

JOURNAL OF THE SENATE

Sixty-second Legislative Assembly

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Bismarck, January 27, 2011

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

The prayer was offered by Reverend Larry Giese, Lord of Life Church, Bismarck.

The roll was called and all members were present.

A quorum was declared by the President.

**COMMUNICATION FROM GOVERNOR JACK DALRYMPLE
JANUARY, 18, 2011**

Pursuant to Article VIII, Section 6 of the North Dakota Constitution, I am hereby nominating Grant Shaft and Duaine Espegard for reappointment and Kirsten Diederich and Terry Hjelmstad for appointment to the State Board of Higher Education. Terry and Grant's terms would be from July 1, 2011 until June 30, 2015, and Kirsten and Duaine's terms go from July 1, 2010 until June 30, 2014.

Mr. Shaft, Mr. Hjelmstad, Mr. Espegard and Ms. Diederich's names have been submitted in accordance with the NDCC 15-10-02. They meet the requirements of Article VIII, Section 6 of the North Dakota Constitution and NDCC 15-10. Therefore, I ask the Senate to confirm Grant Shaft, Kirsten Diederich, Duaine Espegard, and Terry Hjelmstad for these positions within the first 30 days of the 2011 Legislative Session.

Thank you for your consideration.

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 nominee Kirsten Diederich to the North Dakota State Board of Higher Education: Sens. Christmann, Miller, Wanzek, and Marcellais.

SEN. STENEHJEM MOVED that the report be adopted, which motion prevailed on a voice vote.

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 nominee Terry Hjelmstad to the North Dakota State Board of Higher Education: Sens. Klein, Olafson, Andrist, and Murphy.

SEN. STENEHJEM MOVED that the report be adopted, which motion prevailed on a voice vote.

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 nominee Duaine Espegard to the North Dakota State Board of Higher Education: Sens. J. Lee, Nodland, Hogue, and Schneider.

SEN. STENEHJEM MOVED that the report be adopted, which motion prevailed on a voice vote.

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 nominee Grant Shaft to the North Dakota State Board of Higher Education: Sens. Krebsbach, Oehlke, Dever, and Heckaman.

SEN. STENEHJEM MOVED that the report be adopted, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

SB 2226: SEN. HECKAMAN (Education Committee) MOVED that the amendments on SJ page 185 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

SB 2209: SEN. LAFFEN (Industry, Business and Labor Committee) MOVED that the amendments on SJ pages 183-184 be adopted and then be placed on the Eleventh order with **DO NOT PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

SB 2216: SEN. OEHLKE (Finance and Taxation Committee) MOVED that the amendments on SJ pages 184-185 be adopted and then be placed on the Eleventh order with **DO NOT PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

SB 2028: SEN. ANDRIST (Industry, Business and Labor Committee) MOVED that the amendments on SJ page 183 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

MOTION

SEN. CHRISTMANN MOVED that that the rules be suspended and that Engrossed SB 2028 be placed on the Eleventh order for immediate second reading and final passage, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2028: A BILL for an Act to provide for a legislative management study on the payment of extraordinary medical expenses for inmates.

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 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Miller; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wanzek; Wardner; Warner

Engrossed SB 2028 passed.

SECOND READING OF SENATE BILL

SB 2145: A BILL for an Act to amend and reenact section 5-02-01 of the North Dakota Century Code, relating to alcoholic beverage license exception for nonprofit organizations.

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 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Miller; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wanzek; Wardner; Warner

Engrossed SB 2145 passed.

MOTION

SEN. CHRISTMANN MOVED that a committee of two be appointed to escort the Honorable Congressman Rick Berg to the rostrum, which motion prevailed. The President appointed Sens. Stenehjem and Sorvaag.

REMARKS OF THE HONORABLE RICK BERG, UNITED STATES CONGRESSMAN

It is great to be back here at the North Dakota Legislature...back home. Thank you Mr. President, Senator Stenehjem, Senator Christmann, Senator Taylor, and Senator Schneider.

People have been asking what it's like in the US House. The most surprising thing to me is how similar it is to our process. At my first caucus, the caucus chairman worked to quiet the caucus just like here. People fight over committee assignments, office space, parking, and when the cameras are out the speeches get longer....and the cameras are always out in DC.

One of the major differences is if a bill passes one chamber, the other chamber doesn't have to take it up. In committees questions are asked by seniority. It took me two hours to ask a question at the healthcare hearing and you know how hard it was for me to stay quiet for that long.

When I was first elected to the legislature, North Dakota was facing some tough issues--hard economic times, out-migration, high taxes and a business climate that was hardly the envy of the nation. Back then, there were those in other states that wrote off North Dakota's prospects. Some went so far as to say our state wasn't good for much more than grazing animals—they called this place the "buffalo commons."

A lot has changed. Now North Dakota is known as one of the best places in America to do business. This didn't happen by accident. Our successes are in no small part due to the work done by this body. The legislature in North Dakota was proactive in its pursuit of business and job growth. We focused on creating a great business climate first. We made sure that those who wanted to start or grow a business could be assured that the rules wouldn't change on a whim. North Dakota has become a place of stability, of certainty. This attitude transformed North Dakota into what we have today...we truly are the envy of the nation.

When I first got out to Washington, DC, other congressmen would ask how come North Dakota is doing so good, that our unemployment is only 5 percent. I'd respond by saying, "You're wrong. It's only 3.5 percent."

In North Dakota, we learned long ago that we can't spend more than we bring in and we must save for a rainy day. We know that the best way to boost our economy is jobs, and that business, not the state or federal government, creates these jobs. We also learned that too much government can kill jobs and growth by creating uncertainty and overbearing regulations, scaring the private sector and creating a stagnant economy. This is the situation we are seeing across our nation, and after getting out to Washington, DC, I've found the situation is even worse than I thought.

There remains a cloud of uncertainty for our families and businesses, and this must change if we are to get America back on track. The US House of Representatives is pushing policies to reduce spending and promote an environment that creates jobs and economic growth.

Yesterday, the Congressional Budget Office reported that the nation's federal deficit will grow to nearly \$1.5 trillion this year alone. Our nation's mounting debt makes it obvious that the out-of-control government spending must stop. For you veteran legislators, you know my old charts that show ongoing spending and revenue....and the gap, when I tried for the federal budget I couldn't get it on one page.

Our federal government needs tangible, common-sense solutions to reduce federal spending and lower our national debt. They need the common sense that we have in North Dakota. Washington's current level of spending is unsustainable. Congress must set its budgetary priorities and provide the American people with confidence that Congress is serious about getting our country back on track.

In our nation's capitol, there are those who believe we can't get out of the mess we are in. To those, I say, "Look west to a state called North Dakota. If you want to know how to govern, look west from Washington to a city called Bismarck. Look west to a place called the North Dakota House of Representatives and the North Dakota Senate." The answers to our nation's problems can be found right here in North Dakota.

When I ran for this office, I said I wanted to make Washington more like North Dakota. I have thought it would be great to turn over some of these federal problems to the Republicans and Democrats in the North Dakota Legislature and I'm sure that in 80 days, we could get things done.

Thank you so much for your support and friendship over the years,

I am proud to say I was a member of this great body – the North Dakota Legislature.

MOTION

SEN. CHRISTMANN MOVED that the remarks of Congressman Berg be printed in the Senate Journal, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2158: A BILL for an Act to amend and reenact subsections 2, 4, and 5 of section 6-08-16 and subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check with nonsufficient funds or without an account; 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 41 YEAS, 6 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Lyson; Marcellais; Miller; Murphy; Nelson; Nething; Nodland; Oehlke; Olafson; Schaible; Sitte; Sorvaag; Stenehjem; Triplett; Uglem; Wanzek; Wardner; Warner

NAYS: Luick; Mathern; O'Connell; Robinson; Schneider; Taylor

Engrossed SB 2158 passed.

SECOND READING OF SENATE BILL

SB 2289: A BILL for an Act to amend and reenact section 15-20.1-22 of the North Dakota Century Code, relating to grants for innovations.

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 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Miller; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wanzek; Wardner; Warner

SB 2289 passed.

SECOND READING OF SENATE BILL

SB 2277: A BILL for an Act to amend and reenact subsection 21 of section 12.1-30-03 of the

North Dakota Century Code, relating to exceptions to Sunday closing.

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 9 YEAS, 38 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Fischer; Holmberg; Laffen; Lee, J.; Marcellais; Murphy; Oehlke; Schneider; Triplett

NAYS: Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Dotzenrod; Erbele; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Kilzer; Klein; Krebsbach; Larsen; Lee, G.; Luick; Lyson; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Olafson; Robinson; Schaible; Sitte; Sorvaag; Stenehjerm; Taylor; Uglem; Wanzek; Wardner; Warner

SB 2277 lost.

SECOND READING OF SENATE BILL

SB 2284: A BILL for an Act to provide for an interstate compact on industrialized or modular buildings.

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 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Marcellais; Mathern; Miller; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjerm; Taylor; Triplett; Uglem; Wanzek; Wardner; Warner

SB 2284 passed.

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 2035, SB 2175, SB 2214, SB 2231, SB 2233, SB 2243.

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 2078.

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 1200, HB 1230, HB 1260, HB 1262.

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 1076, HB 1188, HB 1216.

MOTION

SEN. CHRISTMANN MOVED that the Senate be on the Fourth, Fifth, and Ninth orders of business and at the conclusion of those orders, the Senate stand adjourned until 12:30 p.m., Friday, January 28, 2011, which motion prevailed.

REPORT OF STANDING COMMITTEE

SB 2031: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2031 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2079: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2079 was placed on the Sixth order on the calendar.

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency"

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - EXPLOITATION OF ELDERLY. During the 2011-12 interim, the legislative management shall consider studying the exploitation of the state's elderly and the state's vulnerable adult population. The study must include a review of the vulnerable adult protection system, the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and any barriers to the use of those sections. The study also must include a review of state and county services available to detect and respond to elderly abuse. The study also must include a statewide review of the role public administrators and guardians have in providing services to the elderly and to vulnerable adults. The legislative management shall report its findings, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2089: 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). SB 2089 was placed on the Sixth order on the calendar.

Page 1, line 15, remove the overstrike over "~~found by a test required by a physician, qualified technician,~~"

Page 1, line 16, remove the overstrike over "~~chemist, or registered nurse~~"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2128, as amended: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2128, as amended, was placed on the Sixth order on the calendar.

Page 1, line 2, replace "tuberculin testing of cattle" with "livestock disease testing required by the state veterinarian"

Page 1, line 3, remove "and"

Page 1, line 3, after "appropriation" insert "; and to declare an emergency"

Page 1, line 7, replace "**Tuberculin testing of cattle**" with "**Disease testing of livestock**"

Page 1, line 8, replace "cattle" with "livestock"

Page 1, line 9, replace "cattle" with "livestock"

Page 1, line 9, remove "an"

Page 1, remove line 10

Page 1, line 11, replace "plant health inspection service" with "disease testing required by the state veterinarian"

Page 1, line 11, after "herd" insert "or flock"

Page 1, line 12, after "veterinarian" insert "or the state veterinarian's designee"

Page 1, line 13, replace "chronological" with "the"

Page 1, line 13, after "order" insert "of filing"

Page 1, line 16, replace "cattle's" with "animal's"

Page 1, line 22, replace "tuberculin" with "disease"

Page 1, line 22, replace "cattle" with "livestock"

Page 2, after line 2, insert:

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

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2147, as amended: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2147, as amended, was placed on the Sixth order on the calendar.

Page 1, line 16, replace "July" with "August"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2148: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (4 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2148 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2152: 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 2152 was rereferred to the **Appropriations Committee**.

REPORT OF STANDING COMMITTEE

SB 2198: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2198 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2250: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2250 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2270: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2270 was placed on the Eleventh order on the calendar.

FIRST READING OF SENATE CONCURRENT RESOLUTIONS

Sens. Mathern, Dever and Reps. Kretschmar, Metcalf introduced:

SCR 4015: A concurrent resolution urging Congress and the President to pursue peace in Iraq and Afghanistan and disengage American combat forces from duty in these countries.

Was read the first time and referred to the **Government and Veterans Affairs Committee**.

Sens. Nelson, Schneider, Triplett and Reps. Conklin, Holman, D. Johnson introduced:

SCR 4016: A concurrent resolution expressing support for the public awareness of multiple sclerosis; declaring the week of March 14-20, 2011, "MS Awareness Week"; and urging the Congress of the United States to join in the movement in creating a world free of multiple sclerosis.

Was read the first time and referred to the **Human Services Committee**.

Sens. Nelson, Murphy, J. Lee and Rep. Conklin introduced:

SCR 4017: A concurrent resolution directing the Legislative Management to study the feasibility and desirability of allowing school officials access to the otherwise confidential files and records of the juvenile court.

Was read the first time and referred to the **Judiciary Committee**.

Sens. Wanzek, Flakoll, Schaible and Reps. Belter, Headland, D. Johnson introduced:

SCR 4018: A concurrent resolution urging the Secretary of the United States Department of Agriculture to rely on sound scientific research to support regulatory decisionmaking with respect to the deregulation of alfalfa and all other similar circumstances.

Was read the first time and referred to the **Agriculture Committee**.

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

William R. Horton, Secretary