

## JOURNAL OF THE SENATE

## Sixty-second Legislative Assembly

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Bismarck, January 26, 2011

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

The prayer was offered by Chaplain Doyle Schulz, Ascension Church, State Penitentiary, Bismarck.

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

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

Page 145, line 28, replace "Larsen" with "Laffen"

Page 145, line 28, remove "Brabandt,"

**SEN. ANDRIST 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, Erbele, Oehlke, and Nelson to the **Senate Memorial Committee**.

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

**MOTION**

**SEN. CHRISTMANN MOVED** that Engrossed SB 2049 be rereferred to the **Finance and Taxation Committee**, which motion prevailed. Pursuant to Sen. Christmann's motion, Engrossed SB 2049 was rereferred.

**CONSIDERATION OF AMENDMENTS**

**SB 2158: SEN. SITTE (Judiciary Committee) MOVED** that the amendments on SJ page 166 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

**CONSIDERATION OF AMENDMENTS**

**SB 2145: SEN. NELSON (Judiciary Committee) MOVED** that the amendments on SJ page 166 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

**SECOND READING OF SENATE BILL**

**SB 2078:** A BILL for an Act to amend and reenact subsection 10 of section 6-09-15 of the North Dakota Century Code, relating to authority of the Bank of North Dakota to originate residential mortgage loans; 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 45 YEAS, 1 NAY, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Burckhard; 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

**NAYS:** Christmann

**ABSENT AND NOT VOTING:** Bowman

Engrossed SB 2078 passed and the emergency clause was declared carried.

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#### **SECOND READING OF SENATE BILL**

**SB 2231:** A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to the definition of those required to register as sexual offenders.

#### **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; Berry; 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

**ABSENT AND NOT VOTING:** Bowman

SB 2231 passed.

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#### **SECOND READING OF SENATE BILL**

**SB 2175:** A BILL for an Act to amend and reenact section 24-02-07.3 of the North Dakota Century Code, relating to prequalification and selection of consultants by the department of transportation.

#### **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; Berry; 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

**ABSENT AND NOT VOTING:** Bowman

SB 2175 passed.

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#### **SECOND READING OF SENATE BILL**

**SB 2233:** A BILL for an Act to create and enact subsection 3 to section 50-25.1-03 of the North Dakota Century Code, relating to a requirement to report sexual conduct by a child discovered on a workplace computer; and to amend and reenact subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code, relating to the definition of sexual conduct as it pertains to sexual performances by children.

**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; Berry; 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

**ABSENT AND NOT VOTING:** Bowman

SB 2233 passed.

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**SECOND READING OF SENATE BILL**

**SB 2201:** A BILL for an Act to amend and reenact sections 14-09-00.1 and 14-09-29 of the North Dakota Century Code, relating to parenting rights and responsibilities; to provide for retroactive application; 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 NOT PASS, the roll was called and there were 3 YEAS, 43 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** O'Connell; Sitte; Wanzek

**NAYS:** Andrist; Berry; 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; Oehlke; Olafson; Robinson; Schaible; Schneider; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Bowman

SB 2201 lost.

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**SECOND READING OF SENATE BILL**

**SB 2035:** A BILL for an Act to amend and reenact subsection 1 of section 43-15-01 of the North Dakota Century Code, relating to pharmacist administration of immunizations and vaccinations to minors.

**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 44 YEAS, 2 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; 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; Oehlke; Olafson; Robinson; Schaible; Schneider; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wanzek; Wardner; Warner

**NAYS:** O'Connell; Sitte

**ABSENT AND NOT VOTING:** Bowman

Engrossed SB 2035 passed.

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**SECOND READING OF SENATE BILL**

**SB 2214:** A BILL for an Act to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to the abuse or neglect of a child; and to provide a penalty.

**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; Berry; 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

**ABSENT AND NOT VOTING:** Bowman

SB 2214 passed.

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**SECOND READING OF SENATE BILL**

**SB 2243:** A BILL for an Act to create and enact a new subsection to section 43-19.1-29 of the North Dakota Century Code, relating to exemptions to regulation by the state board of registration for professional engineers and land surveyors; and to amend and reenact section 43-19.1-02 and subsection 1 of section 43-19.1-27 of the North Dakota Century Code, relating to regulation of professional engineers and land surveyors.

**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; Berry; 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

**ABSENT AND NOT VOTING:** Bowman

SB 2243 passed.

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**SECOND READING OF SENATE BILL**

**SB 2220:** A BILL for an Act to amend and reenact section 23-27-04 of the North Dakota Century Code, relating to performance standards for emergency medical services.

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

**YEAS:** Andrist; Christmann; Freborg; Grindberg; Heckaman; Hogue; Klein; Laffen; Lyson; Marcellais; Miller; Murphy; Nodland; O'Connell; Oehlke; Olafson; Schaible; Sitte; Wardner

**NAYS:** Berry; Burckhard; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Holmberg; Kilzer; Krebsbach; Larsen; Lee, G.; Lee, J.; Luick; Mathern; Nelson; Nething;

Robinson; Schneider; Sorvaag; Stenehjelm; Taylor; Triplett; Uglem; Wanzek; Warner

**ABSENT AND NOT VOTING:** Bowman

SB 2220 lost.

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**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 2024, SB 2037, SB 2053, SB 2142, SB 2186, SCR 4009.

**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 1055, HB 1130, HB 1158, HB 1174, HB 1192, HB 1197, HB 1215, HB 1271, HB 1273.

**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 1066, HB 1122.

**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 Ninth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Thursday, January 27, 2011, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

**SB 2028: 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 2028 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 provide for a legislative management study on the payment of extraordinary medical expenses for inmates.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PAYMENT OF EXTRAORDINARY MEDICAL EXPENSES OF INMATES.** During the 2011-12 interim, the legislative management shall consider studying the payment of extraordinary medical expenses of inmates in correctional facilities, including payment of those expenses through the department of corrections and rehabilitation or other state entity and other cost-management techniques. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

ReNUMBER accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2209: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2209 was placed on the Sixth order on the calendar.

Page 3, after line 4, insert:

"14. "Design-builder" or "design-build entity" means the corporation, partnership, limited partnership, sole proprietorship, joint venture, or other organization established by written agreement that undertakes or enters a contract with a governing body for the design and construction of a design-build project.

15. "Design-build team" means the design-build entity and major subcontractors, including those entities that are responsible for completing at least the design, general construction, mechanical construction, and electrical construction of a design-build project."

Page 3, line 5, replace "14." with "16."

Page 3, line 10, replace "15." with "17."

Page 3, line 11, replace "16." with "18."

Page 3, line 15, replace "17." with "19."

Page 3, line 17, replace "18." with "20."

Page 3, line 19, replace "19." with "21."

Page 3, line 21, replace "20." with "22."

Page 3, line 24, replace "21." with "23."

Page 3, line 30, replace "22." with "24."

Page 4, line 5, replace "ten" with "twenty"

Page 5, line 9, remove "partner, general partner, limited partnership, and subcontractor that"

Page 5, line 10, replace "will participate in the contract proposal" with "member of the design-build entity"

Page 5, line 11, replace "each partner, general partner, limited partnership, and" with "the design-build team for the proposed project has completed or demonstrated the experience, competency, capability, and capacity to complete a project of the size, scope, and complexity of the proposed project and that key personnel expected to be involved on the project have sufficient experience and training to competently manage and complete the design and construction of the proposed project."

Page 5, remove lines 12 through 17

Page 6, remove lines 7 through 9

Page 6, line 10, replace "i." with "l."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2216: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2216 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "deduction from" with "reimbursement of"

Page 1, line 7, replace "**Deduction to reimburse**" with "**Reimbursement to**"

Page 1, line 8, replace "may deduct and retain revenue from" with "is entitled to reimbursement of taxes paid equal to"

Page 1, line 10, remove "The deduction under this section does"

Page 1, line 11, replace "not apply to retailers in whose bar smoking is prohibited by law." with "To obtain reimbursement of the taxes paid, the retailer shall certify to the tax commissioner that the retailer meets the requirements of this section and the date the bar operated by the retailer became smoke-free. A retailer is entitled to reimbursement of the taxes paid during the calendar year from the date the retailer"

became certified as smoke-free and for each succeeding calendar year unless the retailer no longer maintains its status as a smoke-free bar. On or before January 31, 2012, and each succeeding January thirty-first, the tax commissioner shall issue a refund to the certified retailer of the allowed reimbursement amount."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2226: Education Committee (Sen. Freborg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2226 was placed on the Sixth order on the calendar.

Page 1, line 18, remove "not"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2277: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2277 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2284: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2284 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2289: Education Committee (Sen. Freborg, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2289 was placed on the Eleventh order on the calendar.

#### FIRST READING OF SENATE CONCURRENT RESOLUTIONS

Sens. Laffen, Lyson, Sitte and Reps. Anderson, Brabandt, Glassheim introduced:

**SCR 4011:** A concurrent resolution directing the Legislative Management to study the feasibility and desirability of creating a 25-year sustainability vision plan for state facilities with the intent to lower our energy usage, energy costs, and improve the environment.

Was read the first time and referred to the **Natural Resources Committee**.

Sens. Warner, J. Lee and Reps. Conklin, N. Johnson introduced:

**SCR 4012:** A concurrent resolution directing the Legislative Management to study the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit.

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

Sens. Stenehjem, Christmann, Sitte and Reps. Carlson, Delzer, Pollert introduced:

**SCR 4013:** A concurrent resolution urging Congress to adopt a federal balanced budget amendment.

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

Sen. Mathern and Rep. Maragos introduced:

**SCR 4014:** A concurrent resolution urging the Government of Turkey to grant the Ecumenical Patriarch appropriate international recognition, ecclesiastical succession, and the right to train clergy of all nationalities and to respect the property rights and human rights of the Ecumenical Patriarchate; and for other purposes.

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

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

**William R. Horton, Secretary**

