

## JOURNAL OF THE SENATE - SPECIAL SESSION

## Sixty-second Legislative Assembly

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Bismarck, November 9, 2011

The Senate convened at 8:00 a.m., with President Wrigley presiding.

The prayer was offered by Senator Dick Dever.

The roll was called and all members were present.

A quorum was declared by the President.

## REPORT OF STANDING COMMITTEE

**HB 1473, as engrossed: Joint Legislative Redistricting Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (14 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1473 was placed on the Fourteenth order on the calendar.

## SECOND READING OF HOUSE BILL

**HB 1473:** A BILL for an Act to authorize the secretary of state to modify election deadlines and procedures; to create and enact two new sections to chapter 54-03 of the North Dakota Century Code, relating to legislative redistricting and staggering of terms of members of the legislative assembly; to repeal sections 54-03-01.8 and 54-03-01.10 of the North Dakota Century Code, relating to staggering of terms of members of the legislative assembly; to provide a statement of legislative intent; and to provide an effective date.

## MOTION

**SEN. WARNER MOVED** that Engrossed HB 1473 be amended as follows, which motion failed on a voice vote.

Page 1, line 1, after "A BILL" replace the remainder of the bill with a proposed legislative redistricting map that is referred to as revised template b which is on file with the legislative council.

Renumber accordingly

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

**YEAS:** Andrist; Berry; Burckhard; Carlisle; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hogue; Holmberg; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Miller; Nething; Nodland; O'Connell; Oehlke; Olafson; Schaible; Sitte; Sorvaag; Uglem; Wanzek; Wardner

**NAYS:** Bowman; Dotzenrod; Heckaman; Kilzer; Klein; Marcellais; Mathern; Murphy; Nelson; Robinson; Schneider; Taylor; Triplett; Warner

Engrossed HB 1473 passed.

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## MOTION

**SEN. WARNER MOVED** may we be on the sixth order for purpose of amendment, which motion prevailed.

## MOTION

**SEN. CHRISTMANN MOVED** that the Senate stand in recess until 1:00 p.m., which motion prevailed.

**THE SENATE RECONVENED** pursuant to recess taken, with President Wrigley presiding.

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

pg. 1917 line 19 replace "doing" with "going"

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

**FIRST READING OF HOUSE CONCURRENT RESOLUTION**

Reps. Kasper, Bellew, Drovdal, Rust and Sens. Andrist, Nodland introduced:  
(Approved by the Delayed Bills Committee)

**HCR 3053:** A concurrent resolution urging Congress to clearly limit United States Environmental Protection Agency regulation of hydraulic fracturing under the Safe Drinking Water Act to well stimulation treatments that use diesel fuel as the primary constituent--more than 50 percent diesel fuel by volume--of hydraulic fracturing fluid. Was read the first time.

**MOTION**

**SEN. CHRISTMANN MOVED** that the rules be suspended, that HCR 3053 not be printed, not be referred to committee, but be read in title only, be printed in the Journal, and placed on the calendar for immediate second reading and final passage, which motion prevailed on a voice vote.

Reps. Kasper, Bellew, Drovdal, Rust and Sens. Andrist, Nodland introduced:  
(Approved by the Delayed Bills Committee)

**HOUSE CONCURRENT RESOLUTION NO. 3053**

A concurrent resolution urging Congress to clearly limit United States Environmental Protection Agency regulation of hydraulic fracturing under the Safe Drinking Water Act to well stimulation treatments that use diesel fuel as the primary constituent--more than 50 percent diesel fuel by volume--of hydraulic fracturing fluid.

**WHEREAS**, hydraulic fracturing, a mechanical method of increasing the permeability of rock, thus increasing the amount of oil or gas produced from the rock, has greatly enhanced oil and gas production in this state; and

**WHEREAS**, oil and gas production increases in this state have led to growth in employment and economic development as well as promotion of energy independence for the United States; and

**WHEREAS**, the Energy Policy Act of 2005 uses the term "diesel fuel" more than 40 times and defines "diesel fuel" according to the American Society for Testing and Materials standard specifications for fuel oils; and

**WHEREAS**, the Environmental Protection Agency is being urged to define "diesel fuel" in Section 322 of the Energy Policy Act of 2005 in a different and broader manner than the definition of "diesel fuel" used elsewhere in the Act; and

**WHEREAS**, Section 322 of the Energy Policy Act of 2005 was never intended to subject injection of hydraulic fracturing fluids that contain minute amounts of diesel fuel, typically less than one-tenth of 1 percent by volume, to Safe Drinking Water Act regulation;

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

That the Sixty-second Legislative Assembly urges the Congress of the United States to clearly limit Environmental Protection Agency regulation of hydraulic fracturing under the Safe Drinking Water Act to well stimulation treatments that use diesel fuel as the primary constituent--more than 50 percent by volume--of the hydraulic fracturing fluid; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the administrator of the Environmental Protection Agency and to each member of the North Dakota Congressional Delegation.

**SECOND READING OF HOUSE CONCURRENT RESOLUTION**

**HCR 3053:** A concurrent resolution urging Congress to clearly limit United States Environmental Protection Agency regulation of hydraulic fracturing under the Safe Drinking Water Act to well stimulation treatments that use diesel fuel as the primary constituent--more than 50 percent diesel fuel by volume--of hydraulic fracturing fluid.

**REQUEST**

**SEN. ANDRIST REQUESTED** a recorded roll call vote on the adoption of HCR 3053, which request was granted.

**ROLL CALL**

The question being on the final adoption of the resolution, which has been read, the roll was called and there were 44 YEAS, 3 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Berry; Bowman; Burckhard; Carlisle; Christmann; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Grindberg; Heckaman; Hogue; Holmberg; Kilzer; Klein; Krebsbach; Laffen; Larsen; Lee, G.; Lee, J.; Luick; Lyson; Miller; Murphy; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Robinson; Schaible; Schneider; Sitte; Sorvaag; Taylor; Uglen; Wanzek; Wardner; Warner

**NAYS:** Marcellais; Mathern; Triplett

HCR 3053 was declared adopted on a recorded roll call vote.

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**FIRST READING OF HOUSE CONCURRENT RESOLUTION**

Reps. Kasper, Delzer, Dosch, Wrangham and Sens. Cook, Dever introduced:  
(Approved by the Delayed Bills Committee)

**HCR 3054:** A concurrent resolution urging the United States Environmental Protection Agency to approve North Dakota's plan for addressing regional haze and urging Congress to clearly delegate responsibility for the regulation of regional haze and minor source air permitting to the states.

Was read the first time.

**MOTION**

**SEN. CHRISTMANN MOVED** that the rules be suspended, that HCR 3054 not be printed, not be referred to committee, but be read in title only, be printed in the Journal, and placed on the calendar for immediate second reading and final passage, which motion prevailed on a voice vote.

Reps. Kasper, Delzer, Dosch, Wrangham and Sens. Cook, Dever introduced:  
(Approved by the Delayed Bills Committee)

**HOUSE CONCURRENT RESOLUTION NO. 3054**

A concurrent resolution urging the United States Environmental Protection Agency to approve North Dakota's plan for addressing regional haze and urging Congress to clearly delegate responsibility for the regulation of regional haze and minor source air permitting to the states.

**WHEREAS**, in Section 101 of the Clean Air Act, Congress determined that preventing and controlling air pollution "is the primary responsibility of States and local governments" and the Act is designed to prevent the federal government from substituting its inflexible judgment for a state's superior knowledge of local conditions and needs; and

**WHEREAS**, in *American Corn Growers Association v. E.P.A.*, 291 F.3d 1, 2 (D.C. Cir. 2002), the United States Court of Appeals for the District of Columbia Circuit held that the Clean Air Act "calls for states to play the lead role in designing and implementing regional haze programs"; and

**WHEREAS**, the North Dakota State Department of Health developed a reasonable plan for addressing regional haze and this state's air is among the nation's cleanest in the nation with the 2010 American Lung Association ranking Mercer County, home to several coal-based power plants, as one of the 25 cleanest counties in the United States and ranking Billings County, home to Theodore Roosevelt National Park and significant oil and gas development, as the third cleanest; and

**WHEREAS**, the United States Environmental Protection Agency has noticed its intention in the Federal Register to disapprove a portion of this state's plan for addressing regional haze and impose a federal plan in its place that mandates an inappropriate technology, selective catalytic reduction, that is not proven on boilers using this state's high-sodium lignite and which when tested through a pilot study, the technology failed after two months; and

**WHEREAS**, when one compares the United States Environmental Protection Agency's plan to this state's plan there is no significant improvement in visibility under the United

States Environmental Protection Agency's plan, so much so that the visibility improvements the United States Environmental Protection Agency claims would result from its plan are not even humanly perceptible; and

**WHEREAS**, the North Dakota State Department of Health found that international and out-of-state sources are the most significant cause of impaired visibility in the state's national parks and wilderness areas, and that even if every coal plant and oil drilling rig in the state were shut down, the Environmental Protection Agency's visibility goals could not be met because the problem is caused by sources outside this state; and

**WHEREAS**, this state has crafted an implementation plan that takes into account the various technology options available to oil and gas operators to reduce emissions of volatile organic compounds; and

**WHEREAS**, this state's natural gas gathering and processing industry has committed more than \$3 billion to build infrastructure that will capture and market flared gas; and

**WHEREAS**, the United States Environmental Protection Agency is ignoring this state's authority and local knowledge and the Environmental Protection Agency's proposed action would unnecessarily jeopardize this state's sovereignty and economic well-being;

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

That the Sixty-second Legislative Assembly urges the United States Environmental Protection Agency to approve North Dakota's plan for addressing regional haze and urges Congress to clearly delegate responsibility for the regulation of regional haze and minor source air permitting to the states; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the administrator of the United States Environmental Protection Agency and to each member of the North Dakota Congressional Delegation.

#### **SECOND READING OF HOUSE CONCURRENT RESOLUTION**

**HCR 3054:** A concurrent resolution urging the United States Environmental Protection Agency to approve North Dakota's plan for addressing regional haze and urging Congress to clearly delegate responsibility for the regulation of regional haze and minor source air permitting to the states.

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

HCR 3054 was declared adopted on a voice vote.

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#### **MOTION**

**SEN. CHRISTMANN MOVED** that the Senate stand in recess until 4:00 p.m., which motion prevailed.

**THE SENATE RECONVENED** pursuant to recess taken, with President Wrigley presiding.

#### **FIRST READING OF SENATE MEMORIAL RESOLUTION**

Sens. Flakoll, Christmann, Klein, O'Connell, Wardner, Carlisle and Reps. Carlson, Delmore, Nathe, Weiler introduced:

(Approved by the Delayed Bills Committee)

**SMR 8002:** A Senate concurrent memorial resolution for Senator Bob Stenehjem. Was read the first time.

#### **MOTION**

**SEN. CHRISTMANN MOVED** that the rules be suspended, that SMR 8002 be printed, not be referred to committee, but be read in its entirety, be printed in the Journal, and placed on the calendar for immediate second reading and final passage, which motion prevailed on a voice vote.

Sens. Flakoll, Christmann, Klein, O'Connell, Wardner, Carlisle and Reps. Carlson, Delmore, Nathe, Weiler introduced:

(Approved by the Delayed Bills Committee)

#### **SENATE CONCURRENT MEMORIAL RESOLUTION NO. 8002**

A Senate concurrent memorial resolution for Senator Bob Stenehjem.

**WHEREAS**, Bob Stenehjem was first elected to the North Dakota Senate in 1992 and was chosen to serve as its majority leader in 2001, a position he held without interruption until his untimely death in 2011; and

**WHEREAS**, Senator Stenehjem was a rare person who could see the big picture and take the many small steps that are necessary to get the job done, could build the kind of constructive compromise that moved important legislation, and used his leadership and statesmanship to produce legacy legislation that will improve the quality of life for North Dakotans for generations to come; and

**WHEREAS**, Senator Stenehjem earned the respect and friendship of colleagues on both sides of the aisle and people throughout the State Capitol, the nation, and the world; and

**WHEREAS**, during his distinguished career, Senator Stenehjem was a national leader in tribal relations and transportation issues; and

**WHEREAS**, Senator Stenehjem treasured time with family, friends, and colleagues and exhibited a great zest for life and was passionate about politics and the great outdoors; and

**WHEREAS**, on July 18, 2011, we lost a very special friend when Senator Stenehjem tragically passed away; and

**WHEREAS**, Senator Stenehjem will be deeply missed by the many friends and colleagues he left behind, his wife Kathy, four children, and three grandchildren;

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

That we express our sorrow on the passing of Senator Bob Stenehjem and express our deepest sympathy to his family, friends, and colleagues; and

**BE IT FURTHER RESOLVED**, that for the perpetuation of his memory this token of respect and sympathy by his successors in trust be printed in the Journal of the Senate and the Journal of the House and that the Secretary of State present enrolled copies of this resolution to the surviving family.

#### **SECOND READING OF SENATE MEMORIAL RESOLUTION**

**SMR 8002:** A Senate concurrent memorial resolution for Senator Bob Stenehjem.

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

SMR 8002 was declared adopted on a voice vote.

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

**MR. SPEAKER:** The Senate has passed, and your favorable consideration is requested on: SMR 8002.

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

**MR. SPEAKER:** The Senate has passed, unchanged: HB 1473.

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

**MR. SPEAKER:** The Senate has passed, unchanged: HCR 3053, HCR 3054.

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

**MR. PRESIDENT:** The House has passed, unchanged: SB 2370.

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

**MR. PRESIDENT:** The House has passed, unchanged: SMR 8002.

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

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2370.

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

**MR. PRESIDENT:** Your signature is respectfully requested on: HB 1473.

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

**MR. PRESIDENT:** The Speaker has signed: SB 2370.

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

**MR. SPEAKER:** The President has signed: HB 1473.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following bill was delivered to the Governor for approval on November 9, 2011: SB 2370.

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate be on the Fourth, Fifth, Seventh, Ninth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 9:00 a.m., Thursday, November 10, 2011, which motion prevailed.

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

**William R. Horton, Secretary**