

## JOURNAL OF THE SENATE

## Sixty-second Legislative Assembly

\* \* \* \* \*

Bismarck, March 11, 2011

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

The prayer was offered by Chaplain Colleen Ressler, Medcenter One St. Vincent's Care Center, Bismarck.

The roll was called and all members were present except Senators Dotzenrod, Flakoll, Oehlke, and Wanzek.

A quorum was declared by the President.

## CONSIDERATION OF AMENDMENTS

**HB 1152, as reengrossed: SEN. J. LEE (Human Services Committee) MOVED** that the amendments on SJ page 698 be adopted and then be **REREFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed on a voice vote.

## CONSIDERATION OF AMENDMENTS

**HB 1040, as engrossed: SEN. MATHERN (Human Services Committee) MOVED** that the amendments on SJ pages 695-696 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

## CONSIDERATION OF AMENDMENTS

**HB 1091, as engrossed: SEN. SCHNEIDER (Industry, Business and Labor Committee) MOVED** that the amendments on SJ page 697 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

## CONSIDERATION OF AMENDMENTS

**HB 1095: SEN. MATHERN (Human Services Committee) MOVED** that the amendments on SJ page 697 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

## CONSIDERATION OF AMENDMENTS

**HB 1188, as engrossed: SEN. SORVAAG (Judiciary Committee) MOVED** that the amendments on SJ page 698 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

## CONSIDERATION OF AMENDMENTS

**HB 1204, as engrossed: SEN. SITTE (Judiciary Committee) MOVED** that the amendments on SJ pages 698-699 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

## CONSIDERATION OF AMENDMENTS

**HB 1085, as engrossed: SEN. DEVER (Human Services Committee) MOVED** that the amendments on SJ pages 696-697 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed on a voice vote.

## SECOND READING OF SENATE BILL

**SB 2369:** A BILL for an Act to provide appropriations to the department of emergency services for emergency snow removal grants, flood mitigation, and for state disasters; to provide for a transfer; 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 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer;

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; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

Engrossed SB 2369 passed and the emergency clause was declared carried.

\*\*\*\*\*

#### MOTION

**SEN. CHRISTMANN MOVED** that HB 1244 be placed at the bottom of the Fourteenth order, which motion prevailed.

#### SECOND READING OF HOUSE BILL

**HB 1423:** A BILL for an Act to create and enact a new section to chapter 50-24.5 of the North Dakota Century Code, relating to rulemaking authority with respect to the compensation for top management personnel of a basic care facility; 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 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer; 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; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

Engrossed HB 1423, as amended, passed and the emergency clause was declared carried.

\*\*\*\*\*

#### SECOND READING OF HOUSE BILL

**HB 1099:** A BILL for an Act to amend and reenact subsection 2 of section 5-01-17, subsection 2 of section 5-01-19, section 5-03-06, subsections 3 and 5 of section 57-36-14, subsection 7 of section 57-40.2-07, and sections 57-40.3-09, 57-43.1-44, and 57-43.2-37 of the North Dakota Century Code, relating to special events permits for domestic wineries and domestic distilleries, direct shipments of alcoholic beverages, procedures available to the tax commissioner in case of seizure of tobacco products, reporting and remittance of use tax collected during odd-numbered years, the definition of state for motor vehicle excise tax reciprocity purposes, cooperative agreements for the exchange of motor fuels tax information, and cooperative agreements for the exchange of special fuels tax information.

#### 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 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer; 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; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

Engrossed HB 1099, as amended, passed.

\*\*\*\*\*

**SECOND READING OF HOUSE BILL**

**HB 1087:** A BILL for an Act to amend and reenact subsections 1 and 2 of section 28-32-40 of the North Dakota Century Code, relating to the time for filing a petition for reconsideration from a final order of an administrative agency.

**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 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer; 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; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

HB 1087, as amended, passed.

\*\*\*\*\*

**SECOND READING OF HOUSE BILL**

**HB 1114:** A BILL for an Act to create and enact section 40-21-16.1 of the North Dakota Century Code, relating to canvassing city elections; to amend and reenact sections 40-08-08, 40-08-16, and 40-09-10 of the North Dakota Century Code, relating to city elections; to repeal section 40-09-07 of the North Dakota Century Code, relating to the bond and oath of a city commissioner; 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 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer; 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; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

Engrossed HB 1114, as amended, passed and the emergency clause was declared carried.

\*\*\*\*\*

**SECOND READING OF HOUSE BILL**

**HB 1240:** A BILL for an Act to amend and reenact section 54-55-01 of the North Dakota Century Code, relating to the qualifications of members of the commission on uniform state laws.

**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 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer; 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; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjem; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

HB 1240 passed.

\*\*\*\*\*

### SECOND READING OF HOUSE BILL

**HB 1263:** A BILL for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to the athletic nickname and logo of the university of North Dakota.

### REMARKS OF SENATOR NETHING

**MR. PRESIDENT:** Ladies and Gentlemen of the Senate, I rise in support of the committee's recommendation not to pass House Bill 1263. Both the United States Constitution and the North Dakota Constitution have provisions which forbid the passage of laws impairing the obligation of contracts. The test when analyzing whether a law violates these provisions is: First, is there substantial impairment of the contract? Second, is there a significant and legitimate public purpose served? Third, is adjusting the contracting parties' rights reasonable and appropriate in light of the public purpose?

I believe the answers to these questions are as follows. First, yes, there is a substantial impairment as the agreement, in essence, prevents the use of the "Fighting Sioux" nickname and logo, unless certain events occur within a certain period of time and under certain circumstances and House Bill 1263, in essence, requires the use of the nickname and logo. Second, there is no significant and legitimate public purpose served. Now I understand there are those who believe the issue involved would qualify as "significant and legitimate" but in my opinion the true meaning of "significant and legitimate" would be held to a much higher degree of application than the use or non-use of a nickname or logo. Third, no, adjusting the parties' rights is not reasonable and appropriate in light of the public purpose.

I recognize that each of you may disagree with my conclusions, but in my opinion, as you read the agreement and this piece of legislation, you will agree with me on the legitimacy of my position.

Mr. President and fellow Senators, the oath and obligation I took to become a member of this body stated that I would uphold the Constitution of the United States and the State of North Dakota. In view of my understanding of the contract between the State and the NCAA, House Bill 1263, as well as my oath and obligation; House Bill 1263 does violate both the United States and North Dakota State Constitution. I will be voting "no" on this bill. I invite you to join me.

### REQUEST

**SEN. NETHING REQUESTED** that his remarks be printed in the Journal, which request was granted.

### 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 28 YEAS, 15 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer; Freborg; Grindberg; Hogue; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Lyson; Miller; Nodland; O'Connell; Olafson; Sitte; Sorvaag; Stenehjem; Wardner

**NAYS:** Heckaman; Holmberg; Luick; Marcellais; Mathern; Murphy; Nelson; Nething; Robinson; Schaible; Schneider; Taylor; Triplett; Uglem; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

HB 1263 passed.

\*\*\*\*\*

### MOTION

**SEN. STENEHJEM MOVED** that the vote by which HB 1263 passed be reconsidered and the motion to reconsider be laid on the table, which motion prevailed on a verification vote.

**SECOND READING OF HOUSE BILL**

**HB 1084:** A BILL for an Act to amend and reenact sections 14-03-20.1 and 23-02.1-27 of the North Dakota Century Code, relating to surname options on marriage applications and disclosure of birth and death records; 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 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Christmann; Cook; Dever; Erbele; Fischer; 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; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Stenehjerm; Taylor; Triplett; Uglem; Wardner; Warner

**ABSENT AND NOT VOTING:** Dotzenrod; Flakoll; Oehlke; Wanzek

HB 1084 passed and the emergency clause was declared carried.

\*\*\*\*\*

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

**MR. SPEAKER:** The Senate has passed, unchanged: HB 1028, HB 1073, HB 1079, HB 1101, HB 1157, HB 1183, HB 1192, HB 1223, HB 1341, HB 1365, HB 1388, HCR 3001, HCR 3030, HCR 3034.

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

**MR. SPEAKER:** The Senate has amended and subsequently passed: HB 1254.

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

**MR. SPEAKER:** The Senate has failed to pass, unchanged: HB 1202.

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

**MR. PRESIDENT:** The House has passed, unchanged: SB 2141, SB 2160, SB 2164, SB 2170, SB 2176.

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

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2034, SB 2040, SB 2099, SB 2111, SB 2119, SB 2123, SB 2124, SB 2125, SB 2133, SB 2139, SB 2146, SB 2341.

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

**MR. PRESIDENT:** Your signature is respectfully requested on: HB 1219.

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

**MR. PRESIDENT:** Your signature is respectfully requested on: HB 1090, HB 1105, HB 1107, HB 1119, HB 1153, HB 1262, HB 1305, HB 1326, HB 1453, HCR 3029.

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

**MR. PRESIDENT:** The Speaker has signed: SB 2034, SB 2040, SB 2099, SB 2111, SB 2119, SB 2123, SB 2124, SB 2125, SB 2133, SB 2139, SB 2146, SB 2341.

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

**MR. SPEAKER:** The President has signed: HB 1090, HB 1105, HB 1107, HB 1119, HB 1153, HB 1219, HB 1262, HB 1305, HB 1326, HB 1453, HCR 3029.

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

**MR. PRESIDENT:** The Speaker has signed: HB 1219.

**MOTION**

**SEN. CHRISTMANN MOVED** that the absent members 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

1:00 p.m., Monday, March 14, 2011, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

**SCR 4026: Education Committee (Sen. Freborg, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4026 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1027: Agriculture Committee (Sen. Flakoll, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1027 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1041, as engrossed: 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** (4 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1041 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "for application" with "an appropriation"

Page 3, line 12, after "the" insert "state department of health"

Page 3, line 12, remove "under section 1 of this Act"

Page 3, line 17, after "the" insert "state department of health"

Page 3, line 17, remove "under section 1 of this Act"

Page 3, line 30, replace "**APPLICATION**" with "**APPROPRIATION**"

Page 3, line 30, remove "The state department of health shall implement and"

Page 3, remove line 31

Page 4, replace lines 1 through 3 with "There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$287,870, or so much of the sum as may be necessary, to the state department of health for the purpose of establishing and maintaining a nurse aide registry for the biennium beginning July 1, 2011, and ending June 30, 2013. This appropriation includes funding for an additional one and one-half full-time equivalent positions provided to the state department of health to maintain the nurse aide registry."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1071, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1071 was placed on the Sixth order on the calendar.

Page 2, line 8, replace "potash, or uranium" with "or subsurface minerals as defined in section 38-12-01"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1102: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1102 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1109, as engrossed: Transportation Committee (Sen. G. Lee, Chairman)** recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1109 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1181, as reengrossed: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1181 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1218: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1218 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1266, 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** (4 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1266 was placed on the Sixth order on the calendar.

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

Page 1, line 18, replace "Advanced trauma life support training" with "Contracted emergency medical services and trauma medical center"

Page 1, line 18, replace "\$20,000" with "\$416,000"

Page 1, remove line 19

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1320, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1320 was referred to the **Appropriations Committee**.

**REPORT OF STANDING COMMITTEE**

**HCR 3010: Transportation Committee (Sen. G. Lee, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3010 was placed on the Fourteenth order on the calendar.

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

**William R. Horton, Secretary**

