

JOURNAL OF THE SENATE

Fifty-eighth Legislative Assembly

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Bismarck, April 18, 2003

The Senate convened at 8:30 a.m., with President Dalrymple presiding.

The prayer was offered by Senator Tollefson.

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

A quorum was declared by the President.

CONSIDERATION OF CONFERENCE COMMITTEE REPORT

SEN. FLAKOLL MOVED that the conference committee report on Engrossed HB 1295 as printed on SJ pages 1444-1445 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1295, as amended, was placed on the Fourteenth order.

SECOND READING OF HOUSE BILL

HB 1295: A BILL for an Act to amend and reenact section 15.1-02-13 of the North Dakota Century Code, relating to school district employee compensation reports.

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, 0 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Andrist; Bercier; Bowman; Brown; Christenson; Christmann; Cook; Dever; Erbele; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nothing; Nichols; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Urlacher; Wardner

ABSENT AND NOT VOTING: Espegard; Polovitz

Engrossed HB 1295, as amended, passed and the title was agreed to.

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

MR. PRESIDENT: The House has not adopted the conference committee report: HB 1005 and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1005: Reps. Skarphol; Svedjan; Glassheim

APPOINTMENT OF CONFERENCE COMMITTEE

SEN. HOLMBERG MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on Engrossed HB 1005, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on Engrossed HB 1005: Sens. Grindberg, Schobinger, Lindaas.

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

MR. PRESIDENT: The House has concurred in the Senate amendments and subsequently passed: HCR 3039.

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

MR. PRESIDENT: The House has not adopted the conference committee report: HCR 3005.

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

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

SB 2006: Reps. Skarphol; Svedjan; Glassheim

SB 2011: Reprs. Skarphol; Svedjan; Glassheim

SB 2014: Reprs. Skarphol; Svedjan; Glassheim

SB 2017: Reprs. Skarphol; Svedjan; Glassheim

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

MR. PRESIDENT: The House has adopted the conference committee report and subsequently passed: SB 2190.

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

MR. PRESIDENT: The House has adopted the conference committee report, subsequently passed, and the emergency clause carried: SB 2418.

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

MR. PRESIDENT: The House has adopted the conference committee report, subsequently passed, and the emergency clause failed: SB 2345.

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

MR. SPEAKER: The President has appointed as a conference committee to act with a like committee from the House on:

HB 1005: Sens. Grindberg; Schobinger; Lindaas

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

MR. SPEAKER: The Senate has adopted the conference committee report and subsequently passed: HB 1295.

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

MR. SPEAKER: The President has signed: HB 1050, HB 1179, HB 1218, HB 1439.

DELIVERY OF ENROLLED BILLS AND RESOLUTIONS

The following bills were delivered to the Governor for approval on April 18, 2003: SB 2148, SB 2149, SB 2150, SB 2188, SB 2235, SB 2363, SB 2384.

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 Dalrymple presiding.

COMMUNICATION FROM GOVERNOR JOHN HOEVEN

This is to inform you that on April 18, 2003, I have signed the following: SB 2025, SB 2045, SB 2086, SB 2160, SB 2282, and SB 2334.

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

MR. PRESIDENT: The House has concurred in the Senate amendments and subsequently passed: HB 1421.

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

MR. PRESIDENT: The House has adopted the conference committee report and subsequently passed: HB 1489.

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

MR. PRESIDENT: The House has adopted the conference committee report and subsequently failed to pass: HCR 3005.

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 Seventh orders of business and at the conclusion of those orders, the Senate stand adjourned until 9:30 a.m., Monday, April 21, 2003, which motion prevailed.

REPORT OF CONFERENCE COMMITTEE

SB 2007, as engrossed: Your conference committee (Sens. Kringstad, Thane, Mathern and Reprs. Koppelman, Thoreson, Kroeber) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1118-1119, adopt amendments as follows, and place SB 2007 on the Seventh order:

That the House recede from its amendments as printed on pages 1118 and 1119 of the Senate Journal and pages 1237 and 1238 of the House Journal and that Engrossed Senate Bill No. 2007 be amended as follows:

Page 1, line 9, replace "945,564" with "944,532"

Page 1, line 10, replace "159,213" with "163,113"

Page 1, line 11, replace "1,104,777" with "1,107,645"

Page 1, line 12, replace "229,948" with "229,698"

Page 1, line 13, replace "874,829" with "877,947"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2007 - Labor Commissioner - Conference Committee Action

	EXECUTIVE BUDGET	SENATE VERSION	CONFERENCE COMMITTEE CHANGES	CONFERENCE COMMITTEE VERSION	HOUSE VERSION	COMPARISON TO HOUSE
Salaries and wages	\$955,888	\$945,564	(\$1,032)	\$944,532	\$944,532	
Operating expenses	<u>160,713</u>	<u>159,213</u>	<u>3,900</u>	<u>163,113</u>	<u>158,313</u>	<u>\$4,800</u>
Total all funds	\$1,116,601	\$1,104,777	\$2,868	\$1,107,645	\$1,102,845	\$4,800
Less estimated income	<u>232,460</u>	<u>229,948</u>	<u>(250)</u>	<u>229,698</u>	<u>229,698</u>	
General fund	\$884,141	\$874,829	\$3,118	\$877,947	\$873,147	\$4,800
FTE	10.00	10.00	0.00	10.00	10.00	0.00

Dept. 406 - Labor Commissioner - Detail of Conference Committee Changes

	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE ¹	RESTORES FUNDING FOR OPERATING EXPENSES ²	INCREASES FUNDING FOR OPERATING EXPENSES ³	REDUCES FUNDING FOR INFORMATION TECHNOLOGY COSTS ⁴	TOTAL CONFERENCE COMMITTEE CHANGES
Salaries and wages	(\$1,032)				(\$1,032)
Operating expenses		<u>\$1,500</u>	<u>\$4,000</u>	<u>(\$1,600)</u>	<u>3,900</u>
Total all funds	(\$1,032)	\$1,500	\$4,000	(\$1,600)	\$2,868
Less estimated income	<u>(250)</u>				<u>(250)</u>
General fund	(\$782)	\$1,500	\$4,000	(\$1,600)	\$3,118
FTE	0.00	0.00	0.00	0.00	0.00

¹ This amendment reduces funding for state employee health insurance premiums from \$493 to \$488.70 per month.

² This amendment restores funding of \$1,500 from the general fund that was removed by the Senate. The funding is to be used for Labor Department booth rental space.

³ This amendment increases funding for operating expenses by \$4,000 from the general fund for travel expenses associated with the commissioner's participation in the National Association of Government Labor Officials.

⁴ This amendment reduces funding for information technology by \$1,600 from the general fund, which represents a reduction in information technology funding from the general fund of approximately 5 percent. The House had reduced funding for information technology by \$6,400 from the general fund, a reduction of approximately 20 percent.

Engrossed SB 2007 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

SB 2358, as engrossed: Your conference committee (Sens. Trenbeath, Nething, Taylor and Reps. Hawken, Weisz, Delmore) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1057-1059, adopt amendments as follows, and place SB 2358 on the Seventh order:

That the House recede from its amendments as printed on pages 1057-1059 of the Senate Journal and pages 1148-1150 of the House Journal and that Engrossed Senate Bill No. 2358 be amended as follows:

Page 1, line 2, replace "transfer" with "use"

Page 1, line 3, replace "and" with a comma and after "60-06-06.1" insert ", and 60-06-15"

Page 1, line 4, after the second semicolon insert "and"

Page 1, line 5, remove "; and to provide an expiration date"

Page 1, line 9, replace "agreements" with "terms"

Page 1, line 10, replace "A purchase agreement, deed, bill of sale," with "Except as provided in this section, any provision of a"

Page 1, line 11, replace "pertaining to the sale, lease, license or other" with "for the", after "use" insert "or occupancy", and after the first "of" insert "railroad"

Page 1, line 12, replace "nonrailroad purchaser," with "state or federal licensed public grain warehouse or potato warehouse"

Page 1, line 13, remove "lessee, licensee, or other contracting party"

Page 1, line 17, replace "that is" with "to the extent"

Page 1, line 19, replace "personal" with "bodily"

Page 1, line 20, replace "nonrailroad purchaser, lessee, licensee, or other contracting" with "state or federal licensed public grain warehouse or potato warehouse"

Page 1, line 21, remove "party"

Page 1, line 23, replace "that is" with "to the extent"

Page 1, line 24, replace "; or coverage or other" with an underscored period

Page 2, remove lines 1 through 4

Page 2, line 6, replace "personal" with "bodily"

Page 2, line 8, after "liability" insert "to the extent"

Page 2, line 10, remove "purchase"

Page 2, line 11, remove "agreement, deed, bill of sale,"

Page 2, replace lines 13 through 15 with:

3. Notwithstanding any other provision of law, a railroad may require that a state or federal licensed public grain warehouse or potato warehouse contracting for the use or occupancy of railroad right of way, or other adjoining property, provide the following:

a. Commercial general liability insurance of not more than two million dollars per occurrence and not more than four million dollars for multiple occurrences coverage for bodily injury, death, and property damage arising out of the use or occupancy of the property by the contracting party, including:

(1) Damage caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors;

(2) An endorsement naming the railroad as an additional insured; and

(3) An endorsement under the Federal Employers Liability Act [45 U.S.C. et seq.] if the warehouse engages in the business of transporting goods from the warehouse by means of the railroad in an annual volume in excess of two hundred fifty loaded railroad cars.

b. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, environmental damage, and property

damage claims and liability up to two million dollars per occurrence arising out of the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors.

- c. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, property damage, and environmental damage suffered by the lessee, licensee, or other contracting party, its employees, agents, and invitees, arising from the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors unless caused solely by the acts or omission of the railroad that are willful, wanton, or grossly negligent.
 - d. Pollution legal liability insurance up to one million dollars, unless the lessee agrees to a greater amount, to cover liabilities arising from hazardous substances or bulk storage of petroleum products brought on the property, or released on or near the property, or violations of environmental laws, by the lessee, licensee, or other contracting party, its employees, agents, and invitees.
4. Each party to the agreement is responsible for all liability resulting from the environmental condition of the property to the extent caused, aggravated, or contributed to by that party, its employees, agents, and invitees."

Page 2, line 30, remove "or to resolve disputes that arise"

Page 2, remove line 31

Page 3, line 1, remove "purchaser, lessee, or other user for any purpose, of a right of way"

Page 3, line 3, remove "If the commission finds that any term of a proposed right-of-way"

Page 3, remove lines 4 through 8

Page 3, line 9, remove "and reasonable to both parties." and overstrike "The commission shall conduct each hearing required under"

Page 3, overstrike lines 10 through 18

Page 3, line 19, overstrike "the general fund in the state treasury." and insert immediately thereafter "The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the commission, directly to the entities owed. The commission may adopt rules to carry out this section."

SECTION 4. AMENDMENT. Section 60-06-15 of the North Dakota Century Code is amended and reenacted as follows:

60-06-15. Application to existing leaseholds. The provisions of this chapter apply to the renewal or sale of existing leaseholds on railroad rights of way, and to existing leaseholds on lands that have ceased to be used for railroad rights of way after the leasehold was first created, and so long thereafter as the lease site remains under the ownership or control of the railroad or an entity that was or is under common ownership or control of the railroad. The value of a leaseholder's improvements may not be considered in determining annual rental or the gross sum for the right, privilege, and easement sought."

Page 3, line 21, replace "consider studying" with "study"

Page 3, line 22, remove "abandoned and surplus"

Page 3, line 25, remove "purchase agreement,"

Page 3, line 26, remove "deed, bill of sale," and after "agreement" insert "for the use or occupancy of railroad right of way or other adjoining property"

Page 3, line 27, remove "oral or" and replace ", continuation, or extension" with "or amendment"

Page 3, remove lines 29 and 30

Renumber accordingly

Engrossed SB 2358 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

HB 1489, as engrossed: Your conference committee (Sens. Cook, G. Lee, Christenson and Reps. Haas, Herbel, Hunskor) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1421-1422, adopt amendments as follows, and place HB 1489 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1421 and 1422 of the House Journal and pages 1070 and 1071 of the Senate Journal and that Engrossed House Bill No. 1489 be amended as follows:

Page 1, line 5, after the semicolon insert "to provide directives;"

Page 2, line 10, overstrike "**Kindergarten**" and after "**Teacher**" insert "Prekindergarten and kindergarten"

Page 2, line 12, after "teach" insert "prekindergarten and"

Page 4, line 3, replace "elementary" with "early" and after the underscored semicolon insert "or"

Page 4, line 4, remove "a.", replace "in elementary" with "equivalency in early childhood", and replace "; and" with an underscored period

Page 4, remove lines 5 through 23

Page 4, line 30, after the underscored semicolon insert "or"

Page 4, line 31, replace "; or" with an underscored period

Page 5, remove lines 1 through 4

Page 5, line 6, remove the underscored colon

Page 5, line 7, replace "a. Is" with "is", replace "practice" with "practices", remove the underscored semicolon, and after the second "and" insert an underscored colon

Page 5, line 8, replace "b. (1)" with "a."

Page 5, line 9, replace "(2)" with "b." and after the underscored period insert:

"3. In order to teach any grade from one through eight in a self-contained classroom, an individual must be licensed to teach by the education standards and practices board and:

a. Have a major in elementary education; or

b. Have a major equivalency in elementary education."

Page 5, line 13, remove "1.", after "teach" insert "any", after "grade" insert "from", and replace "or six" with "through eight"

Page 5, line 15, replace "a." with "1." and after "education" insert ", with content in the areas taught by the individual and defined by the education standards and practices board as core academic areas"

Page 5, line 16, replace "b." with "2." and replace the underscored semicolon with ", with content in the areas taught by the individual and defined by the education standards and practices board as core academic areas; or"

Page 5, remove lines 17 through 31

Page 6, remove lines 1 through 29

Page 7, remove lines 1 through 3

Page 7, line 4, replace "(3)" with:

"3."

Page 7, remove lines 7 through 12

Page 8, after line 9, insert:

"SECTION 8. TEACHER QUALIFICATIONS - ACCREDITATION RULES - DIRECTIVES. For purposes of accreditation, the superintendent of public instruction may not establish teacher qualification requirements that exceed those established by the education standards and practices board.

SECTION 9. CONTINUING EDUCATION - PAYMENT - DIRECTIVES. A school board's right to reimburse teachers for the cost of continuing education activities undertaken in connection with the No Child Left Behind Act of 2001 may not be contractually curtailed."

Page 8, line 12, after "process" insert "and the impact of those changes"

Page 8, line 15, replace "9" with "11"

Page 8, line 16, replace "2008" with "2006"

Renumber accordingly

Engrossed HB 1489 was placed on the Seventh order of business on the calendar.

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

WILLIAM R. HORTON, Secretary

