakota Senate has a very long and proud tradition of electing some very worthy and capable members to serve as our presiding officer. My tenure in this body brings to mind no exceptions. Today I am completely confident that this tradition will continue, and I am honored to nominate Senator Jerry Klein for the position of Senate President Pro Tempore.

**SEN. ANDERSON:** Mr. President and members of the North Dakota Senate assembled: I've had the pleasure of serving with Connie Triplett in the North Dakota Senate for the past two sessions. I know of no one in the Upper Chamber who is quicker to absorb the essence of every piece of legislation which comes before us. Woe be the presenter of a bill--on either side of the aisle--if the facts are not straight or if Senator Triplett disagrees with the items under discussion--and her speeches are always so well structured we are all aware of the specific reason for her concerns. I could go on, but I think the chamber is well-aware of how she has proved to be a prized member of our Senate and brings great credit and recognition upon all of us serving within this chamber, and, with the citizens of North Dakota without. I am honored to be given the privilege to place the name of Connie Triplett before the members of this body for consideration as Interim President Pro Tem of the North Dakota Senate.

#### **REMARKS BY SENATOR TRIPLETT**

Mr. President, it is an honor to have been nominated by my colleagues for the position of Interim President Pro Tem. I would like to extend a special thank you to my good friend Senator Anderson for his warm and generous remarks in nominating me. Thanks to those of my colleagues who voted for me. This is only my third session in the legislature, so I am still learning the traditions of the Senate. I think the tradition that has the nominees voting for each other is a delightful tradition and one that I am happy to carry on, but I had thought that there was another tradition that more-or-less required the other members of each caucus to vote for their caucus nominee. So, you will understand that I am pretty traumatized (tongue-in-cheek) by the defection of one member of my own party. I'm trying to figure out how to deal with the defection. I think I'll recover before the next legislative session. Seriously, I do understand why my colleague from Bismarck chose to vote for Senator Klein. I believe that he was expressing his gratitude for Senator Klein's graciousness to members of both parties in his capacity as Chairman of the Industry, Business and Labor Committee.

Mr. President, I move that the Senate cast a unanimous ballot in favor of electing Sen. Klein as Interim President Pro Tem.

#### **MOTION**

**SEN. TRIPLETT MOVED** that the Senate cast a unanimous ballot in favor of electing Sen. Klein for Interim President Pro Tem, which motion prevailed.

#### **OATH OF OFFICE**

**SEN. STENEHJEM MOVED** that a committee of two be appointed to escort Interim President Pro Tem Klein to the rostrum, which motion prevailed.

**PRESIDENT PRO TEM FISCHER APPOINTED** Sens. Wanzek and Erbele to escort Sen. Klein to the rostrum for the Oath of Office, which was administered by President Pro Tem Fischer.

**REMARKS OF INTERIM PRESIDENT PRO TEM KLEIN**

Mr. President, Members of the Senate: Serving as your President Pro Tempore is a tremendous honor and privilege, and I would like to thank all of you for your support. I often talk about the time when I was asked to run and former Senator Streibel asking me if I had found anyone to run to take his place. I had told him that the people I had spoken to weren't quite ready. The kids were small. They were busy at work. He said, "I think we have found our candidate." I said, "Wow, that's great! Who did you find?" He said, "We think it's you." Certainly after my visit with my manager at home--I got the go-ahead. We all might remember our day when we decided we would run and do what certainly would be the important work of the people of North Dakota. Anxious, nervous, excited, enthusiastic, oh and outright a little scared might describe some of those early feelings. After these seven sessions, I have no regrets. I enjoy the challenge of each day . . . and the friendships that I have made on both sides of the aisle. I will do my best to treat each one of you with the utmost respect and to maintain the honor and integrity of this position. Once again, thank you all so much for this honor. I am very proud to be your President Pro Tem.

**MOTION**

**SEN. CHRISTMANN MOVED** that the remarks of Interim President Pro Tem Klein, and of Sens. Triplett, Anderson, and Christmann be printed in the Journal, which motion prevailed.

The Senate resumed its regular orders of business with President Pro Tem Klein presiding.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. G. LEE MOVED** that the conference committee report on Engrossed HB 1399 as printed on SJ pages 1578-1580 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1399, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1399:** A BILL for an Act relating to the preservation of American Indian languages; to provide a legislative council report; to provide an appropriation; and to provide a continuing appropriation.

**ROLL CALL**

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

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Christmann

**ABSENT AND NOT VOTING:** Lyson

Engrossed HB 1399, as amended, passed and the title was agreed to.

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**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. COOK MOVED** that the conference committee report on HB 1412 as printed on SJ pages 1580-1581 be adopted, which motion prevailed on a voice vote.

HB 1412, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1412:** A BILL for an Act to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to the fee imposed for emergency services communications; to provide for a legislative council study; and to provide an expiration date.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 44 YEAS, 2 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Marcellais; Mathern; Miller; Nelson;

Nothing; Nodland; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Christmann; O'Connell

**ABSENT AND NOT VOTING:** Lyson

HB 1412, as amended, passed and the title was agreed to.

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#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. TRIPLETT MOVED** that the conference committee report on Engrossed HB 1449 as printed on SJ pages 1609-1610 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1449, as amended, was placed on the Fourteenth order.

#### **SECOND READING OF HOUSE BILL**

**HB 1449:** A BILL for an Act to amend and reenact section 49-02-27 and subdivision a of subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to the decommissioning of wind energy conversion facilities and to the definition of energy conversion facility; and to provide for a legislative council study of the development of wind and other natural resources.

#### **ROLL CALL**

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

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebig; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Marcellais; Mathern; Miller; Nelson; Nothing; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Lyson

Engrossed HB 1449, as amended, passed and the title was agreed to.

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#### **MOTION**

**SEN. HOLMBERG MOVED** that the Senate reconsider its action whereby HB 1216 passed.

#### **REQUEST**

**SEN. HOLMBERG REQUESTED** a recorded roll call vote on the motion to reconsider the action whereby HB 1216 passed, which request was granted.

#### **ROLL CALL**

The question being on the motion to reconsider the action whereby HB 1216 passed, the roll was called and there were 20 YEAS, 26 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Christmann; Dever; Fischer; Flakoll; Grindberg; Holmberg; Horne; Lee, J.; Marcellais; Mathern; Nelson; Nothing; Nodland; Robinson; Schneider; Seymour; Stenehjem

**NAYS:** Andrist; Bowman; Cook; Dotzenrod; Erbele; Fiebig; Freborg; Heckaman; Hogue; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lindaas; Miller; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Taylor; Triplett; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Lyson

The motion to reconsider the action whereby HB 1216 passed, failed.

#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. KREBSBACH MOVED** that the conference committee report on Engrossed HB 1019 as printed on SJ pages 1607-1609 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1019, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1019:** A BILL for an Act to provide an appropriation for defraying the expenses of the parks and recreation department and the International Peace Garden; to provide for a transfer; to amend and reenact subsection 5 of section 55-08-05 and section 55-08-14.1 of the North Dakota Century Code, relating to recreational grants and concession agreements; to provide legislative intent; and to declare an emergency.

**ROLL CALL**

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

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Stenehjem

**ABSENT AND NOT VOTING:** Lyson

Engrossed HB 1019, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The Senate has amended, subsequently passed, and the emergency clause carried: HB 1020.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has concurred in the Senate amendments and subsequently passed: HB 1385.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2008, SB 2038, SB 2178.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: HB 1007, HB 1090, HB 1216, HB 1399, HB 1412, HB 1449.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report, subsequently passed, and the emergency clause carried: HB 1019, HB 1305.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: HCR 3054.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: SB 2007.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report, subsequently passed, and the emergency clause carried: HB 1010, HB 1554.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report, subsequently passed, and the emergency clause carried: SB 2021.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2005, SB 2013, SB 2022, SB 2023, SB 2064, SB 2198, SB 2225, SB 2248, SB 2266.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2012, SB 2267, SB 2371, SB 2373, SB 2391.



**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** Your signature is respectfully requested on: HB 1006, HB 1057, HB 1360, HB 1368.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** Your signature is respectfully requested on: HB 1007, HB 1019, HB 1090, HB 1216, HB 1305, HB 1385, HB 1399, HB 1412, HB 1449.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The President has signed: SB 2002, SB 2006, SB 2016, SB 2017, SB 2097, SB 2195, SB 2201, SB 2230.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The President has signed: HB 1006, HB 1057, HB 1360, HB 1368.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: HB 1011, HB 1017, HB 1035, HB 1116, HB 1151, HB 1295, HB 1304, HB 1425, HB 1436.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: HCR 3063, HCR 3067.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following bills were delivered to the Governor for approval on April 30, 2009: SB 2002, SB 2006, SB 2016, SB 2017, SB 2097, SB 2195, SB 2201, SB 2230.

**COMMUNICATION FROM GOVERNOR JOHN HOEVEN**

This is to inform you that on April 30, 2009, I have signed the following: SB 2199 and SB 2201.

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate stand in recess until 6:00 p.m., which motion prevailed.

**THE SENATE RECONVENED** pursuant to recess taken, with President Pro Tem Klein presiding.

**REPORT OF CONFERENCE COMMITTEE**

**SB 2024:** Your conference committee (Sens. Fischer, Grindberg, Seymour and Reps. Berg, Kempenich, S. Meyer) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1339-1350, adopt amendments as follows, and place SB 2024 on the Seventh order:

That the House recede from its amendments as printed on pages 1339-1350 of the Senate Journal and pages 1402-1413 of the House Journal and that Senate Bill No. 2024 be amended as follows:

Page 1, line 2, after "commission" insert "; to create and enact two new sections to chapter 53-06.2 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to amend and reenact sections 53-06.2-02, 53-06.2-03, 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14, 53-06.2-15, and 53-06.2-16 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to provide for a report to the legislative council; to provide for transition; and to provide an effective date"

Page 1, line 11, replace "\$35,286" with "(\$82,290)" and replace "442,576" with "325,000"

Page 1, line 13, replace "291,984" with "174,408" and replace "412,576" with "295,000"

Page 1, after line 14, insert:

**"SECTION 2. AMENDMENT.** Section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-02. Racing commission - Members - Appointment - Term - Qualifications - Compensation.**

1. A North Dakota racing commission is established ~~consisting in the office of the agriculture commissioner.~~ The commission consists of the chairman and four other members appointed by the ~~governor~~ agriculture commissioner. One of the members must be appointed from a list of four

nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the ~~international Arabian paint~~ horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves for the unexpired portion of the term and may be reappointed. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the ~~governor~~ agriculture commissioner shall appoint a new member to the commission.

2. ~~A person~~ An individual is ineligible for appointment to the commission if that ~~person~~ individual has not been a resident of this state for at least two years before the date of appointment. ~~A person~~ An individual is also ineligible if that ~~person~~ individual is not of such character and reputation as to promote public confidence in the administration of racing in this state. ~~A person~~ An individual who has a financial interest in racing cannot be a member of the commission and ~~cannot be employed by the commission~~ without full disclosure of the financial interest to the agriculture commissioner, the attorney general, and the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission ~~or from employment with the commission.~~ For purposes of this section, ~~a person~~ an individual has a financial interest in racing if that ~~person~~ individual has an ownership interest in horses running at live or simulcast meets conducted or shown in this state subject to this chapter or rules of the commission agriculture commissioner, is required to be licensed under this chapter or the rules of the commission agriculture commissioner or attorney general, or who derives any direct financial benefit from racing, individually or by or through an entity or other person, as regulated by this chapter or the rules of the commission agriculture commissioner or attorney general.
3. Commission members are entitled to ~~seventy-five dollars per day for the same compensation;~~ and mileage and expense reimbursement as allowed to other state employees provided for members of committees of the legislative council under section 54-35-10.

**SECTION 3. AMENDMENT.** Section 53-06.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-03. Director of racing - Appointment - Qualifications - Salary - Duties - Other personnel.**

1. The ~~commission shall~~ agriculture commissioner may appoint a director of racing. The ~~commission shall~~ agriculture commissioner may establish the director's qualifications and salary.
2. The director shall devote such time to the duties of the office as the ~~commission agriculture commissioner~~ may prescribe. The director ~~is the executive officer of the commission and shall enforce the rules and orders of the commission.~~ The director shall perform other duties the ~~commission~~ agriculture commissioner prescribes.
3. The director may employ other ~~persons~~ individuals as authorized by the ~~commission~~ agriculture commissioner.

**SECTION 4. AMENDMENT.** Section 53-06.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-04. Duties of commission and attorney general.**

1. The commission shall:
  4. a. Provide for racing ~~under the certificate system.~~
  2. b. Set racing dates.

- ~~3.~~ c. Adopt rules for effectively preventing the use of any unauthorized substance, compound items, or combinations of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racehorse, ~~unless specifically authorized by the commission.~~
- ~~4.~~ Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and equipment at all races held under the certificate system.
- ~~5.~~ d. Adopt rules governing, restricting, or regulating bids on licensees' concessions and leases on equipment.
- ~~6.~~ e. Consider all proposed extensions, additions, or improvements to the buildings, stables, or tracks on property owned or leased by a licensee.
- ~~7.~~ f. Exclude from racetracks ~~or simulcast pari-mutuel wagering facilities~~ any person who violates any rule ~~of the commission adopted to implement this chapter~~ or any law.
- ~~8.~~ g. Determine the cost of inspections performed under subsection 3 of section 53-06.2-05 and require the licensee to pay that cost.
- ~~9.~~ h. Report biennially to the legislative council regarding the operation of ~~the commission racing under this chapter.~~
- ~~10.~~ i. Provide notice to the North Dakota horsemen's council of meetings held by the commission and permit the North Dakota horsemen's council to participate in the meetings through placement of items on the agenda.
- ~~11.~~ j. Complete, distribute, and post on the commission's web site the minutes of each commission meeting within thirty days of that meeting or before the next meeting of the commission, whichever occurs first.
2. The attorney general shall:
  - a. Provide for pari-mutuel wagering on racing, simulcast, and account wagering.
  - b. Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and equipment at all races held under the certificate system.
  - c. Exclude from simulcast or account wagering facilities any person who violates any rule adopted to implement this chapter or any law.

**SECTION 5.** A new section to chapter 53-06.2 of the North Dakota Century Code is created and enacted as follows:

**Powers of commission.** The commission may:

1. Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which the financial records are to be kept.
2. Investigate the operations of any licensee and enter any vehicle or place of business, residence, storage, or racing of any licensee on the grounds of a licensed association to determine whether there has been compliance with the provisions of this chapter and rules adopted under this chapter and to discover and seize any evidence of noncompliance.
3. License all participants in racing and require and obtain information the commission determines necessary from license applicants. The commission may obtain a statewide and nationwide criminal history record check from the bureau of criminal investigation for the purpose of determining suitability or fitness for a license. The nationwide check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant for a license.

4. Receive moneys from the North Dakota horse racing foundation for deposit in the purse fund, the breeders' fund, or the racing promotion fund in accordance with subsection 6 of section 53-06.2-11.
5. Adopt rules to implement the laws concerning racing and the administration of racing.

**SECTION 6. AMENDMENT.** Section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-05. Powers of ~~commission~~ attorney general.** The ~~commission~~ attorney general may:

1. Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records are to be kept.
2. Investigate the operations of any licensee and enter any vehicle or place of business, residence, storage, or racing of any licensee on the grounds of a licensed association to determine whether there has been compliance with the provisions of this chapter and rules adopted under this chapter, and to discover and seize any evidence of noncompliance.
3. ~~Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants, and horses that are lawfully on a racetrack.~~
4. License all participants in the ~~racing and simulcast~~ pari-mutuel wagering industry and require and obtain information the ~~commission deems~~ attorney general determines necessary from license applicants. ~~Licensure of service providers, totalizator companies, site operators, and organizations applying to conduct or conducting pari-mutuel wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. The commission may obtain a statewide and nationwide criminal history record check from the bureau of criminal investigation for the purpose of determining suitability or fitness for a license. The nationwide check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant for a license.~~
5. ~~Receive moneys from the North Dakota horse racing foundation for deposit in the purse fund, breeders' fund, or racing promotion fund in accordance with subsection 6 of section 53-06.2-11.~~
6. 4. Adopt additional rules for the administration, implementation, and regulation of pari-mutuel wagering activities conducted pursuant to this chapter. The ~~commission~~ attorney general shall deposit any fees collected under authority of this subsection in the ~~racing commission~~ attorney general's operating fund. Subject to legislative appropriation, the ~~commission~~ attorney general may spend the fees for operating costs ~~of the commission~~ under this chapter.

**SECTION 7.** A new section to chapter 53-06.2 of the North Dakota Century Code is created and enacted as follows:

**License and fees.**

1. Each license issued to conduct pari-mutuel wagering must describe the place, track, or racecourse at which the pari-mutuel wagering is to be conducted. Pari-mutuel wagering authorized under this chapter may be held during the hours approved by the attorney general and within the hours permitted by state law.
2. The attorney general may charge a license fee to conduct pari-mutuel wagering.
3. Each applicant for a license to conduct pari-mutuel wagering shall give bond payable to this state with good security as approved by the attorney

general. The bond must be in the amount the attorney general determines will adequately protect the amount normally due and owing to this state.

4. The attorney general may grant licenses to service providers, totalizator companies, site operators, other organizations conducting pari-mutuel wagering, employees of service providers, totalizator companies, site operators, and other organizations conducting pari-mutuel wagering, and other persons as determined by the attorney general.
5. The attorney general may establish the period of time for which licenses issued under this chapter are valid.
6. Subject to legislative appropriation, the attorney general may spend the fees for operating costs of the attorney general.

**SECTION 8. AMENDMENT.** Section 53-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-10. Certificate system - Rules.** The certificate system allows a licensee to receive money from any ~~person individual~~ present at a live horse race, simulcast horse race, ~~or simulcast dog race, or account wagering facility~~ who desires to bet on any entry in that race. ~~A person~~ An individual betting on an entry to win acquires an interest in the total money bet on all entries in the race, in proportion to the amount of money bet by that ~~person individual~~, under rules adopted by the ~~commission~~ attorney general. The licensee shall receive the bets and for each bet shall issue a certificate to the bettor on which is at least shown the number of the race, the amount bet, and the number or name of the entry selected by the bettor. The ~~commission~~ attorney general may adopt rules for place, show, quinella, combination, or other types of betting usually connected with racing.

**SECTION 9. AMENDMENT.** Section 53-06.2-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-10.1. Simulcast wagering.** In addition to racing under the certificate system, as authorized by this chapter, and conducted upon the premises of a racetrack, simulcast pari-mutuel wagering may be conducted in accordance with this chapter or rules adopted by the ~~commission under~~ attorney general to implement this chapter ~~in accordance with chapter 28-32~~. Any organization qualified under section 53-06.2-06 ~~to conduct racing~~ may make written application to the ~~commission~~ attorney general for the conduct of simulcast pari-mutuel wagering on races held at licensed racetracks inside the state or racetracks outside the state, or both. ~~Licensure of service~~ Service providers, totalizator companies, site operators, or organizations applying to conduct or conducting simulcast or account wagering must ~~be approved~~ obtain a license approved by the attorney general. ~~The attorney general may not grant a license denied by the commission.~~ Notwithstanding any other provision of this chapter, the ~~commission~~ attorney general may authorize any licensee to participate in interstate or international combined wagering pools with one or more other racing jurisdictions. Anytime that a licensee participates in an interstate or international combined pool, the licensee, as prescribed by the ~~commission~~ attorney general, may adopt the take-out of the host jurisdiction or facility. The ~~commission~~ attorney general may permit a licensee to use one or more of its races or simulcast programs for an interstate or international combined wagering pool at locations outside its jurisdiction and may allow pari-mutuel pools in other states to be combined with pari-mutuel pools in its jurisdiction for the purpose of establishing an interstate or international combined wagering pool. The participation by a licensee in a combined interstate or international wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located. Pari-mutuel taxes or commissions may not be imposed on any amounts wagered in an interstate or international combined wagering pool other than amounts wagered within this jurisdiction. The certificate system also permits pari-mutuel wagering to be conducted through account wagering. As used in this section, "account wagering" means a form of pari-mutuel wagering in which an individual deposits money in an account and uses the account balance to pay for pari-mutuel wagers. An account wager made on an account established in this state may only be made through the licensed simulcast service provider approved by the attorney general ~~and authorized by the commission~~ to operate the simulcast pari-mutuel wagering system under the certificate system. ~~The attorney general may not grant a license denied by the commission.~~ An account wager may be made in person, by direct telephone communication, or through other electronic communication in accordance with rules adopted by the ~~commission~~ attorney general. Breakage for interstate or international combined wagering pools must be calculated in

accordance with the statutes or rules of the host jurisdiction and must be distributed among the participating jurisdictions in a manner agreed to among the jurisdictions.

**SECTION 10. AMENDMENT.** Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.**

1. For wagering on live horse racing and simulcast wagering:
  - a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered. Of the amount wagered, the licensee shall pay:
    - (1) ~~Two~~ One-half of one percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
  - b. In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered. Of the amount wagered, the licensee shall pay:
    - (1) ~~Two and one-half~~ One-half of one percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
2. For account wagering:
  - a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered.
    - (1) ~~Before eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:~~
      - (a) ~~Two percent to the state treasurer to be deposited in the general fund.~~
      - (b) ~~One half of one percent to the commission to be deposited in the breeders' fund.~~
      - (c) ~~One half of one percent to the commission to be deposited in the purse fund.~~
      - (d) ~~One half of one percent to the commission to be deposited in the racing promotion fund.~~
    - (2) ~~After eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of~~ Of the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:

- ~~(a)~~ (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
  - ~~(b)~~ (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
  - ~~(c)~~ (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.
  - ~~(d)~~ (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- b. ~~In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty five percent of the amount wagered.~~
  - ~~(1)~~ ~~Before eleven million dollars is wagered in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:~~
    - ~~(a)~~ ~~Two and one half percent to the state treasurer to be deposited in the general fund.~~
    - ~~(b)~~ ~~One half of one percent to the commission to be deposited in the breeders' fund.~~
    - ~~(c)~~ ~~One half of one percent to the commission to be deposited in the purse fund.~~
    - ~~(d)~~ ~~One half of one percent to the commission to be deposited in the racing promotion fund.~~
  - ~~(2)~~ ~~After eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of~~ Of ~~the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:~~
    - ~~(a)~~ (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
    - ~~(b)~~ (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
    - ~~(c)~~ (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.
    - ~~(d)~~ (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- 3. ~~For all pari-mutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage of which twenty percent is to be deposited in the racing promotion fund, thirty percent is to be deposited in the breeders' fund, and fifty percent is to be deposited in the purse fund.~~
- 4. The licensee conducting wagering on live racing, simulcast wagering, or account wagering shall retain all other money in the pari-mutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
- 5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting pari-mutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under section 53-06.1-11.1.

6. The commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission may not transfer money among the funds. The commission shall distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute payments awarded to qualified owners and breeders from the breeders' fund without requiring owners and breeders to apply for the payments. The commission, upon approval of the emergency commission, may receive no more than twenty-five percent of the racing promotion fund for the payment of the commission's operating expenses.

**SECTION 11. AMENDMENT.** Section 53-06.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-12. Audits and investigations by state auditor.** On request of the commission or attorney general, the state auditor shall conduct audits and investigate the operations of any licensee. The commission or attorney general shall reimburse the state auditor for all services rendered.

**SECTION 12. AMENDMENT.** Section 53-06.2-13 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-13. Duty of attorney general to participate in certain hearings and to conduct investigations –~~Employment of private counsel by commission.~~**

1. The attorney general shall represent the state in all hearings ~~before the commission~~ and shall prosecute all criminal proceedings arising from violations of this chapter. The attorney general may require payment for any services rendered to the ~~racing~~ commission. Payment for the services must be deposited in the attorney general's operating fund. ~~The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly. All hearings under this chapter must be conducted by the office of administrative hearings under chapter 28-32.~~
2. ~~a.~~ The attorney general may audit and investigate service providers, totalizator companies, site operators, or organizations applying to conduct or conducting pari-mutuel wagering. The attorney general may:
  - (1) ~~a.~~ Inspect all sites in which pari-mutuel wagering is conducted.
  - (2) ~~b.~~ Inspect all pari-mutuel wagering equipment and supplies.
  - (3) ~~c.~~ Seize, remove, or impound any pari-mutuel equipment, supplies, or books and records for the purpose of examination and inspection.
  - (4) ~~d.~~ Inspect, examine, photocopy, and audit all books and records.
- ~~b.~~ ~~The commission shall reimburse the attorney general for auditing and investigation. Payment for auditing and investigation must be deposited in the attorney general's operating fund.~~

**SECTION 13. AMENDMENT.** Section 53-06.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-14. Denial, suspension, and revocation of licenses - Reasons.** The commission or attorney general may deny, suspend, or revoke licenses ~~under the certificate system and privileges granted by it, and it may terminate racing privileges issued by each respective official~~ for just cause. Actions constituting just cause include:

1. Any action or attempted action by a person contrary to any law.
2. Corrupt practices, which include:



- a. Prearranging or attempting to prearrange the order of finish of a race.
  - b. Failing to properly pay winnings to a bettor or to properly return change to a bettor purchasing a ticket.
  - c. Falsifying or manipulating the odds on any entrant in a race.
3. Any violation of the rules of racing adopted by the commission or attorney general under this chapter.
  4. Willful falsification or misstatement of fact in an application for racing or pari-mutuel privileges.
  5. Material false statement to a racing official, the attorney general, or to the commission.
  6. Willful disobedience of ~~a commission~~ an order of the commission or attorney general or of a lawful order of a racing official other than a commission member.
  7. Continued failure or inability to meet financial obligations ~~connected with racing meets.~~
  8. Failure or inability to properly maintain a racetrack.

**SECTION 14. AMENDMENT.** Section 53-06.2-15 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-15. Revocation, suspension, fine - Procedure.** The commission or attorney general, on proof of violation by a licensee, its agents or employees, of this chapter or any rule adopted by the commission ~~may or attorney general to implement this chapter~~, on reasonable notice to the licensee and after giving the licensee an opportunity to be heard, ~~may~~ fine the licensee or revoke or suspend the license. If the license is revoked, the licensee is not eligible to receive another license within twelve months from the date of revocation. Every decision or order of the commission or attorney general must be made in writing and filed ~~with the director~~ for preservation as a permanent record of the commission or attorney general. ~~The decision must be signed by the chairman, attested by the director, and dated.~~

**SECTION 15. AMENDMENT.** Section 53-06.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-16. Prohibited acts - Penalties.**

1. No person may conduct a pari-mutuel ~~horse-race~~ wagering or racing unless that person is licensed by the commission or attorney general. Violation of this subsection is a class A misdemeanor.
2. No person may prearrange or attempt to prearrange the order of finish of a race. Violation of this subsection is a class C felony.

**SECTION 16. REPORT TO LEGISLATIVE COUNCIL.** The racing commission, in its biennial report to the legislative council under section 53-06.2-04, shall include information and recommendations for legislation which address the issue of the liability of charitable organizations that receive and disburse moneys handled through account wagering.

**SECTION 17. TRANSITION.** Any member of the North Dakota racing commission who is a member of the commission as of June 30, 2011, and whose term expires after July 1, 2011, may serve the remainder of that member's unexpired term.

**SECTION 18. EFFECTIVE DATE.** Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, and 15 of this Act become effective on July 1, 2011."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT - LC 98043.0113 FN 2**

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

SB 2024 was placed on the Seventh order of business on the calendar.

#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. GRINDBERG MOVED** that the conference committee report on SB 2024 be adopted.

#### REQUEST

**SEN. GRINDBERG REQUESTED** a verification vote on the motion to adopt the conference committee report on SB 2024, which motion prevailed.

The conference committee report on SB 2024 was adopted.

SB 2024, as amended, was placed on the Eleventh order.

#### SECOND READING OF SENATE BILL

**SB 2024:** A BILL for an Act to provide an appropriation for defraying the expenses of the racing commission; to create and enact two new sections to chapter 53-06.2 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to amend and reenact sections 53-06.2-02, 53-06.2-03, 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1, 53-06.2-11, 53-06.2-12, 53-06.2-13, 53-06.2-14, 53-06.2-15, and 53-06.2-16 of the North Dakota Century Code, relating to the regulation of live racing and pari-mutuel wagering; to provide for a report to the legislative council; to provide for transition; and to provide an effective date.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 29 YEAS, 18 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Bowman; Christmann; Dever; Erbele; Fischer; Flakoll; Grindberg; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Marcellais; Mathern; Miller; O'Connell; Oehlke; Pomeroy; Schneider; Seymour; Stenehjem; Taylor; Triplett; Warner

**NAYS:** Anderson; Andrist; Bakke; Behm; Cook; Dotzenrod; Fiebiger; Freborg; Heckaman; Lyson; Nelson; Nething; Nodland; Olafson; Potter; Robinson; Wanzek; Wardner

Engrossed SB 2024 passed and the title was agreed to.

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#### REPORT OF CONFERENCE COMMITTEE

**SB 2277:** Your conference committee (Sens. Dever, Krebsbach, Nelson and Reps. Dosch, Grande, Conklin) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1330, adopt amendments as follows, and place SB 2277 on the Seventh order:

That the House recede from its amendments as printed on page 1330 of the Senate Journal and page 1363 of the House Journal and that Senate Bill No. 2277 be amended as follows:

Page 1, line 10, after the first "payment" insert "from the fund" and replace "twenty-four" with "twenty"

Page 1, line 11, replace "eighteen" with "fifteen"

Renumber accordingly

SB 2277 was placed on the Seventh order of business on the calendar.

#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. NELSON MOVED** that the conference committee report on SB 2277 be adopted, which motion prevailed on a voice vote.

SB 2277, as amended, was placed on the Eleventh order.

#### SECOND READING OF SENATE BILL

**SB 2277:** A BILL for an Act to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to supplemental retiree benefit payments under the teachers' fund for retirement.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Home; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed SB 2277 passed and the title was agreed to.

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**REPORT OF CONFERENCE COMMITTEE**

**SB 2162, as engrossed:** Your conference committee (Sens. Dever, Erbele, Pomeroy and Reps. Weisz, Porter, Conrad) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1249-1250, adopt amendments as follows, and place SB 2162 on the Seventh order:

That the House recede from its amendments as printed on pages 1249 and 1250 of the Senate Journal and pages 1251 and 1252 of the House Journal and that Engrossed Senate Bill No. 2162 be amended as follows:

Page 1, line 1, after "enact" insert "a new section to chapter 50-06 and"

Page 1, line 2, after "to" insert "criminal history record checks and to"

Page 1, line 3, after "reenact" insert "subdivision g of subsection 2 of section 12-60-24 and"

Page 1, line 7, after "to" insert "criminal history record checks,"

Page 1, line 11, after the first semicolon insert "to provide a statement of legislative intent;" and after the second semicolon insert "to provide an appropriation;"

Page 1, after line 13, insert:

**"SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

**SECTION 2.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record checks.** The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;
2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and
3. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history record checks for new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home."

Page 2, line 9, replace "two" with "three"

Page 9, line 12, after "neglect" insert ". The department may issue a provisional in-home provider registration document in accordance with the rules of the department"

Page 10, remove lines 28 through 31

Page 11, remove lines 1 through 7

Page 11, line 8, replace "3." with "2."

Page 11, after line 9, insert:

"3. The department may issue a provisional self-declaration document in accordance with the rules of the department."

Page 11, line 27, replace "Applicants" with "Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant", replace the first "or" with an underscored comma, and after "self-declaration" insert an underscored comma

Page 11, line 28, after the second "as" insert "new"

Page 11, line 29, after "and" insert "new"

Page 12, line 20, overstrike "the applicant"

Page 13, line 2, replace the first "or" with an underscored comma and after "denial" insert ", or revocation"

Page 13, after line 3, insert:

"9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act."

Page 19, line 11, replace "7" with "9"

Page 23, after line 27, insert:

**"SECTION 28. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSTIONS - BACKGROUND CHECKS.** It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general to assist with conducting background checks under this Act, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 29. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$210,856, or so much of the sum as may be necessary, and \$82,904 in special funds, to the attorney general for the purpose of conducting background checks under this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011."

Page 23, line 29, replace "3" with "5"

Renumber accordingly

Engrossed SB 2162 was placed on the Seventh order of business on the calendar.

#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. DEVER MOVED** that the conference committee report on Engrossed SB 2162 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2162, as amended, was placed on the Eleventh order.

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

**SB 2162:** A BILL for an Act to create and enact a new section to chapter 50-06 and two new sections to chapter 50-11.1 of the North Dakota Century Code, relating to criminal history record checks and to self-declaration of an individual who provides early childhood services; to amend and reenact subdivision g of subsection 2 of section 12-60-24 and sections 50-11.1-02, 50-11.1-02.1, 50-11.1-03, 50-11.1-04, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3, 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6, 50-11.1-07.8, 50-11.1-08, 50-11.1-09, 50-11.1-10, 50-11.1-11, 50-11.1-11.1, 50-11.1-12, and 50-11.1-13.1 of the North Dakota Century Code, relating to criminal history record checks, licensing and

registration of early childhood services providers, investigation of early childhood services providers, denial or revocation of request for early childhood services provider licensure or registration, and resource and referral services; to repeal section 50-11.1-03.1 of the North Dakota Century Code, relating to cardiopulmonary resuscitation certification for a family child care home operator; to provide a statement of legislative intent; to provide a penalty; to provide an appropriation; and to provide an expiration date.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 45 YEAS, 2 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Christmann; Kilzer

Reengrossed SB 2162 passed and the title was agreed to.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. HOLMBERG MOVED** that the conference committee report on Engrossed HB 1018 as printed on SJ pages 1606-1607 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1018, as amended, was placed on the Fourteenth order.

#### SECOND READING OF HOUSE BILL

**HB 1018:** A BILL for an Act to provide an appropriation for defraying the expenses of the state historical society; and to declare an emergency.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1018, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. J. LEE MOVED** that the conference committee report on Reengrossed HB 1540 as printed on SJ pages 1611-1612 be adopted, which motion prevailed on a voice vote.

Reengrossed HB 1540, as amended, was placed on the Fourteenth order.

#### SECOND READING OF HOUSE BILL

**HB 1540:** A BILL for an Act to amend and reenact subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code, relating to the funding of economic assistance programs in counties with federally recognized Indian reservation land; to provide an appropriation; and to provide an effective date.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy;

Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Reengrossed HB 1540, as amended, passed and the title was agreed to.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. HOGUE MOVED** that the conference committee report on Engrossed HB 1509 as printed on SJ pages 1610-1611 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1509, as amended, was placed on the Fourteenth order.

#### SECOND READING OF HOUSE BILL

**HB 1509:** A BILL for an Act to create and enact a new section to chapter 17-04 of the North Dakota Century Code, relating to requirements for wind easement and wind energy leases; and to provide for a legislative council study of wind easement and wind energy leases.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 41 YEAS, 6 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lyson; Mathern; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Wanzek; Wardner; Warner

**NAYS:** Behm; Fiebigler; Lindaas; Marcellais; Miller; Triplett

Engrossed HB 1509, as amended, passed and the title was agreed to.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. FISCHER MOVED** that the conference committee report on Engrossed HB 1005 as printed on SJ page 1606 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1005, as amended, was placed on the Fourteenth order.

#### SECOND READING OF HOUSE BILL

**HB 1005:** A BILL for an Act to provide an appropriation for defraying the expenses of the state treasurer; to amend and reenact section 54-11-13 of the North Dakota Century Code, relating to the salary of the state treasurer; and to provide for a legislative council study.

#### ROLL CALL

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

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebigler; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Potter

Engrossed HB 1005, as amended, passed and the title was agreed to.

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#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. KREBSBACH MOVED** that the conference committee report on Engrossed HB 1002 as printed on SJ pages 1605-1606 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1002, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1002:** A BILL for an Act to provide an appropriation for defraying the expenses of the office of the secretary of state and public printing; to provide for a transfer; to provide legislative intent; to provide a contingent appropriation; to provide an exemption; and to amend and reenact sections 16.1-01-15 and 54-09-05 of the North Dakota Century Code, relating to interest earnings on the election fund and to the salary of the secretary of state.

**ROLL CALL**

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

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Potter

Engrossed HB 1002, as amended, passed and the title was agreed to.

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**REPORT OF CONFERENCE COMMITTEE**

**HB 1010, as engrossed:** Your conference committee (Sens. Grindberg, Wardner, Krauter and Reps. Thoreson, Delzer, Glassheim) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1190-1191, adopt amendments as follows, and place HB 1010 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1190 and 1191 of the House Journal and pages 1132 and 1133 of the Senate Journal and that Engrossed House Bill No. 1010 be amended as follows:

Page 1, line 3, replace the first "and" with "to create and enact a new subsection to section 26.1-36-23 of the North Dakota Century Code, relating to the continuation of group hospital, surgical, and medical coverage after termination of employment;"

Page 1, line 4, after "salary" insert "; and to declare an emergency"

Page 1, line 12, replace "419,738" with "548,923" and replace "6,206,485" with "6,335,670"

Page 1, line 15, replace "380,000" with "500,000" and replace "6,870,000" with "6,990,000"

Page 1, line 16, replace "854,625" with "1,103,810" and replace "15,309,749" with "15,558,934"

Page 1, after line 17, insert:

**"SECTION 2. APPROPRIATION - TRANSFER - STATE BONDING FUND.**

There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$500,000, which the office of management and budget shall transfer to the state bonding fund, for the period beginning with the effective date of this Act and ending June 30, 2011."

Page 1, line 19, replace "\$6,500,000" with "\$6,820,000"

Page 1, line 21, replace "\$300,000" with "\$620,000"

Page 1, line 22, remove "Funding"

Page 1, remove line 23

Page 2, remove lines 19 through 24

Page 2, after line 30, insert:

**"SECTION 10.** A new subsection to section 26.1-36-23 of the North Dakota Century Code is created and enacted as follows:

- a. Notwithstanding any other provision of this section, an employee or member who does not have an election of continuation coverage as described in this section in effect on the effective date of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5], but who would be an assistance-eligible individual under title III of division B of the Act if the election were in effect, may elect continuation coverage. The employer or the group policyholder shall provide employees or members with additional written notice of the right to elect coverage under this subsection within sixty days of the date of enactment of the American Recovery and Reinvestment Act of 2009 or within fourteen days of the effective date of this Act, whichever is later. The employee or member may make the election in writing no later than sixty days after the date the employer or the group policyholder provides the notice to the employee or member.
- b. Continuation coverage elected under this subsection commences with the first period of coverage beginning after February 16, 2009, and may not extend beyond the period of continuation coverage that would have been required if the coverage had instead been elected under subsection 4.
- c. The period beginning on the date that the employee or member was involuntarily terminated and ending when the continuation coverage starts must be disregarded for the purpose of determining whether a preexisting condition exclusion period applies.
- d. An employee or member electing continuation under this subsection shall pay to the group policyholder or the employer, on a monthly basis in advance, the amount of contribution required by the policyholder or employer, but not more than the group rate for the insurance being continued under the group policy on the due date of each payment. The employee's or member's written election of continuation, together with the contribution required to establish contributions on a monthly basis in advance, must be given to the policyholder or employer within thirty-one days of the date the employee's or member's election of continuation coverage.
- e. Continuation of insurance under this subsection terminates at the earlier of the date when the person fails to satisfy subsection 2 or when the person fails to satisfy any requirement of subsection 6.
- f. The notification described in subsection 7 is not required for continuation coverage elected under this subsection.
- g. Except as otherwise provided in this subsection, the provisions of this section apply to an employee or member electing continuation coverage.

**SECTION 11. EMERGENCY.** Sections 2 and 10 of this Act are declared to be an emergency measure."

Renumber accordingly

#### **STATEMENT OF PURPOSE OF AMENDMENT - LC 98011.0206 FN 1**

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

Engrossed HB 1010 was placed on the Seventh order of business on the calendar.

#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. WARDNER MOVED** that the conference committee report on Engrossed HB 1010 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1010, as amended, was placed on the Fourteenth order.

#### **SECOND READING OF HOUSE BILL**

**HB 1010:** A BILL for an Act to provide an appropriation for defraying the expenses of the insurance commissioner; to provide for fund transfers; to provide for making payments of insurance premiums tax collections to fire departments; to create and enact a new subsection to section 26.1-36-23 of the North Dakota Century Code, relating to the



continuation of group hospital, surgical, and medical coverage after termination of employment; to amend and reenact section 26.1-01-09 of the North Dakota Century Code, relating to the commissioner's salary; and to declare an emergency.

### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebig; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1010, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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### REPORT OF CONFERENCE COMMITTEE

**HB 1554, as engrossed:** Your conference committee (Sens. Cook, Dever, Nelson and Reps. Koppelman, Headland, J. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1310-1314, adopt amendments as follows, and place HB 1554 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1310-1314 of the House Journal and pages 1120-1124 of the Senate Journal and that Engrossed House Bill No. 1554 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; to provide legislative intent; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 40-47-01.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-47-01.1. ~~(Effective through July 31, 2009) Extraterritorial zoning—Mediation—Determination by administrative law judge.~~**

1. ~~A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:~~
  - a. ~~One half mile [80 kilometer] if the city has a population of fewer than five thousand.~~
  - b. ~~One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty five thousand.~~
  - c. ~~Two miles [3.22 kilometers] if the city has a population of twenty five thousand or more.~~
2. ~~Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.~~
3. ~~If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the~~

~~majority of the platted lot lies outside the quarter-quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.~~

- ~~4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.~~
- ~~5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.~~
- ~~6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:~~
  - ~~a. The proportional extraterritorial zoning authority of the cities involved in the dispute;~~
  - ~~b. The proximity of the land in dispute to the corporate limits of each city involved;~~
  - ~~c. The proximity of the land in dispute to developed property in the cities involved;~~
  - ~~d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;~~
  - ~~e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;~~

- ~~f. The growth pattern of the cities involved in the dispute; and~~
- ~~g. Any other factor determined to be relevant by the administrative law judge.~~
- 7. ~~For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.~~
- 8. ~~When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.~~
- 9. ~~For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.~~

**~~(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.~~**

- 1. a. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a- (1) One mile [1.61 kilometers] if the city has a population of less fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
  - b- (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
  - e- (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.
  - b. Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.
  - c. The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.
- 2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to

an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.
4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
- 3- 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- 4- 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city

limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

- 5- 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection ~~4~~ 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
- 6- 8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 10. For the purposes of this section, a section or a quarter quarter section ~~shall be is as~~ determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that land use regulations under consideration by local governments be readily available to the public. Local governments are encouraged to jointly discuss their land use regulations and consider the cumulative impact of local regulations.

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

Renumber accordingly

Engrossed HB 1554 was placed on the Seventh order of business on the calendar.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. COOK MOVED** that the conference committee report on Engrossed HB 1554 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1554, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1554:** A BILL for an Act to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; to provide legislative intent; and to declare an emergency.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 45 YEAS, 2 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nothing; Nodland; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** O'Connell; Stenehjem

Engrossed HB 1554, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has appointed as a conference committee to act with a like committee from the Senate on:

**HB 1020:** Reps. Skarphol; Wald; Williams

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2024, SB 2162, SB 2277.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: HB 1002, HB 1005, HB 1509, HB 1540.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report, subsequently passed, and the emergency clause carried: HB 1010, HB 1018, HB 1554.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: HB 1324.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: SB 2008, SB 2038, SB 2178.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report, subsequently passed, and the emergency clause carried: HB 1009.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: SB 2005, SB 2012, SB 2013, SB 2022, SB 2023, SB 2064, SB 2198, SB 2225, SB 2248, SB 2266, SB 2267, SB 2371, SB 2373, SB 2391.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**

**MR. SPEAKER:** The President has signed: HB 1007, HB 1019, HB 1090, HB 1305, HB 1385, HB 1399, HB 1412, HB 1449.

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate be on the Fourth, Fifth, Seventh, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 8:00 a.m., Friday, May 1, 2009, which motion prevailed.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1009, as engrossed:** Your conference committee (Sens. Bowman, Fischer, Krauter and Reps. Klein, Martinson, Onstad) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1381-1382, adopt amendments as follows, and place HB 1009 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1381 and 1382 of the House Journal and pages 1263 and 1264 of the Senate Journal and that Engrossed House Bill No. 1009 be amended as follows:

Page 1, line 3, replace "section" with "sections 4-01-19 and", after "4-01-21" insert "and subdivision d of subsection 1 of section 19-18-04", and after "to" insert "marketing program revenue,"

Page 1, line 4, after "commissioner" insert ", and pesticide registration fees", remove "to provide for transfers; and", and after "study" insert "; and to declare an emergency"

Page 1, line 13, replace "1,145,262" with "1,581,356" and replace "8,130,102" with "8,566,196"

Page 1, line 14, replace "1,065,577" with "1,380,220" and replace "5,779,960" with "6,094,603"

Page 1, line 17, replace "78,623" with "263,623" and replace "2,378,325" with "2,563,325"

Page 1, line 20, replace "3,293,462" with "4,229,199" and replace "20,380,612" with "21,316,349"

Page 1, line 21, replace "2,141,162" with "2,706,140" and replace "13,529,488" with "14,094,466"

Page 1, line 22, replace "1,152,300" with "1,523,059" and replace "6,851,124" with "7,221,883"

Page 1, line 23, replace "2.00" with "7.00" and replace "69.50" with "74.50"

Page 1, after line 23, insert:

**"SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$130,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of employing a department transition support position, for the period beginning with the effective date of this Act and ending June 30, 2011. The agriculture commissioner is authorized one full-time equivalent position for the period beginning with the effective date of this Act and ending December 31, 2010. The funding provided in this section is considered one-time funding."

Page 2, line 3, replace "\$3,529,556" with "\$3,888,578"

Page 2, line 12, replace "\$768,800" with "\$968,800"

Page 3, replace lines 4 through 9 with:

**"SECTION 8. LIVESTOCK HEALTH PERMIT INSPECTION PROGRAM.** The state board of animal health shall increase the number of health permit inspections on livestock entering the state for the biennium beginning July 1, 2009, and ending June 30, 2011. As part of the program, the board shall provide public information on the results of the livestock health permit inspections."

**SECTION 9. OFFICE SPACE LEASE FUNDING - BUDGET SECTION APPROVAL.** The operating expenses line item in section 1 of this Act includes the sum of \$120,000 from the general fund which the agriculture commissioner may use to lease additional office space for department purposes, subject to budget section approval.

**SECTION 10. PROJECT SAFE SEND - 2009 FLOOD PESTICIDE CLEANUP.** The operating expenses line item in section 1 of this Act includes the sum of \$40,000 from the environment and rangeland protection fund which the agriculture commissioner shall use for the collection of damaged pesticides resulting from 2009 flooding under the project safe send program for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 11. AMENDMENT.** Section 4-01-19 of the North Dakota Century Code is amended and reenacted as follows:

**4-01-19. Marketing bureau.** The agriculture commissioner shall establish and maintain a marketing bureau for the purpose of gathering and disseminating statistical information on agricultural marketing problems of the state and engaging in marketing services of agricultural products. Any moneys received or generated by the pride of Dakota program must be deposited in the ~~general~~ agriculture department operating fund in the state treasury."

Page 3, after line 15, insert:

**"SECTION 13. AMENDMENT.** Subdivision d of subsection 1 of section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit ~~five~~ fifty ~~dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.~~

**SECTION 14. FULL-TIME EQUIVALENT POSITION - EMERGENCY COMMISSION APPROVAL.** The agriculture commissioner may request from the emergency commission an additional full-time equivalent position for the state meat inspection program if demand for the program increases sufficient to require the position for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 15. EMERGENCY.** The sum of \$40,000 for project safe send included in the operating expenses line item in section 1 and section 2 of this Act are declared to be an emergency measure."

Renumber accordingly

#### **STATEMENT OF PURPOSE OF AMENDMENT - LC 98010.0208 FN 3**

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

Engrossed HB 1009 was placed on the Seventh order of business on the calendar.

#### **REPORT OF CONFERENCE COMMITTEE**

**HB 1324, as reengrossed:** Your conference committee (Sens. Miller, Cook, Anderson and Reps. Belter, Headland, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1220-1242, adopt amendments as follows, and place HB 1324 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1220-1242 of the House Journal and pages 1037-1059 of the Senate Journal and that Reengrossed House Bill No. 1324 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23,



57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, sections 57-38.5-03 and 57-38.6-03, and subsection 3 of section 57-51-15 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return and allocation of oil and gas gross production tax revenues to political subdivisions; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to provide for legislative council studies; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer ~~under subsection 2 of section 57-38-67~~ who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4.
  - a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
  - b. ~~This credit may not be claimed by an individual who elects to file an income tax return under section 57-38-30.3 or by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.~~
  - c. ~~No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.~~
  - d. ~~The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.~~

**SECTION 3. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with~~

interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections 57-35.3-03, ~~57-38-29~~, 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~4-~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2-~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus
  - ~~3-~~ c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.
2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 ~~and may be treated as an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

**SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding

for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

**SECTION 7. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

**40-63-06. Historic preservation and renovation tax credit.** A credit against state tax liability as determined under sections 57-35.3-03, ~~57-38-29~~, 57-38-30, and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

**SECTION 8. AMENDMENT.** Subsection 4 of section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

4. A credit against state tax liability as determined under section 57-35.3-03, ~~57-38-29~~, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.

**SECTION 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

**SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under

section 57-38-30 for the cost of a geothermal, solar, wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** ~~Any~~ A taxpayer filing an income tax return under this chapter, ~~except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.17. Credit for investments in development corporations.** ~~An individual, estate, trust, or~~ A corporation is allowed, as a credit against a tax otherwise due under section ~~57-38-29 or~~ 57-38-30, the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is entitled to a credit against the tax imposed under section ~~57-38-29 or~~ 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29 or~~ 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts

made by the taxpayer during the year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section ~~57-38-29~~, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.
2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.

- (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
- b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
- c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.
4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.
5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

**SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.

**SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section ~~57-38-29~~ or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were

levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

**SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
  - a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
  - c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.** The gross income of individuals must be allocated and apportioned as follows:

1.
  - a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
  - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. ~~a-~~ Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state.



- b. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
- ~~(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.~~
  - ~~(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~
3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
  4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
  5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.
  6.
    - a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains from the business, must be assigned to this state without regard to the situs of the property.
    - b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.

- e. ~~A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:~~
- (1) ~~The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.~~
  - (2) ~~The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.~~
7. All other items of gross income must be assigned to the taxpayer's domicile.
8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

~~This section applies to every income year beginning after December 31, 1956.~~

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection 6 1 of section ~~57-38-04~~ 57-38-30.3.

**SECTION 26. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing Individual, estate, and trust income tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.	
If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

b. Married filing jointly and surviving spouse.	
If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

c. Married filing separately.	
If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

d. Head of household.	
If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	2.10%
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

e. Estates and trusts.	
If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$352.45 plus 5.54% of amount over \$8,900

- f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.
2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not

apply to federal service while attending annual training, basic military training, or professional military education.

- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
  - i. Reduced by interest and income from bonds issued under chapter 11-37.
  - j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
    - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
    - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
    - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
  - k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
  - l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
  - m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.
  - n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
  - o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.
- 3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
  - 4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by

the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.

- b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.
  - c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:
    - (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
    - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
  - d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the following tax credits:
- a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.

- k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
  - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.
- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
- c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
- d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

**SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.**

A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
- a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and

one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

- b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
  - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of



the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

4. For purposes of this section:
  - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
  - b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
  - a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.

- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].
10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.

11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29 or~~ 57-38-30.3.
12. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection 2 ~~or 6 of section 57-38-04 1 or subsection 4 of section 57-38-30.3~~, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29, 57-38-30, or 57-38-30.3~~.

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.

7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.
10. An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 30. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to

the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.

5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:
  - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 31. AMENDMENT.** Subsection 3 of section 57-51-15 of the North Dakota Century Code as amended by House Bill No. 1304, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

3. The amount to which each county is entitled under subsection 2 must be allocated within the county so the first ~~four~~ five million ~~six~~ three hundred ~~fifty~~ thousand dollars is allocated under subsection 4 for each fiscal year and any amount received by a county exceeding ~~four~~ five million ~~six~~ three hundred ~~fifty~~ thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 5.

**SECTION 32. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 33. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying corporate income taxes, with emphasis on the Uniform Division of Income Tax Act and the apportionment formula applied to multistate corporations doing business in North Dakota and the impact of how other states have adjusted apportionment factors under the Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 34. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 35. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, except section 31 of this Act, which is effective for taxable events occurring after June 30, 2009."

Renumber accordingly

Reengrossed HB 1324 was placed on the Seventh order of business on the calendar.

#### **REPORT OF CONFERENCE COMMITTEE**

**HCR 3054:** Your conference committee (Sens. Hogue, Oehlke, Triplett and Reps. Koppelman, Weiler, Schneider) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1144-1145, adopt amendments as follows, and place HCR 3054 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1144 and 1145 of the House Journal and page 984 of the Senate Journal and that House Concurrent Resolution No. 3054 be amended as follows:

Page 1, replace lines 15 through 25 with:

- "1. Thirty percent of total revenue derived from taxes on oil and gas production or extraction must be transferred by the state treasurer to a special fund in the state treasury known as the legacy fund. The legislative assembly may transfer funds from any source into the legacy fund and such transfers become part of the principal of the legacy fund.
2. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and an expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the legislative assembly. Not more than fifteen percent of the principal of the legacy fund may be expended during a biennium.
3. Statutory programs, in existence as a result of legislation enacted through 2009, providing for impact grants, direct revenue allocations to political subdivisions, and deposits in the oil and gas research fund must remain in effect but the legislative assembly may adjust statutory allocations for those purposes."

Page 2, remove lines 1 through 4

Page 2, line 6, after the first "fund" insert "accruing after June 30, 2017,"

Page 2, line 7, replace "fiscal year" with "biennium" and remove "The principal of the North Dakota legacy fund may not be"

Page 2, remove lines 8 through 10

Renumber accordingly

HCR 3054 was placed on the Seventh order of business on the calendar.

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

**Fran A. Gronberg, Secretary**

