

## JOURNAL OF THE SENATE

## Sixty-first Legislative Assembly

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Bismarck, March 20, 2009

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

The prayer was offered by Pastor Buford S. Marsh, Tipi Wakan Mission, Cannon Ball.

The roll was called and all members were present except Senator Marcellais.

A quorum was declared by the President.

## CONSIDERATION OF AMENDMENTS

**HB 1400, as engrossed: SEN. FLAKOLL (Education Committee) MOVED** that the amendments on SJ pages 834-858 be adopted and then be **REREFERRED** to the **Appropriations Committee** with **DO PASS**.

## MOTION

**SEN. CHRISTMANN MOVED** that Engrossed HB 1400 be amended as follows, which motion prevailed on a verification vote.

That the proposed amendments to Engrossed House Bill No. 1400 as printed on pages 834-858 of the Senate Journal be amended as follows:

Page 847 of the Senate Journal replace lines 38 through 45 with:

- "(1) An amount determined by dividing seventy percent of the district's mineral and tuition revenue, revenue from payments in lieu of property taxes on distribution and transmission of electric power, and revenue from payments in lieu of taxes from electricity generated from sources other than coal by the district's general fund mill levy; and
- (2) An amount determined by dividing the district's revenue from mobile home taxes and telecommunications taxes by the district's general fund mill levy."

Renumber accordingly

Engrossed HB 1400, as amended, was rereferred to the **Appropriations Committee**.

## MOTION

**SEN. KILZER MOVED** that the Senate reconsider its action whereby HB 1302 failed to pass, which motion prevailed on a verification vote.

## SECOND READING OF HOUSE BILL

**HB 1302:** A BILL for an Act to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to extension of time for serving an expert opinion affidavit in medical liability actions.

## 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 27 YEAS, 19 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

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

**NAYS:** Anderson; Bakke; Behm; Dotzenrod; Fiebiger; Heckaman; Horne; Krauter; Lindaas; Mathern; Nelson; O'Connell; Pomeroy; Potter; Robinson; Schneider; Seymour; Taylor; Triplett

**ABSENT AND NOT VOTING:** Marcellais

HB 1302 passed and the title was agreed to.

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#### CONSIDERATION OF AMENDMENTS

**HB 1433, as engrossed: SEN. DEVER (Human Services Committee) MOVED** that the amendments on SJ pages 880-881 be adopted and then be **REFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

#### MOTION

**SEN. CHRISTMANN MOVED** that Reengrossed HB 1304, which is on the Fourteenth order, be rereferred to the **Finance and Taxation Committee**, which motion prevailed. Pursuant to Sen. Christmann's motion, Reengrossed HB 1304 was rereferred.

#### MOTION

**SEN. CHRISTMANN MOVED** that HB 1014 be placed at the top of the Sixth order, which motion prevailed.

#### CONSIDERATION OF AMENDMENTS

**HB 1014, as engrossed: SEN. SEYMOUR (Appropriations Committee) MOVED** that the amendments on SJ page 877 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

#### MOTION

**SEN. CHRISTMANN MOVED** that HB 1014 be placed at the top of the Fourteenth order, which motion prevailed.

#### SECOND READING OF HOUSE BILL

**HB 1014:** A BILL for an Act to provide an appropriation for defraying the expenses of the committee on protection and advocacy.

#### 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:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebigler; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Miller; Nelson; Nothing; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Marcellais

Engrossed HB 1014, as amended, passed and the title was agreed to.

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

**MR. SPEAKER:** The Senate has passed unchanged: HB 1302.

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

**MR. SPEAKER:** The Senate has amended and subsequently passed: HB 1014.

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

**MR. PRESIDENT:** The House has passed unchanged: SB 2366, SCR 4001, SCR 4002, SCR 4003, SCR 4006, SCR 4009, SCR 4019, SCR 4022, SCR 4026, SCR 4028.

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

**MR. PRESIDENT:** The House has amended and subsequently passed: SB 2101, SB 2129, SB 2161, SB 2171, SB 2222, SB 2234, SB 2248, SCR 4016, SCR 4020, SCR 4021.

#### HOUSE AMENDMENTS TO SENATE BILL NO. 2101

Page 2, line 15, remove "down"

Renumber accordingly

#### HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2129

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-63 of the North Dakota Century Code, relating to definitions; to"

Page 3, after line 6, insert:

"**SECTION 3.** A new section to chapter 54-63 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter, "advanced biofuel" means fuel derived from renewable biomass and includes:

1. Biofuel derived from cellulose, hemicellulose, or lignin;
2. Biofuel derived from sugar and starch other than ethanol derived from corn kernel starch;
3. Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
4. Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;
5. Biogas, including landfill gas and sewage waste treatment gas, produced through the conversion of organic matter from renewable biomass;
6. Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and
7. Other fuel derived from cellulosic biomass."

Page 3, after line 23, insert:

"g. A member with a substantial interest in advanced biofuel and sugar-based biofuel, appointed by the governor."

Page 5, after line 16, insert:

"j. Provide incentives to support research and demonstration projects and obtain matching grants for projects involving advanced biofuels and sugar-based biofuels."

Renumber accordingly

#### **HOUSE AMENDMENTS TO SENATE BILL NO. 2161**

Page 1, line 2, replace "; to amend and reenact section" with a period

Page 1, remove lines 3 through 5

Page 4, remove lines 13 through 30

Page 5, remove lines 1 through 23

Renumber accordingly

#### **HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2171**

Page 1, line 13, replace "an" with "a protection" and replace "for" with "after a hearing under section 14-07.1-02 or an order prohibiting contact"

Page 1, line 14, remove "protection or no contact order issued after a hearing under section 14-07.1-02"

Page 1, line 17, after the third "the" insert "protection" and replace "for" with "or the order prohibiting contact"

Page 1, line 18, remove "protection or no contact order"

Page 1, line 21, remove "if"

Page 1, line 22, remove "required"

Page 1, line 23, remove "with the consent of the tenant,"

Page 2, line 14, replace "the landlord's duty to pay" with "timing for the payment of"

Page 2, line 18, remove "later of the" and remove "or the termination of the"

Page 2, line 19, remove "tenancy indicated in the written notice under subsection 1"

Renumber accordingly

#### HOUSE AMENDMENTS TO SENATE BILL NO. 2222

Page 2, line 3, remove "less than" and after "thousand" insert "or fewer"

Renumber accordingly

#### HOUSE AMENDMENTS TO SENATE BILL NO. 2234

Page 2, line 15, replace "An" with "A lis pendens or other"

Page 2, line 18, replace "an appropriate" with "a" and after "jurat" insert "or verification upon oath or affirmation"

Renumber accordingly

#### HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2248

Page 1, line 1, remove "to create and enact a new section to chapter 4-35 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to certified pesticide applicators;"

Page 5, remove lines 30 and 31

Page 6, remove lines 1 and 2

Page 10, line 1, after "1." insert "a."

Page 10, line 2, remove "or", overstrike "use", and overstrike "classified for"

Page 10, line 3, overstrike "restricted use"

Page 10, after line 6, insert:

"b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:

- (1) Complies with the certification requirements established by the board; or
- (2) Is under the direct supervision of a certified applicator."

Page 13, line 8, remove the overstrike over "~~The certified~~"

Page 13, remove the overstrike over lines 9 through 17

Page 13, line 18, remove the overstrike over "~~physically present at the time and place that the pesticide is applied.~~" and remove "Because"

Page 13, remove lines 19 and 20

Renumber accordingly

#### HOUSE AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4016

Page 1, remove lines 11 and 12

Page 1, remove lines 15 through 17

Page 1, remove lines 20 through 22

Renumber accordingly

#### HOUSE AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4020

Page 1, line 15, replace "2004" with "2005"

Renumber accordingly

**HOUSE AMENDMENTS TO ENGROSSED SENATE CONCURRENT  
RESOLUTION NO. 4021**

Page 1, line 1, replace "regulated" with "United States Department of Agriculture inspection and regulation of"

Page 1, line 18, replace "regulated" with "United States Department of Agriculture inspection and regulation of"

Renumber accordingly

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**  
**MR. PRESIDENT:** The House has amended, subsequently passed, and the emergency clause carried: SB 2114, SB 2116.

**HOUSE AMENDMENTS TO SENATE BILL NO. 2114**

Page 1, line 1, remove "a new" and after "subsection" insert "8"

Page 1, line 3, remove "section 12-44.1-06 and"

Page 1, line 4, remove "grades of correctional facilities and"

Page 1, remove lines 7 through 23

Page 2, remove lines 1 through 11

Page 2, line 12, replace "A new subsection" with "Subsection 8"

Page 2, line 13, after the colon insert:

"8."

Page 2, line 16, after "facility" insert "except for law enforcement purposes"

Page 2, line 21, after "facility" insert "except for law enforcement purposes"

Page 3, line 5, remove "battery or"

Page 3, line 8, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

Renumber accordingly

**HOUSE AMENDMENTS TO SENATE BILL NO. 2116**

Page 1, line 1, remove "a new" and after "subsection" insert "8"

Page 1, line 9, replace "A new subsection" with "Subsection 8"

Page 1, line 10, after the colon insert:

"8."

Page 1, line 14, after "divisions" insert "except for law enforcement purposes"

Page 1, line 20, after "divisions" insert "except for law enforcement purposes"

Page 2, line 13, remove "battery or"

Page 2, line 16, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

Renumber accordingly

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**  
**MR. PRESIDENT:** The House has failed to pass unchanged: SB 2427, SB 2439.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**  
**MR. SPEAKER:** Your signature is respectfully requested on: SB 2214, SB 2236, SB 2265, SB 2269, SB 2289, SB 2297, SB 2322, SB 2357, SB 2368, SB 2378.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**  
**MR. PRESIDENT:** Your signature is respectfully requested on: HB 1109, HB 1159, HB 1176, HB 1234, HB 1272, HB 1386, HB 1413, HB 1484, HB 1491, HB 1505, HB 1525, HB 1575, HCR 3020, HCR 3051.

**MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)**  
**MR. PRESIDENT:** The Speaker has signed: SB 2214, SB 2236, SB 2265, SB 2269, SB 2289, SB 2297, SB 2322, SB 2357, SB 2368, SB 2378.

**MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)**  
**MR. SPEAKER:** The President has signed: HB 1024, HB 1027, HB 1048, HB 1060, HB 1064, HB 1094, HB 1101, HB 1130, HB 1135, HB 1139, HB 1140, HB 1153, HB 1192, HB 1223, HB 1232, HB 1257, HB 1277, HB 1291, HB 1296, HB 1321, HB 1340, HB 1345, HB 1367, HB 1402, HB 1420, HB 1428, HB 1460, HB 1477, HB 1497, HB 1566, HCR 3011, HCR 3036.

#### MOTION

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

#### MOTION

**SEN. CHRISTMANN MOVED** that the Senate be on the Fourth, Fifth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 12:30 p.m., Monday, March 23, 2009, which motion prevailed.

#### REPORT OF STANDING COMMITTEE

**HB 1035: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1035 was placed on the Sixth order on the calendar.

Page 1, line 10, after "surplus" insert "determined as of June thirtieth of each year"

Page 1, line 13, after "2." insert "If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve, notwithstanding section 65-04-01 the organization shall modify premium rates for the next year so that one-tenth of the difference between the actuarially discounted reserve and one hundred twenty percent of the actuarially discounted reserve is estimated to be collected during the following year.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years.

4."

Page 1, line 17, replace "3." with "5."

ReNUMBER accordingly

#### REPORT OF STANDING COMMITTEE

**HB 1037, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1037 was placed on the Fourteenth order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1057, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Reengrossed HB 1057, as amended, was placed on the Fourteenth order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1162: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS**

(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1162 was placed on the Sixth order on the calendar.

Page 1, line 9, after the underscored period insert "This section does not apply to the sale or offer for sale of an item that is not a flag but which portrays a likeness of a flag of the United States of America, such as food, clothing, a lapel pin, a paper product, or other non-flag item."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**HB 1204, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1204 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "subsection 15 to section 26.1-36-05," and after "26.1-36" insert a comma

Page 1, line 4, after "to" insert "individual"

Page 6, after line 5, insert:

**"SECTION 2.** Subsection 15 to section 26.1-36-05 of the North Dakota Century Code is created and enacted as follows:

15. A provision that except as otherwise provided under this subsection, the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a crime or to which a contributing cause was the insured's engagement in an illegal occupation. However, under this subsection the insurer is liable for a loss to the extent the crime committed was a misdemeanor violation of section 39-08-01."

Page 6, line 10, after the first underscored comma insert "individual."

Page 6, line 14, after the underscored period insert "The coverage required under this section may be subject to limitations under subdivision g of subsection 2 of section 26.1-36-04 or subsection 15 of section 26.1-36-05."

Page 6, line 20, after "under" insert "subsection 15 of section 26.1-36-05 and" and replace "2" with "3"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**HB 1478, as reengrossed: Human Services Committee (Sen. J. 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). Reengrossed HB 1478 was placed on the Sixth order on the calendar.

Page 1, line 2, after "program" insert "; and to provide legislative intent"

Page 1, line 13, overstrike "one" and insert immediately thereafter "two" and remove "sixty"

Page 2, after line 3, insert:

**"SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative assembly that public school districts and private schools help ensure that families of enrolled school-age children are aware of available health care coverage. Health care coverage may be available from individual student policies or from state or federally funded programs, such as medicaid or the children's health insurance program. It is expected that schools will provide information and applications to families as part of annual enrollment efforts. The department of human services and the superintendent of public instruction may offer assistance to schools with this effort."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1510, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1510 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "business"

Page 1, line 13, remove "business"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1561, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1561 was placed on the Sixth order on the calendar.

Page 1, line 2, after "decisions" insert "; to provide for application; and to declare an emergency"

Page 1, after line 22, insert:

**"SECTION 2. APPLICATION.** This Act applies only to claims filed on or after the effective date of this Act.

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

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HCR 3044: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3044 was placed on the Fourteenth order on the calendar.

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

**Fran A. Gronberg, Secretary**