

JOURNAL OF THE SENATE

NINETY-EIGHTH SESSION

THIRTY-THIRD DAY

STATE OF SOUTH DAKOTA
Senate Chamber, Pierre
Thursday, March 02, 2023

The Senate convened at 1:00 p.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Rev. Sam Handschke, followed by the Pledge of Allegiance led by Senate page Gretta Larson.

Roll Call: All members present except Sens. Johnson and Tobin who were excused.

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 32nd 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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COMMUNICATIONS AND PETITIONS

2

March 2, 2023

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Mr. President and Members of the Senate:

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I have the honor to inform you that on March 1, 2023, I approved Senate Bill 76, and the same has been deposited in the office of the Secretary of State.

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Respectfully submitted,

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Kristi Noem

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Governor

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March 2, 2023

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Mr. President and Members of the Senate:

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I have the honor to inform you that on March 2, 2023, I approved Senate Bills 19, 25, and 150, and the same have been deposited in the office of the Secretary of State.

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Respectfully submitted,

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Kristi Noem

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Governor

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REPORTS OF STANDING COMMITTEES

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Mr. President:

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The Committee on Senate Education respectfully reports that it has had under consideration **HB 1116** and returns the same without recommendation.

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Respectfully submitted,

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Kyle Schoenfish, Chair

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Mr. President:

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The Committee on Senate Education respectfully reports that it has had under consideration the nomination of Steven Perkins of Lincoln County, Sioux Falls, South Dakota, to the South Dakota Board of Education Standards and returns the same with the recommendation that the Senate advise and consent to the confirmation of said appointment.

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Respectfully submitted,

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Kyle Schoenfish, Chair

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Mr. President:

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The Committee on Senate Agriculture and Natural Resources respectfully reports that it has had under consideration the nomination of Robert Whitmyre of Day County, Webster, South Dakota, to the Game, Fish and Parks Commission and returns the same with the recommendation that the Senate advise and consent to the confirmation of said reappointment, and that said reappointment having been certified as uncontested, be placed on the consent calendar.

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1 Also Mr. President:

2 The Committee on Senate Agriculture and Natural Resources respectfully reports that it has
3 had under consideration the nomination of Jim White of Beadle County, Huron, South Dakota, to
4 the Game, Fish and Parks Commission and returns the same with the recommendation that the
5 Senate advise and consent to the confirmation of said appointment.

6 Respectfully submitted,
7 Herman Otten, Chair

8 Mr. President:

9 The Committee on Senate Commerce and Energy respectfully reports that it has had under
10 consideration the nomination of Steve Westra of Minnehaha County, Sioux Falls, South Dakota, to
11 the position of Commissioner of the Governor's Office of Economic Development and returns the
12 same with the recommendation that the Senate advise and consent to the confirmation of said
13 appointment.

14 Also Mr. President:

15 The Committee on Senate Commerce and Energy respectfully reports that it has had under
16 consideration **HB 1239** and returns the same with the recommendation that said bill be amended
17 as follows:

18 1239E

19 On page 1, line 4, of the House Commerce and Energy Engrossed bill, after "SECTION:

20 No " delete "state law, regulation, or executive order and no "

21 On page 1, line 6, of the House Commerce and Energy Engrossed bill, after "state." insert "
22 This section does not apply to a generally applicable zoning ordinance, building regulation, or fire
23 code if the ordinance, regulation, or code is not used to prohibit the use, production, manufacture,
24 or transport of fuel gas or fuel gas appliances within the state.

25 For the purposes of section 1 and 2 of this Act, the term, fuel gas, means natural gas or
26 propane."

27 On page 1, line 8, of the House Commerce and Energy Engrossed bill, after "SECTION:

28 No " delete "state law, regulation, or executive order and no "

29 On page 1, line 9, of the House Commerce and Energy Engrossed bill, after "state." insert "
30 This section does not apply to a generally applicable zoning ordinance, building regulation, or fire if
31 the ordinance, regulation, or code is not used to prohibit a fuel gas utility service within the state."

32 And that as so amended, **HB 1239** do pass.

33 Respectfully submitted,
34 David Wheeler, Chair

35 Mr. President:

36 The Committee on Senate Judiciary respectfully reports that it has had under consideration the
37 nomination of Vaughn Beck to the Board of Pardons and Paroles and returns the same with the
38 recommendation that the Senate advise and consent to the confirmation of said appointment.

1 Also Mr. President:

2 The Committee on Senate Judiciary respectfully reports that it has had under consideration
3 **HB 1098** which was deferred to the 41st Legislative Day.

4 Also Mr. President:

5 The Committee on Senate Judiciary respectfully reports that it has had under consideration
6 **HB 1160** which was tabled.

7 Also Mr. President:

8 The Committee on Senate Judiciary respectfully reports that it has had under consideration
9 **HB 1170** and returns the same with the recommendation that said bill do pass.

10 Also Mr. President:

11 The Committee on Senate Judiciary respectfully reports that it has had under consideration
12 **HB 1240** and returns the same with the recommendation that said bill be amended as follows:

13 1240B

14 On page 1, line 7, of the House Judiciary Engrossed bill, after "evidence. " delete "A person
15 designated under a validly executed power of attorney by the person alleged to be in need of
16 protection must be considered as a nominee. "

17 On page 1, line 10, of the House Judiciary Engrossed bill, delete " If a person designated under
18 a validly executed power of attorney by the person alleged to be in need of protection is not
19 appointed as the guardian or conservator, the court must issue written findings of facts and
20 conclusions of law as to why the designated person was not appointed." and insert " If a person
21 alleged to be in need of protection has designated an individual to serve as guardian or conservator
22 under a validly executed legal instrument, including a power of attorney, and the court does not
23 appoint the designated individual, the court shall issue written findings of fact and conclusions of
24 law as to why the designated individual was not appointed."

25 On page 2, line 15, of the House Judiciary Engrossed bill, delete "A" and insert "In addition to
26 any court-ordered evaluation, a"

27 On page 2, line 15, of the House Judiciary Engrossed bill, delete "have" and insert "obtain"

28 On page 2, line 16, of the House Judiciary Engrossed bill, delete "done by a physician,
29 psychologist, or psychiatrist" and insert "at the person's own expense to be completed by a licensed
30 healthcare professional"

31 On page 2, line 16, of the House Judiciary Engrossed bill, after "choice" insert " in accordance
32 with § 29A-5-306"

33 On page 2, line 29, of the House Judiciary Engrossed bill, remove the overstrikes from "A report
34 shall briefly state:"

35 On page 2, line 30, of the House Judiciary Engrossed bill, remove the overstrikes from "(1)
36 The current mental, physical and social condition of the protected person;"

37 On page 2, line 31, of the House Judiciary Engrossed bill, remove the overstrikes from "(2)
38 The living arrangements during the reporting period;"

39 On page 2, line 32, of the House Judiciary Engrossed bill, remove the overstrikes from "(3)
40 The medical, educational, vocational and other professional services provided to the protected
41 person and the guardian's opinion as to the adequacy of the protected person's care;"

- 1 On page 3, line 1, of the House Judiciary Engrossed bill, remove the overstrikes from "(4) A
2 summary of the guardian's visits with and activities on the protected person's behalf;"
- 3 On page 3, line 3, of the House Judiciary Engrossed bill, remove the overstrikes from "(5) If
4 the protected person is institutionalized, whether the guardian agrees with the current treatment or
5 habilitation plan;"
- 6 On page 3, line 5, of the House Judiciary Engrossed bill, remove the overstrikes from "(6) A
7 recommendation as to the need for continued guardianship and any recommended changes in the
8 scope of the guardianship;"
- 9 On page 3, line 7, of the House Judiciary Engrossed bill, remove the overstrikes from "(7) Any
10 other information requested by the court or useful in the opinion of the guardian;"
- 11 On page 3, line 9, of the House Judiciary Engrossed bill, remove the overstrikes from "(8) The
12 compensation requested and the reasonable and necessary expenses incurred by the guardian; and"
- 13 On page 3, line 11, of the House Judiciary Engrossed bill, remove the overstrikes from "(9)
14 The date on which the guardian completed the training curricula required pursuant to § 29A-5-119."
- 15 On page 3, line 13, of the House Judiciary Engrossed bill, remove the overstrikes from "A
16 guardian shall mail a copy of the report to the individuals and entities specified in § 29A-5-410 no
17 later than fourteen days following its filing."
- 18 On page 3, line 15, of the House Judiciary Engrossed bill, delete "Any" and insert "Within sixty
19 days of the filing of the annual report, any"
- 20 On page 3, line 15, of the House Judiciary Engrossed bill, remove the overstrikes from "Any
21 interested person may request a hearing on the report. The court may order the guardian to attend
22 the hearing on the report on the court's own motion or on the petition of any interested person. A
23 report of the guardian may be incorporated into and made a part of the accounting of the
24 conservator"
- 25 On page 3, line 18, of the House Judiciary Engrossed bill, after "conservator" insert " if the
26 same individual holds both appointments"
- 27 On page 3, line 18, of the House Judiciary Engrossed bill, remove the overstrikes from the
28 period
- 29 On page 3, line 19, of the House Judiciary Engrossed bill, after "conservator." delete "Section
30 4. That chapter 29A-5 be amended with a NEW SECTION:"
- 31 On page 3, line 20, of the House Judiciary Engrossed bill, after "SECTION:" delete "A report
32 shall briefly state:
- 33 (1) The current mental, physical and social condition of the protected person;
- 34 (2) The living arrangements during the reporting period;
- 35 (3) The medical, educational, vocational, and other professional services provided to the
36 protected person and the guardian's opinion as to the adequacy of the protected person's care;
- 37 (4) A summary of the guardian's visits with and activities on the protected person's behalf;
- 38 (5) A statement indicating whether or not the protected person has made any statements or
39 indications to the guardian, or any other person who has informed the guardian, that the protected
40 person does not want the guardianship to continue, or that the protected person wants a different
41 guardian to be appointed;

1 (6) If the protected person is institutionalized, whether the guardian agrees with the current
2 treatment or habilitation plan;

3 (7) A recommendation as to the need for continued guardianship and any recommended
4 changes in the scope of the guardianship;

5 (8) Any other information requested by the court or useful in the opinion of the guardian;

6 (9) The compensation requested and the reasonable and necessary expenses incurred by the
7 guardian; and

8 (10) The date on which the guardian completed the training curricula required pursuant
9 to § 29A-5-119.

10 A guardian shall mail a copy of the report to the individuals and entities specified in § 29A-5-
11 410 no later than fourteen days following its filing.

12 Within sixty days of the filing of the annual report, any interested person may request a hearing
13 on the report. The court may order the guardian to attend the hearing on the report on the court's
14 own motion or on the petition of any interested person. A report of the guardian may be incorporated
15 into and made a part of the accounting of the conservator if the same individual holds both
16 appointments.

17 If the report indicates that the protected person wants to have the guardianship ended, or
18 wants to have another person to serve as the guardian, the court must determine if a hearing is
19 necessary, based on the totality of the circumstances, including whether or not a hearing has
20 previously been held on the same issue."

21 On page 4, line 31, of the House Judiciary Engrossed bill, remove the overstrikes from "An
22 accounting shall include:"

23 On page 4, line 32, of the House Judiciary Engrossed bill, remove the overstrikes from "(1) A
24 listing of the receipts, disbursements, and distributions from the estate under the conservator's
25 control during the period covered by the account;"

26 On page 4, line 34, of the House Judiciary Engrossed bill, remove the overstrikes from "(2) A
27 listing of the estate;"

28 On page 5, line 1, of the House Judiciary Engrossed bill, remove the overstrikes from "(3) The
29 services being provided to the protected person;"

30 On page 5, line 2, of the House Judiciary Engrossed bill, remove the overstrikes from "(4) The
31 significant actions taken by the conservator during the reporting period;"

32 On page 5, line 3, of the House Judiciary Engrossed bill, remove the overstrikes from "(5) A
33 recommendation as to the continued need for conservatorship and any recommended changes in
34 the scope of the conservatorship;"

35 On page 5, line 5, of the House Judiciary Engrossed bill, remove the overstrikes from "(6) Any
36 other information requested by the court or useful in the opinion of the conservator;"

37 On page 5, line 7, of the House Judiciary Engrossed bill, remove the overstrikes from "(7) The
38 compensation requested and the reasonable and necessary expenses incurred by the conservator;"

39 On page 5, line 9, of the House Judiciary Engrossed bill, remove the overstrikes from "(8) An
40 annual inventory of any item of tangible personal property with a value of two thousand five hundred
41 dollars or more which has come into the conservator's possession or knowledge for the minor or
42 protected person; and"

1 On page 5, line 12, of the House Judiciary Engrossed bill, remove the overstrikes from "(9)
2 The date on which the conservator completed the training curricula required pursuant to § 29A-5-
3 119."

4 On page 5, line 14, of the House Judiciary Engrossed bill, remove the overstrikes from "A
5 conservator shall mail a copy of the accounting to the individuals and entities specified in § 29A-5-
6 410 no later than fourteen days following its filing. A conservator shall notify all persons receiving
7 the accounting that they must present written objections within fourteen"

8 On page 5, line 17, of the House Judiciary Engrossed bill, delete "fourteen" and insert "sixty"

9 On page 5, line 17, of the House Judiciary Engrossed bill, remove the overstrikes from " days
10 after receipt or be barred from thereafter objecting."

11 On page 5, line 18, of the House Judiciary Engrossed bill, remove the overstrikes from "Upon
12 filing an objection, any interested person may request a hearing on the accounting. The court may
13 order the conservator to attend the hearing on an account on the court's own motion or on the
14 petition of any interested person. An accounting by a conservator may be incorporated into and
15 made a part of the report of the guardian"

16 On page 5, line 21, of the House Judiciary Engrossed bill, after "guardian" insert " if the same
17 individual holds both appointments"

18 On page 5, line 21, of the House Judiciary Engrossed bill, remove the overstrikes from the
19 period

20 On page 5, line 22, of the House Judiciary Engrossed bill, remove the overstrikes from "Subject
21 to written objection, appeal, or vacation within the time permitted, an order allowing an account of
22 a conservator adjudicates as to liabilities concerning all matters disclosed in the account."

23 On page 5, line 25, of the House Judiciary Engrossed bill, after "account." delete "Section 6.
24 That chapter 29A-5 be amended with a NEW SECTION:

25 "

26 On page 5, line 26, of the House Judiciary Engrossed bill, after "SECTION:" delete "An
27 accounting shall include:

28 (1) A listing of the receipts, disbursements, and distributions from the estate under the
29 conservator's control during the period covered by the account;

30 (2) A listing of the estate;

31 (3) The services being provided to the protected person;

32 (4) The significant actions taken by the conservator during the reporting period;

33 (5) A statement indicating whether or not the protected person has made any statements or
34 indications to the conservator, or any other person who has informed the conservator, that the
35 protected person does not want the conservatorship to continue, or that the protected person wants
36 a different conservator to be appointed;

37 (6) A recommendation as to the continued need for conservatorship and any recommended
38 changes in the scope of the conservatorship;

39 (7) Any other information requested by the court or useful in the opinion of the conservator;

40 (8) The compensation requested and the reasonable and necessary expenses incurred by the
41 conservator;

1 (9) An annual inventory of any item of tangible personal property with a value of two thousand
2 five hundred dollars or more which has come into the conservator's possession or knowledge for the
3 minor or protected person; and

4 (10) The date on which the conservator completed the training curricula required
5 pursuant to § 29A-5-119.

6 A conservator shall mail a copy of the accounting to the individuals and entities specified in §
7 29A-5-410 no later than fourteen days following its filing. A conservator shall notify all persons
8 receiving the accounting that they must present written objections within sixty days after receipt or
9 be barred from thereafter objecting.

10 Upon filing an objection, any interested person may request a hearing on the accounting. The
11 court may order the conservator to attend the hearing on an account on the court's own motion or
12 on the petition of any interested person. An accounting by a conservator may be incorporated into
13 and made a part of the report of the guardian if the same individual holds both appointments.

14 Subject to written objection, appeal, or vacation within the time permitted, an order allowing
15 an account of a conservator adjudicates as to liabilities concerning all matters disclosed in the
16 account.

17 If the report indicates that the protected person wants to have conservatorship ended, or wants
18 to have another person serve as the conservator, the court must determine if a hearing is necessary,
19 based on the totality of the circumstances, including whether or not a hearing has previously been
20 held on the same issue."

21 On page 6, line 31, of the House Judiciary Engrossed bill, delete "party" and insert "person"

22 On page 6, line 32, of the House Judiciary Engrossed bill, delete "and" and insert "or"

23 On page 6, line 32, of the House Judiciary Engrossed bill, delete "party" and insert "person"

24 On page 6, line 33, of the House Judiciary Engrossed bill, after "of " delete "an interested party
25 or t"

26 On page 6, line 33, of the House Judiciary Engrossed bill, after "person" delete " and does not
27 endanger the welfare or financial interest of the protected person"

28 On page 6, line 34, of the House Judiciary Engrossed bill, after "person." insert " If the court
29 does not grant access, the court must issue written findings of fact and conclusions of law as to why
30 the medical or financial records access was not granted."

31 On page 6, after line 34, of the House Judiciary Engrossed bill, insert: "

32 **Section 6. That chapter 29A-5 be amended with a NEW SECTION:**

33 If the court receives any verbal or written communication from a protected person alleging
34 that a guardian or conservator is abusing or neglecting the protected person or is engaging in self-
35 dealing with respect to the protected person's property, or the guardianship or conservatorship is
36 no longer necessary and should be terminated, and the communication contains credible and
37 substantial evidence, which in context of the entire record, supports the allegation, the court must
38 treat the communication as a petition under § 29A-5-504."

39 And that as so amended, **HB 1240** do pass, and having been certified as uncontested, be
40 placed on the consent calendar.

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Respectfully submitted,
Helene Duhamel, Chair

1 Mr. President:

2 The Committee on Legislative Procedure respectfully reports that **SB 5, 6, 50, 72, 78, 81,**
3 **86, 132, 182, 198, and 204** were delivered to her Excellency, the Governor, for her approval at
4 11:45 a.m., March 2, 2023.

5 Respectfully submitted,
6 Lee A. Schoenbeck, Chair

7 Mr. President:

8 The Committee on Legislative Procedure respectfully reports that the Office of Engrossing and
9 Enrolling has carefully compared **SB 17, 21, 23, 35, 55, 69, 140, 145, 180, and 181, and**
10 **SJR 505** and finds the same correctly enrolled.

11 Respectfully submitted,
12 Lee A. Schoenbeck, Chair

13 **MESSAGES FROM THE HOUSE**

14 Mr. President:

15 I have the honor to inform your honorable body that the House has concurred in Senate
16 amendments to **HB 1108, 1124, and 1165**.

17 Also Mr. President:

18 I have the honor to return herewith **SB 17, 21, 23, 35, 55, 69, 145, 161, 172, 173, 180,**
19 **and 181** which have passed the House without change.

20 Also Mr. President:

21 I have the honor to return herewith **SB 67, 120, 159, and 160** which have been amended by
22 the House and your concurrence in the amendments is respectfully requested.

23 Also Mr. President:

24 I have the honor to inform your honorable body that **SB 79, 155, 158, and 191** were lost on
25 second reading and final passage.

26 Respectfully,
27 Patricia Miller, Chief Clerk

28 **MOTIONS AND RESOLUTIONS**

29 SENATE PAGE RESOLUTION 4 Introduced by: Senators Beal; Bolin; Bordeaux; Breitling;
30 Castleberry; Crabtree; Davis; Deibert; Diedrich; Duhamel; Foster; Frye-Mueller; Hoffman; Hunhoff;
31 Johnson; Klumb; Kolbeck, Jack; Kolbeck, Steve; Larson; Maher; Mehlhaff; Nesiba; Novstrup; Otten,
32 Herman; Pischke; Reed; Rohl; Schoenbeck; Schoenfish; Stalzer; Tobin; Wheeler; Wiik; Wink;
33 Zikmund

1 A RESOLUTION, Expressing the appreciation and gratitude of the Senate of the Ninety-eighth
2 Legislature of the State of South Dakota to Grace Barnett, Kasey Broers, Jayse Foss, Morgan Gill,
3 Dakota Jensen, Gretta Larson, Lauren Murphy, Gabrielle Rebelein, Baylie Somsen, and Luke
4 Worsley.

5 WHEREAS, the above named served loyally as pages for the Senate of the Ninety-eighth
6 Legislative Session; and

7 WHEREAS, the members of the Ninety-eighth Senate express their most sincere appreciation
8 to these young people for their service to the state; and

9 WHEREAS, the members extend to these young people their wishes for every success in life:

10 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Ninety-eighth Legislature of the
11 State of South Dakota, that a personal copy of this resolution be duly certified and furnished to each
12 page on this last day of service.

13 Sen. Wheeler moved that Senate Page Resolution 4 be adopted.

14 The question being on Sen. Wheeler's motion that Senate Page Resolution 4 be adopted.

15 And the roll being called:

16 Yeas 33, Nays 0, Excused 2, Absent 0

17 Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich,
18 Duhamel, Foster, Frye-Mueller, Hoffman, Hunhoff, Klumb, Jack Kolbeck, Steve Kolbeck, Larson,
19 Maher, Mehlhaff, Nesiba, Novstrup, Herman Otten, Pischke, Reed, Rohl, Schoenbeck, Schoenfish,
20 Stalzer, Wheeler, Wiik, Wink, and Zikmund

21 Excused: Johnson and Tobin

22 So the motion having received an affirmative vote of a majority of the members-elect, the
23 President declared the motion prevailed.

24 Sen. Crabtree moved that **SB 4, and HB 1065, 1093, 1094, 1142, 1144, 1167, 1176, and**
25 **1226** be deferred to Monday, March 6, 2023, the 34th legislative day.

26 Which motion prevailed.

27 Sen. Deibert moved that the Senate do concur in House amendments to **SB 139**.

28 The question being on Sen. Deibert's motion that the Senate do concur in House amendments
29 to **SB 139**.

30 And the roll being called:

31 Yeas 29, Nays 4, Excused 2, Absent 0

32 Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich,
33 Duhamel, Foster, Frye-Mueller, Hoffman, Hunhoff, Steve Kolbeck, Larson, Maher, Mehlhaff, Nesiba,
34 Herman Otten, Pischke, Reed, Rohl, Schoenbeck, Stalzer, Wheeler, Wiik, Wink, and Zikmund

35 Nays: Klumb, Jack Kolbeck, Novstrup, and Schoenfish

36 Excused: Johnson and Tobin

1 So the motion having received an affirmative vote of a majority of the members-elect, the
2 President declared the motion carried and the amendments were concurred in.

3 Sen. Hoffman moved that the Senate do concur in House amendments to **SB 146**.

4 The question being on Sen. Hoffman's motion that the Senate do concur in House amendments
5 to **SB 146**.

6 And the roll being called:

7 Yeas 29, Nays 4, Excused 2, Absent 0

8 Yeas: Beal, Bolin, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich, Duhamel, Frye-
9 Mueller, Hoffman, Hunhoff, Klumb, Jack Kolbeck, Steve Kolbeck, Larson, Maher, Mehlhaff, Nesiba,
10 Novstrup, Herman Otten, Pischke, Reed, Rohl, Schoenbeck, Stalzer, Wiik, Wink, and Zikmund

11 Nays: Bordeaux, Foster, Schoenfish, and Wheeler

12 Excused: Johnson and Tobin

13 So the motion having received an affirmative vote of a majority of the members-elect, the
14 President declared the motion carried and the amendments were concurred in.

15 Sen. Crabtree moved that when we adjourn today, we adjourn to convene at 1:00 p.m. on
16 Monday, March 6, 2023, the 34th legislative day.

17 Which motion prevailed.

18 **CONSIDERATION OF REPORTS OF COMMITTEES**

19 Sen. Crabtree moved that the reports of the Standing Committees on
20 State Affairs on **HB 1106** as found on page 380 of the Senate Journal; also

21 Senate Appropriations on **HB 1137** as found on page 376 of the Senate Journal; and

22 Health and Human Services on **HB 1174** as found on page 376 of the Senate Journal be
23 adopted.

24 Which motion prevailed and the reports were adopted.

25 Sen. Schoenbeck moved that JR 7-8 be suspended for the sole purpose of considering the
26 report of the Committee on Senate Education on **HB 1116**.

27 The question being on Sen. Schoenbeck's motion that JR 7-8 be suspended for the sole purpose
28 of considering the report of the Committee on Senate Education on **HB 1116**.

29 And the roll being called:

30 Yeas 32, Nays 1, Excused 2, Absent 0

31 Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich,
32 Duhamel, Foster, Hoffman, Hunhoff, Klumb, Jack Kolbeck, Steve Kolbeck, Larson, Maher, Mehlhaff,

1 Nesiba, Novstrup, Herman Otten, Pischke, Reed, Rohl, Schoenbeck, Schoenfish, Stalzer, Wheeler,
2 Wiik, Wink, and Zikmund

3 Nays: Frye-Mueller

4 Excused: Johnson and Tobin

5 So the motion having received an affirmative vote of a two-thirds majority of the members-
6 elect, the President declared the motion carried and the rules were suspended.

7 Sen. Novstrup moved that **HB 1116** be placed on today's calendar.

8 The question being on Sen. Novstrup's motion that **HB 1116** be placed on today's calendar.

9 And the roll being called:

10 Yeas 15, Nays 18, Excused 2, Absent 0

11 Yeas: Beal, Bolin, Castleberry, Frye-Mueller, Hoffman, Hunhoff, Klumb, Jack Kolbeck, Maher,
12 Mehlhaff, Novstrup, Pischke, Stalzer, Wiik, and Zikmund

13 Nays: Bordeaux, Breitling, Crabtree, Davis, Deibert, Diedrich, Duhamel, Foster, Steve Kolbeck,
14 Larson, Nesiba, Herman Otten, Reed, Rohl, Schoenbeck, Schoenfish, Wheeler, and Wink

15 Excused: Johnson and Tobin

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

18 **SECOND READING OF CONSENT CALENDAR ITEMS**

19 Sen. Novstrup requested that **HB 1220** be removed from the Consent Calendar.

20 **HB 1053**: FOR AN ACT ENTITLED, An Act to prohibit the issuance of a written certification to
21 a pregnant woman or breastfeeding mother for purposes of medical cannabis use.

22 **HB 1059**: FOR AN ACT ENTITLED, An Act to establish a community paramedic endorsement.

23 Were read the second time.

24 The question being "Shall **HB 1053 and 1059** pass as amended?"

25 And the roll being called:

26 Yeas 31, Nays 0, Excused 4, Absent 0

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

31 Excused: Frye-Mueller, Johnson, Pischke, and Tobin

32 So the bills having received an affirmative vote of a majority of the members-elect, the
33 President declared the bills passed and the titles were agreed to.

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SECOND READING OF HOUSE BILLS AND JOINT RESOLUTIONS

HB 1141: FOR AN ACT ENTITLED, An Act to provide property tax relief for owner-occupied single-family dwellings.

Was read the second time.

Sen. Crabtree moved that **HB 1141** be amended as follows:

1141D

On page 1, line 13, of the Senate State Affairs Engrossed bill, delete "three hundred " and insert "four hundred and twenty-five "

On page 1, line 19, of the Senate State Affairs Engrossed bill, delete "three hundred " and insert "four hundred and twenty-five "

Which motion prevailed.

Sen. Nesiba moved that **HB 1141** be amended as follows:

1141E

On page 1, line 1, of the Senate State Affairs Engrossed bill, delete "provide property tax relief for owner-occupied single-family dwellings" and insert "lower the state sales tax rate and the state use tax rate on food to two and one-half percent"

On the Senate State Affairs Engrossed bill, delete everything after the enacting clause and insert:

"

Section 1. That § 10-45-1 be AMENDED:

10-45-1. Terms used in this chapter mean:

(1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes. The harvesting of timber on land within the state is considered an agricultural purpose;

(2) "Business," any activity engaged in by any person or caused to be engaged in by such person with the object of gain, benefit, or advantage, either direct or indirect;

(3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The term, candy, does not include any preparation containing flour and does not require refrigeration;

(4) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property, any product transferred electronically, or services including transportation, shipping, postage, handling, crating, and packing. The term does not include postage for direct mail;

- 1 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
2 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed
3 for its taste or nutritional value. The term, food, does not include any:
- 4 ~~(a) alcoholic beverages,~~ Alcoholic beverage as defined by § 35-1-1;
5 ~~(b) tobacco,~~ Tobacco product as defined by § 10-50-1;
6 (c) Cigarette as defined by § 10-50B-4;
7 (d) Cannabis or cannabis product as defined by § 34-20G-1; or
8 ~~(e) prepared~~ Prepared food;
- 9 (6) Repealed by SL 2007, ch 56, § 1.
- 10 (7) "Person," any individual, firm, copartnership, joint adventure, association, limited
11 liability company, corporation, municipal corporation, estate, trust, business trust, receiver, the
12 State of South Dakota and its political subdivisions, or any group or combination acting as a unit;
- 13 (8) "Prepared food," any food sold in a heated state or heated by the seller; two or more
14 food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating
15 utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or
16 straws. A plate does not include a container or packaging used to transport the food.
- 17 Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller,
18 and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the
19 consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its
20 Food Code as of January 1, 2003, so as to prevent food borne illnesses;
- 21 (8A) "Product transferred electronically," any product obtained by the purchaser by
22 means other than tangible storage media. A product transferred electronically does not include any
23 intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.
- 24 (9) "Relief agency," the state, and county, municipality or district thereof, or any agency
25 engaged in actual relief work;
- 26 (10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than
27 for resale, sublease, or subrent;
- 28 (11) "Retailer," any person engaged in the business of selling tangible goods, wares, or
29 merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and
30 tickets or admissions to places of amusement and athletic events as provided in this chapter, and
31 the sale at retail of products transferred electronically. The term also includes any person subject
32 to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible personal
33 property or any product transferred electronically at retail by a person who does not hold himself or
34 herself out as engaging in the business of selling such tangible personal property or products
35 transferred electronically at retail does not constitute such person a retailer;
- 36 (12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner
37 or by any means whatsoever, for a consideration;
- 38 (13) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
39 sweeteners. The term, soft drinks, does not include any beverage that contains milk or milk
40 products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice
41 by volume;
- 42 (14) "Tangible personal property," personal property that can be seen, weighed,
43 measured, felt, or touched, or that is in any other manner perceptible to the senses. The term
44 includes electricity, water, gas, steam, and prewritten computer software.

1 **Section 2. That chapter 10-45 be amended with a NEW SECTION:**

2 The rate of tax imposed by this chapter on retailers upon the gross receipts of all sales of food
3 and food ingredients as defined by § 10-45-1 is two and one-half percent.

4 **Section 3. That § 10-46-1 be AMENDED:**

5 **10-46-1.** Terms, as used in this chapter mean:

6 (1) "Business," any activity engaged in by any person or caused to be engaged in by
7 such person with the object of gain, benefit or advantage either direct or indirect;

8 (2) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
9 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
10 drops, or pieces. The term, candy, does not include any preparation containing flour and does not
11 require refrigeration;

12 (3) "Delivery charges," charges by the retailer for preparation and delivery to a location
13 designated by the purchaser of tangible personal property, any product transferred electronically,
14 or services including transportation, shipping, postage, handling, crating, and packing. The term
15 does not include postage for direct mail;

16 (4) "Fair market value," the price at which a willing seller and willing buyer will trade.
17 Fair market value shall be determined at the time of purchase. If a public corporation is supplying
18 tangible personal property or any product transferred electronically that will be used in the
19 performance of a contract, fair market value shall be determined pursuant to § 5-18B-7. This
20 definition also applies to chapter 10-45;

21 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
22 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed
23 for its taste or nutritional value. The term, food, does not include any:

24 ~~(a) alcoholic beverages,~~ Alcoholic beverage as defined by § 35-1-1;

25 ~~(b) tobacco,~~ Tobacco product as defined by § 10-50-1;

26 (c) Cigarette as defined by § 10-50B-4;

27 (d) Cannabis or cannabis product as defined by § 34-20G-1; or

28 ~~(e) prepared~~ Prepared food;

29 (6) "Included in the measure of tax," the tangible personal property, any product
30 transferred electronically, or the service was purchased from a retailer licensed under chapter 10-
31 45 and that retailer has included the tax in the amount received from the sale;

32 (7) "In this state" or "in the state," within the exterior limits of the State of South Dakota
33 and includes all territory within such limits owned by or ceded to the United States of America;

34 (8) "Prepared food," any food sold in a heated state or heated by the seller; two or more
35 food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating
36 utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or
37 straws. A plate does not include a container or packaging used to transport the food.

38 Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller,
39 and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the
40 consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its
41 Food Code as of January 1, 2003, so as to prevent food borne illnesses;

1 (8A) "Product transferred electronically," any product obtained by the purchaser by
2 means other than tangible storage media. A product transferred electronically does not include any
3 intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.

4 (9) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any
5 manner or by any means whatsoever, for a consideration. A transaction, whereby the possession of
6 property is transferred but the seller retains the title as security for the payment of the price, is a
7 purchase;

8 (10) "Purchase price," shall have the same meaning as gross receipts defined in chapter
9 10-45;

10 (11) "Retailer," any person performing services in this state or engaged in the business
11 of selling tangible personal property or products transferred electronically for use, storage or other
12 consumption within the meaning of this chapter. However, if in the opinion of the secretary of
13 revenue, it is necessary for the efficient administration of this chapter to regard any salesmen,
14 representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors,
15 employers, or persons under whom they operate or from whom they obtain the tangible personal
16 property or any product transferred electronically sold by them irrespective of whether they are
17 making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers,
18 or persons, the secretary of revenue may so regard them and may regard the dealers, distributors,
19 supervisors, employers, or persons as retailers for purposes of this chapter;

20 (12) "Retailer maintaining a place of business in the state," any retailer having or
21 maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house,
22 warehouse, or other place of business, or any agents operating within the state under the authority
23 of the retailer or its subsidiary, irrespective of whether such place of business or agent is located
24 here permanently or temporarily or whether such retailer or subsidiary is admitted to do business
25 within this state pursuant to the laws of the State of South Dakota granting the rights of foreign
26 corporations to do business in this state;

27 (13) "Secretary," the secretary of the Department of Revenue or any duly authorized and
28 appointed assistant, deputies, or agents of the secretary charged with the administration or
29 enforcement of this chapter;

30 (14) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
31 sweeteners. The term, soft drinks, does not include any beverage that contains milk or milk
32 products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice
33 by volume;

34 (15) "Storage," any keeping or retention in this state for use or other consumption in the
35 State of South Dakota for any purpose except sale in the regular course of business;

36 (16) "Tangible personal property," personal property that can be seen, weighed,
37 measured, felt, or touched, or that is in any other manner perceptible to the senses if furnished or
38 delivered to consumers or users within this state. The term includes electricity, water, gas, steam,
39 and prewritten computer software;

40 (17) "Use," the exercise of right or power over tangible personal property or any product
41 transferred electronically incidental to the ownership of that property, except that it does not include
42 the sale of that property in the regular course of business. Use also includes the use of the types of
43 services, the gross receipts from the sale of which are to be included in the measure of the tax
44 imposed by chapter 10-45, and the delivery or causing delivery into this state of tangible personal
45 property or any product transferred electronically intended to advertise any product or service or
46 promote or facilitate any sale to South Dakota residents.

47 **Section 4. That chapter 10-46 be amended with a NEW SECTION:**

48 The rate of tax imposed by this chapter on the use, storage, or consumption in this state of
49 food and food ingredients as defined by § 10-46-1 is two and one-half percent.

50 "

1 Which motion lost.

2 The question being "Shall **HB 1141** pass as amended?"

3 And the roll being called:

4 Yeas 31, Nays 2, Excused 2, Absent 0

5 Yeas: Beal, Bolin, Bordeaux, Breitling, Castleberry, Crabtree, Davis, Deibert, Diedrich,
6 Duhamel, Foster, Frye-Mueller, Hoffman, Hunhoff, Klumb, Jack Kolbeck, Steve Kolbeck, Maher,
7 Mehlhaff, Novstrup, Herman Otten, Pischke, Reed, Rohl, Schoenbeck, Schoenfish, Stalzer, Wheeler,
8 Wiik, Wink, and Zikmund

9 Nays: Larson and Nesiba

10 Excused: Johnson and Tobin

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

13 **SIGNING OF BILLS**

14 The President publicly read the title to

15 **SB 17:** FOR AN ACT ENTITLED, An Act to make appropriations for water and environmental
16 purposes and to declare an emergency.

17 **SB 21:** FOR AN ACT ENTITLED, An Act to make an appropriation for costs related to the Black
18 Hills National Forest Land and Resource Management Plan revision process and to declare an
19 emergency.

20 **SB 23:** FOR AN ACT ENTITLED, An Act to make an appropriation for the modernization of the
21 state's enterprise resource planning systems and to declare an emergency.

22 **SB 35:** FOR AN ACT ENTITLED, An Act to make an appropriation to expand laboratory space
23 at the Sanford Underground Research Facility and to declare an emergency.

24 **SB 55:** FOR AN ACT ENTITLED, An Act to prohibit ranked-choice voting.

25 **SB 69:** FOR AN ACT ENTITLED, An Act to modify the composition of the State-Tribal Relations
26 Committee.

27 **SB 140:** FOR AN ACT ENTITLED, An Act to revise certain provisions relating to voter
28 registration.

29 **SB 145:** FOR AN ACT ENTITLED, An Act to revise provisions pertaining to township eligibility
30 for the rural access infrastructure fund.

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

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

1 **SJR 505:** A JOINT RESOLUTION, Proposing and submitting to the electors at the next general
2 election an amendment to the Constitution of the State of South Dakota, updating references to
3 certain officeholders and persons.

4 **HB 1008:** FOR AN ACT ENTITLED, An Act to revise provisions relating to actuarial terminology
5 used by the South Dakota Retirement System.

6 **HB 1030:** FOR AN ACT ENTITLED, An Act to make an appropriation for the revised construction
7 costs of the bioproducts facility in Brookings, and to declare an emergency.

8 **HB 1135:** FOR AN ACT ENTITLED, An Act to provide for transparency in the pricing of
9 prescription drugs.

10 **HB 1148:** FOR AN ACT ENTITLED, An Act to clarify registration and residence requirements
11 for voting at a township meeting.

12 **HB 1209:** FOR AN ACT ENTITLED, An Act to revise provisions regarding industrial hemp.

13 And signed the same in the presence of the Senate.

14 Sen. Reed moved that the Senate do now adjourn, which motion prevailed and at 2:20 p.m.
15 the Senate adjourned.

16

Kay Johnson, Secretary