

## JOURNAL OF THE SENATE

## Sixtieth Legislative Assembly

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Bismarck, January 29, 2007

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

The prayer was offered by Pastor Lester Wolfgram, Shepherd of the Valley Lutheran Church, Bismarck.

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

A quorum was declared by the President.

## MOTION

**SEN. CHRISTMANN MOVED** that SB 2010, which is on the Sixth order, be rereferred to the **Appropriations Committee**, which motion prevailed. Pursuant to Sen. Christmann's motion, SB 2010 was rereferred.

## CONSIDERATION OF AMENDMENTS

**SB 2183: SEN. OEHLKE (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 210 be adopted and then be **REREFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2249: SEN. FLAKOLL (Education Committee) MOVED** that the amendments on SJ pages 211-212 be adopted and then be **REREFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2038: SEN. OEHLKE (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 209 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2047: SEN. HORNE (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 209 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2101: SEN. MARCELLAIS (Judiciary Committee) MOVED** that the amendments on SJ page 210 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2177: SEN. NETHING (Judiciary Committee) MOVED** that the amendments on SJ page 210 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2210: SEN. J. LEE (Human Services Committee) MOVED** that the amendments on SJ page 211 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2214: SEN. LYSON (Judiciary Committee) MOVED** that the amendments on SJ page 211 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2230: SEN. NELSON (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 211 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SB 2233: SEN. OEHLKE (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 211 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SB 2262: SEN. OLAFSON (Judiciary Committee) MOVED** that the amendments on SJ page 212 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SB 2064: SEN. FIEBIGER (Judiciary Committee) MOVED** that the amendments on SJ pages 209-210 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**FIRST READING OF SENATE CONCURRENT RESOLUTION**

Sens. Nelson, Horne, Robinson and Reps. Hawken, Mueller introduced:

**SCR 4010:** A concurrent resolution in memory of James D. Ployhar.

Was read the first time.

**MOTION**

**SEN. CHRISTMANN MOVED** that the rules be suspended, that SCR 4010 not be printed, not be referred to committee, be read in title only, be printed in the Journal and placed on the calendar for immediate second reading and final passage, which motion prevailed.

Sens. Nelson, Horne, Robinson and Reps. Hawken, Mueller introduced:

**SENATE CONCURRENT RESOLUTION NO. 4010**

A concurrent resolution in memory of James D. Ployhar.

**WHEREAS**, on January 2, 2007, James D. Ployhar was summoned to eternal rest; and

**WHEREAS**, James D. Ployhar taught music education in schools in Lakota and Fargo and at the International Music Camp for many years, established and directed the Fargo Theatre Big Band All Stars, and served as a clinician and guest conductor at the undergraduate and university level throughout the world; and

**WHEREAS**, James D. Ployhar, pursuant to a commission by the North Dakota Legislative Assembly, composed the Flickertail March and the Centennial Overture; and

**WHEREAS**, James D. Ployhar wrote and composed music that has been performed worldwide and coproduced a Disney adventure film; and

**WHEREAS**, James D. Ployhar graduated from Valley City State University and was awarded the university's Distinguished Alumnus Award; and

**WHEREAS**, James D. Ployhar was husband to Ruth, a father to Steve, Carol, Debbie, Jane, and Doug, and a friend to many citizens of this state; and

**WHEREAS**, we now pause to mourn the passing of James D. Ployhar and honor his memory for his outstanding service to the people of this state and those around the world who have had the pleasure of hearing his music performed;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That we express our sorrow on the passing of James D. Ployhar and show our appreciation, on behalf of the people of North Dakota, for his service and his gift of music; and

**BE IT FURTHER RESOLVED**, that the Secretary of State present enrolled copies of this resolution to the widow and children of James D. Ployhar, the Valley City State University Music Alumni Hall of Fame, and the International Music Camp.

**SECOND READING OF SENATE CONCURRENT RESOLUTION**

**SCR 4010:** A concurrent resolution in memory of James D. Ployhar.

The question being on the final adoption of the resolution, which has been read.

SCR 4010 was declared adopted on a voice vote.

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**MOTION**

**SEN. O'CONNELL MOVED** that the remarks of Sen. Nelson be printed in the Journal, which motion prevailed.

**REMARKS OF SENATOR NELSON**

Jim Ployhar was a true musician - writer, composer, arranger, singer, piano player, band director, comedian and historian.

If you ever played in a junior high band, you played music composed or arranged by James D. Ployhar. If you lived in Lakota, Valley City or Fargo, perhaps you played in one of his bands. Mr. Ployhar was a regular at the International Music Camp and kids loved to play his music and in his bands. Over his lifetime, it is estimated that he wrote over 800 compositions.

Jim founded, and for many years directed, the Fargo Theatre Big Band All-Stars. He arranged music from earlier years that was no longer in print and wrote scripts to keep the show flowing. He was also the original director of the Fargo Theatre Singers.

His band and singers performed annually at events such as Silent Movie Night at the Fargo Theatre, Valley City High School class reunions, Fargo Elks, NDSU alumni 50th anniversary, MeritCare talent fest, Dollars for Scholars events, service club charity shows, the Hjemkomst Center gala, Plains Art Museum grand opening, Life's Options, etc.

In 1975 the Legislative Assembly passed HB 1160, which designated James D. Ployhar's "Spirit of the Land" as the official state march (1975 Session Laws, Chapter 462). Mr. Ployhar had been commissioned by the North Dakota Band Director's Association to compose a march appropriate for official state functions. "Spirit of the Land" was played in the Capitol's Great Hall by the Jamestown High School Band on the day the bill passed the House of Representatives in February 1975. Once designated as the state march, "Spirit of the Land" was sent to a publisher. The title happened to be nearly identical to another march. As a result, the publisher requested that a new title be selected. Mr. Ployhar agreed to "The Flickertail", a concert march. In 1989 the Legislative Assembly finally officially approved the change. In 1989 he also wrote the "Centennial Overture" in honor of our state's celebration.

Last November, Valley City State University honored Jim as the first enrollee of the VCSU Music Hall of Fame. Although seriously ill, he made the trip to Valley City for the event.

James Ployhar died on January 2. He is survived by his wife, Ruth, 5 children, 11 grandchildren and 1 great grandson. His funeral was January 6. It was truly a celebration with a 9th grade band playing his music, "The Lord's Prayer" sung by a grandson and a mini-big band to lead him out to lead the eternal big band. As stated in media, "It was a grand celebration of Jim Ployhar's musical life".

We honor him today. Thank you for your vote of acclamation.

**MOTION**

**SEN. CHRISTMANN MOVED** that the rules be suspended and that SCR 4010 be messaged to the House immediately, which motion prevailed.

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

**MR. SPEAKER:** The Senate has passed and your favorable consideration is requested on: SCR 4010.

**SECOND READING OF SENATE BILL**

**SB 2072:** A BILL for an Act to create and enact a new subsection to section 28-32-50 of the North Dakota Century Code, relating to awarding of attorney's fees in actions involving workforce safety and insurance; to amend and reenact sections 39-01-02 and 65-02-28, subsection 10 of section 65-05-08, section 65-05-19, subsection 1 of section 65-05-28, and sections 65-05.1-06.1 and 65-10-03 of the North Dakota Century Code, relating to exceptions to the requirement of the state name display on motor vehicles, claim file destruction, dependency allowances, nondependency payments upon death, change of doctors, notices of rehabilitation awards and retraining, and attorney's fees under the workers' compensation system; and to provide for application.

**REQUEST**

**SEN. HEITKAMP REQUESTED** that the Senate divide Engrossed SB 2072, which request was granted on a voice vote.

**DIVISION A:** Sections 4 and 5 of the bill.

**DIVISION B:** The remainder of the bill.

**REQUEST**

**SEN. HEITKAMP REQUESTED** a recorded roll call vote on Divisions A and B of Engrossed SB 2072, which request was granted.

**ROLL CALL**

The question being on the final adoption of Division A of Engrossed SB 2072, which consists of Sections 4 and 5 of the bill, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

Division A of Engrossed SB 2072 passed.

**REQUEST**

**SEN. WANZEK REQUESTED** that Division B of Engrossed SB 2072 be subdivided as follows, which request was granted.

**DIVISION B:** Section 2 of the bill.

**DIVISION C:** The remainder of the bill, excluding Sections 2, 4, and 5.

**ROLL CALL**

The question being on the final adoption of Division B of Engrossed SB 2072, which consists of Section 2 of the bill, the roll was called and there were 28 YEAS, 18 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hacker; Holmberg; Horne; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lyson; Marcellais; Nething; Oehlke; Olafson; Stenehjem; Tallackson; Tollefson; Urlacher; Wanzek; Wardner

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

**ABSENT AND NOT VOTING:** Andrist

Division B of Engrossed SB 2072 passed.

**ROLL CALL**

The question being on the final adoption of Division C of Engrossed SB 2072, which includes all of the bill except Sections 2, 4, and 5, the roll was called and there were 15 YEAS, 31 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Bowman; Christmann; Fischer; Flakoll; Freborg; Holmberg; Kilzer; Klein; Lee, G.; Lee, J.; Oehlke; Olafson; Stenehjem; Urlacher; Wanzek

**NAYS:** Anderson; Bakke; Behm; Cook; Dever; Erbele; Fiebiger; Grindberg; Hacker; Heckaman; Heitkamp; Horne; Krauter; Krebsbach; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Pomeroy; Potter; Robinson; Seymour; Tallackson; Taylor; Tollefson; Triplett; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

Division C of Engrossed SB 2072 lost.

Therefore, the bill now includes Sections 2, 4, and 5 and excludes the remainder of the bill.

**SECOND READING OF SENATE BILL**

**SB 2072:** A BILL for an Act to amend and reenact section 39-01-02, subsection 10 of section 65-05-08, and section 65-05-19 of the North Dakota Century Code, relating to

exceptions to the requirement of the state name display on motor vehicles, dependency allowances, and nondependency payments upon death.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

Reengrossed SB 2072 passed and the title was agreed to.

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#### SECOND READING OF SENATE BILL

**SB 2131:** A BILL for an Act to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to information provided by health insurers to the department of human services; 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 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

Engrossed SB 2131 passed, the title was agreed to, and the emergency clause was declared carried.

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#### SECOND READING OF SENATE BILL

**SB 2133:** A BILL for an Act to amend and reenact section 50-24.1-18.1 of the North Dakota Century Code, relating to consumer-directed care for medical assistance recipients.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

Engrossed SB 2133 passed and the title was agreed to.

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#### SECOND READING OF SENATE BILL

**SB 2158:** A BILL for an Act to amend and reenact section 43-07-02, subsection 3 of section 43-07-04, section 43-07-10, and subsection 3 of section 43-07-14 of the North Dakota Century Code, relating to contractor licenses and unlicensed contractors.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjerm; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

Engrossed SB 2158 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2226:** A BILL for an Act to create and enact section 5-03-08.1 of the North Dakota Century Code, relating to allocation of wholesale taxes on wine for a state grape and wine program; to amend and reenact section 5-03-08 of the North Dakota Century Code, relating to allocation of beer and liquor wholesale taxes; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

**ROLL CALL**

The question being on the final passage of the amended 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:** Bakke; Behm; Fiebiger; Grindberg; Heckaman; Horne; Krebsbach; Lindaas; Mathern; Nelson; O'Connell; Potter; Robinson; Seymour; Tallackson; Taylor; Tollefson; Wanzek; Warner

**NAYS:** Anderson; Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Lee, G.; Lee, J.; Lyson; Marcellais; Nething; Oehlke; Olafson; Pomeroy; Stenehjerm; Triplett; Urlacher; Wardner

**ABSENT AND NOT VOTING:** Andrist

Engrossed SB 2226 lost.

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**SECOND READING OF SENATE BILL**

**SB 2002:** A BILL for an Act to provide an appropriation for defraying the expenses of the office of the secretary of state and public printing; and to amend and reenact section 54-09-05 of the North Dakota Century Code, relating to the salary of the secretary of state.

**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:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjerm; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

SB 2002 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2007:** A BILL for an Act to provide an appropriation for defraying the expenses of the labor commissioner.

**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:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

SB 2007 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2004:** A BILL for an Act to provide an appropriation for defraying the expenses of the state auditor; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor.

**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, 0 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist; Bowman

SB 2004 passed and the title was agreed to.

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**REQUEST**

**SEN. BOWMAN REQUESTED** that the record show he intended to vote "YEA" on SB 2004, which request was granted.

**SECOND READING OF SENATE BILL**

**SB 2005:** A BILL for an Act to provide an appropriation for defraying the expenses of the state treasurer; and to amend and reenact section 54-11-13 of the North Dakota Century Code, relating to the salary of the state treasurer.

**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:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

SB 2005 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2006:** A BILL for an Act to provide an appropriation for defraying the expenses of the office of the state tax commissioner and for payment of state reimbursement under the homestead tax credit; to provide for a transfer; to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the tax commissioner's salary; and to

provide an exemption from the provisions of 54-44.1-11 of the North Dakota Century Code.

#### 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:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist

SB 2006 passed and the title was agreed to.

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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 2036, SB 2073, SB 2096, SB 2123, SB 2125, SB 2126, SB 2128, SB 2148, SB 2152, SB 2171, SB 2195, SB 2204, SB 2216, SB 2231, SB 2235, SB 2242, SB 2274, SB 2289, SCR 4007.

#### 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 1061, HB 1066, HB 1083, HB 1114, HB 1126, HB 1149, HB 1186, HB 1303, HB 1347, HB 1413, HB 1422, HB 1466, HB 1488.

#### 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 1503.

#### MOTION

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

#### MOTION

**SEN. CHRISTMANN MOVED** that the Senate be on the Fourth, Fifth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Tuesday, January 30, 2007, which motion prevailed.

#### REPORT OF STANDING COMMITTEE

**SB 2023: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2023 was placed on the Sixth order on the calendar.

Page 1, line 22, replace "4,300,000" with "4,100,000"

Page 1, line 23, replace "4,300,000" with "4,100,000"

Page 2, line 2, replace "83,422" with "42,538"

Page 2, line 3, replace "30,578" with "15,592"

Page 2, line 4, replace "114,000" with "58,130"

Page 2, line 7, replace "560,476" with "2,069,727"

Page 2, line 8, replace "560,476" with "2,069,727"

Page 2, line 22, replace "10,569,893" with "11,823,274"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**



This amendment decreases the deficiency appropriation for the Office of Adjutant General from \$4.3 million to \$4.1 million, decreases the deficiency appropriation for the Department of Agriculture from \$114,000 to \$58,130, and increases the deficiency appropriation for the University of North Dakota from \$560,476 to \$2,069,727. The total general fund appropriation is increased by \$1,253,381, from \$10,569,893 to \$11,823,274.

#### REPORT OF STANDING COMMITTEE

**SB 2137: Political Subdivisions Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2137 was placed on the Sixth order on the calendar.

Page 5, line 10, remove "coordinated through the county"

Page 5, line 15, after the overstruck period insert "If a city provides an emergency management organization of its own, the city and county shall synchronize the city and county emergency plans."

Page 5, line 16, remove the overstrike over "~~mayer of a city~~" and after "~~or~~" insert "with an emergency management organization and the"

Page 5, line 17, remove the overstrike over "~~city~~", after "~~or~~" insert "and the", and remove "and"

Page 5, line 18, remove "the cities within that county"

Page 5, line 19, overstrike "the person" and insert immediately thereafter "each individual"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2141: Finance and Taxation Committee (Sen. Urlacher, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2141 was rereferred to the **Appropriations Committee**.

#### REPORT OF STANDING COMMITTEE

**SB 2146: Transportation Committee (Sen. G. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2146 was placed on the Sixth order on the calendar.

Page 1, line 16, after "~~twenty~~" insert "seven" and remove the overstrike over "~~days~~"

Page 1, line 17, remove "~~forty-eight hours~~", overstrike the first "of" and insert immediately thereafter "from", remove the overstrike over "~~date~~", and remove "time"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2185: 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). SB 2185 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 amend and reenact subsection 29 of section 12.1-01-04 of the North Dakota Century Code, relating to the definition of serious bodily injury.

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

**SECTION 1. AMENDMENT.** Subsection 29 of section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

29. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, ~~or a bone fracture, or impediment of air flow or blood flow to the brain or lungs.~~

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2201: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2201 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "with" with ". Only" and replace "and" with "are"

Page 1, line 12, remove "nonresidents"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2234: Government and Veterans Affairs Committee (Sen. Dever, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2234 was placed on the Sixth order on the calendar.

Page 2, after line 26, insert:

" \_\_\_\_\_  
Ballot name requested "

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2236: Political Subdivisions Committee (Sen. Cook, Chairman)** recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2236 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2248: 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). SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "12.1-20-05.1," and after "29-03-01.1" insert a comma

Page 1, line 2, after "to" insert "the luring of a minor by electronic means," and after "state" insert a comma

Page 1, line 3, after "offenses" insert "; and to provide a penalty"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 12.1-20-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-05.1. Luring minors by computer or other electronic means.** An adult is guilty of luring minors by computer or other electronic means when:

1. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of ~~computer~~ data or ~~computer~~ programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and
2. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
3. A violation of this section is a class A misdemeanor, ~~but~~ if the adult is less than twenty-two years of age and reasonably believes the minor is age

fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older ~~or~~ and the adult reasonably believes the minor is ~~under the age of~~ fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor."

Page 1, replace lines 19 through 24 with:

**"29-03-09. Venue of kidnapping, forcible restraint, unlawful imprisonment, electronic luring, or prostitution cases.** The venue of a criminal action for any of the following offenses is in any county in which the offense is committed, or into or out of which the individual upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense:

1. ~~For kidnapping~~ Kidnapping, forcible restraint, or unlawful imprisonment, in violation of chapter 12.1-18;~~or~~
2. ~~For A~~ violation of section 12.1-29-01, 12.1-29-02, or 12.1-29-03 relating to prostitution;

~~is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense; or~~

3. Luring a minor by computer or other electronic means in violation of section 12.1-20-05.1."

Page 2, remove lines 1 through 6

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2257: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2257 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 amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to membership of the workforce safety and insurance board; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **65-02-03.1. Workforce safety and insurance board of directors - Appointment.**

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:
  - a. Six board members represent employers in this state which maintain active accounts with the organization, at least one of which must be a participant in the risk management program, at least two of which must be employers with annual premiums greater than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of ten thousand dollars but less than twenty-five thousand dollars, at least one of which must be an employer with an

annual premium of less than ten thousand dollars, and at least one employer at large representative. Except for the employer at large representative, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.

- b. Three members represent employees; at least one member must have received workforce safety and insurance benefits; and at least one member must represent organized labor.
  - c. One member is a member of the North Dakota medical association.
  - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
2. Board members shall serve four-year terms, ~~except the initial term of office of the member at large to be appointed on August 1, 2003, expires on December 31, 2006, and the term of office of the medical association member whose term of office became effective January 1, 2003, expires on December 31, 2006.~~ The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. Board members may not serve more than three consecutive terms.
- a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the replacement member for a departing employer representative or medical association representative from a list of three candidates submitted by the ~~board~~ agriculture commissioner, attorney general, and insurance commissioner. ~~The board agriculture commissioner, attorney general, and insurance commissioner shall~~ conduct an interview of an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor.
  - b. The governor shall select the replacement member for the departing organized labor employee representative from a list of three names of potential candidates submitted by an organization that is statewide in scope and which through ~~its~~ the organization's affiliates embraces a cross-section and a majority of organized labor in this state. The governor shall select the replacement member for a departing nonorganized labor employee representative.
  - c. The governor shall appoint the replacement member for the member at large from a list of three candidates submitted by the ~~board~~ agriculture commissioner, attorney general, and insurance commissioner.
  - d. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this subsection.

**SECTION 2. APPLICATION.** This Act applies to all workforce safety and insurance board appointments for replacements and vacancies that occur after July 31, 2007."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2259: 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). SB 2259 was placed on the Sixth order on the calendar.

Page 1, line 1, after the third comma insert "7,"

Page 1, line 5, after the third comma insert "7,"

Page 4, after line 8, insert:

- "7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within ~~ten~~three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2263: Transportation Committee (Sen. G. Lee, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2263 was rereferred to the **Appropriations Committee**.

#### REPORT OF STANDING COMMITTEE

**SB 2264: Political Subdivisions Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2264 was placed on the Sixth order on the calendar.

Page 1, remove lines 7 through 24

Page 2, remove lines 1 through 15

Page 2, line 16, remove "3." and remove "subsections 1 and 2 do not apply, if"

Page 2, line 25, after the period insert "The owner of a mobile home park shall notify each tenant in the park in writing of a pending sale at least one hundred eighty days before the sale is to be completed."

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**SB 2296: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2296 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2300: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2300 was placed on the Sixth order on the calendar.

Page 1, line 10, overstrike "bank" and insert immediately thereafter "depository institution"

Page 1, line 10, overstrike "1813(h)" and insert immediately thereafter "1813(c)(2)"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2340: Judiciary Committee (Sen. Nething, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2340 was rereferred to the **Appropriations Committee**.

**REPORT OF STANDING COMMITTEE**

**SB 2375: Judiciary Committee (Sen. Nething, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2375 was rereferred to the **Appropriations Committee**.

**REPORT OF STANDING COMMITTEE**

**SB 2382: Judiciary Committee (Sen. Nething, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2382 was rereferred to the **Appropriations Committee**.

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

**William R. Horton, Secretary**