

JOURNAL OF THE SENATE

Fifty-ninth Legislative Assembly

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Bismarck, January 25, 2005

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 Senator Schobinger.

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. Espgaard, Chairman)** has carefully examined the Journal of the Twelfth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 125, line 48, replace "5" with "6"

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

THE SENATE RECOGNIZED THE PRESENCE OF:

Former Senator Deb Mathern.

**COMMUNICATION FROM GOVERNOR JOHN HOEVEN
January 12, 2005**

The Governor has made the following appointments during the last Legislative Interim that are subject to re-nomination and Senate confirmation:

Mr. Blake Krabseth, Minot, and Ms. Lois Altenburg, Grand Forks, to the Gaming Commission, each for a term of 3 years, effective July 1, 2004.

Mr. John Q. Paulson, Fargo, to the State Board of Higher Education, for a term of 4 years, effective July 1, 2004.

Mr. Allen C. Hoberg, Bismarck, as Director of the North Dakota Office of Administrative Hearings, for a term of 6 years, effective July 1, 2003.

Please note that with regard to confirmation of appointments to the State Board of Higher Education, Article VIII, Section 6 of the North Dakota Constitution provides that Senate confirmation by the thirtieth legislative day of the session will preclude a vacancy from occurring on the board.

Thank you.

REPORT OF PROCEDURAL COMMITTEE

MR. PRESIDENT: Your procedural **Committee on Committees (Sen. Stenehjem, Chairman)** respectfully submits the following names for your **Select Committee** to approve the nominees to the North Dakota Gaming Commission: Sens. Klein, Krebsbach, Hacker, Heitkamp, and Mathern.

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

REPORT OF PROCEDURAL COMMITTEE

MR. PRESIDENT: Your procedural **Committee on Committees (Sen. Stenehjem, Chairman)** respectfully submits the following names for your **Select Committee** to approve the nominee to the State Board of Higher Education: Sens. Flakoll, Erbele, G. Lee, Cook, Andrist, Seymour, and Triplett.

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

REPORT OF PROCEDURAL COMMITTEE

MR. PRESIDENT: Your procedural **Committee on Committees (Sen. Stenehjem, Chairman)** respectfully submits the following names for your **Select Committee** to approve the nominee for the Director of the North Dakota Office of Administrative Hearings: Sens. Lyson, Kilzer, Traynor, Trenbeath, Every, and Fairfield.

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

REPORT OF PROCEDURAL COMMITTEE

MR. PRESIDENT: Your procedural **Committee on Committees (Sen. Stenehjem, Chairman)** recommends the appointment of Sens. Dever, Brown, and Nelson to the **Senate Memorial Committee**.

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

CONSIDERATION OF AMENDMENTS

SB 2041: SEN. LYSON (Natural Resources Committee) MOVED that the amendments on SJ page 153 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2190: SEN. ESPEGARD (Industry, Business and Labor Committee) MOVED that the amendments on SJ pages 153-154 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2220: SEN. HEITKAMP (Natural Resources Committee) MOVED that the amendments on SJ page 154 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2129: A BILL for an Act to amend and reenact section 37-14-07 of the North Dakota Century Code, relating to collecting fees on loans from the veterans' aid fund.

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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

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

ABSENT AND NOT VOTING: Schobinger

Engrossed SB 2129 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2151: A BILL for an Act to create and enact two new sections to chapter 37-17.1 of the North Dakota Century Code, relating to intrastate mutual aid by emergency response units; and to declare an emergency.

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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

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

ABSENT AND NOT VOTING: Schobinger

Engrossed SB 2151 passed, the title was agreed to, and the emergency clause was declared carried.

SECOND READING OF SENATE BILL

SB 2100: A BILL for an Act to amend and reenact subsection 33 of section 20.1-01-02 of the North Dakota Century Code, relating to the definition of resident for game and fish purposes.

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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espgaard; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Seymour; Stenehjerm; Syverson; Tallackson; Taylor; Thane; Tollefson; Traynor; Trenbeath; Triplett; Urlacher; Wardner; Warner

ABSENT AND NOT VOTING: Schobinger

SB 2100 passed and the title was agreed to.

MOTION

SEN. CHRISTMANN MOVED that the Senate accede to the request from the House for the return of HB 1073, which motion prevailed.

MOTION

SEN. CHRISTMANN MOVED that the Senate accede to the request from the House for the return of HB 1040, which motion prevailed.

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

MR. SPEAKER: The Senate accedes to the House request for the return of: HB 1040, HB 1073.

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 2128, SB 2142, SB 2162, SB 2173, SB 2183, SB 2191, SB 2199, SB 2216.

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

MR. SPEAKER: The Senate has passed, the emergency clause carried, and your favorable consideration is requested on: SB 2172.

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

MR. PRESIDENT: The House has passed and your favorable consideration is requested on: HB 1053, HB 1082, HB 1093, HB 1113, HB 1150, HB 1178, HB 1192, HB 1198, HB 1199, HB 1214, HB 1237, HB 1243, HB 1251.

MOTION

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

MOTION

SEN. CHRISTMANN MOVED that the Senate be on the Fifth, Ninth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Wednesday, January 26, 2005, which motion prevailed.

REPORT OF STANDING COMMITTEE

SB 2027: Judiciary Committee (Sen. Traynor, 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 2027 was placed on the Sixth order on the calendar.

Page 1, line 4, after the first "to" insert "indigent defense services for mental illness commitment proceedings, civil commitment of sexual predators, guardian ad litem services, and"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 14-07.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-05.1. Appointment of guardian ad litem for minor. The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time before the full hearing. The role of the guardian ad litem consists of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court, ~~after notice to the state's attorney of the county of venue,~~ may direct the fees to be paid, in whole or in part, by the ~~county of venue~~ supreme court. The court may direct either or both parties to reimburse the ~~county~~ state, in whole or in part, for the payment.

SECTION 2. AMENDMENT. Section 14-09-06.3 of the North Dakota Century Code is amended and reenacted as follows:

14-09-06.3. Custody investigations and reports - Costs.

1. In contested custody proceedings the court may, upon the request of either party, or, upon its own motion, order an investigation and report concerning custodial arrangements for the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential custody arrangements, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.
4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the ~~county~~ supreme court.

SECTION 3. AMENDMENT. Section 14-09-06.4 of the North Dakota Century Code is amended and reenacted as follows:

14-09-06.4. Appointment of guardian ad litem or child custody investigator for children in custody, support, and visitation proceedings - Immunity. In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor children, and in any action when the custody or visitation of children is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the children concerning custody, support, and visitation. The court, in its discretion, may appoint a guardian ad litem or child custody investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the children's best interests. If appointed, the child custody investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the

guardian ad litem or child custody investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the ~~county of venue~~ supreme court. The court may direct either or both parties to reimburse the ~~county~~ state, in whole or in part, for such payment. Any guardian ad litem or child custody investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or child custody investigator is a disputable presumption.

SECTION 4. AMENDMENT. Section 14-17-15 of the North Dakota Century Code is amended and reenacted as follows:

14-17-15. Costs. The court may order reasonable fees of experts and the child's guardian ad litem and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the ~~county social service board of the county in which the child resides or is found~~ state. In addition, the court may award reasonable attorney's fees if an award is permitted under chapter 28-26.

SECTION 5. AMENDMENT. Section 25-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-13. Right to counsel - Indigency - Waiver - Recoupment - Limitations.

1. Every respondent under this chapter is entitled to legal counsel. The counsel has access to the respondent's medical records upon proof of representation.
2. Unless an appearance has been entered on behalf of the respondent, the court shall, within twenty-four hours, exclusive of weekends or holidays, from the time the petition was filed, appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel shall immediately notify the court of that fact.
3. If, after consultation with counsel, the respondent wants to waive the right to counsel or the right to any of the hearings provided for under this chapter, the respondent may do so by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and must also be signed by counsel.
4. If the court determines that the respondent is indigent, the court shall order that appointed counsel be ~~compensated from county funds of the county that is the respondent's place of residence in a reasonable amount based upon time and expenses provided by the commission on legal counsel for indigents~~. After notice and hearing, the court may order a respondent with appointed counsel to reimburse the ~~county~~ state for expenditures made on the respondent's behalf.
5. If the state's attorney of a ~~the~~ county that has expended sums under ~~subsection 4 on behalf of a respondent who is liable to reimburse the county~~ is the respondent's place of residence determines that the respondent may have funds or property to reimburse the ~~county~~ state, the state's attorney shall seek civil recovery of those sums. Commencement of the action must occur within six years after the date the sums were paid.

SECTION 6. AMENDMENT. Section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-09. Right to counsel - Waiver.

1. Every respondent is entitled to legal counsel. Unless an appearance has been entered on behalf of the respondent, the court, within twenty-four hours from the time the petition was filed, exclusive of weekends or holidays, shall appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel immediately shall notify the court of that fact.

2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and the respondent's counsel shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with mental retardation.
3. If the court determines that the respondent is indigent, the court shall ~~appoint counsel and order that appointed counsel be compensated by the county that is the respondent's place of residence in a reasonable amount based upon time and expenses provided by the commission on legal counsel for indigents.~~
4. The state's attorney of a the county that ~~has expended sums pursuant to subsection 3~~ is the respondent's county of residence may seek civil recovery of those sums from property of the respondent. Commencement of the action must occur within six years after the date the sums were paid. After notice and hearing, the court may order an individual to reimburse ~~the county state~~ the county state for expenditures made on that individual's behalf pursuant to this chapter."

Page 8, line 23, replace "10" with "16 of this Act"

Page 8, line 27, replace "5" with "11" and replace "7" with "13"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2036: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2036 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2044: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2044 was placed on the Sixth order on the calendar.

Page 14, line 1, overstrike "containers of one pound [.45", remove "kilogram" , and overstrike "]" or"

Page 14, line 2, overstrike "less,", remove "the", overstrike "label", overstrike "must", remove "contain", overstrike "the", overstrike "information", and replace "required by" with "packets as prepared for use in home gardens or household plantings or vegetable seed in preplanted containers, mats, tapes, or other planting devices"

Page 14, line 3, remove "this subsection"

Page 14, line 5, after "b." insert "Lot identification by lot number or other means. c." and overstrike "standards as"

Page 14, overstrike lines 6 and 7

Page 14, line 8, overstrike "revisions"

Page 14, line 9, after "Percentage" insert "standard established by the commissioner"

Page 14, line 11, remove "; the" and overstrike "calendar month and year the test was completed"

Page 14, line 12, remove "or the year for which the seed was packaged"

Page 14, line 14, overstrike "c." and insert immediately thereafter "d." and overstrike "full"

Page 14, line 25, remove the overstrike over "e."

Page 14, line 28, after the overstruck period insert "The calendar month and year the germination test was completed and a statement stating the sell by date that may be no more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within twelve months, exclusive of the month of test."

- f. For seeds placed in a germination medium, mat, tape, or other device in a way as to make it difficult to determine the quantity of seed without removing the seed, a statement to indicate the minimum number of seeds in the container."

Page 14, line 29, overstrike "of more than one pound [.45]"

Page 14, line 30, remove "kilogram", overstrike "],", remove "the", overstrike "label", overstrike "must", remove "contain", overstrike "the", and overstrike "information"

Page 14, line 31, replace "required by this subsection" with "other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices"

Page 15, line 4, overstrike "Origin, meaning the state or foreign country where grown. If the origin is"

Page 15, overstrike lines 5 through 7

Page 15, line 8, overstrike "e."

Page 15, line 15, remove "or the year for which the seed was"

Page 15, line 16, remove "packaged"

Page 15, line 17, overstrike "f." and insert immediately thereafter "d." and overstrike "full"

Page 15, after line 18, insert:

- e. The labeling requirements for vegetable seed in a container of more than one pound [.45 kilogram] are satisfied if the seed is weighed from a properly labeled container in the presence of the purchaser."

Page 24, line 28, replace "2. A" with "However, a"

Page 24, line 29, replace "under subsection 1" with "from this chapter"

Page 24, line 30, replace "3." with "2."

Page 30, remove lines 3 and 4

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2052: Education Committee (Sen. Freborg, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2052 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2061: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2061 was placed on the Sixth order on the calendar.

Page 1, line 2, after "lien" insert "; and to provide a penalty"

Page 1, line 6, after "**lien**" insert "- Penalty"

Page 1, line 14, replace "maintain possession by securing the" with "post a signed and dated notice of the lien on the primary entrance to the mobile home. An individual who without authorization from the landlord willfully removes the notice is guilty of a class B misdemeanor"

Page 1, remove lines 15 and 16

Page 1, line 17, remove "the county of the location of the mobile home"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2132: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2132 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "twenty" with "eighty"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2203: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2203 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2221: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2221 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2224: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2224 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2265: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2265 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2266: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2266 was rereferred to the **Appropriations Committee**.

REPORT OF STANDING COMMITTEE

SB 2297: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2297 was rereferred to the **Appropriations Committee**.

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

William R. Horton, Secretary