

# *JOURNAL OF THE SENATE*

## *NINETY-EIGHTH SESSION*

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FOURTEENTH DAY

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STATE OF SOUTH DAKOTA  
Senate Chamber, Pierre  
Tuesday, January 31, 2023

The Senate convened at 2:00 p.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Rev. Craig Wexler, followed by the Pledge of Allegiance led by Senate page Sydney Meissner.

Roll Call: All members present except Sens. Foster who was excused and Frye-Mueller who was suspended.

### **APPROVAL OF THE JOURNAL**

Mr. President:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the 13th day.

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

And we hereby move the adoption of the report.

Respectfully submitted,  
Lee A. Schoenbeck, Chair

Which motion prevailed.

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**REPORTS OF STANDING COMMITTEES**

2 Mr. President:

3 The Committee on Senate Judiciary respectfully reports that it has had under consideration  
4 **SB 89** with the recommendation that said bill be referred to the Joint Committee on Appropriations  
5 with a Do Pass recommendation.

6 Also Mr. President:

7 The Committee on Senate Judiciary respectfully reports that it has had under consideration the  
8 nomination of Craig Price of Hughes County, Pierre, South Dakota, to the position of Secretary of  
9 the Department of Public Safety and returns the same with the recommendation that the Senate  
10 advise and consent to the confirmation of said appointment, and that said appointment having been  
11 certified as uncontested, be placed on the consent calendar.

12 Also Mr. President:

13 The Committee on Senate Judiciary respectfully reports that it has had under consideration  
14 **HB 1002, 1063, and 1071** and returns the same with the recommendation that said bills do pass,  
15 and having been certified as uncontested, be placed on the consent calendar.

16 Also Mr. President:

17 The Committee on Senate Judiciary respectfully reports that it has had under consideration  
18 **HB 1064** and returns the same with the recommendation that said bill be amended as follows:

19 1064B

20 On page 1, line 3, of the Introduced bill, after "system" insert " and to declare an emergency"

21 On page 2, after line 3, of the Introduced bill, insert: "

22 **Section 6.** Whereas, this Act is necessary for the support of the state government and its  
23 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
24 force and effect from and after its passage and approval."

25 And that as so amended, **HB 1064** do pass, and having been certified as uncontested, be  
26 placed on the consent calendar.

27 Respectfully submitted,  
28 Helene Duhamel, Chair

29 Mr. President:

30 The Committee on Senate Agriculture and Natural Resources respectfully reports that it has  
31 had under consideration **SB 79** with the recommendation that said bill be referred to the Joint  
32 Committee on Appropriations with a Do Pass recommendation.

33 Also Mr. President:

34 The Committee on Senate Agriculture and Natural Resources respectfully reports that it has  
35 had under consideration **SB 92, and HB 1025** and returns the same with the recommendation that  
36 said bills do pass.

1 Also Mr. President:

2 The Committee on Senate Agriculture and Natural Resources respectfully reports that it has  
3 had under consideration **HB 1028** and returns the same with the recommendation that said bill do  
4 pass, and having been certified as uncontested, be placed on the consent calendar.

5 Respectfully submitted,  
6 Herman Otten, Chair

7 Mr. President:

8 The Committee on Senate Education respectfully reports that it has had under consideration  
9 **SB 96** which was deferred to the 41st Legislative Day.

10 Respectfully submitted,  
11 Kyle Schoenfish, Chair

12 Mr. President:

13 The Committee on Senate Commerce and Energy respectfully reports that it has had under  
14 consideration **SB 95 and 117** and returns the same with the recommendation that said bills do  
15 pass.

16 Also Mr. President:

17 The Committee on Senate Commerce and Energy respectfully reports that it has had under  
18 consideration **SB 109 and 110** which were deferred to the 41st Legislative Day.

19 Respectfully submitted,  
20 David Wheeler, Chair

21 Mr. President:

22 The Committee on Legislative Procedure respectfully reports that **SB 22, 26, 29, and 43** were  
23 delivered to her Excellency, the Governor, for her approval at 4:20 p.m., January 30, 2023.

24 Respectfully submitted,  
25 Lee A. Schoenbeck, Chair

26 **MESSAGES FROM THE HOUSE**

27 Mr. President:

28 I have the honor to transmit herewith **HCR 6004** which has been adopted by the House and  
29 your concurrence is respectfully requested.

30 Also Mr. President:

31 I have the honor to transmit herewith **HB 1041, 1046, 1047, and 1101** which have passed  
32 the House and your favorable consideration is respectfully requested.

1 Also Mr. President:

2 I have the honor to return herewith **SB 27** which has passed the House without change.

3 Respectfully,  
4 Patricia Miller, Chief Clerk

5 **MOTIONS AND RESOLUTIONS**

6 Sen. Crabtree moved that the Senate direct the President Pro Tempore to request the  
7 appearance of the Office of the Attorney General to defend the South Dakota Senate and Senate  
8 President Pro Tempore Lee Schoenbeck as provided in SDCL 1-11-1, in the matter of *Frye-Mueller*  
9 *v. Schoenbeck*, case number 23-CV-3002, filed in the United States District Court, District of South  
10 Dakota, Central Division.

11 The question being on Sen. Crabtree's motion that the Senate direct the President Pro Tempore  
12 to request the appearance of the Office of the Attorney General to defend the South Dakota Senate  
13 and Senate President Pro Tempore Lee Schoenbeck as provided in SDCL 1-11-1, in the matter of  
14 *Frye-Mueller v. Schoenbeck*, case number 23-CV-3002, filed in the United States District Court,  
15 District of South Dakota, Central Division.

16 And the roll being called:

17 Yeas 31, Nays 1, Excused 2, Absent 0, Suspended 1

18 Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich,  
19 Duhamel, Brent "B.R." Hoffman, Hunhoff, David Johnson, Klumb, Jack Kolbeck, Steve Kolbeck,  
20 Larson, Mehlhaff, Nesiba, Novstrup, Herman Otten, Reed, Rohl, Schoenbeck, Schoenfish, Stalzer,  
21 Tobin, Wheeler, Wiik, Wink, and Zikmund

22 Nays: Pischke

23 Excused: Foster and Maher

24 Suspended: Frye-Mueller

25 So the motion having received an affirmative vote of a majority of the members-elect, the  
26 President declared the motion carried.

27 Sen. Pischke moved that the suspension of Senator Julie Frye-Mueller be immediately rescinded  
28 and that she be restored to her rights as a South Dakota state senator.

29 The question being on Sen. Pischke's motion that the suspension of Senator Julie Frye-Mueller  
30 be immediately rescinded and that she be restored to her rights as a South Dakota state senator.

31 And the roll being called:

32 Yeas 11, Nays 22, Excused 1, Absent 0, Suspended 1

33 Yeas: Beal, Castleberry, Diedrich, Brent "B.R." Hoffman, Hunhoff, Klumb, Novstrup, Pischke,  
34 Wiik, Wink, and Zikmund

35 Nays: Bolin, Bordeaux, Breitling, Crabtree, Davis, Deibert, Duhamel, David Johnson, Jack  
36 Kolbeck, Steve Kolbeck, Larson, Maher, Mehlhaff, Nesiba, Herman Otten, Reed, Rohl, Schoenbeck,  
37 Schoenfish, Stalzer, Tobin, and Wheeler

38 Excused: Foster

1 Suspended: Frye-Mueller

2 So the motion not having received an affirmative vote of a majority of the members-elect, the  
3 President declared the motion lost.

4 Sen. Crabtree moved that **SB 101** be deferred to Wednesday, February 1, 2023, the 15<sup>th</sup>  
5 legislative day.

6 Which motion prevailed.

7 Sen. Crabtree moved that **SB 74** be deferred to Monday, February 6, 2023, the 18<sup>th</sup> legislative  
8 day.

9 Which motion prevailed.

10 **SCR 604:** A CONCURRENT RESOLUTION, Urging the United States Congress to re-introduce  
11 the Consumer and Fuel Retailer Choice Act.

12 Introduced by: **Senator** Schoenbeck

13 Was read the first time and the President waived the committee referral pursuant to JR 6D-1.

14 **HCR 6004:** A CONCURRENT RESOLUTION, Encouraging the Executive Board of the Legislature  
15 to authorize an interim study of the licensure and nomenclature of emergency medical and advanced  
16 life support personnel.

17 Was read the first time and referred to the Committee on Health and Human Services.

## 18 **CONSIDERATION OF REPORTS OF COMMITTEES**

19 Sen. Crabtree moved that the report of the Standing Committee on

20 Joint Appropriations on **SB 14** as found on page 130 of the Senate Journal be adopted.

21 Which motion prevailed and the report was adopted.

## 22 **CONSIDERATION OF EXECUTIVE APPOINTMENTS**

23 The Senate proceeded to the consideration of the executive appointment of David Flute of  
24 Roberts County, Sisseton, South Dakota, to the position of Secretary of the Department of Tribal  
25 Relations.

26 The question being "Does the Senate advise and consent to the executive appointment of David  
27 Flute pursuant to the executive message as found on page 82 of the Senate Journal?"

28 And the roll being called:

29 Yeas 27, Nays 6, Excused 1, Absent 0, Suspended 1

1 Yeas: Beal, Bolin, Breitling, Castleberry, Crabtree, Davis, Diedrich, Duhamel, Brent "B.R."  
2 Hoffman, Hunhoff, David Johnson, Klumb, Jack Kolbeck, Steve Kolbeck, Maher, Novstrup, Herman  
3 Otten, Reed, Rohl, Schoenbeck, Schoenfish, Stalzer, Tobin, Wheeler, Wiik, Wink, and Zikmund

4 Nays: Bordeaux, Deibert, Larson, Mehlhaff, Nesiba, and Pischke

5 Excused: Foster

6 Suspended: Frye-Mueller

7 So the question having received an affirmative vote of a majority of the members-elect, the  
8 President declared the appointment confirmed.

#### 9 **CONSIDERATION OF CONSENT EXECUTIVE APPOINTMENTS**

10 Sen. Bolin requested that the nomination of Shawnie Rechtenbaugh be removed from the  
11 Consent Calendar.

12 Sen. Mehlhaff requested that the nominations of Matt Althoff and Melissa Magstadt be removed  
13 from the Consent Calendar.

#### 14 **FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS**

15 The President declared that **SJR 501** was withdrawn at the request of the prime sponsor  
16 pursuant to JR 6B-1.1.

17 **SB 178:** FOR AN ACT ENTITLED, An Act to create provisions for the protection of warehouse  
18 distribution center employees.

19 Introduced by: **Senator** Nesiba

20 **SB 179:** FOR AN ACT ENTITLED, An Act to revise provisions related to the South Dakota  
21 Science and Technology Authority.

22 Introduced by: **Senator** Maher

23 Were read the first time and referred to the Committee on Commerce and Energy.

24 **SB 182:** FOR AN ACT ENTITLED, An Act to establish a uniform method for calculating high  
25 school credit received from completing postsecondary courses.

26 Introduced by: **Senator** Castleberry

27 Was read the first time and referred to the Committee on Education.

28 **SB 175:** FOR AN ACT ENTITLED, An Act to modify practice criteria for physician assistants.

29 Introduced by: **Senator** Tobin

1 **SB 177:** FOR AN ACT ENTITLED, An Act to provide for the study of developmental disability  
2 services and to provide an appropriation therefor.

3 Introduced by: **Senator** Jack Kolbeck

4 Were read the first time and referred to the Committee on Health and Human Services.

5 **SB 176:** FOR AN ACT ENTITLED, An Act to modify certain requirements for removal from the  
6 sex offender registry.

7 Introduced by: **Senator** Klumb

8 **SB 180:** FOR AN ACT ENTITLED, An Act to address requirements for the execution of a living  
9 will.

10 Introduced by: **Senator** Diedrich

11 **SB 181:** FOR AN ACT ENTITLED, An Act to authorize the provision of medical records and the  
12 imposition of related fees.

13 Introduced by: **Senator** Diedrich

14 Were read the first time and referred to the Committee on Judiciary.

#### 15 **FIRST READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

16 **HB 1101:** FOR AN ACT ENTITLED, An Act to ensure the proper labeling of American Indian  
17 arts and crafts.

18 Was read the first time and referred to the Committee on Commerce and Energy.

19 **HB 1046:** FOR AN ACT ENTITLED, An Act to to provide free tuition at Board of Technical  
20 Education institutions for children or spouses of members of the South Dakota National Guard  
21 disabled or deceased in the line of duty.

22 Was read the first time and referred to the Committee on Education.

23 **HB 1041:** FOR AN ACT ENTITLED, An Act to provide an exception to the definition of drug  
24 paraphernalia.

25 Was read the first time and referred to the Committee on Judiciary.

26 **HB 1047:** FOR AN ACT ENTITLED, An Act to revise certain provisions regarding military affairs.

27 Was read the first time and referred to the Committee on Military and Veterans Affairs.

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**SECOND READING OF CONSENT CALENDAR ITEMS**

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**SB 8:** FOR AN ACT ENTITLED, An Act to revise provisions relating to addiction and prevention services professionals.

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Was read the second time.

5

The question being "Shall **SB 8** pass?"

6

And the roll being called:

7

Yeas 32, Nays 1, Excused 1, Absent 0, Suspended 1

8

Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich, Duhamel, Brent "B.R." Hoffman, Hunhoff, David Johnson, Klumb, Jack Kolbeck, Steve Kolbeck, Larson, Maher, Mehlhaff, Nesiba, Novstrup, Herman Otten, Reed, Rohl, Schoenbeck, Schoenfish, Stalzer, Tobin, Wheeler, Wiik, Wink, and Zikmund

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Nays: Pischke

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Excused: Foster

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Suspended: Frye-Mueller

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So the bill having received an affirmative vote of a majority of the members-elect, the President declared the bill passed and the title was agreed to.

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

18

**SB 62:** FOR AN ACT ENTITLED, An Act to amend provisions regarding delivery of electronic insurance documents.

19

20

Was read the second time.

21

The question being "Shall **SB 62** pass as amended?"

22

And the roll being called:

23

Yeas 31, Nays 2, Excused 1, Absent 0, Suspended 1

24

Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Diedrich, Duhamel, Brent "B.R." Hoffman, Hunhoff, David Johnson, Klumb, Jack Kolbeck, Steve Kolbeck, Larson, Maher, Mehlhaff, Nesiba, Novstrup, Herman Otten, Reed, Rohl, Schoenbeck, Schoenfish, Stalzer, Tobin, Wheeler, Wiik, Wink, and Zikmund

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Nays: Deibert and Pischke

29

Excused: Foster

30

Suspended: Frye-Mueller

31

So the bill having received an affirmative vote of a majority of the members-elect, the President declared the bill passed and the title was agreed to.

32



1 **SB 44:** FOR AN ACT ENTITLED, An Act to repeal provisions regarding the creation of river basin  
2 natural resource districts.

3 Was read the second time.

4 The question being "Shall **SB 44** pass?"

5 And the roll being called:

6 Yeas 30, Nays 3, Excused 1, Absent 0, Suspended 1

7 Yeas: Beal, Bolin, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich, Duhamel, Brent  
8 "B.R." Hoffman, Hunhoff, David Johnson, Klumb, Jack Kolbeck, Steve Kolbeck, Maher, Mehlhaff,  
9 Novstrup, Herman Otten, Pischke, Reed, Rohl, Schoenbeck, Schoenfish, Stalzer, Tobin, Wheeler,  
10 Wiik, Wink, and Zikmund

11 Nays: Bordeaux, Larson, and Nesiba

12 Excused: Foster

13 Suspended: Frye-Mueller

14 So the bill having received an affirmative vote of a majority of the members-elect, the President  
15 declared the bill passed and the title was agreed to.

16 **SB 73:** FOR AN ACT ENTITLED, An Act to exclude road improvement district and township-  
17 owned self-propelled machinery, equipment, and vehicles from fuel excise tax.

18 Was read the second time.

19 Sen. Klumb moved that **SB 73** be amended as follows:

20 73B

21 On the Senate Taxation Engrossed bill, delete the previously adopted amendment(s), thus  
22 restoring the bill to the Introduced version.

23 Which motion prevailed.

24 The question being "Shall **SB 73** pass as amended?"

25 And the roll being called:

26 Yeas 33, Nays 0, Excused 1, Absent 0, Suspended 1

27 Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich,  
28 Duhamel, Brent "B.R." Hoffman, Hunhoff, David Johnson, Klumb, Jack Kolbeck, Steve Kolbeck,  
29 Larson, Maher, Mehlhaff, Nesiba, Novstrup, Herman Otten, Pischke, Reed, Rohl, Schoenbeck,  
30 Schoenfish, Stalzer, Tobin, Wheeler, Wiik, Wink, and Zikmund

31 Excused: Foster

32 Suspended: Frye-Mueller

33 So the bill having received an affirmative vote of a majority of the members-elect, the President  
34 declared the bill passed and the title was agreed to.

1 Sen. Crabtree moved that the balance of the calendar including **SB 12, 13, 67, 70, and 75**  
2 be deferred to Wednesday, February 1, 2023, the 15<sup>th</sup> legislative day.

3 Which motion prevailed.

4 **COMMEMORATIONS**

5 **SC 805:** A LEGISLATIVE COMMEMORATION, Honoring the 2022 Tea Area High School girls  
6 soccer team for winning the Class A State Championship.

7 Introduced by: **Senator** Herman Otten and **Representatives** Ernie Otten and Aylward

8 Sen. Rohl moved that the Senate do now adjourn, which motion prevailed and at 3:01 p.m.  
9 the Senate adjourned.

10

Kay Johnson, Secretary