

JOURNAL OF THE SENATE

EIGHTY-SEVENTH SESSION

EIGHTH DAY

STATE OF SOUTH DAKOTA
Senate Chamber, Pierre
Tuesday, January 24, 2012

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

The prayer was offered by the Chaplain, Rev. Susan Carr, followed by the Pledge of Allegiance led by Senate pages Noah Cozad and Kirsten Titze.

Roll Call: All members present except Sen. Nygaard who was 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 seventh 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,
Bob Gray, Chair

Which motion prevailed.

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

3 The Senate proceeded to the consideration of the executive appointment of Laurie Gill of
4 Hughes County, Pierre, South Dakota, to the position of Secretary of the Department of Human
5 Services.

6 The question being "Does the Senate advise and consent to the executive appointment of
7 Laurie Gill pursuant to the executive message as found on page 37 of the Senate Journal?"

8 And the roll being called:

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

10 Yeas:

11 Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
12 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;
13 Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave;
14 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

15 Excused:

16 Adelstein; Nygaard

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

19 President ProTempore Gray now presiding.

20 The Senate proceeded to the consideration of the executive appointment of Matthew
21 Michels of Yankton County, Yankton, South Dakota, to the position of Interim Secretary of the
22 Department of Veterans Affairs.

23 The question being "Does the Senate advise and consent to the executive appointment of
24 Matthew Michels pursuant to the executive message as found on page 38 of the Senate
25 Journal?"

26 And the roll being called:

27 Yeas 34, Nays 0, Excused 1, Absent 0

28 Yeas:

29 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);
30 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;
31 Lederman; Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg;
32 Rave; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

1 Excused:
2 Nygaard

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

5 President Matt Michels now presiding.

6 The Senate proceeded to the consideration of the executive appointment of Jeffrey P.
7 Marlette of Pennington County, Box Elder, South Dakota, to the position of Assistant Adjutant
8 General, Army.

9 The question being "Does the Senate advise and consent to the executive appointment of
10 Jeffrey P. Marlette pursuant to the executive message as found on page 40 of the Senate
11 Journal?"

12 And the roll being called:

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

14 Yeas:
15 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);
16 Haverly; Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;
17 Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave;
18 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

19 Excused:
20 Hundstad; Nygaard

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

23 The Senate proceeded to the consideration of the executive appointment of Leroy LaPlante
24 of Clay County, Vermillion, South Dakota, to the position of Secretary of the Department of
25 Tribal Relations.

26 The question being "Does the Senate advise and consent to the executive appointment of
27 Leroy LaPlante pursuant to the executive message as found on page 39 of the Senate Journal?"

28 And the roll being called:

29 Yeas 34, Nays 0, Excused 1, Absent 0

1 Yeas:

2 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);
3 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;
4 Lederman; Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg;
5 Rave; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

6 Excused:

7 Nygaard

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

10 The Senate proceeded to the consideration of the executive appointment of James Hagen
11 of Hughes County, Pierre, South Dakota, to the position of Secretary of the Department of
12 Tourism.

13 The question being "Does the Senate advise and consent to the executive appointment of
14 James Hagen pursuant to the executive message as found on page 38 of the Senate Journal?"

15 And the roll being called:

16 Yeas 34, Nays 0, Excused 1, Absent 0

17 Yeas:

18 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);
19 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;
20 Lederman; Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg;
21 Rave; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

22 Excused:

23 Nygaard

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

26 **REPORTS OF STANDING COMMITTEES**

27 MR. PRESIDENT:

28 The Committee on Judiciary respectfully reports that it has had under consideration SB 43
29 and returns the same with the recommendation that said bill do pass.

1 Also MR. PRESIDENT:

2 The Committee on Judiciary respectfully reports that it has had under consideration SB 39
3 and 41 and returns the same with the recommendation that said bills do pass and be placed on
4 the consent calendar.

5 Respectfully submitted,
6 Craig Tieszen, Chair

7 Also MR. PRESIDENT:

8 The Committee on Commerce and Energy respectfully reports that it has had under
9 consideration SB 62 and returns the same with the recommendation that said bill be amended
10 as follows:

11 62fb

12 On page 1 of the printed bill, delete lines 6 to 15, inclusive, and insert:

13 "Notwithstanding the provisions of § 35-1-5.6, a licensee that is licensed to sell wine
14 on-sale may permit a customer to bring a sealed and unopened bottle of wine onto the licensed
15 premises for consumption by the customer while eating a meal that was prepared by the licensee
16 and that was served at a table on the licensed premises. The licensee may charge a corkage fee
17 for serving wine supplied by a customer. The customer may carry out the unconsumed portion
18 of the bottle of wine if it is securely resealed by the licensee with a cork or other similar cap and
19 placed in a sealed bag or other container. The licensee shall also attach the receipt for the meal
20 and any corkage fee to the bag or container. A bottle of wine that is recorked and sealed as
21 provided in this section is not a violation of the provisions of § 35-1-9.1 if the cork and the seal
22 have not been disturbed.

23 Section 2. That chapter 35-1 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 A licensee that is licensed to sell wine on-sale may permit a customer to carry out the
26 unconsumed portion of a bottle of wine if the customer purchased the bottle of wine from the
27 licensee and consumed a portion of it with a meal that was prepared and served by the licensee
28 at a table on the licensed premises. The licensee shall securely reseat the bottle of wine with a
29 cork or other similar cap and place the bottle in a sealed bag or other container. The licensee
30 shall also attach a receipt for the meal and the wine to the bag or container. A bottle of wine that
31 is recorked and sealed as provided in this section is not a violation of the provisions of § 35-1-
32 9.1 if the cork and the seal have not been disturbed."

33 And that as so amended said bill do pass.

34 Respectfully submitted,
35 Tom Nelson, Chair

1 **MESSAGE FROM THE HOUSE**

2 MR. PRESIDENT:

3 I have the honor to transmit herewith HB 1012, 1021, 1031, 1047, 1050, and 1052 which
4 have passed the House and your favorable consideration is respectfully requested.

5 Respectfully,
6 Karen Gerdes, Chief Clerk

7 **CONSIDERATION OF REPORTS OF COMMITTEES**

8 Sen. Olson moved that the reports of the Standing Committees on

9 Taxation on SB 20 as found on page 118 of the Senate Journal; also

10 Health and Human Services on SB 15 as found on page 119 of the Senate Journal be
11 adopted.

12 Which motion prevailed.

13 **FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS**

14 SB 139 Introduced by: Senators Heineman, Adelstein, Johnston, Kraus, and Tidemann and
15 Representatives Sly, Blake, Brunner, Dennert, Elliott, Fargen, Feickert, Gibson, Hawley,
16 Hunhoff (Bernie), Iron Cloud III, Jones, Killer, Kirschman, Kloucek, Lucas, Miller, Olson
17 (Betty), Schrempp, Sigdestad, Street, and Wismer

18 FOR AN ACT ENTITLED, An Act to establish the Teach for America grant program
19 within the Department of Education and to make an appropriation therefor.

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

21 SB 140 Introduced by: Senators Putnam, Cutler, Haverly, Hunhoff (Jean), Krebs, Nelson
22 (Tom), Nygaard, Peters, Rhoden, Sutton, Tidemann, and Tieszen and Representatives
23 Romkema, Abdallah, Carson, Deelstra, Dennert, Gosch, Hansen (Jon), Hawley, Hoffman,
24 Kirkeby, Novstrup (David), Street, Turbiville, Van Gerpen, Vanneman, Verchio, and Wink

25 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding glazing material
26 on motorcycle windshields and wind deflectors.

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

1 SB 141 Introduced by: Senators Peters, Buhl, Cutler, Holien, Nelson (Tom), and Nygaard
2 and Representatives Gibson, Abdallah, Blake, Hunhoff (Bernie), Kirkeby, Perry, Street, and
3 Turbiville

4 FOR AN ACT ENTITLED, An Act to expand the legal definition of the term, domestic
5 abuse.

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

7 SB 142 Introduced by: Senators Nygaard and Tidemann and Representatives Street,
8 Carson, Perry, and Wink

9 FOR AN ACT ENTITLED, An Act to impose the sales tax on the gross receipts derived
10 from renting mini-storage units, self-storage units, or storage space and the use tax on the use
11 of mini-storage units, self-storage units, or storage space.

12 Was read the first time and referred to the Committee on Taxation.

13 SB 143 Introduced by: Senators Nygaard, Frerichs, and Peters and Representatives
14 Hoffman, Boomgarden, Cronin, Dennert, Feickert, Perry, Turbiville, and Wick

15 FOR AN ACT ENTITLED, An Act to increase the number of allowable nonresident
16 waterfowl hunting days.

17 Was read the first time and referred to the Committee on Agriculture and Natural
18 Resources.

19 SB 144 Introduced by: Senators Lederman, Frerichs, Maher, Nelson (Tom), and
20 Rampelberg and Representatives Miller, Hansen (Jon), Kloucek, and Rozum

21 FOR AN ACT ENTITLED, An Act to amend provisions regarding captive insurance
22 companies.

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

24 SB 145 Introduced by: Senators Cutler, Brown, Maher, Novstrup (Al), Schlekeway, and
25 Tieszen and Representatives Kirkeby, Bolin, Gosch, Hawley, Perry, Rausch, Solum, and
26 Willadsen

27 FOR AN ACT ENTITLED, An Act to prohibit rebates and regulate contracts for residential
28 roofing goods and services.

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

1 SB 146 Introduced by: Senators Cutler, Krebs, and Peters and Representatives Moser,
2 Blake, Elliott, Gibson, Gosch, Hickey, Kirkeby, Lucas, Magstadt, Rozum, Sigdestad, and Street

3 FOR AN ACT ENTITLED, An Act to provide for an affirmative defense of compulsion
4 for the crime of prostitution.

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

6 SB 147 Introduced by: Senators Peters, Gray, and Olson (Russell) and Representatives
7 Novstrup (David), Cronin, Hawley, Moser, Rausch, Tulson, and Verchio

8 FOR AN ACT ENTITLED, An Act to limit compensatory damages in civil actions related
9 to death or injury.

10 Was read the first time and referred to the Committee on State Affairs.

11 **FIRST READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

12 HB 1012: FOR AN ACT ENTITLED, An Act to require public hearings for applications
13 for oil and gas orders only if contested and to reduce the number of hearing notice publications
14 required for oil and gas cases.

15 Was read the first time and referred to the Committee on Agriculture and Natural
16 Resources.

17 HB 1021: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the
18 rights of victims of crime.

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

20 HB 1031: FOR AN ACT ENTITLED, An Act to establish a license fee and a renewal fee
21 for carriers licensing under the International Fuel Tax Agreement, to establish a decal fee and
22 a mailing fee, and to provide for the disposition of the fees.

23 Was read the first time and referred to the Committee on Transportation.

24 HB 1047: FOR AN ACT ENTITLED, An Act to revise certain provisions relating to
25 military law.

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

1 HB 1050: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding
2 National Guard discipline and courts-martial.

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

4 HB 1052: FOR AN ACT ENTITLED, An Act to grant discretion to the court with regard
5 to personal appearances in certain adoption appearances.

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

7 **SECOND READING OF CONSENT CALENDAR ITEMS**

8 Sen. Peters requested that SB 17 be removed from the Consent Calendar.

9 Pursuant to Senate Rule 6-1, the President removed SB 16 from the Consent Calendar.

10 **CONSIDERATION OF CONSENT CALENDAR EXECUTIVE APPOINTMENTS**

11 The Senate proceeded to the consideration of the executive appointment of Alan D.
12 Ruhlman of Brown County, Aberdeen, South Dakota, to the Career Service Commission.

13 The question being "Does the Senate advise and consent to the executive appointment of
14 Alan D. Ruhlman pursuant to the executive message as found on page 23 of the Senate
15 Journal?"

16 And the roll being called:

17 Yeas 34, Nays 0, Excused 1, Absent 0

18 Yeas:

19 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);
20 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;
21 Lederman; Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg;
22 Rave; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

23 Excused:

24 Nygaard

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

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

2 SB 42: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding habeas
3 corpus.

4 Was read the second time.

5 42fa

6 Sen. Vehle moved that SB 42 be further amended as follows:

7 On page 2, line 14, of the Senate Judiciary Committee engrossed bill, delete "made" and
8 insert "is".

9 On page 3, line 21, after "Court" insert "and the South Dakota Supreme Court".

10 Which motion prevailed.

11 The question being "Shall SB 42 pass as amended?"

12 And the roll being called:

13 Yeas 30, Nays 4, Excused 1, Absent 0

14 Yeas:

15 Adelstein; Begalka; Bradford; Brown; Cutler; Fryslie; Gray; Hansen (Tom); Haverly;
16 Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman; Maher; Nelson
17 (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave; Rhoden;
18 Schlekeway; Tidemann; Tieszen; Vehle

19 Nays:

20 Buhl; Frerichs; Hundstad; Sutton

21 Excused:

22 Nygaard

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

25 SB 6: FOR AN ACT ENTITLED, An Act to authorize criminal background checks for
26 various state employees.

27 Was read the second time.

28 The question being "Shall SB 6 pass as amended?"

1 And the roll being called:

2 Yeas 34, Nays 0, Excused 1, Absent 0

3 Yeas:

4 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);
5 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;
6 Lederman; Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg;
7 Rave; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

8 Excused:

9 Nygaard

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

12 SB 61: FOR AN ACT ENTITLED, An Act to exempt the production of certain plants and
13 sod from sales and use taxes.

14 Was read the second time.

15 Sen. Brown moved that SB 61 be referred to the Committee on Appropriations.

16 Which motion prevailed.

17 SB 14: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding alcohol
18 or drug commitments.

19 Was read the second time.

20 The question being "Shall SB 14 pass?"

21 And the roll being called:

22 Yeas 34, Nays 0, Excused 1, Absent 0

23 Yeas:

24 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);
25 Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs;
26 Lederman; Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg;
27 Rave; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

28 Excused:

29 Nygaard

