

JOURNAL OF THE SENATE

Sixty-second Legislative Assembly

* * * * *

Bismarck, March 22, 2011

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

The prayer was offered by Pastor Adrian Timmons, Johnson Corners Wesleyan Church, Watford City.

The roll was called and all members were present.

A quorum was declared by the President.

THE SENATE RECOGNIZED THE PRESENCE OF:

Former Senator Elroy Lindaas.

CONSIDERATION OF AMENDMENTS

HB 1005, as engrossed: SEN. HOLMBERG (Appropriations Committee) MOVED that the amendments on SJ pages 794-795 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

HB 1413, as engrossed: SEN. UGLEM (Natural Resources Committee) MOVED that the amendments on SJ page 795 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

CONSIDERATION OF AMENDMENTS

HB 1162, as engrossed: SEN. ANDRIST (Political Subdivisions Committee) MOVED that the amendments on SJ page 795 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

SECOND READING OF HOUSE BILL

HB 1163: A BILL for an Act to create and enact a new section to chapter 54-02 of the North Dakota Century Code, relating to the national honor and remember flag.

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 8 YEAS, 39 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Andrist; Bowman; Dever; Kilzer; Larsen; Lyson; O'Connell; Sorvaag

NAYS: Berry; Burckhard; Christmann; Cook; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Klein; Krebsbach; Laffen; Lee, G.; Lee, J.; Luick; Marcellais; Mathern; Miller; Murphy; Nelson; Nething; Nodland; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Stenehjem; Taylor; Triplett; Uglen; Wanzek; Wardner; Warner

HB 1163 lost.

SECOND READING OF HOUSE BILL

HB 1133: A BILL for an Act to amend and reenact subsections 2 and 9 of section 15-39.1-04, subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-17, and 15-39.1-20 of the North Dakota Century Code, relating to definitions of beneficiary and salary, incorporation of federal law changes, and modification of death and beneficiary provisions under the teachers' fund for retirement.

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

Engrossed HB 1133 passed.

SECOND READING OF HOUSE BILL

HB 1132: A BILL for an Act to amend and reenact sections 2-05-03, 2-05-04, 2-05-05, and 2-05-06.5, subsection 3 of section 2-05-11.1, and sections 2-05-11.3 and 57-43.3-06 of the North Dakota Century Code, relating to the powers and duties of the aeronautics commission and the distribution of aviation fuel tax revenue; to repeal sections 2-05-06.4, 2-05-08, 2-05-12, 2-05-15, 2-05-15.1, 2-05-16, and 2-05-17 of the North Dakota Century Code, relating to the powers and duties of the aeronautics commission; and to declare an emergency.

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

HB 1132 passed and the emergency clause was declared carried.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3026: A concurrent resolution urging Congress to require renegotiation of United States Fish and Wildlife Service wetlands easements.

The question being on the final adoption of the resolution, which has been read, and has committee recommendation of DO PASS.

Engrossed HCR 3026 was declared adopted on a voice vote.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3021: A concurrent resolution urging the Citizen's Stamp Advisory Committee of the United States Postal Service to issue a commemorative stamp honoring coal miners and their contributions to our nation.

The question being on the final adoption of the resolution, which has been read, and has committee recommendation of DO PASS.

HCR 3021 was declared adopted on a voice vote.

SECOND READING OF HOUSE BILL

HB 1045: A BILL for an Act to amend and reenact sections 57-40.6-01 and 57-40.6-10 of the North Dakota Century Code, relating to definitions and standards and guidelines for emergency services communication systems.

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 HB 1045, as amended, passed.

SECOND READING OF HOUSE BILL

HB 1421: A BILL for an Act to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to good funds for real estate transactions.

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 HB 1421, as amended, passed.

SECOND READING OF HOUSE BILL

HB 1241: A BILL for an Act to create and enact a new section to chapter 38-11.1, section 38-11.1-04.1, and a new section to chapter 47-16 of the North Dakota Century Code, relating to notice of oil and gas drilling operations, compensation for loss of agricultural production and income caused by oil and gas production, and definition of drilling; to amend and reenact sections 38-11.1-02, 38-11.1-04, 38-11.1-08, and 47-16-39.1 of the North Dakota Century Code, relating to damage and disruption payments for damages caused by oil and gas production, agreement with offer of settlement, and the obligation to pay oil and gas royalties; to repeal section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations; and to provide an effective date.

MOTION

SEN. ANDRIST MOVED that Engrossed HB 1241, as amended, be amended as follows.

In lieu of the amendments adopted by the Senate as printed on page 772 and 773 of the Senate Journal, Engrossed House Bill No. 1241 is amended as follows:

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "38-11.1-04.1" insert ", and a new section to chapter 47-16"

Page 1, line 2, replace the second "and" with a comma

Page 1, line 3, after the second "production" insert ", and definition of drilling"

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

Page 1, line 4, after "sections" insert "38-11.1-02,"

Page 1, line 4, after "38-11.1-04" insert ", 38-11.1-08,"

Page 1, line 6, after "production" insert ", agreement with offer of settlement,"

Page 1, line 6, after "royalties" insert "; to repeal section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations; and to provide an effective date"

Page 1, after line 8, insert:

"SECTION 1. AMENDMENT. Section 38-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-02. Purpose and interpretation.

It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and ~~38-11.1-05~~38-11.1-04.1 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons."

Page 3, after line 9, insert:

"SECTION 4. AMENDMENT. Section 38-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-08. Agreement - Offer of settlement.

Unless both parties provide otherwise by written agreement, at the time the notice required by ~~section 38-11.1-05~~subsection 2 of section 38-11.1-04.1 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by ~~section 38-11.1-05~~subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made."

Page 4, line 8, overstrike "from initial" and insert immediately thereafter "after"

Page 4, line 8, after "production" insert "is marketed"

Page 4, line 9, after "operator" insert "thereafter"

Page 4, after line 24, insert:

"SECTION 7. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Drilling - Definition for oil and gas lease purposes.

Notwithstanding any provision in an oil and gas lease to the contrary, in any clause of an oil and gas lease which permits extension of the primary term of the lease, drilling means that an actual drilling rig, capable of drilling the well to the total proposed depth, whether total vertical depth in a vertical well or total measured depth in a horizontal well, is on location and actively drilling before the expiration of

the primary term of the lease. The spud date of the well must be listed on the department of mineral resources rig list as being before the expiration of the primary term of the lease to extend the lease.

SECTION 8. REPEAL. Section 38-11.1-05 of the North Dakota Century Code is repealed.

SECTION 9. EFFECTIVE DATE. Sections 2 and 5 of this Act become effective for drilling operations commenced after July 31, 2011."

Renumber accordingly

REQUEST

SEN. WARDNER REQUESTED a verification vote on the motion to adopt the proposed amendments to Engrossed HB 1241, as amended, which request was granted.

The proposed amendments to Engrossed HB 1241, as amended, were adopted on a verification vote.

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 40 YEAS, 7 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

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

NAYS: Dever; Freborg; Lyson; Miller; Murphy; Oehlke; Olafson

Engrossed HB 1241, as amended, passed.

SECOND READING OF HOUSE BILL

HB 1428: A BILL for an Act to amend and reenact section 6-09.4-23 of the North Dakota Century Code, relating to authority to withhold school district state aid.

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

HB 1428 passed.

SECOND READING OF HOUSE BILL

HB 1393: A BILL for an Act to create and enact a new section to chapter 20.1-01 of the North Dakota Century Code, relating to legal weapons for hunting purposes.

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, 1 NAY, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; 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

NAYS: Hogue

Engrossed HB 1393, as amended, passed.

SECOND READING OF HOUSE BILL

HB 1335: A BILL for an Act to create and enact a new section to chapter 61-28 of the North Dakota Century Code, relating to exemptions from enforcement actions for water transfers used to control flooding; and to declare an emergency.

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

Engrossed HB 1335 passed and the emergency clause was declared carried.

SECOND READING OF HOUSE BILL

HB 1459: A BILL for an Act to create and enact a new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 45 YEAS, 2 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; 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; Uglem; Wanzek; Wardner; Warner

NAYS: Laffen; Triplett

Engrossed HB 1459 passed and the emergency clause was declared carried.

SECOND READING OF HOUSE BILL

HB 1182: A BILL for an Act to amend and reenact section 4-24-09 of the North Dakota Century Code, relating to investments of agricultural commodity funds.

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

HB 1182 passed.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3040: A concurrent resolution urging the Secretary of the United States Department of Agriculture to change prevented planting provisions in crop insurance policies for the purpose of providing compensation to producers affected by Devils Lake flooding.

The question being on the final adoption of the resolution, which has been read, and has committee recommendation of DO PASS.

HCR 3040 was declared adopted on a voice vote.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3019: A concurrent resolution urging the United States Army Corps of Engineers to immediately cease wrongful denial of access and wrongful requirement of payment for the natural flows of the Missouri River.

The question being on the final adoption of the resolution, which has been read, and has committee recommendation of DO PASS.

Engrossed HCR 3019 was declared adopted on a voice vote.

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

MR. SPEAKER: The Senate has passed, unchanged: HB 1009, HB 1017, HB 1022, HB 1023, HB 1024, HB 1097, HB 1196, HB 1197, HB 1221, HB 1415, HCR 3008.

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

MR. SPEAKER: The Senate has passed, the emergency clause carried, unchanged: HB 1216, HB 1343.

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

MR. SPEAKER: The Senate has amended and subsequently passed: HB 1214.

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

MR. SPEAKER: The Senate has amended, subsequently passed, and the emergency clause carried: HB 1089, HB 1167.

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

MR. SPEAKER: The Senate has failed to pass, unchanged: HB 1395.

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

MR. PRESIDENT: The House has passed, unchanged: SB 2066, SB 2101, SB 2120, SB 2182, SB 2256.

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

MR. PRESIDENT: The House has amended and subsequently passed: SB 2169, SB 2247.

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2169

Page 1, line 7, replace "shall" with "may"

Page 1, line 8, replace "shall" with "may"

Page 1, line 9, replace "shall" with "may"

Renumber accordingly

HOUSE AMENDMENTS TO SENATE BILL NO. 2247

Page 2, line 25, remove "otherwise"

Page 2, after line 27, insert:

"8. Whenever funding is available from grants, a member of the domestic violence fatality review commission who is not a permanent full-time state employee is entitled to compensation at a rate of seventy-five dollars per day and mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09, to be paid by the employing agency."

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 2241, SB 2285.

HOUSE AMENDMENTS TO SENATE BILL NO. 2241

Page 1, line 2, replace "and" with a semicolon

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

Page 2, after line 8, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2285

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 29-06-15 of the North Dakota Century Code, relating to arrests without a warrant; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 29-06-15 of the North Dakota Century Code is created and enacted as follows:

If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state which requires the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

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

MR. PRESIDENT: The House has failed to pass, unchanged: SB 2184, SB 2332.

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

MR. SPEAKER: Your signature is respectfully requested on: SB 2149, SB 2151, SB 2265, SB 2270, SB 2288, SB 2293, SB 2305, SB 2347, SB 2367, SCR 4005, SCR 4012, SCR 4016, SCR 4020, SCR 4021.

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

MR. PRESIDENT: Your signature is respectfully requested on: HB 1075, HB 1100, HB 1145, HB 1161, HB 1176, HB 1185, HB 1205, HB 1346, HB 1376, HB 1430, HCR 3007, HCR 3020, HCR 3022.

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

MR. PRESIDENT: The Speaker has signed: SB 2149, SB 2151, SB 2265, SB 2270, SB 2288, SB 2293, SB 2305, SB 2347, SB 2367, SCR 4005, SCR 4012, SCR 4016, SCR 4020, SCR 4021.

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

MR. SPEAKER: The President has signed: HB 1113, HB 1139, HB 1222, HB 1319, HB 1391, HB 1465, HCR 3032.

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 1:00 p.m., Wednesday, March 23, 2011, which motion prevailed.

REPORT OF STANDING COMMITTEE

HB 1010, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1010 was placed on the Sixth order on the calendar.

Page 1, replace lines 13 and 14 with:

"Grants	<u>1,772,278</u>	<u>429,029</u>	<u>2,201,307</u>
Total all funds	\$2,756,770	\$461,692	\$3,218,462"

Page 1, replace line 16 with:

"Total general fund	\$1,311,284	\$52,318	\$1,363,602"
---------------------	-------------	----------	--------------

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:**House Bill No. 1010 - Council on the Arts - Senate Action**

	Executive Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$741,580	\$741,580		\$741,580
Operating expenses	295,575	275,575		275,575
Grants	<u>2,216,307</u>	<u>2,191,307</u>	10,000	<u>2,201,307</u>
Total all funds	\$3,253,462	\$3,208,462	\$10,000	\$3,218,462
Less estimated income	<u>1,854,860</u>	<u>1,854,860</u>	0	<u>1,854,860</u>
General fund	\$1,398,602	\$1,353,602	\$10,000	\$1,363,602
FTE	5.00	5.00	0.00	5.00

Department No. 709 - Council on the Arts - Detail of Senate Changes

	Restores Funding for Poet Laureate ¹	Total Senate Changes
Salaries and wages		
Operating expenses		
Grants	<u>10,000</u>	<u>10,000</u>
Total all funds	\$10,000	\$10,000

Less estimated income	0	0
General fund	\$10,000	\$10,000
FTE	0.00	0.00

¹ This amendment restores funding removed by the House for a poet laureate.

REPORT OF STANDING COMMITTEE

HB 1055, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1055 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1142, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1142 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 53 of the North Dakota Century Code, relating to registered agritourism activity liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 53 of the North Dakota Century Code is created and enacted as follows:

Definitions.

In this chapter, unless the context otherwise requires:

1. "Agritourism activity" means any activity, including farming and ranching activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by members of the general public, for educational, recreational, or entertainment purposes, regardless of whether the member of the general public pays to participate in the activity or to view or enjoy the attraction.
2. "Inherent risk" means:
 - a. Any condition or danger that is an integral part of agritourism, including:
 - (1) Surface and subsurface conditions of the land;
 - (2) Surface and subsurface conditions of the water;
 - (3) Natural conditions of land, vegetation, and water;
 - (4) The behavior of wild or domestic animals; and
 - (5) Structures and equipment ordinarily used in farming or ranching; and
 - b. The potential of a participant to act in a negligent manner, including failing to follow instructions or failing to exercise reasonable caution while engaging in an agritourism activity.
3. "Participant" means a member of the general public who engages in a registered agritourism activity.

4. "Registered agritourism activity" means an agritourism activity that is registered with the division of tourism.
5. "Registered agritourism operator" means a person that is registered with the division of tourism and that is engaged in the provision of a registered agritourism activity.

Registration - Requirements.

1. A person may become a registered agritourism operator by registering with the division of tourism.
2. The registration must include a description of the agritourism activity that the person provides or intends to provide.
3. The division of tourism may not impose any fees or other charges to register agritourism operators.
4. A registration under this section is effective for five years.

Registered agritourism operators - Maintenance of list.

The division of tourism shall:

1. Maintain a list of all registered agritourism operators; and
2. Maintain a list of all registered agritourism activities.

Notice regarding liability - Requirements.

A registered agritourism operator shall post in a conspicuous location on the premises and include in each written contract pertaining to an individual's participation in agritourism a notice indicating that under the laws of this state, the registered agritourism operator is not liable for any injury to or for the death of a participant if the injury or death results from an inherent risk.

Participant in agritourism activity - Assumption of risk.

Except as otherwise provided, a participant assumes all inherent risks of agritourism. In any action for damages arising from an individual's participation in agritourism, a registered agritourism operator may plead assumption of risk by the participant as an affirmative defense.

Liability of registered agritourism operator.

This chapter does not prevent or limit the liability of a registered agritourism operator if the operator:

1. Injures a participant willfully or through conduct that amounts to gross negligence; or
2. a. Has actual knowledge of or should have known of:
 - (1) A dangerous condition on property, including in a facility, at which a registered agritourism activity occurs;
 - (2) A dangerous condition with respect to equipment used in the registered agritourism activity; or
 - (3) The dangerous propensity of a particular animal used in the registered agritourism activity;
- b. Does not exercise ordinary care to remedy the danger or to warn a participant of the danger; and

- c. The danger causes injury to the participant or contributes to the injury of the participant.

Division of tourism - Copy of law - Provision to registered agritourism operator.

The division of tourism shall provide a copy of the applicable law to each person that registers or reregisters as an agritourism operator."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1175, 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 1175 was placed on the Sixth order on the calendar.

Page 1, line 9, after "year" insert an underscored comma

Page 1, line 11, after "indirectly" insert "to a person"

Page 1, line 12, after "advertising" insert "the"

Page 1, line 12, remove "for the sale or retention of contracts of"

Page 1, remove line 13

Page 1, line 14, remove "cash equivalent is prohibited under this section"

Page 1, line 14, after the underscored period insert "As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Page 2, line 6, after "year" insert an underscored comma

Page 2, line 8, after "indirectly" insert "to a person"

Page 2, line 8, after "advertising" insert "the"

Page 2, remove line 9

Page 2, line 10, remove "premium or a giving of cash or cash equivalent is prohibited under this section"

Page 2, line 10, after the underscored period insert "As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer

may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Page 2, line 31, after "year" insert an underscored comma

Page 3, line 2, after "indirectly" insert "to a person"

Page 3, line 2, after "advertising" insert "the"

Page 3, remove line 3

Page 3, line 4, remove "premium or a giving of cash or cash equivalent is prohibited under this section"

Page 3, line 4, after the underscored period insert "As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1230: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1230 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1260: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1260 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1269, as reengrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "for application" with "an appropriation"

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo."

Page 5, replace lines 7 through 11 with:

"SECTION 4. APPROPRIATION. There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180, 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1307: Judiciary Committee (Sen. Nething, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1307 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1321, as reengrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact chapter 19-20.3 of the North Dakota Century Code, relating to anhydrous ammonia risk management program requirements; to"

Page 1, line 3, remove "and"

Page 1, line 4, after "fund" insert "; to provide an effective date; and to declare an emergency"

Page 5, after line 11, insert:

"SECTION 8. Chapter 19-20.3 of the North Dakota Century Code is created and enacted as follows:

19-20.3-01. Risk management program - Anhydrous ammonia.

In order to determine compliance with the risk management program requirements set forth in section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011, the agriculture commissioner may:

1. Request information from any person that:
 - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - b. Is required to comply with the risk management program requirements;
2. Conduct inspections of any person that:
 - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - b. Is required to comply with the risk management program requirements; and
3. Obtain and review risk management plans required under 40 Code of Federal Regulations, part 68, as amended through June 30, 2011, and other records applicable to any person that:
 - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - b. Is required to comply with the risk management program requirements.

19-20.3-02. Risk management program - Enforcement authority.

If the agriculture commissioner determines that there is noncompliance on the part of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is required to comply with the risk management program requirements referenced in section 19-20.3-01, the agriculture commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;
2. Issue a cease and desist order; and
3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation."

Page 5, after line 12, insert:

"SECTION 10. CONTINGENT EFFECTIVE DATE. Section 8 of this Act becomes effective on the date that the governor certifies to the legislative council that the agriculture commissioner has been delegated by the administrator of the environmental protection agency to implement and enforce the risk management program as it pertains to the sale, storage, and handling of anhydrous ammonia for agricultural purposes, in accordance with section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011.

SECTION 11. EFFECTIVE DATE. Sections 1 and 9 of this Act become effective on July 1, 2011. Sections 2 through 7 of this Act become effective on January 1, 2012.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1328, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1328 was placed on the Sixth order on the calendar.

Page 5, line 1, replace "features of" with "information from"

Page 5, line 2, remove "as a real estate recording under this section and which also"

Page 5, line 3, replace "meets the requirements for a lien under" with "in"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1418, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1418 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1419, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1419 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1467, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1467 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HCR 3003, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3003 was placed on the Fourteenth order on the calendar.

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

William R. Horton, Secretary

