

## JOURNAL OF THE SENATE

## Sixty-first Legislative Assembly

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Bismarck, February 4, 2009

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

The prayer was offered by Pastor Steve Sathre, Trinity Lutheran Church, Bismarck.

The roll was called and all members were present.

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 Nineteenth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 227, line 21, replace "5 YEAS, 1 NAY" with "6 YEAS, 0 NAYS"

**SEN. ANDRIST MOVED** that the report be adopted, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2350: SEN. WANZEK (Agriculture Committee) MOVED** that the amendments on SJ pages 263-264 be adopted and then be **REFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2097: SEN. MARCELLAIS (Human Services Committee) MOVED** that the amendments on SJ page 260 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2123: SEN. SCHNEIDER (Judiciary Committee) MOVED** that the amendments on SJ page 261 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2184: SEN. OEHLKE (Finance and Taxation Committee) MOVED** that the amendments on SJ page 261 be adopted and then be placed on the Eleventh order with **DO NOT PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2209: SEN. SCHNEIDER (Judiciary Committee) MOVED** that the amendments on SJ page 261 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2232: SEN. LYSON (Judiciary Committee) MOVED** that the amendments on SJ page 262 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2248: SEN. KLEIN (Agriculture Committee) MOVED** that the amendments on SJ page 262 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## CONSIDERATION OF AMENDMENTS

**SB 2301: SEN. ANDRIST (Political Subdivisions Committee) MOVED** that the amendments on SJ page 263 be adopted and then be placed on the Eleventh order with **DO NOT PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SB 2370: SEN. LYSON (Judiciary Committee) MOVED** that the amendments on SJ page 264 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SB 2416: SEN. TRIPLETT (Finance and Taxation Committee) MOVED** that the amendments on SJ page 264 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**SCR 4009: SEN. NELSON (Judiciary Committee) MOVED** that the amendments on SJ pages 264-265 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

**SECOND READING OF SENATE BILL**

**SB 2054:** A BILL for an Act to amend and reenact section 24-02-02.3 of the North Dakota Century Code, relating to department of transportation agreements with tribal governments.

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

Engrossed SB 2054 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2095:** A BILL for an Act to create and enact chapter 38-22 of the North Dakota Century Code, relating to the geologic storage of carbon dioxide; to repeal section 38-08-24 of the North Dakota Century Code, relating to priorities in permitting carbon dioxide geologic storage projects; to provide a penalty; and to provide a continuing appropriation.

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

Engrossed SB 2095 passed and the title was agreed to.

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**SECOND READING OF SENATE BILL**

**SB 2139:** A BILL for an Act to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to ownership of subsurface pore space; to provide for application; 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 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

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

Engrossed SB 2139 passed, the title was agreed to, and the emergency clause was declared carried.

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#### SECOND READING OF SENATE BILL

**SB 2151:** A BILL for an Act to amend and reenact subsections 2 and 3 of section 32-12.2-02 of the North Dakota Century Code, relating to liability of the state, the definition of discretionary acts relating to design of a public project, and claims arising from leased vehicles.

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

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

SB 2151 lost.

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#### SECOND READING OF SENATE BILL

**SB 2196:** A BILL for an Act to amend and reenact section 5-01-06.1 of the North Dakota Century Code, relating to host liability for damages caused by an intoxicated individual.

#### 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 17 YEAS, 30 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Dever; Fiebiger; Heckaman; Hogue; Kilzer; Lindaas; Lyson; Marcellais; Mathern; Nodland; Olafson; Schneider; Seymour; Taylor; Triplett

**NAYS:** Andrist; Behm; Bowman; Christmann; Cook; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Holmberg; Horne; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Miller; Nelson; Nething; O'Connell; Oehlke; Pomeroy; Potter; Robinson; Stenehjem; Wanzek; Wardner; Warner

SB 2196 lost.

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#### SECOND READING OF SENATE BILL

**SB 2208:** A BILL for an Act to amend and reenact section 4-10.2-08 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-09-16 of the North Dakota Century Code, relating to oilseed assessments; to provide an effective date; 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, 2 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais;

Mathern; Miller; Nelson; Nething; Nodland; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** O'Connell; Stenehjem

Engrossed SB 2208 passed, the title was agreed to, and the emergency clause was declared carried.

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#### SECOND READING OF SENATE BILL

**SB 2227:** A BILL for an Act to amend and reenact subsections 5 and 6 of section 43-12.2-01 and subsection 3 of section 43-12.2-03 of the North Dakota Century Code, relating to the medical loan repayment program.

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

SB 2227 passed and the title was agreed to.

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#### MOTION

**SEN. CHRISTMANN MOVED** that SB 2280, which is on the Eleventh order, be laid over one legislative day, which motion prevailed.

#### SECOND READING OF SENATE BILL

**SB 2287:** 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 a medicaid family planning services waiver.

#### 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 20 YEAS, 27 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Dotzenrod; Fiebiger; Heckaman; Holmberg; Horne; Krauter; Krebsbach; Mathern; Nelson; O'Connell; Pomeroy; Potter; Schneider; Seymour; Taylor; Triplett; Warner

**NAYS:** Andrist; Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hogue; Kilzer; Klein; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Miller; Nething; Nodland; Oehlke; Olafson; Robinson; Stenehjem; Wanzek; Wardner

SB 2287 lost.

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#### SECOND READING OF SENATE BILL

**SB 2291:** A BILL for an Act to amend and reenact section 17-03-04 of the North Dakota Century Code, relating to the biofuel partnership in assisting community expansion fund.

#### 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:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy;

Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

SB 2291 passed and the title was agreed to.

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#### SECOND READING OF SENATE BILL

**SB 2321:** A BILL for an Act to amend and reenact sections 60-02.1-41 and 60-10-16 of the North Dakota Century Code, relating to roving grain buyers.

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

SB 2321 passed and the title was agreed to.

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#### SECOND READING OF SENATE BILL

**SB 2347:** A BILL for an Act to create and enact a new subsection to section 57-39.2-04 and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to gross receipts from the sale of items delivered electronically; and to provide an effective date.

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

SB 2347 passed and the title was agreed to.

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#### MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)

**MR. SPEAKER:** The Senate has passed and your favorable consideration is requested on: SB 2069, SB 2141, SB 2250, SB 2251, SB 2254, SB 2256, SB 2261, SB 2279, SB 2295, SB 2299, SB 2309, SB 2313, SB 2349, SB 2352, SB 2354.

#### 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 1029, HB 1194, HB 1229, HB 1273, HB 1302, HB 1311, HB 1346, HB 1530, HB 1566.

#### 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 1308, HB 1487.

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

**MR. PRESIDENT:** The House has passed unchanged: SCR 4011.

#### MOTION

**SEN. CHRISTMANN MOVED** that the Senate be on the Fourth, Fifth, Ninth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 12:30 p.m., Thursday, February 5, 2009, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

**SB 2053: 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). SB 2053 was placed on the Sixth order on the calendar.

Page 1, line 14, after the period insert "For purposes of this subsection, an Indian tribe means a tribal government agency, instrumentality, or political subdivision that performs essential government functions and does not include business entities or agencies the primary purpose of which is to operate a business enterprise."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2226: Education Committee (Sen. Freborg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2226 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "subsection 2 of"

Page 1, line 20, replace "Subsection 2 of section" with "Section"

Page 1, replace lines 22 through 24 with:

**"15-62.2-02. State board of higher education - Powers and duties.**

1. The state board of higher education shall:
  - 4- a. Administer the North Dakota student financial assistance program and the North Dakota scholars program and adopt functional rules regarding the eligibility and selection of grant and scholarship recipients.
  - 2- b. Determine the amount of individual grants, ~~but which may not to exceed one~~ two thousand dollars per recipient per academic year, under the North Dakota student financial assistance program.
  - 3- c. ~~Adopt for~~ For the North Dakota student financial assistance program, ~~adopt~~ adopt criteria for substantial need, based upon the ability of the parents or guardian to contribute toward the applicant's educational expenses. In determining educational expenses for an applicant attending an institution of higher education other than an institution under the control of the state board of higher education, the board shall use the lesser of:
    - (1) The statewide average tuition charged that year at four-year institutions of higher education under the control of the state board of higher education; or
    - (2) The actual tuition charged that year by the institution in which the applicant is enrolled.
  - 4- d. Establish the appropriate procedures for fiscal control, fund accounting, and necessary reports.
  - 5- e. Apply for, receive, expend, and administer granted moneys from federal or private sources.
2. The state board of higher education may not expend in excess of forty million dollars for student financial assistance grants during the 2009-11 biennium."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2264: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2264 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2293: Judiciary Committee (Sen. Nething, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2293 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2294: Human Services Committee (Sen. J. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2294 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "coverage" with "policies"

Page 1, line 8, remove "1."

Page 1, line 11, after "provides" insert "a policy for"

Page 1, line 12, replace "for" with "of" and after "telemedicine" insert "services"

Page 1, remove lines 13 through 23

Page 2, remove lines 1 through 14

Page 2, line 17, after "provide" insert "a policy for"

Page 2, line 18, after "coverage" insert "of telemedicine services"

Page 2, line 19, remove "for telemedicine services"

Re-number accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2303: Education Committee (Sen. Freborg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2303 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "for the purpose of offering" with "to"

Page 1, line 9, after "support" insert "existing programs that provide services"

Page 1, line 19, replace "its outcome" with "the retention and graduation rates achieved"

Re-number accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2315: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2315 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "whether the book is sold in paper, recorded,"

Page 1, line 9, replace "electronic, or any other" with "the"

Re-number accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2375: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2375 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2389: Education Committee (Sen. Freborg, Chairman)** recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2389 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2391: Human Services Committee (Sen. J. Lee, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2391 was rereferred to the **Appropriations Committee**.

**REPORT OF STANDING COMMITTEE**

**SB 2406: Education Committee (Sen. Freborg, Chairman)** recommends **DO NOT PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2406 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2407: Education Committee (Sen. Freborg, Chairman)** recommends **DO NOT PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2407 was placed on the Eleventh order on the calendar.

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

**Fran A. Gronberg, Secretary**