

## JOURNAL OF THE SENATE

## Fifty-third Legislative Assembly

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Bismarck, April 6, 1993

The Senate convened at 9:00 a.m., with President Myrdal presiding.

The prayer was offered by Rev. Stephen Eastin, First Presbyterian Church, Mandan.

The roll was called and all members were present.

A quorum was declared by the President.

## SIGNING OF BILLS AND RESOLUTIONS

The President signed the following enrolled bills: HB 1023, HB 1032, HB 1091, HB 1097, HB 1103, HB 1134, HB 1138, HB 1139, HB 1142, HB 1163, HB 1165, HB 1184, HB 1203, HB 1211, HB 1234, HB 1247, HB 1286, HB 1306, HB 1313, HB 1335, HB 1337, HB 1347, HB 1357, HB 1376, HB 1394.

## MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The President has signed: HB 1023, HB 1032, HB 1091, HB 1097, HB 1103, HB 1134, HB 1138, HB 1139, HB 1142, HB 1163, HB 1165, HB 1184, HB 1203, HB 1211, HB 1234, HB 1247, HB 1286, HB 1306, HB 1313, HB 1335, HB 1337, HB 1347, HB 1357, HB 1376, HB 1394.

## SIGNING OF BILLS AND RESOLUTIONS

The President signed the following enrolled bills and resolutions: HB 1075, HB 1397, HB 1406, HB 1408, HB 1410, HB 1444, HB 1453, HB 1472, HB 1489, HB 1506, HB 1507, HB 1508, HB 1509, HB 1510, HCR 3014, HCR 3018, HCR 3019, HCR 3025, HCR 3026, HCR 3035, HCR 3039, HCR 3041, HCR 3043, HCR 3050.

## MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The President has signed: HB 1075, HB 1397, HB 1406, HB 1408, HB 1410, HB 1444, HB 1453, HB 1472, HB 1489, HB 1506, HB 1507, HB 1508, HB 1509, HB 1510, HCR 3014, HCR 3018, HCR 3019, HCR 3025, HCR 3026, HCR 3035, HCR 3039, HCR 3041, HCR 3043, HCR 3050.

## SIGNING OF BILLS AND RESOLUTIONS

The President signed the following enrolled bills: HB 1400, HB 1405, HB 1417, HB 1426, HB 1429, HB 1436, HB 1474, HB 1475, HB 1484, HB 1485, HB 1488, HB 1491, HB 1495, HB 1497.

## MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The President has signed: HB 1400, HB 1405, HB 1417, HB 1426, HB 1429, HB 1436, HB 1474, HB 1475, HB 1484, HB 1485, HB 1488, HB 1491, HB 1495, HB 1497.

## SIGNING OF BILLS AND RESOLUTIONS

The President signed the following enrolled bills and resolution: SB 2027, SB 2051, SB 2120, SB 2144, SB 2216, SB 2327, SB 2359, SB 2468, SB 2487, SB 2505, SCR 4070.

## MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The President has signed and your signature is respectfully requested on: SB 2027, SB 2051, SB 2120, SB 2144, SB 2216, SB 2327, SB 2359, SB 2468, SB 2487, SB 2505, SCR 4070.

## SIGNING OF BILLS AND RESOLUTIONS

The President signed the following enrolled bills: SB 2048, SB 2097, SB 2214, SB 2225, SB 2231, SB 2473, SB 2511.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The President has signed and your signature is respectfully requested on: SB 2048, SB 2097, SB 2214, SB 2225, SB 2231, SB 2473, SB 2511.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The Senate has amended and subsequently passed: HB 1010.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The Senate has concurred in the House amendments and subsequently passed: SB 2523.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The Senate has adopted the conference committee report and subsequently passed: SB 2042.

**MOTION**

SEN. MATHERN MOVED that the Senate stand in recess until 1:00 p.m., which motion prevailed.

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

**MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)**

MADAM PRESIDENT: The House does not concur in the Senate amendments to HB 1015 and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1015: Reps. Wald; Kunkel; Huether

**CONSIDERATION OF AMENDMENTS**

HB 1017: SEN. LIPS (Appropriations Committee) MOVED that the amendments on SJ pages 1430-1431 be adopted.

**REQUEST**

SEN. NELSON REQUESTED a recorded roll call vote on the motion to adopt the proposed amendments to HB 1017, which request was granted.

**ROLL CALL**

The question being on the motion to adopt the proposed amendments to HB 1017, the roll was called and there were 29 YEAS, 20 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: DeMers; Dotzenrod; Evanson; Graba; Heinrich; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lips; Marks; Mathern; Maxson; Mushik; O'Connell; Redlin; Robinson; Scherber; Schoenwald; Tallackson; Thane; Tomac; Wogsland; Yockim

NAYS: Andrist; Bowman; Freborg; Goetz; Grindberg; Holmberg; Lindgren; Mutch; Naaden; Nalewaja; Nelson; Nething; Sand; Solberg; Stenehjerm, B.; Stenehjerm, W.; Streibel; Tennefos; Traynor; Urlacher

The motion to adopt the proposed amendments to HB 1017 passed.

HB 1017 was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

HB 1017: A BILL for an Act to provide an appropriation for defraying the expenses of the workers compensation bureau and its divisions; and to provide for authorization to expend funds from the workers' compensation contingency line item.

**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 30 YEAS, 19 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** DeMers; Dotzenrod; Evanson; Goetz; Graba; Heinrich; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Langley; Lindaas; Lips; Marks; Mathern; Maxson; Mushik; O'Connell; Redlin; Robinson; Scherber; Schoenwald; Tallackson; Thane; Tomac; Traynor; Wogsland; Yockim

**NAYS:** Andrist; Bowman; Freborg; Grindberg; Holmberg; Krebsbach; Lindgren; Mutch; Naaden; Nalewaja; Nelson; Nething; Sand; Solberg; Stenehjem, B.; Stenehjem, W.; Streibel; Tennefos; Urlacher

HB 1017 passed and the title was agreed to.

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#### SECOND READING OF HOUSE BILL

**HB 1435:** A BILL for an Act to amend and reenact subsection 2 of section 15-62.2-00.1 and section 15-62.2-02 of the North Dakota Century Code, relating to eligible institutions under the student financial assistance program and to the powers and duties of the state board of higher education.

#### CONFLICT OF INTEREST

**SEN. GRINDBERG STATED** that he had a conflict of interest on HB 1435 and requested permission to vote.

The question being on whether Sen. Grindberg could vote on HB 1435, which request was granted.

#### 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 18 YEAS, 29 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Graba; Grindberg; Heinrich; Jerome; Kelsh; Kinnoin; Lindgren; Mathern; Nalewaja; Nelson; Sand; Solberg; Stenehjem, W.; Streibel; Tallackson; Tennefos; Urlacher

**NAYS:** Bowman; DeMers; Dotzenrod; Evanson; Goetz; Holmberg; Keller; Kelly; Krauter; Krebsbach; Langley; Lindaas; Lips; Marks; Maxson; Mushik; Mutch; Naaden; Nething; O'Connell; Redlin; Robinson; Scherber; Schoenwald; Stenehjem, B.; Thane; Tomac; Traynor; Yockim

**ABSENT AND NOT VOTING:** Freborg; Wogsland

HB 1435 lost.

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#### REPORT OF CONFERENCE COMMITTEE

**SEN. JEROME MOVED** that the conference committee report on HB 1349 be adopted, which motion failed.

#### REPORT OF CONFERENCE COMMITTEE

**SEN. SCHERBER MOVED** that the conference committee report on SB 2379 be adopted, which motion prevailed.

#### REPORT OF CONFERENCE COMMITTEE

**SEN. GRABA MOVED** that the conference committee report on SCR 4038 be adopted, which motion prevailed.

#### REPORT OF CONFERENCE COMMITTEE

**SEN. HEINRICH MOVED** that the conference committee report on HB 1300 be adopted, which motion prevailed.

**APPOINTMENT OF CONFERENCE COMMITTEE**

SEN. LANGLEY MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1511, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1511: Sens. Langley, Schoenwald, Krebsbach.

**MOTION**

SEN. MATHERN MOVED that the Senate stand in recess until 5:00 p.m., which motion prevailed.

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

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

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

HB 1511: Sens. Langley; Schoenwald; Krebsbach

**SIGNING OF BILLS AND RESOLUTIONS**

The President signed the following enrolled bills: SB 2074, SB 2082, SB 2285, SB 2293, SB 2453.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The President has signed and your signature is respectfully requested on: SB 2074, SB 2082, SB 2285, SB 2293, SB 2453.

**SIGNING OF BILLS AND RESOLUTIONS**

The President signed the following enrolled bills: HB 1009, HB 1096, HB 1168, HB 1180, HB 1181, HB 1225, HB 1344, HB 1469.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The President has signed: HB 1009, HB 1096, HB 1168, HB 1180, HB 1181, HB 1225, HB 1344, HB 1469.

**SIGNING OF BILLS AND RESOLUTIONS**

The President signed the following enrolled bill and resolution: SB 2403, SCR 4074.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The President has signed and your signature is respectfully requested on: SB 2403, SCR 4074.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The President has signed and your signature is respectfully requested on the veto certification of SB 2398.

**MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)**

MADAM PRESIDENT: The House has passed unchanged: SCR 4073.

**MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)**

MADAM PRESIDENT: The House has adopted the conference committee report on SB 2279.

**MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)**

MADAM PRESIDENT: The House has adopted the conference committee report on HB 1126.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The Senate has adopted the conference committee report and subsequently passed: SB 2379, SCR 4038.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The Senate has adopted the conference committee report on HB 1300.

**MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)**

MADAM PRESIDENT: The House has dissolved the Conference Committee on SB 2003 and respectfully requests the return of the same for purposes of reconsideration.

**MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)**

MADAM PRESIDENT: The Speaker has signed the veto certification on SB 2398.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following bill and veto certification was delivered to the Secretary of State for his filing at the hour of 4:55 p.m., on April 6, 1993: SB 2398.

**MOTION**

SEN. MATHERN MOVED that the Senate dissolve the Conference Committee on SB 2003, and accede to the House request to return SB 2003, which motion prevailed.

**MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)**

MR. SPEAKER: The Senate has dissolved its Conference Committee on SB 2003 and accedes to the House request to return SB 2003.

**MOTION**

SEN. MATHERN MOVED that HB 1003 be returned to the Senate floor from the Education Committee and be rereferred to the Appropriations Committee, which motion prevailed. Pursuant to Sen. Mathern's motion, HB 1003 was rereferred.

**MOTION**

SEN. LINDGREN MOVED that the Senate reconsider its action whereby the conference committee report on HB 1349 failed to pass, which motion prevailed.

**REPORT OF CONFERENCE COMMITTEE**

SEN. LINDGREN MOVED that the conference committee report on HB 1349 be adopted, which motion prevailed on a verification vote.

HB 1349, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

HB 1349: A BILL for an Act to amend and reenact section 29-04-03.1 of the North Dakota Century Code, relating to the limitation of time within which a prosecution for a sexual abuse crime involving a minor victim must be commenced.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 32 YEAS, 16 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Bowman; DeMers; Evanson; Freborg; Goetz; Graba; Grindberg; Heinrich; Holmberg; Jerome; Kelly; Kelsh; Krauter; Krebsbach; Lindaas; Lindgren; Lips; Mathern; Mushik; Naaden; Nalewaja; Nelson; Redlin; Robinson; Scherber; Streibel; Tallackson; Tennesfos; Thane; Traynor; Wogsland; Yockim

**NAYS:** Andrist; Dotzenrod; Keller; Kinnoin; Langley; Marks; Maxson; Mutch; Nething; O'Connell; Sand; Schoenwald; Solberg; Stenehjem, W.; Tomac; Uriacher

**ABSENT AND NOT VOTING:** Stenehjem, B.

HB 1349 passed and the title was agreed to.

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**APPOINTMENT OF CONFERENCE COMMITTEE**

SEN. TALLACKSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1004, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1004: Sens. DeMers, Mushik, Goetz.

**APPOINTMENT OF CONFERENCE COMMITTEE**

SEN. TALLACKSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1012, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1012: Sens. Kelly, Lips, Naaden.

**APPOINTMENT OF CONFERENCE COMMITTEE**

SEN. TALLACKSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1014, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1014: Sens. Yockim, Redlin, Nething.

**APPOINTMENT OF CONFERENCE COMMITTEE**

SEN. TALLACKSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1018, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1018: Sens. DeMers, Lindaas, Holmberg.

**APPOINTMENT OF CONFERENCE COMMITTEE**

SEN. TALLACKSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1065, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1065: Sens. Lindaas, Robinson, Naaden.

**MOTION**

SEN. MATHERN MOVED that the Senate be on the Fourth, Fifth, Seventh, Twelfth, and Sixteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 9:00 a.m., Wednesday, April 7, 1993, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

SB 2540: Human Services Committee (Sen. Mathern, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2540 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

HB 1274: Appropriations Committee (Sen. Tallackson, Chairman) recommends DO PASS (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1274 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

HB 1389: Appropriations Committee (Sen. Tallackson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1389 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on page 1362 of the Senate Journal, Reengrossed House Bill No. 1389 is amended as follows:

Page 1, line 4, remove the third "and"

Page 1, line 5, after "penalty" insert "; and to declare an emergency"

Page 2, line 17, after "who" insert "has filed a resident North Dakota income tax return for the year prior to the effective date of this Act and who"

Page 3, line 2, replace the period with "; or"

Page 3, line 3, replace "'Resident" also means a veteran who was" with "Was"

Page 3, line 6, remove "A person is not a resident of North Dakota for"

Page 3, remove lines 7 through 11

Page 4, line 2, replace "December 31, 1993" with "June 30, 1995"

Page 6, after line 17, insert:

"SECTION 10. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

DEPARTMENT 540 - ADJUTANT GENERAL

SENATE - This amendment requires the filing of a resident North Dakota income tax return in addition to meeting the residency requirements contained in the bill and extends the application deadline to June 30, 1995.

This amendment also adds an emergency clause.

**REPORT OF STANDING COMMITTEE**

**HB 1514, as engrossed:** Natural Resources Committee (Sen. Keller, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1514 was placed on the Fourteenth order on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**SB 2088, as engrossed:** Your conference committee (Sens. Marks, Kinnoin, Freborg and Reps. Rennerfeldt, Johnson, Kerzman) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 814, adopt amendments as follows, and place SB 2088 on the Seventh order:

That the House recede from its amendments as printed on page 814 of the Senate Journal and page 880 of the House Journal and that Engrossed Senate Bill No. 2088 be amended as follows:

Page 1, line 8, replace "license fee" with "annual fee for a license for a bird species required to be licensed is five dollars. The maximum annual fees for bird species licenses to be paid by a person holding more than one bird species license is twenty-five dollars. The annual fee for a license for any other species required to be licensed is ten dollars. The maximum annual fees for nonbird species licenses to be paid by a person holding more than one nonbird species license is seventy-five dollars."

Page 1, remove lines 9 through 11

Renumber accordingly

Engrossed SB 2088 was placed on the Seventh order of business on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**SB 2096:** Your conference committee (Sens. Schoenwald, Keller, Krebsbach and Reps. Jacobs, C. Carlson, Kilichowski) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 1028, adopt amendments as follows, and place SB 2096 on the Seventh order:

That the Senate accede to the House amendments as printed on page 1028 of the Senate Journal and page 1080 of the House Journal and that Senate Bill No. 2096 be further amended as follows:

Page 1, line 10, after "other" insert "individual"

ReNUMBER accordingly

SB 2096 was placed on the Seventh order of business on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**SB 2227:** Your conference committee (Sens. Keller, Krauter, Mutch and Reps. Soukup, Froseth, Mahoney) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1028-1029, adopt amendments as follows, and place SB 2227 on the Seventh order:

That the House recede from its amendments as printed on pages 1028-1029 of the Senate Journal and pages 1081-1082 of the House Journal and that Senate Bill No. 2227 be amended as follows:

Page 3, line 22, after "address" insert "where appropriate"

Page 5, line 4, after "be" insert "adequately"

Page 5, line 11, replace "concerning" with "connection with"

Page 6, line 19, after "obtained" insert "consistent with the requirements of the governing instrument or law"

Page 6, line 28, remove "might"

Page 6, line 29, replace "affect" with "affects" and replace "bank" with "banking institution"

Page 7, line 2, replace "bank" with "banking institution"

Page 7, line 6, replace "bank" with "banking institution"

Page 7, line 9, replace "might affect" with "affects"

Page 7, line 12, after "employees" insert "except:

- a. As authorized by the instrument creating the relationship or as authorized by law;
- b. When the banking institution has been advised in writing by its counsel or auditor that it has incurred as a fiduciary a contingent or potential liability and desires to relieve itself of that liability, a sale or transfer may be made with the approval of the board of directors, provided that the banking institution, upon consummation of the sale or transfer, makes reimbursement in cash at no loss to the account;

c. To purchase at market value, defaulted investment funds;  
or

d. Where ordered by the board"

Page 7, line 14, replace "bank" with "banking institution"

Page 7, line 16, after the underscored period insert "If the retention of stock or obligations of the banking institution or its affiliates is authorized by the instrument creating the relationship, by court order, or by law it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired."

Page 7, line 17, remove "not" and remove "or make a loan"

Page 7, line 19, remove "not" and after "accounts" insert "and if the transaction is not prohibited by the terms of any governing instrument"

Page 7, after line 19, insert:

"5. A banking institution may make a loan to an account from the funds belonging to another account when the making of a loan to a designated account is authorized by the instrument creating the account from which the loan is made.

6. A banking institution may make a loan to an account and may take as security for the loan, assets of the account provided the transaction is fair to the account."

Page 7, line 26, after the underscored period insert "The banking institution may permit the investments of a fiduciary account to be deposited elsewhere."

Page 7, line 27, replace "The" with "Except for commingled investments, the"

Renumber accordingly

SB 2227 was placed on the Seventh order of business on the calendar.

#### REPORT OF CONFERENCE COMMITTEE

SB 2287: Your conference committee (Sens. Graba, Dotzenrod, Andrist (refused to sign) and Reps. Soukup, Hagle (refused to sign), Grumbo) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1031-1032, adopt amendments as follows, and place SB 2287 on the Seventh order:

That the House recede from its amendments as printed on pages 1031-1032 of the Senate Journal and pages 1085-1086 of the House Journal and that Senate Bill No. 2287 be amended as follows:

Page 1, line 15, after the underscored period insert "The average annual cost of this publication for cities having a prior history of publication may be printed on the ballot. For cities not having a prior history of publication, the estimated average annual cost of publication, as mutually determined by the city and its official newspaper, may be printed on the ballot."

Page 1, line 16, after "record" insert "or a summary"

Page 1, line 17, replace the first "its" with "the" and after "proceedings" insert "showing the substantive actions of the city council"

Page 1, line 21, after the underscored period insert "Individual itemized vouchers in amounts under fifty dollars need not be published but must be available for review upon request. For cities with a population of twenty-five thousand or more, individual itemized vouchers in amounts under five hundred dollars need not be published."

Page 2, line 7, after the underscored period insert "The average annual cost of this publication for cities having a prior history of publication may be printed on the ballot. For cities not having a prior history of publication, the estimated average annual cost of publication, as mutually determined by the city and its official newspaper, may be printed on the ballot."

Page 2, line 9, after "record" insert "or a summary"

Page 2, line 10, replace the first "its" with "the" and after "proceedings" insert "showing the substantive actions of the governing body"

Page 2, line 14, after the underscored period insert "Individual itemized vouchers in amounts under fifty dollars need not be published but must be available for review upon request. For cities with a population of twenty-five thousand or more, individual itemized vouchers in amounts under five hundred dollars need not be published."

Page 2, line 24, after the underscored period insert "The average annual cost of this publication for cities having a prior history of publication may be printed on the ballot. For cities not having a prior history of publication, the estimated average annual cost of publication, as mutually determined by the city and its official newspaper, may be printed on the ballot."

Page 2, line 26, after "record" insert "or a summary", replace the first "its" with "the", and after "proceedings" insert "showing the substantive actions of the city council"

Page 3, line 2, after the underscored period insert "Individual itemized vouchers in amounts under fifty dollars need not be published but must be available for review upon request. For cities with a population of twenty-five thousand or more, individual itemized vouchers in amounts under five hundred dollars need not be published."

Page 3, line 10, after the underscored period insert "The average annual cost of this publication for cities having a prior history of publication may be printed on the ballot. For cities not having a prior history of publication, the estimated average annual cost of publication, as mutually determined by the city and its official newspaper, may be printed on the ballot."

Page 3, line 12, after "record" insert "or a summary", replace the first "its" with "the", and after "proceedings" insert "showing the substantive actions of the city commission"

Page 3, line 16, after the underscored period insert "Individual itemized vouchers in amounts under fifty dollars need not be published but must be available for review upon request. For cities with a population of twenty-five thousand or more, individual itemized vouchers in amounts under five hundred dollars need not be published."

Renumber accordingly

SB 2287 was placed on the Seventh order of business on the calendar.

#### REPORT OF CONFERENCE COMMITTEE

SB 2295, as engrossed: Your conference committee (Sens. Yockim, Mathern, Thane and Reps. Svedjan, Price, Kerzman) recommends that the HOUSE

RECEDE from the House amendments on SJ pages 1085-1089, adopt amendments as follows, and place SB 2295 on the Seventh order:

That the House recede from its amendments as printed on pages 1085-1089 of the Senate Journal and pages 1245-1249 of the House Journal and that Engrossed Senate Bill No. 2295 be amended as follows:

Page 1, line 2, after "providers" insert "; and to provide an appropriation"

Page 1, replace lines 6 through 13 with:

1. "Cooperative agreement" means an agreement among two or more health care providers or third-party payers for the sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by health care providers.
2. "Department" means the department of health and consolidated laboratories."

Page 2, replace lines 1 through 12 with:

5. "Third-party payer" means any insurer or other entity responsible for providing payment for health care services, including the workers compensation bureau, the comprehensive health association of North Dakota, and any self-insured entity.

**SECTION 2. Application for cooperative agreements - Departmental review.** A health care provider may negotiate a cooperative agreement with another health care provider or third-party payer if the likely benefits resulting from the agreement outweigh the disadvantages attributable to a reduction in competition that may result from the agreement. The parties to a cooperative agreement may apply to the department for a certificate of public advantage governing the agreement. The application must include an executed copy of the cooperative agreement and must describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. The applicants shall file a copy of the application and related materials with the attorney general and the department. The department shall review the application and shall hold a public hearing on the application. The department shall grant or deny the application within ninety days of the date of filing of the application. The decision must be in writing and must set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor."

Page 2, line 13, remove "cooperative agreement approved under this Act."

Page 2, line 14, after "representatives" insert "of a health care provider or third-party payer"

Page 2, replace lines 18 through 29 with:

**"SECTION 3. Standards for certification.** The department shall issue a certificate of public advantage for cooperative agreement if the department determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits to health care consumers resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. The department shall consult with the attorney general regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

1. In evaluating the potential benefits of a cooperative agreement to health care consumers, the department shall consider whether any of the following benefits may result from the cooperative agreement:
  - a. Enhancement of the quality of health care services provided to residents of this state;
  - b. Preservation of health care facilities in geographical proximity to the communities traditionally served by those facilities;
  - c. Gains in the cost efficiency of services provided by the parties involved;
  - d. Improvements in the utilization of health care resources and equipment; and
  - e. Avoidance of duplication of health care resources.
2. The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include the following factors:
  - a. The extent of any likely adverse impact on the bargaining power of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payers in negotiating payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;
  - b. The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or persons furnishing goods or services to or in competition with providers or third-party payers that is likely to result directly or indirectly from the cooperative agreement;
  - c. The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and
  - d. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits to health care consumers over disadvantages attributable to any reduction in competition likely to result from the agreement.

**SECTION 4. Certificate termination.** The department may, after notice and hearing, terminate a certificate of public advantage if the department determines that:

1. The likely or actual benefits to health care consumers that result from a certified agreement no longer outweigh the disadvantages attributable to a potential reduction in competition resulting from the agreement; or
2. Performance by the parties under the certified agreement does not conform to the representations made by the parties in the application or to the provisions of any conditions attached to the certificate of public advantage by the department at the time the application was granted.

**SECTION 5. Records.** The department shall maintain all cooperative agreements for which the certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty days after termination.

**SECTION 6. Investigation by attorney general.** The attorney general, at any time after an application is filed under section 2 of this Act, may require by subpoena the attendance and testimony of witnesses and the production of documents in the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 3 of this Act. The attorney general may seek an order from the district court compelling compliance with a subpoena issued under this section.

**SECTION 7. Cooperative agreement enjoined - Automatic stay - Standards for adjudication.** The attorney general may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in district court. The attorney general may file an action before or after the department acts on the application for a certificate, but the action must be brought no later than forty days following the department's approval of an application for certificate of public advantage. Upon the filing of the complaint, the department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The attorney general may apply to the court for ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case. In any action, the applicants for a certificate bear the burden of establishing by clear and convincing evidence that the likely benefits to health care consumers which result from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. The court shall review whether the agreement constitutes an unreasonable restraint of trade under state or federal law in assessing disadvantages attributable to a reduction in competition likely to result from the agreement.

**SECTION 8. Cancellation of a certificate of public advantage.** If, at any time following the forty-day period specified in section 7 of this Act, the attorney general determines that, as a result of changed circumstances, the benefits to health care consumers which result from a certified agreement no longer outweigh the disadvantages attributable to a reduction in competition resulting from the agreement, the attorney general may file suit in district court seeking to cancel the certificate of public advantage. In an action brought under this section, the attorney general has the burden of establishing by a preponderance of the evidence that, as a result of changed circumstances, the benefits to health care consumers which result from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement. If the attorney general first establishes by a preponderance of the evidence that the department's certification was obtained as a result of material misrepresentation to the department or the attorney general as the result of coercion, threats, or intimidation toward any party to the cooperative agreement, the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits to health care consumers which result from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to any reduction in competition resulting from the agreement.

**SECTION 9. Resolution by consent decree - Attorney fees.** The

under section 7 or 8 of this Act by entering an order that, with the consent of the parties, modifies the cooperative agreement. Upon the entry of the order, the parties to the cooperative agreement have the protection specified in section 10 of this Act and the cooperative agreement has the effectiveness specified in section 10 of this Act. If the attorney general prevails in an action under section 6, 7, or 8 of this Act, the attorney general is entitled to an award of the reasonable costs of the investigation or litigation and reasonable attorney fees, expert witness fees, and court costs incurred in litigation.

**SECTION 10. Effective certification - Validity - Application.** A cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. If the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating a cooperative agreement is lawful conduct. This section does not immunize any person for conduct in negotiating a cooperative agreement for which an application for a certificate of public advantage is not filed. If the department or the district court determines that the applicants have not established by clear and convincing evidence that the likely benefits to health care consumers which result from a cooperative agreement outweigh any disadvantage attributable to a potential reduction in competition resulting from the agreement, the agreement is invalid and has no force or effect. This section does not exempt hospitals or other health care providers from compliance with laws governing hospital cost reimbursement. This Act does not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals. Notwithstanding any provisions to the contrary, any improvements, construction, expansion, or acquisition of health care equipment or services approved as a condition of a cooperative agreement is not subject to laws governing certificate of need.

**SECTION 11. Assessment - Health care cooperative agreement fund.** The department shall establish an assessment to be paid by each party to a cooperative agreement. The aggregate amount of the assessment for a cooperative agreement may not exceed forty thousand dollars. The parties shall pay the assessment to the department when the application for the cooperative agreement is submitted to the department. The department shall deposit the moneys received under this section in the health care cooperative agreement fund of the state treasury.

**SECTION 12. APPROPRIATION.** There is hereby appropriated out of any moneys in the health care cooperative agreement fund, not otherwise appropriated, such amounts as may be necessary to the department of health and consolidated laboratories for administering the cooperative agreements between health care providers and for reimbursement to the attorney general for expenses incurred for the biennium beginning July 1, 1993, and ending June 30, 1995."

Page 3, remove lines 1 through 27

Page 4, remove lines 1 through 28

Page 5, remove lines 1 through 28

Page 6, remove lines 1 through 5

Re-number accordingly

Engrossed SB 2295 was placed on the Seventh order of business on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**SB 2384:** Your conference committee (Sens. Schoenwald, Keller, Krebsbach and Reps. Dorso, Shide, Stenson) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 894, adopt amendments as follows, and place SB 2384 on the Seventh order:

That the House recede from its amendments as printed on page 894 of the Senate Journal and page 966 of the House Journal and that Senate Bill No. 2384 be amended as follows:

Page 6, line 22, replace "an" with "any"

Page 6, line 26, replace "penaly" with "penalty"

ReNUMBER accordingly

SB 2384 was placed on the Seventh order of business on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**SB 2441:** Your conference committee (Sens. Langley, Krauter, Streibel and Reps. Rennerfeldt, Belter, Dobrinski) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1094, adopt amendments as follows, and place SB 2441 on the Seventh order:

That the House recede from its amendments as printed on page 1094 of the Senate Journal and pages 1179-1180 of the House Journal and that Senate Bill No. 2441 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 26.1-30-18 of the North Dakota Century Code, relating to the inception and expiration of insurance policies.

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

**SECTION 1. AMENDMENT.** Section 26.1-30-18 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-30-18. Inception and expiration of policies - Inception of hail insurance policies.** ~~As~~ Except as provided in this section, an insurance policy covers the insured at from 12:01 a.m. on of the day on which coverage begins and expires at 12:01 a.m. on of the day of expiration of the policy. However, if the application for a policy, or the amendment to a policy, of insurance on growing crops against loss by hail has been signed in the presence of the insurance agent, the policy or amendment takes effect at the time and on the day date stated on the application for the insurance. The provision allowing in all other instances, an application for a policy of insurance on growing crops against loss by hail to take takes effect as provided on the application may not be limited or restricted by rule or bulletin of the commissioner no earlier than 12:01 a.m. of the day following the date on the application."

ReNUMBER accordingly

SB 2441 was placed on the Seventh order of business on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1126, as engrossed:** Your conference committee (Sens. Dotzenrod, Tomac, Tennefos and Reps. A. Carlson, A. Olson, Hokana) recommends that the **SENATE RECEDE** from the Senate amendments on SJ pages 796-797 and place HB 1126 on the Seventh order.

Engrossed HB 1126 was placed on the Seventh order of business on the calendar.

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

CAROL SIEGERT, Secretary