

JOURNAL OF THE SENATE

Sixty-second Legislative Assembly

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Bismarck, January 28, 2011

The Senate convened at 12:30 p.m., with President Wrigley presiding.

The prayer was offered by Reverend Heather Brown, Trinity Lutheran Parish, Glenburn and Lansford.

The roll was called and all members were present except Senators Cook, Miller, and Triplett.

A quorum was declared by the President.

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 Seventeenth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 189, line 11, after "**January**" remove ","

Page 190, line 21, after "**MOVED**" remove "that"

Page 194, line 34, remove ", as amended"

Page 194, line 36, remove "as amended"

Page 195, line 16, remove ", as amended"

Page 195, line 18, remove "as amended"

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

CONSIDERATION OF AMENDMENTS

SB 2079: SEN. DEVER (Human Services Committee) MOVED that the amendments on SJ page 194 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

SB 2147: SEN. KLEIN (Agriculture Committee) MOVED that the amendments on SJ page 195 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

SB 2128: SEN. FLAKOLL (Agriculture Committee) MOVED that the amendments on SJ pages 194-195 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

SB 2089: SEN. SCHNEIDER (Industry, Business and Labor Committee) MOVED that the amendments on SJ page 194 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

MOTION

SEN. CHRISTMANN MOVED that SB 2209 be moved to the bottom of the Eleventh order, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2216: A BILL for an Act to create and enact a new section to chapter 57-39.6 of the North Dakota Century Code, relating to a reimbursement of alcoholic beverage gross

receipts taxes for operation of a smoke-free bar; and to provide an effective date.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 2 YEAS, 42 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Larsen; Mathern

NAYS: Andrist; Berry; Bowman; Burckhard; Christmann; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Uglem; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Cook; Miller; Triplett

Engrossed SB 2216 lost.

SECOND READING OF SENATE BILL

SB 2226: A BILL for an Act to create and enact sections 15.1-20-02.1, 15.1-20-03.1, and 15.1-20-03.2 of the North Dakota Century Code, relating to compulsory attendance at school; and to amend and reenact section 15.1-20-03 of the North Dakota Century Code, relating to compulsory attendance.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 43 YEAS, 1 NAY, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sorvaag; Stenehjem; Taylor; Uglem; Wanzek; Wardner; Warner

NAYS: Sitte

ABSENT AND NOT VOTING: Cook; Miller; Triplett

Engrossed SB 2226 passed.

SECOND READING OF SENATE BILL

SB 2270: A BILL for an Act to amend and reenact section 50-01.2-03.2 of the North Dakota Century Code, relating to county social service board reporting.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 44 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Uglem; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Cook; Miller; Triplett

SB 2270 passed.

SECOND READING OF SENATE BILL

SB 2031: A BILL for an Act to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2 of the North Dakota Century Code, relating to the exemption from sales and use tax for construction materials used in a wind-powered electrical generating facility; and to provide an effective date.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 13 YEAS, 31 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Krebsbach; Laffen; Luick; Mathern; Murphy; Nelson; O'Connell; Robinson; Schneider; Sitte; Taylor; Wardner; Warner

NAYS: Andrist; Berry; Bowman; Burckhard; Christmann; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Larsen; Lee, G.; Lee, J.; Lyson; Marcellais; Nething; Nodland; Oehlke; Olafson; Schaible; Sorvaag; Stenehjem; Uglem; Wanzek

ABSENT AND NOT VOTING: Cook; Miller; Triplett

SB 2031 lost.

SECOND READING OF SENATE BILL

SB 2198: A BILL for an Act to create and enact a new section to chapter 54-21.2 of the North Dakota Century Code, relating to heating, ventilation, and air-conditioning interoperability standards; and to provide an effective date.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 44 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Uglem; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Cook; Miller; Triplett

SB 2198 passed.

SECOND READING OF SENATE BILL

SB 2250: A BILL for an Act to provide for operator's license renewals.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 12 YEAS, 32 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Dotzenrod; Freborg; Heckaman; Hogue; Laffen; Larsen; Lyson; Nething

NAYS: Christmann; Dever; Erbele; Fischer; Flakoll; Grindberg; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Luick; Marcellais; Mathern; Murphy; Nelson; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Uglem; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Cook; Miller; Triplett

SB 2250 lost.

SECOND READING OF SENATE BILL

SB 2148: A BILL for an Act to amend and reenact section 43-12.1-18 of the North Dakota Century Code, relating to prescriptive practice standards for advanced practice registered nurses.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 33 YEAS, 11 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Andrist; Bowman; Christmann; Dever; Dotzenrod; Erbele; Flakoll; Freborg; Heckaman; Hogue; Holmberg; Klein; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Stenehjem; Taylor; Uglem; Wanzek; Warner

NAYS: Berry; Burckhard; Fischer; Grindberg; Kilzer; Krebsbach; Laffen; Larsen; Murphy; Sorvaag; Wardner

ABSENT AND NOT VOTING: Cook; Miller; Triplett

SB 2148 passed.

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

MR. SPEAKER: The Senate has passed, and your favorable consideration is requested on: SB 2028, SB 2145, SB 2158, SB 2284, SB 2289.

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

MR. PRESIDENT: The House has passed, and your favorable consideration is requested on: HB 1225.

MOTION

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

MOTION

SEN. CHRISTMANN MOVED that the Senate be on the Fourth, Fifth, and Ninth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Monday, January 31, 2011, which motion prevailed.

REPORT OF STANDING COMMITTEE

SB 2030: Agriculture Committee (Sen. Flakoll, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2030 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2038: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2038 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "and"

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

Page 3, line 10, after the period insert "The commission on legal counsel for indigents is authorized one full-time equivalent position for the purposes of this section."

SECTION 3. EFFECTIVE DATE. This Act becomes effective on January 1, 2012."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2039: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2039 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2041: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2041 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2051: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2051 was placed on the Sixth order on the calendar.

Page 2, line 16, replace the first "the" with "serious bodily"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2052: Judiciary Committee (Sen. Nething, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2052 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2054: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2054 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2076: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2076 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2082: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2082 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2090: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2090 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2091: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2091 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2105: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2105 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 4, after "indigents" insert "; and to provide an appropriation"

Page 1, line 19, after the boldfaced underscored period insert:

"1."

Page 2, line 1, replace "1." with "a."

Page 2, line 2, replace "2." with "b."

Page 2, line 3, replace "3." with "c."

Page 2, line 5, replace "4." with "d."

Page 2, line 7, replace "5." with "e."

Page 2, line 9, replace "6." with "f."

Page 2, after line 9, insert:

"2."

Page 2, after line 11, insert:

"SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$70,500, or so much of the sum as may be necessary, to the commission on legal counsel for indigents for the purpose of providing legal counsel services to persons who refuse to retain their own counsel, if the court has determined that they are incompetent to represent themselves, for the biennium beginning July 1, 2011, and ending June 30, 2013. "

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2112: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2112 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2133: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2133 was placed on the Sixth order on the calendar.

Page 1, line 21, replace "must" with "shall"

Page 1, line 22, after "seizure" insert "and the law enforcement agency shall take possession of the identification within twenty-four hours after receipt of the notice"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2177: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2177 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2190: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2190 was placed on the Sixth order on the calendar.

Page 1, line 3, remove the first "and"

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

Page 1, after line 18, insert:

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

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2196: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2196 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2219: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2219 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2223: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2223 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2225: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2225 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2229: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2229 was placed on the Sixth order on the calendar.

Page 1, line 10, after the period insert "This appropriation is not subject to section 54-44.1-11."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2235: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2235 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2246: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2246 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2247: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2247 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2281: Education Committee (Sen. Freborg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2281 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and a new section to chapter 32-12.1"

Page 1, line 8, remove "The superintendent of public instruction shall ensure that any athletic activity that is"

Page 1, line 9, replace "sponsored or sanctioned by a school or school district" with "Each school district that sponsors or sanctions any athletic activity"

Page 1, line 14, after the first underscored comma insert "athletic"

Page 1, line 14, remove "immediately"

Page 1, line 15, after "exhibits" insert "or reports"

Page 1, line 18, replace "physician" with "licensed health care provider"

Page 1, line 19, remove "and"

Page 1, line 21, replace "physician" with "licensed health care provider"

Page 1, line 22, after "or" insert "athletic"

Page 1, line 23, after "trainer" insert "; and

- e. Require that each coach receive biennial training to educate the coach about the nature and risk of concussion, including the risk of play after a concussion or head injury

Page 2, line 1, replace "superintendent of public instruction" with "school district"

Page 2, line 2, after "parent" insert "or guardian"

Page 2, line 3, replace "electronically" with "in written or verifiable electronic form"

Page 2, after line 5, insert:

- "4. This section does not create any liability for, or create a cause of action against, a school district, its officers, or its employees.
- 5. To carry out its duties under this section, a school district may contract for and accept private contributions, gifts, and grants, or in-kind aid from the federal government, the state, or any other source.
- 6. For the purposes of this section, "licensed health care provider" means an individual who is registered, licensed, certified, or otherwise statutorily recognized in this state to provide health care services or treatment within the individual's scope of practice and who is trained and experienced in the evaluation, management, and care of concussions."

Page 2, remove lines 6 through 27

Renumber accordingly

FIRST READING OF SENATE CONCURRENT RESOLUTION

Sens. Wanzek, Luick, Uglem and Reps. Belter, Headland, D. Johnson introduced:

SCR 4019: A concurrent resolution recognizing the benefits of subsurface drain tile projects and urging the State Water Commission, State Engineer, State Department of Health, and water resource districts to recognize the beneficial attributes of and to promote drain tile projects in this state.

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

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

William R. Horton, Secretary