

Committee: House State Affairs

Wednesday, February 16, 2022 7:30 AM

Roll Call

Present: Rep. Anderson, Rep. Beal, Rep. Chaffee, Rep. Goodwin, Rep. Gosch, Rep. Hansen, Rep. Kevin Jensen, Rep. Lesmeister, Rep. Reimer, Rep. Jamie Smith, Rep. Wiese, Rep. Chris Johnson, and Rep. Kent Peterson

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Representative Kent Peterson**

**MOTION: TO APPROVE THE MINUTES OF MONDAY, FEBRUARY 14<sup>TH</sup>**

Moved by: Chaffee  
Second by: Beal  
Action: Prevailed by voice vote

Representative Peterson, Chair, passed the gavel to Representative Johnson, Vice Chair.

**HB 1124 : accommodate legislation on medical services.**

Presented by: Representative Kent Peterson, District 19

**MOTION: DO PASS HB 1124**

Moved by: Gosch  
Second by: Beal  
Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Anderson, Beal, Chaffee, Goodwin, Gosch, Kevin Jensen, Lesmeister, Reimer, Jamie Smith, Wiese, Chris Johnson, and Kent Peterson

Excused: Hansen

**HB 1125 : accommodate legislation relating to education in South Dakota.**

Presented by: Representative Kent Peterson, District 19

**MOTION: DO PASS HB 1125**

Moved by: Gosch  
Second by: Beal  
Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Anderson, Beal, Chaffee, Goodwin, Gosch, Kevin Jensen, Lesmeister, Reimer, Jamie Smith, Wiese, Chris Johnson, and Kent Peterson

Excused: Hansen

**HB 1126 : accommodate legislation relating to the protection of public safety.**

Presented by: Representative Kent Peterson, District 19

**MOTION: DO PASS HB 1126**

Moved by: Gosch  
Second by: Beal  
Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Anderson, Beal, Chaffee, Goodwin, Gosch, Kevin Jensen, Lesmeister, Reimer, Jamie Smith, Wiese, Chris Johnson, and Kent Peterson

Excused: Hansen

**HB 1127 : enhance South Dakota.**

Presented by: Representative Kent Peterson, District 19

**MOTION: DO PASS HB 1127**

Moved by: Gosch  
Second by: Beal  
Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Anderson, Beal, Chaffee, Goodwin, Gosch, Kevin Jensen, Lesmeister, Reimer, Jamie Smith, Wiese, Chris Johnson, and Kent Peterson

Excused: Hansen

**HB 1210 : make an appropriation to the Board of Regents to provide grant funding for a new biomedical facility at the research park in Sioux Falls, and to declare an emergency.**

Presented by: Representative Kent Peterson, District 19

Proponents: James W Abbott, USD Discovery District, Sioux Falls (Handout(s) #1)  
Dan Engebretson, Board of Regents  
Drew Duncan, South Dakota Biotechnology Association, Sioux Falls  
Deb Peters, Self, Hartford  
Deb Fischer-Clemens, Avera Health, Sioux Falls  
Mitchell Rave, Sanford Health, Sioux Falls  
Brian Maher, Board of Regents  
Debra Owen, Greater Sioux Falls Chamber of Commerce, Sioux Falls

Opponents: Derek Johnson, Bureau of Finance and Management

**MOTION: DO PASS HB 1210**

Moved by: Beal  
Second by: Chaffee  
Action: Was not acted on.

**MOTION:    SUBSTITUTE MOTION:    REFER HB 1210 TO HOUSE COMMITTEE ON APPROPRIATIONS DO PASS**

Moved by:    Gosch  
Second by:    Reimer  
Action:        Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes:    Anderson, Beal, Chaffee, Goodwin, Gosch, Kevin Jensen, Lesmeister, Reimer, Jamie Smith, Wiese, Chris Johnson, and Kent Peterson

Excused:      Hansen

The gavel was passed back to Representative Peterson, Chair.

**HB 1261 :    establish emergency retire-rehire provisions for the South Dakota Retirement System.**

Presented by: Representative Kent Peterson, District 19  
Proponents:    Wade Pogany, Associated School Boards of South Dakota, Pierre (Handout(s) #2, 3)  
                      Dianna Miller, Large School Group, Pierre  
                      Mitch Richter, United School Association of South Dakota, Madison  
Opponents:    James Johns, South Dakota Retirement System  
                      Doug Fiddler, South Dakota Retirement System  
                      Matt Clark, South Dakota Investment Council  
                      Mark Barnett, South Dakota Retirement System  
                      Derek Johnson, Bureau of Finance and Management

**MOTION:    AMEND HB 1261**

1261A

On page 1, line 4, of the Introduced bill, after "Dakota:" delete "Section 1. That § 3-12C-401 be AMENDED:

"

On page 1, line 5, of the Introduced bill, after "AMENDED:" delete "3-12C-401. Any employee included in § 3-12C-301 shall make a contribution to the system, except as specified in § 3-12C-1405 and section 4 of this Act, and the employer shall make an equal contribution to the system, except as otherwise specified, at the following rates:

- (1) Class A members: five percent of compensation through June 30, 2002, and six percent of compensation after June 30, 2002;
- (2) Justices, judges, and magistrate judges: nine percent of compensation;
- (3) All other Class B members: eight percent of compensation.

The employer shall cause to be deducted on each payroll of the employee for each payroll period the contribution payable by the employee as provided in this section.

Except for those contributions specified in § 3-12C-1405, contributions required of employees by this section shall must be made by the participating unit pursuant to the provisions of § 414(h)(2) of the Internal Revenue Code. The contributions shall must be classified as employee contributions for all purposes under this chapter. An employee may not receive the amount of the contributions directly rather than as contributions under this section."

On page 2, line 7, of the Introduced bill, delete " 4" and insert " 2"

On page 2, line 10, of the Introduced bill, after "benefit." delete "Section 3. That § 3-12C-1401 be AMENDED:

"

On page 2, line 11, of the Introduced bill, after "AMENDED:" delete "3-12C-1401. Except as provided in § 3-12C-1401. 1 and section 4 of this Act, a retired member's retirement is invalid if the member is reemployed by a participating unit unless the member's employment relationship with the initial participating unit has been terminated, as defined in this chapter and as required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service, and the member has been separated from service for three consecutive calendar months after the member's effective date of retirement. The initial participating unit's system representative shall certify to the system that the termination of the employment relationship took place. In addition, any second participating unit shall subject the member to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system. If a single participating unit is both the member's initial participating unit and the member's second participating unit, the unit shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its chief executive officer, the officer's agent, or the chair of the unit's governing commission or board shall so certify."

On page 2, line 26, of the Introduced bill, after "certify." delete "Section 4. That chapter 3-12C be amended with a NEW SECTION:

"

On page 2, line 27, of the Introduced bill, after "SECTION:" delete "A retired member's retirement remains valid if the member comes back to work a full-time, Class A credited service position for a participating unit at least thirty days after the termination of the member's employment with the participating unit or another participating unit, during which time the member had no contract or employment relationship with a participating unit, if:

- (1) The salary of the position is seventy-five percent or less of the salary the member received from the participating unit prior to termination;
- (2) The participating unit hiring the member certifies that it has not been successful in filling the position with a qualified candidate before hiring the member; and
- (3) The participating unit hiring the member contributes to the system twelve percent of the salary of the position, with no contribution from the member.

A retired member reemployed under this section will continue to receive COLA increases and will not be subject to the benefit reduction referenced in § 3-12C-1405."

On page 3, after line 6, of the Introduced bill, insert: "

**Section 2. That chapter 3-12C be amended with a NEW SECTION:**

A retired member may be reemployed in an emergency full-time position for a participating unit if:

- (1) The member has been separated from service for at least twelve consecutive months after the member's effective retirement date; and
- (2) The participating unit hiring the member demonstrates that a good faith effort, as described in section 3 of this Act, was made to hire appropriately qualified personnel who are not receiving a retirement benefit from the system.

A retired member reemployed under this section will continue to receive COLA increases and will not be subject to the benefit reduction referenced in § 3-12C-1405 until June 30, 2025. However, all other provisions of § 3-12C-1405 apply."

On page 3, after line 6, of the Introduced bill, insert: "

**Section 3. That chapter 3-12C be amended with a NEW SECTION:**

To demonstrate that a good faith effort was made, the participating unit shall provide the following documentation of actions taken to recruit an appropriately qualified person for the emergency position:

- (1) The participating unit's need for the emergency position and the efforts made to fill the position;
- (2) A plan for hiring appropriately qualified personnel without using the emergency position in the future;
- (3) A description of the retired member's experience, knowledge, and abilities; and

(4) A certification that no formal or informal agreement existed to reemploy the retired member.

Participating units shall advertise the position in at least two publicly accessible resources for at least one month, within the six months preceding the emergency employment. All copies of postings must be included with the documentation."

On page 3, line 8, of the Introduced bill, after "§ 3-12C-1405.1" delete " and section 4 of this Act"

On page 3, line 13, of the Introduced bill, delete "The" and insert "Except as provided in section 2 of this Act, the"

On page 3, line 30, of the Introduced bill, delete " section 4" and insert " sections 2 and 3"

On page 3, line 30, of the Introduced bill, delete " act" and insert " Act"

Moved by: Gosch

Second by: Beal

Action: Prevailed by voice vote

**MOTION: DEFER HB 1261 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Beal

Second by: Chaffee

Action: Prevailed by Majority Members Elect (10-3-0-0)

Voting Yes: Anderson, Beal, Chaffee, Goodwin, Hansen, Lesmeister, Reimer, Jamie Smith, Wiese, and Chris Johnson

Voting No: Gosch, Kevin Jensen, and Kent Peterson

**HB 1258 : prohibit obtaining an individual's COVID-19 vaccination status without the consent of the individual.**

Presented by: Representative Spencer Gosch, District 23

Opponents: Doug Abraham, South Dakota Association of Specialty Care Providers, Rapid City

Doug Abraham, South Dakota Retailers Association, Pierre

Justin Bell, South Dakota State Medical Association, Sioux Falls

Tim Rave, South Dakota Association of Healthcare Organizations, Sioux Falls

Deb Fischer-Clemens, Avera Health, Sioux Falls

Terrance Lee Dosch, South Dakota Council of Community Behavioral Health, Pierre

Darla Pollman Rogers, South Dakota Rural Electric Association, Pierre

Darla Pollman Rogers, South Dakota Association of Rural Water Systems, Madison

**MOTION: AMEND HB 1258**

1258A

On page 1, line 1, of the Introduced bill, delete "prohibit obtaining an individual's COVID-19 vaccination status without the consent of the individual" and insert "protect an individual's conscience from entities requiring the COVID-19 vaccine"

On the Introduced bill, delete everything after the enacting clause and insert:

"

**Section 1.** This Act shall be referred to as the COVID-19 Vaccine Freedom of Conscience Act.

**Section 2.** That a NEW SECTION be added to title 34:

For the purpose of this Act, the term, conscience, means a person's inner conviction of what is right or wrong in the person's conduct.

**Section 3. That a NEW SECTION be added to title 34:**

A person has the right to be exempt from any COVID-19 vaccination mandate, requirement, obligation, or demand on the basis that receiving a COVID-19 vaccination violates the person's conscience. A person may exercise the right to be exempt under this Act orally or in writing.

**Section 4. That a NEW SECTION be added to title 34:**

No person may be subjected to any disciplinary action; being terminated, demoted, or losing employment status in any way; loss of student status, including status in a particular study program; nor may any person be denied access to any business premises as a result of the person's decision to decline to receive a COVID-19 vaccination on the basis of conscience.

**Section 5. That a NEW SECTION be added to title 34:**

Any entity or agent of any entity that mandates or requires any person to receive a COVID-19 vaccination or conditions any person's job or student status upon receiving a COVID-19 vaccination must inform the person of the right to the conscience exemption under this Act.

**Section 6. That a NEW SECTION be added to title 34:**

A civil action for damages or injunctive relief, or both, may be brought by any person for any violation of any provision of this Act. A person aggrieved by any violation of this Act who commences a civil action is entitled, upon the finding of a violation, to recover threefold the actual damages sustained, along with the costs of the action and reasonable attorney's fees.

**Section 7. That a NEW SECTION be added to title 34:**

A health care facility, as defined in § 34-12-1.1, is exempt from this Act during any period of time that compliance would result in a violation of regulations issued by the centers for medicare and medicaid services or the centers for disease control and prevention."

Moved by: Kevin Jensen  
Second by: Hansen  
Action: Prevailed by voice vote

**MOTION: DO PASS HB 1258 AS AMENDED**

Moved by: Chris Johnson  
Second by: Hansen  
Action: Prevailed by Majority Members Elect (7-6-0-0)

Voting Yes: Beal, Chaffee, Gosch, Hansen, Kevin Jensen, Wiese, and Chris Johnson

Voting No: Anderson, Goodwin, Lesmeister, Reimer, Jamie Smith, and Kent Peterson

**HB 1326 : reinstate the prohibition against certain acts causing the termination of an unborn human life, and to prescribe a penalty therefor.**

Presented by: Representative Steven Haugaard, District 10

**MOTION: TO TABLE HB 1326**

Moved by: Beal  
Second by: Kevin Jensen  
Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Anderson, Beal, Chaffee, Goodwin, Gosch, Hansen, Kevin Jensen, Lesmeister, Jamie Smith, Wiese, Chris Johnson, and Kent Peterson

Excused: Reimer

**HJR 5003 : proposing and submitting to the voters at the next general election a new section to Article VI of the Constitution of the State of South Dakota, relating to the definition of a human being.**

Presented by: Representative Steven Haugaard, District 10

Opponents: Justin Bell, South Dakota State Medical Association, Sioux Falls  
A. Jason Rumpca, South Dakota Section of the American College of Obstetricians and Gynecologists, Rapid City

**MOTION: AMEND HJR 5003**

HJR5003A

On page 1, line 12, of the Introduced bill, delete " each member of the species homo sapiens, at all stages of life, including the moment of fertilization or cloning, or other moment at which a member of the species comes into being" and insert " an individual living member of the species of Homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation"

Moved by: Hansen

Second by: Gosch

Action: Prevailed by voice vote

**MOTION: DO PASS HJR 5003 AS AMENDED**

Moved by: Gosch

Second by: Hansen

Action: Prevailed by Majority Members Elect (8-4-1-0)

Voting Yes: Beal, Chaffee, Goodwin, Gosch, Hansen, Kevin Jensen, Wiese, and Chris Johnson

Voting No: Anderson, Lesmeister, Jamie Smith, and Kent Peterson

Excused: Reimer

**HB 1141 : exempt members of Indian tribes in South Dakota from hunting and fishing license fees.**

**MOTION: TO TABLE HB 1141**

Moved by: Gosch

Second by: Hansen

Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Anderson, Beal, Chaffee, Goodwin, Gosch, Hansen, Kevin Jensen, Lesmeister, Jamie Smith, Wiese, Chris Johnson, and Kent Peterson

Excused: Reimer

**MOTION: ADJOURN**

Moved by: Gosch  
Second by: Beal  
Action: Prevailed by voice vote

Pam Kean, Committee Secretary

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/s/ KENT PETERSON  
Kent Peterson, Chair