

## JOURNAL OF THE SENATE

## Sixty-first Legislative Assembly

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Bismarck, April 8, 2009

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

The prayer was offered by Father Paul Eberle, Cathedral of the Holy Spirit, Bismarck.

The roll was called and all members were present.

A quorum was declared by the President.

## CONSIDERATION OF AMENDMENTS

**SB 2443: SEN. NETHING (Judiciary Committee) MOVED** that the amendments on SJ page 1176 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed.

## SECOND READING OF SENATE BILL

**SB 2443:** A BILL for an Act to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to facility relocation cost recovery due to implementation of the American Recovery and Reinvestment Act of 2009; 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 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; Stenehjerm; Taylor; Triplett; Wanzek; Wardner; Warner

SB 2443, as amended, passed and the title was agreed to.

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## CONSIDERATION OF AMENDMENTS

**HB 1554, as engrossed: SEN. COOK (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ pages 1120-1124 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

## SECOND READING OF HOUSE BILL

**HB 1554:** A BILL for an Act to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; 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 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; Stenehjerm; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1554, as amended, passed and the title was agreed to.

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**CONSIDERATION OF AMENDMENTS**

**HB 1112, as engrossed: SEN. KLEIN (Agriculture Committee) MOVED** that the amendments on SJ pages 1036-1037 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

**SECOND READING OF HOUSE BILL**

**HB 1112:** A BILL for an Act to amend and reenact section 36-24-26 of the North Dakota Century Code, relating to penalties for violating meat inspection laws; and to provide a penalty.

**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 HB 1112, as amended, passed and the title was agreed to.

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**CONSIDERATION OF AMENDMENTS**

**HB 1074, as engrossed: SEN. NELSON (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 1036 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

**SECOND READING OF HOUSE BILL**

**HB 1074:** A BILL for an Act to adopt the Uniform Prudent Management of Institutional Funds Act; and to repeal chapter 15-67 of the North Dakota Century Code, relating to the Uniform Management of Institutional Funds Act; 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 HB 1074, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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**CONSIDERATION OF AMENDMENTS**

**HB 1304, as reengrossed and amended: SEN. COOK (Finance and Taxation Committee) MOVED** that the amendments on SJ pages 1178-1182 be adopted and then be **REREFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed.

**CONSIDERATION OF AMENDMENTS**

**HB 1053, as engrossed and amended: SEN. CHRISTMANN (Appropriations Committee) MOVED** that the amendments on SJ page 1036 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

**SECOND READING OF HOUSE BILL**

**HB 1053:** A BILL for an Act to amend and reenact sections 37-17.1-06 and 37-17.1-07 of the North Dakota Century Code, relating to the department of emergency services division of homeland security and local and regional emergency management organizations.

**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 HB 1053, as amended, passed and the title was agreed to.

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**CONSIDERATION OF AMENDMENTS**

**HB 1317, as engrossed and amended: SEN. BOWMAN (Appropriations Committee) MOVED** that the amendments on SJ page 1037 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

**SECOND READING OF HOUSE BILL**

**HB 1317:** A BILL for an Act to amend and reenact subsection 2 of section 53-06.1-12 of the North Dakota Century Code, relating to gaming and excise taxes; and to provide an effective date.

**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 HB 1317, as amended, passed and the title was agreed to.

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**CONSIDERATION OF AMENDMENTS**

**HB 1436: SEN. COOK (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ pages 1084-1120 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

**SECOND READING OF HOUSE BILL**

**HB 1436:** A BILL for an Act to amend and reenact section 1-02-06.1, subsection 2 of section 1-02-09, sections 1-02-09.2, 4-05.1-19, 15-10-42, 15-10-43, and 15-11-39, subsection 5 of section 15-39.1-05.2, subsection 3 of section 15.1-02-13, section 15.1-02-15, subsection 3 of section 15.1-06-08, subsection 4 of section 15.1-06-08.1, sections 15.1-21-10 and 16.1-01-17, subsection 5 of section 18-11-15, section 24-02-46, subsection 3 of section 25-01.3-02, subsection 3 of section 25-02-01.1, sections 26.1-36.4-06, 28-32-03, 28-32-06, and 28-32-07, subsection 1 of section 28-32-10, sections 28-32-15, 28-32-17, 28-32-18, 28-32-19, and 28-32-20, subsection 3 of section 34-11.1-01, subsection 2 of section 40-63-03, sections 44-04-18.6, 48-08-04, and 48-10-01, subsection 4 of section 49-23-03, subsections 3 and 4 of section 50-09-29, sections 52-02-18, 54-03-02, 54-03-04, and 54-03-19.2, subsection 2 of section 54-03-20, sections 54-03-26, 54-03-27, 54-03.1-02, 54-03.2-02, and 54-05.1-02, subsections 3 and 4 of section 54-06-25, sections 54-06-31, 54-35-01, 54-35-02, 54-35-02.1, 54-35-02.2, 54-35-02.3, 54-35-02.4, 54-35-02.5, 54-35-02.6, 54-35-02.7, 54-35-02.8, 54-35-03, 54-35-04, 54-35-05, 54-35-06, 54-35-07, 54-35-08, 54-35-09, 54-35-10, 54-35-11, 54-35-12, 54-35-15, 54-35-15.1, 54-35-16, 54-35-17, 54-35-18, 54-35-22, 54-35-23, 54-35.2-01, 54-35.2-02, 54-35.2-04, and 54-35.2-05, subsection 3 of section 54-40-01, sections 54-44.1-12.1, 54-52.1-08.2, 54-55-01, 54-55-04, 54-58-03, 54-59-07, 54-59-11, 54-59-12, and 54-59-23, subsection 10 of section 54-60-03, and sections 54-60-11, 54-62-03, 57-40.6-12, 61-24-04, 61-24.5-04, 65-02-30, and 65-06.2-09 of the North Dakota Century Code, relating to differentiation between the legislative executive committee and the legislative council as an agency of the

legislative branch; to repeal section 49-21-22.2 of the North Dakota Century Code, relating to the regulatory reform review commission; and to authorize replacement of obsolete terms.

#### 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

HB 1436, as amended, passed and the title was agreed to.

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#### CONSIDERATION OF AMENDMENTS

**HB 1461, as engrossed: SEN. NELSON (Government and Veterans Affairs Committee) MOVED** that the amendments on SJ page 1120 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

#### SECOND READING OF HOUSE BILL

**HB 1461:** A BILL for an Act to amend and reenact subdivision c of subsection 2 of section 16.1-07-15 of the North Dakota Century Code, relating to restrictions applicable to early voting precincts; and to provide a penalty.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 1 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; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Potter

Engrossed HB 1461, as amended, passed and the title was agreed to.

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#### CONSIDERATION OF AMENDMENTS

**HB 1534, as engrossed: SEN. FIEBIGER (Transportation Committee) MOVED** that the amendments on SJ pages 1182-1183 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

#### SECOND READING OF HOUSE BILL

**HB 1534:** A BILL for an Act to amend and reenact subsection 2 of section 39-08-01 and section 39-08-01.2 of the North Dakota Century Code, relating to special punishment for causing injury or death while under the influence of alcohol.

#### 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 HB 1534, as amended, passed and the title was agreed to.

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**CONSIDERATION OF AMENDMENTS**

**HB 1305, as engrossed: SEN. WARNER (Appropriations Committee) MOVED** that the amendments on SJ page 1182 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

**SECOND READING OF HOUSE BILL**

**HB 1305:** A BILL for an Act to provide an appropriation to the state department of health for water project grants; 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, 1 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; 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

**NAYS:** Krauter

Engrossed HB 1305, as amended, passed, the title was agreed to, and the emergency clause was declared carried.

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**CONSIDERATION OF AMENDMENTS**

**HB 1016, as engrossed: SEN. WARDNER (Appropriations Committee) MOVED** that the amendments on SJ pages 1176-1178 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

**SECOND READING OF HOUSE BILL**

**HB 1016:** A BILL for an Act to provide an appropriation for defraying the expenses of the office of the adjutant general; to provide statements of legislative intent; to provide an appropriation; to provide for transfers; to provide an exemption; 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 HB 1016, as amended, passed and the title was agreed to.

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**CONSIDERATION OF AMENDMENTS**

**HB 1487: SEN. HOLMBERG (Appropriations Committee) MOVED** that the amendments on SJ page 1182 be adopted and then be placed on the Fourteenth order with **DO PASS**.

**REQUEST**

**SEN. POTTER REQUESTED** a recorded roll call vote on the motion to adopt the proposed amendments to HB 1487, which request was granted.

**ROLL CALL**

The question being the motion to adopt the amendments to HB 1487, the roll was called and there were 27 YEAS, 20 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lyson; Miller; Nething; Nodland; Oehlke; Olafson; Seymour; Stenehjem; Wanzek; Wardner

**NAYS:** Anderson; Bakke; Behm; Dotzenrod; Fiebiger; Heckaman; Horne; Krauter; Lindaas; Marcellais; Mathern; Nelson; O'Connell; Pomeroy; Potter; Robinson; Schneider; Taylor; Triplett; Warner

The motion to adopt the amendments to HB 1487 passed.

#### SECOND READING OF HOUSE BILL

**HB 1487:** A BILL for an Act relating to the receipt of federal economic stimulus or fiscal relief funding; 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 29 YEAS, 18 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Miller; Nething; Nodland; O'Connell; Oehlke; Olafson; Seymour; Stenehjem; Wanzek; Wardner

**NAYS:** Anderson; Bakke; Behm; Dotzenrod; Fiebiger; Heckaman; Horne; Krauter; Marcellais; Mathern; Nelson; Pomeroy; Potter; Robinson; Schneider; Taylor; Triplett; Warner

HB 1487, as amended, passed, the title was agreed to, but the emergency clause lost.

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#### CONSIDERATION OF AMENDMENTS

**HCR 3030, as engrossed:** SEN. SCHNEIDER (Natural Resources Committee) MOVED that the amendments on SJ pages 1015-1016 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

#### SECOND READING OF HOUSE CONCURRENT RESOLUTION

**HCR 3030:** A concurrent resolution urging Congress to use common sense principles for congressional action on climate change legislation.

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

Engrossed HCR 3030, as amended, was declared adopted on a voice vote.

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#### CONSIDERATION OF AMENDMENTS

**HCR 3039, as engrossed:** SEN. ERBELE (Natural Resources Committee) MOVED that the amendments on SJ pages 1124-1125 be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

#### SECOND READING OF HOUSE CONCURRENT RESOLUTION

**HCR 3039:** A concurrent resolution urging the President and Congress to develop energy resources on the nation's Outer Continental Shelf, promote domestic energy production, and to not impose additional taxes on America's energy producers.

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

Engrossed HCR 3039, as amended, was declared adopted on a voice vote.

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#### SECOND READING OF SENATE BILL

**SB 2442:** A BILL for an Act to provide for a legislative council study of blue cross blue shield of North Dakota to determine whether legislative changes are appropriate to the laws relating to nonprofit mutual insurance companies.

**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 44 YEAS, 3 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

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

**NAYS:** Dever; Lee, J.; Oehlke

SB 2442 passed and the title was agreed to.

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**SECOND READING OF HOUSE BILL**

**HB 1327:** A BILL for an Act to provide for the remodeling of a nursing facility to meet the requirements of assisted living and basic care and a pilot project on assisted living rent subsidies; and to provide an 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 46 YEAS, 1 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; 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

**NAYS:** Kilzer

Engrossed HB 1327, as amended, passed and the title was agreed to.

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**SECOND READING OF HOUSE BILL**

**HB 1346:** A BILL for an Act to amend and reenact section 40-01.1-02 of the North Dakota Century Code, relating to the placement of a question on the ballot to establish a local advisory study committee.

**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

HB 1346 passed and the title was agreed to.

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**SECOND READING OF HOUSE BILL**

**HB 1368:** A BILL for an Act to create and enact chapter 18-13 of the North Dakota Century Code, relating to reduced ignition propensity standards for cigarettes; 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 PASS, the roll was called and there were 39 YEAS, 8 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

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

**NAYS:** Andrist; Bowman; Christmann; Dever; Fischer; Klein; Lee, G.; Wanzek

Reengrossed HB 1368, as amended, passed and the title was agreed to.

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#### SECOND READING OF HOUSE BILL

**HB 1434:** A BILL for an Act to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to endowment funds at institutions of higher education; and to provide an appropriation.

#### 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 14 YEAS, 33 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Bakke; Behm; Dotzenrod; Fiebiger; Heckaman; Horne; Marcellais; Mathern; Nelson; Nething; O'Connell; Potter; Schneider; Seymour

**NAYS:** Anderson; Andrist; Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hogue; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Miller; Nodland; Oehlke; Olafson; Pomeroy; Robinson; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

Engrossed HB 1434 lost.

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#### SECOND READING OF HOUSE BILL

**HB 1350:** A BILL for an Act to provide an appropriation to the department of commerce for a grant for construction of a great plains applied energy research center; and to provide for a report to the budget section.

#### 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 29 YEAS, 18 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hogue; Holmberg; Kilzer; Krauter; Krebsbach; Lee, G.; Lyson; Nelson; Nodland; O'Connell; Olafson; Potter; Robinson; Seymour; Stenehjem; Taylor; Wanzek; Wardner

**NAYS:** Anderson; Andrist; Bakke; Dotzenrod; Heckaman; Horne; Klein; Lee, J.; Lindaas; Marcellais; Mathern; Miller; Nething; Oehlke; Pomeroy; Schneider; Triplett; Warner

Engrossed HB 1350 passed and the title was agreed to.

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#### SECOND READING OF HOUSE BILL

**HB 1425:** A BILL for an Act to amend and reenact sections 11-23-01, 50-06-20, 50-09-27, and 57-15-31 of the North Dakota Century Code, relating to programs funded at state expense and county property tax levies; to repeal section 50-09-21.1 of the North Dakota Century Code, relating to foster care and subsidized adoption services; to provide an appropriation; and to provide an effective date.

#### MOTION

**SEN. KRAUTER MOVED** that Engrossed HB 1425 be amended as follows:

In lieu of the amendments adopted by the Senate on pages 739 and 740 of the Senate Journal, Engrossed House Bill No. 1425 is amended as follows:

Page 1, line 4, after the semicolon insert "to provide an appropriation;"



Page 1, line 19, replace "August 1" with "January 1"

Page 1, line 20, replace "2009" with "2011"

Page 3, line 23, replace "August 1" with "January 1"

Page 3, line 24, replace "2009" with "2011"

Page 3, after line 28, insert:

**"SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,319,748, or so much of the sum as may be necessary, to the department of human services for the purpose of funding nonfederal foster care and subsidized adoption costs, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. EFFECTIVE DATE.** This Act is effective January 1, 2011."

Page 3, line 30, replace "2008" with "2010"

Renumber accordingly

#### **REQUEST**

**SEN. KRAUTER REQUESTED** a verification vote on the proposed amendments to HB 1425, which request was granted.

The proposed amendments to HB 1425 were adopted on a verification vote.

#### **MOTION**

**SEN. J. LEE MOVED** that Engrossed HB 1425 be amended as follows:

In lieu of the amendments adopted by the Senate as printed on pages 739 and 740, and as printed above on pages 1198-1199 of the Senate Journal, Engrossed House Bill No. 1425 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the responsibility for the funding of nonfederal foster care and subsidized adoption costs.

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

**SECTION 1. NONFEDERAL FOSTER CARE AND SUBSIDIZED ADOPTION COSTS - LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of transferring from the county to the state the responsibility for the funding of nonfederal foster care and subsidized adoption costs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

#### **REQUEST**

**SEN. KRAUTER REQUESTED** a verification vote on the proposed amendments to HB 1425, which request was granted.

#### **REQUEST**

**SEN. J. LEE REQUESTED** a recorded roll call vote on the motion to adopt the proposed amendments to Engrossed HB 1425, which request was granted.

#### **ROLL CALL**

The question being on the motion to adopt the proposed amendments to Engrossed HB 1425, the roll was called and there were 25 YEAS, 22 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bowman; Christmann; Cook; Dever; Fischer; Flakoll; Freborg; Grindberg; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lyson; Miller; Nething; Nodland; Oehlke; Olafson; Stenehjem; Wanzek; Wardner

**NAYS:** Anderson; Bakke; Behm; Dotzenrod; Erbele; Fiebiger; Heckaman; Horne; Krauter; Lindaas; Marcellais; Mathern; Nelson; O'Connell; Pomeroy; Potter; Robinson; Schneider; Seymour; Taylor; Triplett; Warner

The proposed amendments to Engrossed HB 1425 were adopted.

#### 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 46 YEAS, 1 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; Potter; Robinson; Schneider; Seymour; Stenehjem; Taylor; Triplett; Wanzek; Wardner; Warner

**NAYS:** Pomeroy

Engrossed HB 1425, as amended, passed and the title was agreed to.

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#### MOTION

**SEN. CHRISTMANN MOVED** that HB 1540 and HB 1231 be moved to the top of the Fourteenth order, which motion prevailed.

#### SECOND READING OF HOUSE BILL

**HB 1540:** A BILL for an Act to amend and reenact subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code, relating to the funding of economic assistance programs in counties with federally recognized Indian reservation land; and to provide an 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 45 YEAS, 1 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; 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

**NAYS:** Christmann

**ABSENT AND NOT VOTING:** Holmberg

Reengrossed HB 1540, as amended, passed and the title was agreed to.

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#### SECOND READING OF HOUSE BILL

**HB 1231:** A BILL for an Act to provide an appropriation to the state department of health for a mobile dental care service grant.

#### 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; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; 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

**ABSENT AND NOT VOTING:** Holmberg

HB 1231 passed and the title was agreed to.

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**MOTION**

**SEN. CHRISTMANN MOVED** that SB 2223, SB 2208, SB 2163, SB 2251, SB 2359, SB 2270, and SCR 4018 be moved to the top of the Twelfth order, which motion prevailed.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. G. LEE MOVED** that the Senate do not concur in the House amendments to Engrossed SB 2223 as printed on SJ pages 873-874 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT APPOINTED** as a Conference Committee on Engrossed SB 2223: Sens. Nething, Nodland, Fiebiger.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. FLAKOLL MOVED** that the Senate do not concur in the House amendments to Engrossed SB 2208 as printed on SJ page 667 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT APPOINTED** as a Conference Committee on Engrossed SB 2208: Sens. Klein, Wanzek, Behm.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. DEVER MOVED** that the Senate do not concur in the House amendments to Engrossed SB 2163 as printed on SJ page 771 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT APPOINTED** as a Conference Committee on Engrossed SB 2163: Sens. Oehlke, Dever, Nelson.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. DEVER MOVED** that the Senate do not concur in the House amendments to SB 2251 as printed on SJ page 952 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT APPOINTED** as a Conference Committee on SB 2251: Sens. Oehlke, Dever, Horne.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. DEVER MOVED** that the Senate do not concur in the House amendments to Engrossed SB 2359 as printed on SJ pages 952-953 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT APPOINTED** as a Conference Committee on Engrossed SB 2359: Sens. Oehlke, Cook, Nelson.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. DEVER MOVED** that the Senate do not concur in the House amendments to Engrossed SB 2270 as printed on SJ page 1030 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT APPOINTED** as a Conference Committee on Engrossed SB 2270: Sens. Cook, Oehlke, Horne.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. FLAKOLL MOVED** that the Senate do not concur in the House amendments to SCR 4018 as printed on SJ page 1001 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed on a voice vote.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT APPOINTED** as a Conference Committee on SCR 4018: Sens. Wanzek, Miller, Taylor.

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

**MR. SPEAKER:** The Senate has passed, the emergency clause carried, and your favorable consideration is requested on: SB 2441.

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

**MR. SPEAKER:** The Senate has passed unchanged: HB 1231, HB 1346, HB 1350.

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

**MR. SPEAKER:** The Senate has amended and subsequently passed: HB 1016, HB 1053, HB 1112, HB 1317, HB 1327, HB 1368, HB 1436, HB 1461, HB 1534, HB 1540, HB 1554, HCR 3030, HCR 3039.

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

**MR. SPEAKER:** The Senate has amended and subsequently passed: HB 1425.

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

**MR. SPEAKER:** The Senate has amended, subsequently passed, and the emergency clause carried: HB 1074, HB 1305.

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

**MR. SPEAKER:** The Senate has amended, subsequently passed, and the emergency clause failed: HB 1487.

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

**MR. SPEAKER:** The Senate has failed to pass unchanged: HB 1434.

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

**MR. PRESIDENT:** The House has passed unchanged: SB 2319, SB 2425, SCR 4027.

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

**MR. PRESIDENT:** The House has passed, the emergency clause carried, unchanged: SB 2046.

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

**MR. PRESIDENT:** The House has amended and subsequently passed: SB 2027, SB 2266, SB 2336, SB 2342, SB 2373, SB 2391.

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 40-47-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One-half mile [.80 kilometer] if the city has a population of fewer than five thousand.
  - b. One mile [1.61 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand.
  - c. Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.

2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;

- b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
  8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
  9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
  - b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
  - c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.
2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the

governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, then the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, then if the dispute is between a city and a township and upon acceptance the board of county commissioners for the area in dispute within that county, the dispute must be resolved by that board of county commissioners. However, if the board of county commissioners does not accept the dispute, either party may petition the office of administrative hearings for a hearing by an administrative law judge. In addition, either party may petition the office of administrative hearings for a hearing by an administrative law judge before the board of county commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law judge. The party that does not prevail is liable for the costs of the administrative law judge.

3. Notwithstanding subsection 2, in an area in which there would otherwise be joint jurisdiction and in which the city has presented a plat or site plan application before the effective date of this Act, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city adopts, modifies, and enforces any zoning designation or regulation and approves any subdivision plat or regulation. For a decision of the city to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, then the dispute must be submitted to a committee for mediation. The committee must be composed of one member appointed by the governor and two members of the governing body of the city and two members of the governing body of the political subdivision that would otherwise have jurisdiction. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, then if the dispute is between a city and a township and upon acceptance the board of county commissioners for the area in dispute within that county, the dispute must be resolved by that board of county commissioners. However, if the board of county commissioners does not accept the dispute, either party may petition the office of administrative hearings for a hearing by an administrative law judge. In addition, either party may petition the office of administrative hearings for a hearing by an administrative law judge before the board of county commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law judge. The party that does not prevail is liable for the costs of the administrative law judge.
4. Upon petition, the office of administrative hearings shall appoint an administrative law judge to resolve the dispute. A hearing by an administrative law judge or the board of county commissioners may not be held until after at least two weeks' written notice has been given to the governing bodies of the jurisdictions involved in the dispute. Each

governing body and any person affected by the regulation may appear at the hearing and present evidence on any matter to be determined by the administrative law judge or the board of county commissioners. A decision by the administrative law judge or board of county commissioners is binding on all jurisdictions involved in the dispute and remains effective until the governing bodies in the area of joint jurisdiction agree to change the zoning or subdivision regulation. The administrative law judge or board of county commissioners shall enter an order setting forth what the administrative law judge or board of county commissioners determines to be fair and reasonable terms and conditions. In all cases, the administrative law judge or board of county commissioners shall set forth in writing a decision, including findings of fact, reasons for the decision, and an order. The decision must include the factors upon which the decision is based. Within thirty days after receipt of the administrative law judge's order or the board of county commissioners' decision, any interested party dissatisfied with the decision may appeal to district court under the procedures in section 28-34-01. In making a decision under this subsection, the administrative law judge or board of county commissioners shall consider the following factors and shall give substantial weight to the factor described in subdivision a:

- a. Whether the proposed change is consistent with a projected growth plan;
  - b. The impact of the proposed change on the present and planned uses of the area under review;
  - c. The impact of the proposed change on the health and safety of the residents of the area;
  - d. The effect of the change on the liability of the affected jurisdiction to adequately staff and enforce the change;
  - e. The economic, physical, and social relationship of the inhabitants, businesses, and industries in the area affected by the change and the effect of the change on other political subdivisions;
  - f. The economic impact of the proposed change on the property owners in the area of the proposed change and the economic impact on the city of a decision to deny the change; and
  - g. Any other factor determined to be relevant by the administrative law judge or board of county commissioners.
5. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
  6. Where two or more contiguous cities with populations of two thousand or more have boundaries at a distance where there would be an overlap of zoning authority under this section, the cities' zoning authority is divided along a line equidistant between or among the cities.
  7. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, and one city is larger than the other, based upon the classification in subsection 1, the larger city shall exercise the same authority as the smaller city where the cities are contiguous under this section.
  8. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, an annexation of property by one of the cities does not affect the zoning authority previously established under this section.
  - ~~3.~~ 9. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all



political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

4. 10. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
5. 11. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 10 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.

- 6- 12. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 13. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 14. For the purposes of this section, a quarter quarter section ~~shall be~~ is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
15. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

**SECTION 2. APPLICATION.** This Act applies to the exercise of extended zoning and subdivision regulation by a city before the effective date of this Act except the city continues extended zoning and subdivision regulation for areas for which a plat or site plan application was presented to the city before the effective date of this Act. The zoning districts and regulation of those districts of the city remain in effect and are the districts and regulations in an area of joint jurisdiction until modified or different districts and regulations are adopted by another political subdivision under this Act."

Renumber accordingly

**HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2266**

Page 3, line 5, remove "out of any moneys in the"

Page 3, line 6, replace "general fund in the state treasury, not otherwise appropriated" with "from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, from other grants, or from other funds available within the university system's 2009-11 biennium budget"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT - LC 90765.0301 FN 1**

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2336**

In lieu of the amendments adopted by the House as printed on page 942 of the House Journal, Engrossed Senate Bill No. 2336 is amended as follows:

Page 1, line 2, replace "Garrison diversion overview committee" with "creation of a legislative overview committee for water-related topics; and to provide an expiration date"

Page 1, line 6, overstrike "**Garrison diversion**" and insert immediately thereafter "Water-related topics"

Page 1, line 9, replace "Garrison diversion" with "water-related topics"

Page 1, line 11, replace "the Garrison diversion project and related matters" with "water-related topics"

Page 1, after line 15, insert:

**"SECTION 2. EXPIRATION DATE.** This Act is effective through November 30, 2013, and after that date is ineffective."

Renumber accordingly

**HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2342**

Page 1, line 14, replace "40,000" with "40,000"

Page 1, remove line 15

Page 1, line 16, replace "275,500" with "245,500"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment removes \$30,000 of the general fund appropriation designated for office support.

**HOUSE AMENDMENTS TO SENATE BILL NO. 2373**

Page 1, line 2, after "fund" insert "and committee"

Page 1, line 15, replace "as follows:" with "to be spent on research, producer education, marketing, and promotion as directed by the grape and wine program fund committee. The committee consists of:

- a. The agriculture commissioner or the commissioner's designee;
  - b. The vice president for agriculture at North Dakota state university or the vice president's designee;
  - c. An individual appointed by the governor;
  - d. An individual appointed by the commissioner of the department of commerce;
  - e. An individual appointed by the state board of agricultural research and education; and
  - f. Two individuals appointed by the North Dakota grape growers association.
3. All members of the committee shall serve for a term of two years, beginning July first of each odd-numbered year, and may be reappointed for additional terms.
  4. If any member of the committee resigns or ceases to be a member of the class the member represents, that individual's membership on the committee ceases and the appropriate appointing authority may appoint a new member for the remainder of the term.
  5. The North Dakota grape growers association shall designate as chairman one of the two individuals the association appoints to the committee unless the committee elects a different chairman from the members on the committee. The committee shall meet at least once every two years and at the call of the chairman."

Page 1, remove lines 16 through 20

Renumber accordingly

**HOUSE AMENDMENTS TO SENATE BILL NO. 2373**

In addition to the amendments adopted by the House as printed on page 968 of the House Journal, Senate Bill No. 2373 is further amended as follows:

Page 1, line 2, replace the second "and" with "to provide for a report to the legislative assembly;" and after "appropriation" insert "; and to provide an expiration date"

Page 1, after line 20, insert:

**"SECTION 2. REPORT TO SIXTY-SECOND AND SIXTY-THIRD LEGISLATIVE ASSEMBLIES.** The grape and wine program fund committee shall report to the sixty-second and sixty-third legislative assemblies on the progress of the grape and wine program and the use of the grape and wine program fund.

**SECTION 3. EXPIRATION DATE.** This Act is effective through June 30, 2013, and after that date is ineffective."

Renumber accordingly

**HOUSE AMENDMENTS TO SENATE BILL NO. 2391**

In lieu of the amendments adopted by the House as printed on pages 907 and 908 of the House Journal, Senate Bill No. 2391 is amended as follows:

Page 1, line 11, replace "nongovernmental" with "statewide marketing firm"

Page 1, line 12, remove "entity that provides alternatives-to-abortion services to conduct statewide marketing"

Page 1, line 23, replace "\$500,000" with "\$100,000"

Page 2, line 2, replace "designate \$400,000 of this appropriation for alternatives-to-abortion services and" with "use this funding for contracting with a statewide marketing firm to inform the public about the alternatives-to-abortion program. Funding for the alternatives-to-abortion program is also appropriated to the Department of Human Services in House Bill No. 1012."

Page 2, remove lines 3 and 4

Renumber accordingly

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

**MR. PRESIDENT:** The House has amended, subsequently passed, and the emergency clause carried: SB 2005.

**HOUSE AMENDMENTS TO SENATE BILL NO. 2005**

Page 1, line 2, after "commission" insert "; to provide for a contingent appropriation; and to declare an emergency"

Page 1, line 11, replace "75,317" with "70,717" and replace "560,680" with "556,080"

Page 1, line 13, replace "115,927" with "111,327" and replace "687,185" with "682,585"

Page 1, line 15, replace "120,927" with "116,327" and replace "687,185" with "682,585"

Page 1, after line 16, insert:

**"SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Indian youth leadership program	\$0	\$40,000
Total general fund	\$0	\$40,000

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The Indian affairs commission shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 3. CONTINGENT PROGRAM FUNDING.** Section 1 of this Act includes \$40,000 from the general fund for an Indian youth leadership program which the Indian affairs commission may spend only to the extent that federal funds appropriated in section 4 of this Act are not available for these purposes.

**SECTION 4. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the Indian affairs commission, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Indian youth leadership program	\$40,000
Total federal funds	\$40,000

The Indian affairs commission may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess

of the amounts appropriated under this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

**SECTION 5. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT - LC 98024.0102 FN 2**

A copy of the statement of purpose of amendment is on file in the Legislative Council Office.

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

**MR. PRESIDENT:** The House has failed to pass unchanged: SCR 4013.

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

**MR. SPEAKER:** The Senate does not concur in the House amendments to SB 2163, SB 2208, SB 2223, SB 2251, SB 2270, SB 2359, and SCR 4018 and the President has appointed as a conference committee to act with a like committee from the House on:

**SB 2163:** Sens. Oehlke; Dever; Nelson  
**SB 2208:** Sens. Klein; Wanzek; Behm  
**SB 2223:** Sens. Nething; Nodland; Fiebiger  
**SB 2251:** Sens. Oehlke; Dever; Horne  
**SB 2270:** Sens. Cook; Oehlke; Horne  
**SB 2359:** Sens. Oehlke; Cook; Nelson  
**SCR4018:** Sens. Wanzek; Miller; Taylor

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate be on the Fourth, Fifth, Seventh, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Thursday, April 9, 2009, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

**HB 1225, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed HB 1225, as amended, was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1407, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed HB 1407, as amended, was placed on the Fourteenth order on the calendar.

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

**Fran A. Gronberg, Secretary**

