

JOURNAL OF THE SENATE

Sixty-first Legislative Assembly

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Bismarck, February 2, 2009

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

The prayer was offered by Pastor Dom Vetter, Word of Faith Church, Bismarck.

The roll was called and all members were present except Senators Robinson and Taylor.

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

Page 216, line 25, replace "7 YEAS, 0 NAYS" with "4 YEAS, 3 NAYS"

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

CONSIDERATION OF AMENDMENTS

SB 2228: SEN. G. LEE (Transportation Committee) MOVED that the amendments on SJ pages 229-232 be adopted and then be **REFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2268: SEN. NODLAND (Industry, Business and Labor Committee) MOVED that the amendments on SJ pages 232-234 be adopted and then be **REFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2302: SEN. BAKKE (Education Committee) MOVED that the amendments on SJ page 235 be adopted and then be **REFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2054: SEN. MARCELLAIS (Transportation Committee) MOVED that the amendments on SJ page 227 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2068: SEN. POMEROY (Natural Resources Committee) MOVED that the amendments on SJ pages 227-228 be adopted and then be placed on the Eleventh order with **DO NOT PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2141: SEN. TRIPLETT (Natural Resources Committee) MOVED that the amendments on SJ page 228 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2189, as engrossed: SEN. HOGUE (Natural Resources Committee) MOVED that the amendments on SJ page 229 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2299: SEN. MILLER (Agriculture Committee) MOVED that the amendments on SJ page 235 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2032: A BILL for an Act to amend and reenact subsections 1 and 3 of section 57-39.2-04.2 and subsections 1 and 3 of section 57-40.2-04.2 of the North Dakota Century Code,

relating to the exemption from sales and use tax for materials used in the construction or expansion of a wind-powered facility; 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 PASS, the roll was called and there were 45 YEAS, 0 NAYS, 0 EXCUSED, 2 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; Schneider; Seymour; Stenehjem; Triplett; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Robinson; Taylor

Engrossed SB 2032 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2043: A BILL for an Act to amend and reenact sections 53-06.2-02 and 53-06.2-03 and subsection 6 of section 53-06.2-11 of the North Dakota Century Code, relating to the racing commission and the authority of the attorney general.

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 4 YEAS, 41 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Horne; Marcellais; O'Connell; Triplett

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

ABSENT AND NOT VOTING: Robinson; Taylor

Engrossed SB 2043 lost.

SECOND READING OF SENATE BILL

SB 2070: A BILL for an Act to create and enact a new section to chapter 39-01 of the North Dakota Century Code, relating to smoking in vehicles; to amend and reenact subsection 1 of section 39-06.1-06 and section 39-06.1-08 of the North Dakota Century Code, relating to statutory fees for nonmoving violations; and to provide a penalty.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 35 YEAS, 10 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Anderson; Andrist; Bakke; Cook; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Krauter; Krebsbach; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; Oehlke; Pomeroy; Potter; Schneider; Seymour; Triplett; Wardner; Warner

NAYS: Behm; Bowman; Christmann; Dever; Klein; Lee, G.; O'Connell; Olafson; Stenehjem; Wanzek

ABSENT AND NOT VOTING: Robinson; Taylor

SB 2070 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2074: A BILL for an Act to create and enact chapter 28-35 of the North Dakota Century Code, relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; to repeal sections 30.1-29-02 and 30.1-29-32 of the North Dakota Century Code, relating to the jurisdiction of protective proceedings; 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 45 YEAS, 0 NAYS, 0 EXCUSED, 2 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; Schneider; Seymour; Stenehjem; Triplett; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Robinson; Taylor

SB 2074 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2115: A BILL for an Act to amend and reenact section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives.

ROLL CALL

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

YEAS: 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; Schneider; Seymour; Stenehjem; Triplett; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Robinson; Taylor

Engrossed SB 2115 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2174: A BILL for an Act to provide for the creation of an autism spectrum disorder task force; to amend and reenact sections 23-09.4-01, 23-09.4-02, 23-09.4-03, 23-09.4-04, 23-09.4-05, 23-09.4-06, and 23-09.4-08 of the North Dakota Century Code, relating to residential care for children with autism spectrum disorder; and to provide an appropriation.

ROLL CALL

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

YEAS: 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; Schneider; Seymour; Stenehjem; Triplett; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Robinson; Taylor

Engrossed SB 2174 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2187: A BILL for an Act to create and enact a new section to chapter 34-14 of the North Dakota Century Code, relating to employer's payment of accrued paid time off.

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 22 YEAS, 23 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Andrist; Bowman; Christmann; Cook; Erbele; Fischer; Freborg; Grindberg; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lyson; Miller; Nodland; Olafson; Stenehjem; Wanzek; Wardner

NAYS: Anderson; Bakke; Behm; Dever; Dotzenrod; Fiebiger; Flakoll; Heckaman; Horne; Krauter; Lindaas; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Pomeroy; Potter; Schneider; Seymour; Triplett; Warner

ABSENT AND NOT VOTING: Robinson; Taylor

Engrossed SB 2187 lost.

SECOND READING OF SENATE BILL

SB 2194: A BILL for an Act to amend and reenact section 54-34.3-10 of the North Dakota Century Code, relating to the commission on the status of women; and to provide for transition.

ROLL CALL

The question being on the final passage of the bill, which has been read, and is PLACED ON THE CALENDAR WITHOUT RECOMMENDATION, the roll was called and there were 20 YEAS, 25 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Anderson; Bakke; Behm; Dotzenrod; Fiebiger; Fischer; Heckaman; Horne; Krauter; Lindaas; Marcellais; Mathern; Nelson; O'Connell; Pomeroy; Potter; Schneider; Seymour; Triplett; Warner

NAYS: Andrist; Bowman; Christmann; Cook; Dever; Erbele; Flakoll; Freborg; Grindberg; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lyson; Miller; Nething; Nodland; Oehlke; Olafson; Stenehjem; Wanzek; Wardner

ABSENT AND NOT VOTING: Robinson; Taylor

SB 2194 lost.

SECOND READING OF SENATE BILL

SB 2203: A BILL for an Act to amend and reenact section 4-10.4-08 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-02-12 of the North Dakota Century Code, relating to the barley assessment.

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, 1 NAYS, 0 EXCUSED, 2 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; Schneider; Seymour; Triplett; Wanzek; Wardner; Warner

NAYS: Stenehjem

ABSENT AND NOT VOTING: Robinson; Taylor

SB 2203 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2211: A BILL for an Act to create and enact a new section to chapter 25-13 of the North Dakota Century Code, relating to killing or injuring a service animal; to amend and reenact sections 25-13-01.1, 25-13-02, 25-13-02.1, 25-13-03, 25-13-04, and 25-13-05 of the North Dakota Century Code, relating to service animals; and to provide a penalty.

ROLL CALL

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

YEAS: 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; Schneider; Seymour; Stenehjem; Triplett; Wanzek; Wardner; Warner

ABSENT AND NOT VOTING: Robinson; Taylor

Engrossed SB 2211 passed and the title was agreed to.

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

MR. SPEAKER: The Senate has passed and your favorable consideration is requested on: SB 2031, SB 2056, SB 2059, SB 2087, SB 2110, SB 2112, SB 2122, SB 2152, SB 2158, SB 2176, SB 2206, SB 2210, SB 2233.

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

MR. SPEAKER: The Senate has passed, the emergency clause carried, and your favorable consideration is requested on: SB 2057, SB 2281.

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 1048, HB 1053, HB 1127, HB 1129, HB 1217, HB 1239, HB 1245, HB 1287, HB 1318, HB 1360, HB 1371, HB 1452, HCR 3003, HCR 3007.

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

MR. PRESIDENT: The House has passed, the emergency clause carried, and your favorable consideration is requested on: HB 1074, HB 1128, HB 1181.

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, Ninth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Tuesday, February 3, 2009, which motion prevailed.

REPORT OF STANDING COMMITTEE

SB 2069: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2069 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2095: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2095 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "38-20" with "38-22"

Page 1, line 6, replace "38-20" with "38-22"

Page 1, line 8, replace "38-20-01" with "38-22-01"

Page 1, line 18, replace "38-20-02" with "38-22-02"

Page 2, line 18, replace "38-20-03" with "38-22-03"

Page 3, line 5, replace "38-20-04" with "38-22-04"

Page 3, line 7, replace "38-20-05" with "38-22-05"

Page 3, line 19, replace "38-20-06" with "38-22-06"

Page 4, line 7, replace "38-20-07" with "38-22-07"

Page 4, line 9, replace "38-20-08" with "38-22-08"

Page 4, line 22, after "owners" insert "or mineral lessees"

Page 4, line 23, after "owners" insert "or mineral lessees"

Page 5, line 8, replace "38-20-09" with "38-22-09"

Page 5, line 11, replace "38-20-10" with "38-22-10"

Page 5, line 15, replace "38-20-11" with "38-22-11"

Page 5, line 20, replace "38-20-12" with "38-22-12"

Page 6, line 3, replace "38-20-13" with "38-22-13"

Page 6, line 10, replace "38-20-14" with "38-22-14"

Page 6, line 22, replace "38-20-23" with "38-22-23"

Page 6, line 27, replace "38-20-15" with "38-22-15"

Page 7, line 15, replace "38-20-16" with "38-22-16"

Page 7, line 20, replace "38-20-17" with "38-22-17"

Page 8, line 27, replace "38-20-18" with "38-22-18"

Page 9, line 14, replace "38-20-19" with "38-22-19"

Page 9, line 24, replace "38-20-20" with "38-22-20"

Page 10, line 3, replace "38-20-21" with "38-22-21"

Page 10, line 6, replace "38-20-22" with "38-22-22"

Page 10, line 9, replace "38-20-23" with "38-22-23"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2139: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and" and after "application" insert "; and to declare an emergency"

Page 1, line 21, replace the first "Act" with "chapter" and replace the second "Act" with "chapter"

Page 1, after line 22, insert:

"Mineral and pore space estates - Relationship. In the relationship between a severed mineral owner and a pore space estate, this chapter does not change or alter the common law as of the effective date of this chapter as it relates to the rights belonging to, or the dominance of, the mineral estate.

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

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2223: Transportation Committee (Sen. G. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2223 was placed on the Sixth order on the calendar.

Page 1, line 1, after the semicolon insert "to provide for a report to the legislative assembly;"

Page 1, line 6, after the period insert "One project must focus on coordination in a rural area and one project must focus on coordination in an urban area."

Page 1, line 15, remove "The department shall prepare a four-year statewide public"

Page 1, remove lines 16 through 18

Page 1, after line 18, insert:

"SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The director of the department of transportation shall report to the sixty-second legislative assembly with findings and recommendations based on the results of the public transportation coordination pilot projects."

Page 1, line 20, replace "\$375,000" with "\$125,000"

Page 1, line 21, replace "two" with "a"

Page 1, line 22, replace "projects" with "project"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2279: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2279 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2292: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2305: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2305 was rereferred to the **Appropriations Committee**.

REPORT OF STANDING COMMITTEE

SB 2312: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO NOT PASS** (4 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2312 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2313: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2313 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2335: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2335 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "8,000" with "5,000"

Page 1, line 11, after the period insert "The department of commerce may develop grant criteria to best utilize the available funds."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2349: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2349 was placed on the Eleventh order on the calendar.

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

Fran A. Gronberg, Secretary