

JOURNAL OF THE HOUSE

NINETY-SEVENTH SESSION

THIRTY-EIGHTH DAY

STATE OF SOUTH DAKOTA
House of Representatives, Pierre
Monday, March 28, 2022

The House convened at 11:00 a.m., pursuant to adjournment, the Speaker presiding.

The prayer was offered by the Chaplain, Rev. Jake Krahn, followed by the Pledge of Allegiance led by House page Jacob Weinheimer.

Roll Call: All members present.

APPROVAL OF THE JOURNAL

MR. SPEAKER:

The Committee on Legislative Procedure respectfully reports that the Chief Clerk of the House has had under consideration the House Journal of the 37th day.

In the House Journal of the 37th day the following correction should be made:

Page 671, line 19 should read: Yeas 52, Nays 16, Excused 1, Absent 1

Page 671, line 28 should read: Excused: Milstead, Absent: Davis

All addition errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,
Spencer R. Gosch, Chair

Which motion prevailed.

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COMMUNICATIONS AND PETITIONS

March 15, 2022

Mr. Speaker and Members of the House:

I have the honor to inform you that on March 15, 2022, I approved House Bills 1068, 1099, 1100, 1162, 1174, and 1328, and the same have been deposited in the office of the Secretary of State.

Respectfully submitted,
Kristi Noem
Governor

March 16, 2022

Mr. Speaker and Members of the House:

I have the honor to inform you that on March 16, 2022, I approved House Bills 1041, 1084, 1127, 1214, and 1268, and the same have been deposited in the office of the Secretary of State.

Respectfully submitted,
Kristi Noem
Governor

March 18, 2022

Mr. Speaker and Members of the House:

I have the honor to inform you that on March 18, 2022, I approved House Bills 1014, 1038, 1051, 1102, 1129, 1133, 1173, 1229, 1271, 1272, 1273, 1278, 1279, 1284, 1293, 1302, 1322, and 1325, and the same have been deposited in the office of the Secretary of State.

Respectfully submitted,
Kristi Noem
Governor

March 21, 2022

Mr. Speaker and Members of the House:

I have the honor to inform you that on March 21, 2022, I approved House Bills 1012, 1031, 1032, and 1119, and the same have been deposited in the office of the Secretary of State.

Respectfully submitted,
Kristi Noem
Governor

1 March 22, 2022

2 Mr. Speaker and Members of the House:

3 I have the honor to inform you that on March 22, 2022, I approved House Bill 1306, and the
4 same has been deposited in the office of the Secretary of State.

5 Respectfully submitted,
6 Kristi Noem
7 Governor

8 March 23, 2022

9 Mr. Speaker and Members of the House:

10 I have the honor to inform you that on March 23, 2022, I approved House Bills 1113 and 1318,
11 and the same have been deposited in the office of the Secretary of State.

12 Respectfully submitted,
13 Kristi Noem
14 Governor

15 March 25, 2022

16 Mr. Speaker and Members of the House:

17 I have the honor to inform you that on March 24, 2022, I approved House Bills 1096, 1117,
18 1152, 1156, 1176, 1209, 1210, 1277, 1289, and 1340, and the same have been deposited in the
19 office of the Secretary of State.

20 Respectfully submitted,
21 Kristi Noem
22 Governor

23 March 25, 2022

24 Mr. Speaker and Members of the House:

25 I have the honor to inform you that on March 25, 2022, I approved House Bill 1033, and the
26 same has been deposited in the office of the Secretary of State.

27 Respectfully submitted,
28 Kristi Noem
29 Governor

30 **EXECUTIVE VETOES AND RECOMMENDATIONS**

31 March 25, 2022

32 Dear Mr. Speaker and Members of the House of Representatives,

33 I respectfully return to you House Bill 1281 with my VETO. House Bill 1281 is an act to clarify
34 the contents of the general appropriations act for fiscal year 2023, pertaining to certain federal
35 moneys and to declare an emergency.

1 South Dakota is one of the most financially sound states in the country. Our state is top-3 in
2 the nation for fiscal stability, we have a AAA credit rating, we have passed a balanced budget for
3 133 consecutive years, and our state pension plan was 102% funded at the end of February 2022.

4 Financial success and stability of that magnitude and longevity is not an accident, and it is
5 further enhanced by our sound budgeting and accounting principles. We do not use accounting
6 gimmicks or tricks to balance our budget, we never use one-time money for ongoing expenses, and
7 we have an annual appropriations process with a part-time, citizen Legislature.

8 South Dakota has built our firm financial standing over the decades through a partnership
9 between the executive branch and the legislative branch, in particular through a close working
10 relationship between the Bureau of Finance and Management, the Joint Appropriations committee,
11 and the Legislative Research Council's fiscal staff.

12 Over the past two years, our state has received an unprecedented level of federal funding due
13 to the passage of several COVID-19 pandemic relief bills. I share many of your concerns with the
14 billions of dollars in taxpayer money being thrown around by the federal government. I believe
15 strongly that the state should use those funds to strengthen our economy for the long term.

16 I do not want the unique federal activity over the last two years to upset our state's
17 long-standing, commonsense approach to budgeting - an approach that has led to 133 consecutive
18 years of balanced budgets. House Bill 1281 marks a stark departure from that process.

19 I recognize the desire of some legislators to have a greater level of involvement in the allocation
20 of these federal relief funds. However, House Bill 1281 includes a number of logistical and technical
21 deficiencies. While House Bill 1281 may seem simple in principle, it is unworkable in practice and
22 would have many unintended consequences. For instance, House Bill 1281:

- 23 1. Lacks clarity on which agencies are impacted, when they are impacted, and the
24 amount of budget impact;
- 25 2. Increases bureaucracy with unnecessary accounting and budget transfers;
- 26 3. Reduces transparency by forcing budget transfers that do not accurately reflect the
27 true base budget;
- 28 4. Fails to recognize that because highway construction is continuously appropriated
29 and not part of the base budget, construction projects could instead be considered
30 a "new program" under this bill that requires approval by the Joint Committee on
31 Appropriations. As of March 14, 2022, the Department of Transportation has over
32 \$350 million of transportation projects under construction, contract, or advertised
33 for letting. Expenditures for these nearly 300 projects will likely cross over the
34 federal fiscal year, the state fiscal year, and the calendar year; and
- 35 5. Duplicates hearings adding additional Joint Appropriations Committee hearings
36 where statutory directives already require existing public boards to hold such
37 hearings.

38 The bottom line is this: House Bill 1281 creates a complicated, at times duplicative, new
39 process that makes it more difficult to understand and account for the operations of state
40 government. In doing so, it places unnecessary burdens on legislators, LRC staff, and agencies.

41 I am concerned about legal weaknesses that arise when a legislative proposal is not put
42 through the usual public hearing process. Due process in the legislative session means South Dakota
43 taxpayers are given advance notice of a hearing and a meaningful opportunity to be heard. That did
44 not happen with House Bill 1281. The public will not be able to find even one recorded public hearing
45 on the final language of House Bill 1281.

46 Within House Bill 1281, legal deficiencies are evident throughout. Section 10 of House Bill 1281
47 deserves special mention due to three significant legal defects:

- 1 1. Improperly allows the Joint Interim Committee on Appropriations to undo the
2 majority of the Legislature's vote on the Fiscal Year 2023 budget bill. The bill does
3 so by granting that Committee the authority to appropriate (or refuse to
4 appropriate) funds, even when the authority to spend was already addressed in the
5 general appropriations bill passed by the entire Legislature;
- 6 2. Increases the scope and authority of the Joint Interim Appropriations Committee,
7 even beyond what the Legislature has authorized it to do in Joint Rule 7-12. This
8 unnecessarily complicates the process and weakens the authority of the other 87
9 Legislators who are not serving on the Joint Interim Appropriations Committee; and
- 10 3. Improperly seeks to give the Joint Interim Committee on Appropriations authority
11 over the issuance of federal funds that are required, by state law, to be held in trust
12 for airport sponsors and administered in accordance with the terms of federal
13 mandates. See SDCL 50-4-4 through 50-4-6.

14 Given these practical implementation problems and legal impediments, I have chosen to veto
15 House Bill 1281, and I ask you to sustain my veto. I commit to engage with the Legislature to create
16 a system by which we can achieve the goals that motivate House Bill 1281. I want conversation and
17 input to continue on these extraordinary federal relief funds before any new programs are rolled
18 out.

19 As part of this commitment, I have asked incoming Bureau of Finance and Management
20 Commissioner Jim Terwilliger to establish a new protocol to communicate with the Legislature as
21 any new COVID grants or relief funds are received. I do not believe legislation is necessary to
22 achieve these goals, so long as we are all willing to work together based on common trust and good
23 faith.

24 That is my commitment to the Legislature, and I ask you to sustain my veto.

25 Respectfully submitted,
26 Kristi Noem
27 Governor

28 March 25, 2022

29 Dear Mr. Speaker and Members of the House of Representatives,

30 I respectfully return to you House Bill 1223 with my VETO. House Bill 1223 is an act that
31 modifies parental rights and revises certain informed consent provisions related to a pregnant
32 minor's health care decisions.

33 The bill as drafted allows for a doctor to treat a pregnant minor even in the absence of any
34 parental involvement. I appreciate the drafters' good intentions, and I agree that protecting the
35 health of any mother and their child is critically important. But there are flaws in the language of
36 the bill that require a veto.

37 First, House Bill 1223 states that if a parent withholds consent to treatment, then the minor
38 may give consent instead. As a parent to three children and now a grandparent, I know that this bill
39 erodes parental rights in a way that ultimately hurts families. Parents' constitutional rights include
40 the right to care, custody, and control of their children. That includes the right to make healthcare
41 decisions for their child.

42 There are limited exceptions to parental rights where the law allows the state to intercede and
43 act in the best interests of the child, but House Bill 1223 does not recognize those well-established
44 exceptions.

45 As originally drafted, the bill stated that a parent's decisions about their child's healthcare could
46 be overridden if the parent unreasonably withheld consent for the child's care. But that word was

1 stricken from the bill by the time it reached my desk. Under House Bill 1223, a parent could
2 reasonably withhold their consent for a health procedure for their child, and the doctor could ignore
3 the parent's reasonable objection. What if the parent simply wants a second opinion? After all,
4 doctors often disagree. House Bill 1223 would wrongfully allow a doctor to ignore the parent's
5 request for a second opinion for their child's health care.

6 Second, House Bill 1223 is not necessary. Physicians are currently able to treat minors without
7 parental consent, pursuant to SDCL 20-9-4.2, when delaying care to obtain that consent would
8 create risks to the life or health of the minor. That law has been on the books for nearly 40 years.
9 While I know there were anecdotes shared during committee testimony that were troubling, in this
10 case, there was no meaningful data provided to show that SDCL 20-9-4.2 is inadequate to protect
11 the life and health of a pregnant minor.

12 While I believe many who voted for this bill were well intentioned, these concerns require me
13 to oppose it. South Dakota must stand as an example for the rest of the country that we respect
14 both parental rights and the health of their children. This bill fails to properly account for both of
15 those interests.

16 For these reasons, I oppose House Bill 1223 and ask that you sustain my veto.

17 Respectfully submitted,
18 Kristi Noem
19 Governor

20 **CONSIDERATION OF EXECUTIVE VETOES AND RECOMMENDATIONS**

21 The House proceeded to the reconsideration of **HB 1281**, pursuant to the veto of the Governor
22 and the veto message found on page 689 on the House Journal as provided in Article IV, Section 4,
23 of the Constitution of the State of South Dakota.

24 The question being "Shall **HB 1281** pass, the veto of the Governor notwithstanding?"

25 And the roll being called:

26 Yeas 40, Nays 30, Excused 0, Absent 0

27 Yeas: Aylward, Beal, Bordeaux, Cwach, Dennert, Deutsch, Duba, Finck, Lana Greenfield, Gross,
28 Hansen, Haugaard, Healy, Hoffman, Howard, Kevin Jensen, Phil Jensen, Karr, Keintz, Ladner,
29 Lesmeister, Marty, May, Mills, Milstead, Mulally, Odenbach, Overweg, Perry, Kent Peterson, Sue
30 Peterson, Pischke, Pourier, Randolph, Jamie Smith, Soye, St. John, Weis, Wiese, and Speaker Gosch

31 Nays: Anderson, Bartels, Barthel, Blare, Chaffee, Chase, Davis, Derby, Drury, Fitzgerald,
32 Goodwin, Jamison, Chris Johnson, Koth, Miskimins, Mortenson, Olson, Ernie Otten, Reed, Rehfeldt,
33 Reimer, Schneider, Stevens, Thomason, Tidemann, Vasgaard, Weisgram, Willadsen, Wink, and York

34 So the bill not having received an affirmative vote of a two-thirds majority of the members-
35 elect, the Speaker declared the bill lost, sustaining the Governor's veto.

36 The House proceeded to the reconsideration of **HB 1223**, pursuant to the veto of the Governor
37 and the veto message found on page 691 on the House Journal as provided in Article IV, Section 4,
38 of the Constitution of the State of South Dakota.

39 The question being "Shall **HB 1223** pass, the veto of the Governor notwithstanding?"

40 And the roll being called:

41 Yeas 23, Nays 47, Excused 0, Absent 0

1 Yeas: Aylward, Bartels, Barthel, Bordeaux, Cwach, Davis, Drury, Duba, Healy, Jamison, Keintz,
2 Lesmeister, Miskimins, Mortenson, Olson, Kent Peterson, Pourier, Reed, Rehfeldt, Jamie Smith,
3 Thomason, Tidemann, and Wiese

4 Nays: Anderson, Beal, Blare, Chaffee, Chase, Dennert, Derby, Deutsch, Finck, Fitzgerald,
5 Goodwin, Lana Greenfield, Gross, Hansen, Haugaard, Hoffman, Howard, Kevin Jensen, Phil Jensen,
6 Chris Johnson, Karr, Koth, Ladner, Marty, May, Mills, Milstead, Mulally, Odenbach, Ernie Otten,
7 Overweg, Perry, Sue Peterson, Pischke, Randolph, Reimer, Schneider, Soye, St. John, Stevens,
8 Vasgaard, Weis, Weisgram, Willadsen, Wink, York, and Speaker Gosch

9 So the bill not having received an affirmative vote of a two-thirds majority of the members-
10 elect, the Speaker declared the bill lost, sustaining the Governor's veto.

11 **MESSAGES FROM THE SENATE**

12 Mr. SPEAKER:

13 I have the honor to transmit herewith **SB 213** which has passed the Senate and your favorable
14 consideration is respectfully requested.

15 Respectfully,
16 Kay Johnson, Secretary

17 **MOTIONS AND RESOLUTIONS**

18 Rep. Milstead moved that the rules be suspended for the sole purpose of introducing, giving
19 first reading to, dispensing with committee referral, and placing on today's calendar a bill relating
20 to a temporary gas holiday on certain fuels.

21 The question being on Rep. Milstead's motion that the rules be suspended for the sole purpose
22 of introducing, giving first reading to, dispensing with committee referral, and placing on today's
23 calendar a bill relating to a temporary gas holiday on certain fuels.

24 And the roll being called:

25 Yeas 36, Nays 34, Excused 0, Absent 0

26 Yeas: Aylward, Beal, Dennert, Deutsch, Drury, Fitzgerald, Goodwin, Lana Greenfield, Gross,
27 Hansen, Haugaard, Howard, Jamison, Kevin Jensen, Phil Jensen, Karr, Ladner, Marty, May, Mills,
28 Milstead, Mulally, Odenbach, Overweg, Perry, Sue Peterson, Pischke, Randolph, Soye, St. John,
29 Vasgaard, Weis, Weisgram, Wiese, York, and Speaker Gosch

30 Nays: Anderson, Bartels, Barthel, Blare, Bordeaux, Chaffee, Chase, Cwach, Davis, Derby,
31 Duba, Finck, Healy, Hoffman, Chris Johnson, Keintz, Koth, Lesmeister, Miskimins, Mortenson, Olson,
32 Ernie Otten, Kent Peterson, Pourier, Reed, Rehfeldt, Reimer, Schneider, Jamie Smith, Stevens,
33 Thomason, Tidemann, Willadsen, and Wink

34 So the motion not having received an affirmative vote of a two-thirds majority of the members-
35 elect, the Speaker declared the motion lost.

1 Rep. Soye moved that the rules be suspended for the sole purpose of introducing, giving first
2 reading to, dispensing with committee referral, and placing on today's calendar a bill relating to
3 referral to the elector an act to protect an individual's conscience from entities requiring a COVID-
4 19 vaccine.

5 The question being on Rep. Soye's motion that the rules be suspended for the sole purpose of
6 introducing, giving first reading to, dispensing with committee referral, and placing on today's
7 calendar a bill relating to referral to the elector an act to protect an individual's conscience from
8 entities requiring a COVID-19 vaccine.

9 And the roll being called:

10 Yeas 35, Nays 35, Excused 0, Absent 0

11 Yeas: Aylward, Beal, Chaffee, Dennert, Deutsch, Fitzgerald, Goodwin, Gross, Hansen,
12 Haugaard, Howard, Kevin Jensen, Phil Jensen, Chris Johnson, Karr, Ladner, Marty, May, Mills,
13 Milstead, Mulally, Odenbach, Overweg, Perry, Sue Peterson, Pischke, Randolph, Schneider, Soye,
14 St. John, Vasgaard, Weis, Weisgram, Wiese, and Speaker Gosch

15 Nays: Anderson, Bartels, Barthel, Blare, Bordeaux, Chase, Cwach, Davis, Derby, Drury, Duba,
16 Finck, Lana Greenfield, Healy, Hoffman, Jamison, Keintz, Koth, Lesmeister, Miskimins, Mortenson,
17 Olson, Ernie Otten, Kent Peterson, Pourier, Reed, Rehfeldt, Reimer, Jamie Smith, Stevens,
18 Thomason, Tidemann, Willadsen, Wink, and York

19 So the motion not having received an affirmative vote of a two-thirds majority of the members-
20 elect, the Speaker declared the motion lost.

21 Rep. Karr moved that the rules be suspended for the sole purpose of giving first reading to,
22 dispensing with committee referral, and to give second reading and final consideration to **SB 213**.

23 The question being on Rep. Karr's motion that the rules be suspended for the sole purpose of
24 giving first reading to, dispensing with referral to committee, and to give second reading and final
25 consideration to **SB 213**.

26 And the roll being called:

27 Yeas 68, Nays 2, Excused 0, Absent 0

28 Yeas: Anderson, Bartels, Barthel, Beal, Blare, Bordeaux, Chaffee, Chase, Cwach, Davis, Derby,
29 Deutsch, Drury, Duba, Finck, Fitzgerald, Goodwin, Lana Greenfield, Gross, Hansen, Haugaard,
30 Healy, Hoffman, Howard, Jamison, Kevin Jensen, Phil Jensen, Chris Johnson, Karr, Keintz, Koth,
31 Ladner, Lesmeister, Marty, May, Mills, Milstead, Miskimins, Mortenson, Mulally, Odenbach, Olson,
32 Ernie Otten, Overweg, Perry, Kent Peterson, Sue Peterson, Pischke, Pourier, Randolph, Reed,
33 Rehfeldt, Reimer, Schneider, Jamie Smith, Soye, St. John, Stevens, Thomason, Tidemann,
34 Vasgaard, Weis, Weisgram, Wiese, Willadsen, Wink, York, and Speaker Gosch

35 Nays: Aylward and Dennert

36 So the motion having received an affirmative vote of a two-thirds majority of the members-
37 elect, the Speaker declared the motion prevailed.

38 **SECOND READING OF SENATE BILLS AND JOINT RESOLUTIONS**

39 **SB 213**: FOR AN ACT ENTITLED, An Act to revise Senate Bill 60, the General Appropriations
40 Act for fiscal year 2022, as previously enacted in the Ninety-Seventh Session of the South Dakota
41 Legislature.

42 Was read the second time.

1 The question being "Shall **SB 213** pass?"

2 And the roll being called:

3 Yeas 67, Nays 3, Excused 0, Absent 0

4 Yeas: Anderson, Bartels, Barthel, Beal, Blare, Bordeaux, Chaffee, Chase, Cwach, Davis,
5 Dennert, Derby, Deutsch, Drury, Duba, Finck, Fitzgerald, Goodwin, Lana Greenfield, Gross, Hansen,
6 Haugaard, Healy, Hoffman, Howard, Jamison, Kevin Jensen, Phil Jensen, Chris Johnson, Karr, Keintz,
7 Koth, Ladner, Lesmeister, May, Mills, Milstead, Miskimins, Mortenson, Mulally, Odenbach, Olson,
8 Ernie Otten, Overweg, Perry, Kent Peterson, Sue Peterson, Pischke, Pourier, Randolph, Reed,
9 Rehfeldt, Reimer, Schneider, Jamie Smith, St. John, Stevens, Thomason, Tidemann, Vasgaard,
10 Weis, Weisgram, Wiese, Willadsen, Wink, York, and Speaker Gosch

11 Nays: Aylward, Marty, and Soye

12 So the bill having received an affirmative vote of a two-thirds majority of the members-elect,
13 the Speaker declared the bill passed and the title was agreed to.

14 Speaker Gosch moved that the House do now recess until later today.

15 Which motion prevailed and at 12:28 p.m., the House recessed.

16 **RECESS**

17 The House reconvened at 1:28 p.m., the Speaker presiding.

18 There being no objection, the House reverted to Order of Business No. 5 - Reports of Standing
19 Committees.

20 **REPORTS OF STANDING COMMITTEES**

21 MR. SPEAKER:

22 The Joint Committee on Appropriations respectfully reports that it has had under consideration
23 **SB 213** and returns the same with the recommendation that said bill do pass.

24 Respectfully submitted,
25 Chris Karr, Co-Chair

Respectfully submitted,
Jean Hunhoff, Co-Chair

26 Mr. SPEAKER:

27 The Committee on Legislative Procedure respectfully reports that the House and Senate have,
28 pursuant to the Governor's veto of **HB 1223 and 1281**, sustained that veto and delivered the same
29 to his Excellency, the Secretary of State, for filing at 2:00 p.m., March 28, 2022.

30 Respectfully submitted,
31 Spencer R. Gosch, Chair

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SIGNING OF BILLS

The Speaker publicly read the title to

SB 213: FOR AN ACT ENTITLED, An Act to revise Senate Bill 60, the General Appropriations Act for fiscal year 2022, as previously enacted in the Ninety-Seventh Session of the South Dakota Legislature.

And signed the same in the presence of the House.

The following prayer was offered by the Chaplain, Rev. Jake Krahn.

Heavenly Father,

As we draw this year's legislative session to a close, I thank You for the work each one has done to serve You and to serve their constituents throughout their work here.

May the service of each person that was given here in this place be but a small part of the many ways they serve their communities throughout the rest of the year. May the work that was started here continue to have positive impact throughout each town, city, and county throughout South Dakota.

As we dismiss today, I pray for each representative, staffer, legislative research council member, page, and anyone else who helped to make these sessions possible:

I ask that You would bless them and keep them,
That You would smile on them and be gracious to them
That You would show them Your favor
And give them Your peace.

We pray all these things in the name of Jesus,

Amen.

Rep. Reimer moved that the House do now adjourn sine die in accordance with Article III, Section 16 of the South Dakota Constitution, which motion prevailed, and at 1:30 p.m. the House adjourned.

Patricia Miller, Chief Clerk