

**SENATE JOURNAL  
57<sup>TH</sup> LEGISLATURE  
EIGHTY-FIFTH LEGISLATIVE DAY**

Helena, Montana  
April 16, 2001

Senate Chambers  
State Capitol

Senate convened at 5:00 p.m. President Beck presiding. Invocation by Reverend Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present except Senators Doherty, Holden and Miller, excused. Quorum present.

**REPORTS OF STANDING COMMITTEES**

**BILLS AND JOURNAL** (Miller, Chairman): 4/16/2001  
Correctly enrolled: SB 80, SB 134, SB 168, SB 179, SB 191, SB 258, SB 263, SB 264, SB 281, SB 303, SB 315, SB 346, SB 350, SB 376, SB 393, SB 484, SB 494.  
Examined by the sponsor and found to be correct: SB 80, SB 134, SB 168, SB 179, SB 191, SB 258, SB 263, SB 264, SB 281, SB 303, SB 315, SB 346, SB 350, SB 376, SB 393, SB 484, SB 494.  
Signed by the President at 3:00 p.m., April 13, 2001: SB 46, SB 131, SB 162, SB 240, SB 280, SB 317, SB 326, SB 344, SB 368, SB 489, SB 495, SB 501, SB 519.  
Signed by the President at 5:00 p.m., April 16, 2001: SB 494.

**LEGISLATIVE ADMINISTRATION** (Grimes, Chairman): 4/16/2001  
**MR. PRESIDENT:**  
We, your committee on Legislative Administration recommend that employment of the following attaches of the Senate be terminated as of 12 noon, Friday, April 13, 2001:

<u>TITLE</u>	<u>NAME</u>
Pages:	Andrea Drinkwalter, Huntley, MT Briann Koterba, Westby, MT Catherine Woods, Miles City, MT Tannis Hargrove, Three Forks, MT Jonathan Clark, Anaconda, MT Max Weber, Great Falls, MT Sam Kulla, Missoula, MT Daniel Mazurek, Helena, MT

and recommend that the following attaches of the Senate be employed as of 3:00 p.m., Monday, April 16, 2001:

<u>TITLE</u>	<u>NAME</u>
Pages:	Tyner Kuehn, Missoula, MT Melissa Turnbull, Brockton, MT Jonathan Marks, Trout Creek, MT Ryan Jolley, Victor, MT Andrea Noonan, Fairmont, MT

Report Adopted.

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**STATE ADMINISTRATION** (Hargrove, Chairman):

4/16/2001

**PRELIMINARY REPORT**

**SR 7**, be adopted. Report adopted.

**SR 23**, be adopted. Report adopted.

**Senator Miller present at this time.**

**REPORTS OF SELECT COMMITTEES**

CONFERENCE COMMITTEE  
on House Amendments to **Senate Bill 514**  
Report No. 1, April 13, 2001

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered House amendments to **Senate Bill 514** (reference copy – salmon) and recommend this Conference Committee report be adopted.

And, recommend that House amendments to **Senate Bill 514** (reference copy – salmon) be accepted by the Senate.

For the Senate:

Berry, Chairman  
Grosfield  
Cocchiarella

For the House:

Price, Vice Chairman  
Laible  
Wanzenried

CONFERENCE COMMITTEE  
on Senate Amendments to **House Bill 559**  
Report No.2, April 13, 2001

Mr. Speaker and Mr. President:

We, your Conference Committee on **House Bill 559**, met April 12, 2001, and considered:

1. Senate Committee on Judiciary amendments to third reading copy, dated March 27, 2001.

We recommend that **House Bill 559** (reference copy – salmon) be amended as follows:

1. Page 1, line 15.

**Strike:** "-- MOBILE HOME SPACE RENTALS EXEMPTED"

2. Page 1, lines 15 and 17.

**Strike:** "70-24-436" on line 15 through "HOME" on line 17

**Insert:** "this chapter"

3. Page 1, line 25.

**Strike:** "WITHIN THE NOTICE PERIOD"

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**Insert:** "before the date specified in the notice"

4. Page 2, line 6.

**Strike:** subsection (D) in its entirety

**Renumber:** subsequent subsections

5. Page 2, line 7.

**Following:** "(1)(b)"

**Strike:** " "

**Insert:** "or"

**Strike:** "OR (1)(D)."

6. Page 2, following line 14.

**Insert:** "(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home."

7. Page 2, line 19.

**Following:** "z"

**Insert:** "This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home."

8. Page 3, following line 1.

**Insert:** "(6) Subsections (3) through (5) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home."

**Renumber:** subsequent subsections

9. Page 3, following line 4.

**Insert:** "(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and"

10. Page 3, line 5.

**Following:** "(B)"

**Insert:** "(b)"

11. Page 3, lines 7 and 8.

**Strike:** subsection (7) in its entirety

12. Page 3, line 22.

**Strike:** "15"

**Insert:** "7 calendar"

13. Page 3, line 30.

**Following:** "park"

**Insert:** ", its manager, or its owner, the notice period is 24 hours;"

14. Page 4, lines 1 through 3.

**Strike:** "IF" on line 1 through "DAYS;" on line 3

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15. Page 6, lines 3 through 10.

**Strike:** subsections (4) through (6) in their entirety

For the House:

Noennig, Vice Chairman  
Laible  
Matthews

For the Senate:

K. Miller, Chairman  
Grimes  
Christiaens

**FREE CONFERENCE COMMITTEE**  
on **House Bill 605**  
Report No. 1, April 13, 2001

Mr. Speaker and Mr. President:

We, your Free Conference Committee on **House Bill 605**, met April 12, 2001, and considered:

1. Senate Committee on Natural Resources amendments to third reading copy, dated March 29, 2001.

We recommend that **House Bill 605** (reference copy – salmon) be amended as follows:

1. Title, line 15 through line 16.

**Strike:** "AND PROVIDING A DELAYED EFFECTIVE DATE"

2. Title, line 16.

**Following:** "AN"

**Insert:** "IMMEDIATE"

**Following:** "DATE"

**Insert:** "AND AN APPLICABILITY DATE"

3. Page 3, line 29.

**Following:** "by "

**Strike:** "ordinance"

**Insert:** "rule, ordinance,"

4. Page 4, line 9.

**Following:** "of"

**Strike:** "an ordinance"

**Insert:** "a rule, ordinance,"

5. Page 4, line 11.

**Following:** "(4)(a)"

**Strike:** "The board may approve and a"

**Insert:** "A"

**Following:** "may"

**Strike:** "adopt an ordinance"

**Insert:** ", subject to approval by the board, adopt a rule, ordinance,"

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6. Page 4, line 12 through line 13.

**Strike:** "under" on line 12 through "law" on line 13

7. Page 4, line 28.

**Following:** "by"

**Strike:** "an ordinance"

**Insert:** "a rule, ordinance,"

8. Page 5, line 1.

**Following:** "the"

**Strike:** "ordinance"

**Insert:** "rule, ordinance,"

9. Page 5, line 2.

**Following:** "that the"

**Strike:** "ordinance"

**Insert:** "rule, ordinance,"

10. Page 5, line 4.

**Following:** "the"

**Strike:** "ordinance"

**Insert:** "rule, ordinance,"

11. Page 6, line 16.

**Following:** "revised"

**Strike:** "ordinances"

**Insert:** "rules, ordinances,"

12. Page 6, line 20.

**Following:** "RELATED TO"

**Strike:** "ORDINANCES"

**Insert:** "rules, ordinances,"

13. Page 6, line 22.

**Following:** "OF"

**Strike:** "AN ORDINANCE"

**Insert:** "a rule, ordinance,"

14. Page 7, line 1.

**Strike:** "(13)(E)"

**Insert:** "(13)(f)"

15. Page 7, line 3 through line 4.

**Following:** "ACTION."

**Strike:** remainder of line 3 through "LANGUAGE." on line 4

**Insert:** "The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals

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and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action."

**Renumber:** subsequent subsections

16. Page 7, line 5.

**Following:** "PROPOSED"

**Strike:** "ORDINANCE"

**Insert:** "rule, ordinance,"

17. Page 7, line 8.

**Strike:** "25"

**Insert:** "10"

**Following:** "PROPOSED"

**Strike:** "ORDINANCE"

**Insert:** "rule, ordinance,"

18. Page 7, line 13.

**Following:** "PROPOSED"

**Strike:** "ORDINANCE"

**Insert:** "rule, ordinance,"

19. Page 7.

**Following:** line 15

**Insert:** "NEW SECTION. **Section 3. Applicability.** [Section 2] does not apply to proposals for new rules, ordinances, or local laws that have been noticed to the public and submitted to the local air pollution control program governing body before [the effective date of this act]."

**Renumber:** subsequent section

20. Page 7, line 17.

**Strike:** "MAY 1, 2003"

**Insert:** "on passage and approval"

For the House:

D. Mood, Vice Chairman

Clancy

Matthews

For the Senate:

Crismore, Chairman

Tash

Nelson

**MESSAGES FROM THE GOVERNOR**

April 13, 2001

The Honorable Tom Beck

President of the Senate

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State Capitol  
Helena, Montana 59620

Dear Senator Beck:

Please be informed that I have signed **Senate Bill 321** sponsored by Senator Mahlum, **Senate Bill 361** sponsored by Senator McNutt, **Senate Bill 390** sponsored by Senator Cobb, and **Senate Bill 482** sponsored by Senator Ekegren on April 13, 2001.

Sincerely,  
JUDY MARTZ  
Governor

April 13, 2001

The Honorable Dan McGee  
Speaker of the House  
State Capitol  
Helena, MT 59620

The Honorable Tom Beck  
President of the Senate  
State Capitol  
Helena, MT 59620

Dear Speaker McGee and President Beck:

In accordance with the powers vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments **House Bill 456**, "AN ACT PROVIDING ELIGIBILITY FOR MEDICAID FOR INDIVIDUALS WHO HAVE PARTICIPATED IN THE MONTANA BREAST AND CERVICAL HEALTH PROGRAM AND WHO REQUIRE TREATMENT FOR BREAST OR CERVICAL CANCER, OR BOTH; PROVIDING AN APPROPRIATION FROM THE GENERAL FUND AND REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCLUDE FUNDING FOR THE 2005 BIENNIUM EXECUTIVE BUDGET REQUEST FROM THE INCOME ON THE TOBACCO SETTLEMENT TRUST FUND; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE, for the following reasons.

I have no objection to the substantive provisions and intent of HB 456. I do, however, object to that portion of the bill "requiring" the Department of Public Health and Human Services to include funding for the program in its executive budget request for the 2005 biennium from the income generated by the tobacco settlement trust fund. I would recommend that Section 2 of the bill be amended to reflect instead a request that the Department consider the inclusion of the program in its 2005 biennium executive budget request. I have attached my amendments to that effect.

Section 2 of HB 456 appropriates approximately \$387,000 from the general fund over the next biennium for purposes of Medicaid match for the treatment of breast and cervical cancer as contemplated by Section 1 of the bill. I have no objection to that portion of the legislation. I do, however, object to that portion of Section 2 that ostensibly mandates specific actions on the part of the executive branch during the executive budget process for the next biennium.

Article VI, Section 9 of the Montana Constitution provides that "[t]he governor shall submit to the legislature at a time

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fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state." Under the Constitution, the executive branch is vested with the power and authority to prepare and submit a proposed budget to the legislative branch. Likewise, Article III, Section 1 prohibits the exercise of powers properly belonging to one branch by either of the remaining branches.

In light of our constitutional structure, I believe that the language in Section 2 providing an express directive to the executive branch to include funding for a specific program from a specific source constitutes an infringement by the legislative branch on powers specifically reserved to the executive branch. The authority to establish and submit a proposed budget is vested in the executive branch. The legislative branch, in turn, has full authority to modify that proposed budget as it sees fit through the legislative process, subject only to executive branch veto powers. The legislative branch does not, however, have authority to specifically direct the executive branch as to how it prepares the executive budget proposal.

I am therefore recommending an amendment that would change the current "directive" structure of the language in Section 2 to a "request" by the legislative branch that the executive branch consider this program, as funded by income from the tobacco settlement trust, for inclusion in its budget proposal to the 2003 Legislature. I have no objections to the legislative branch expressing its desire that the program be included in the next executive budget proposal by making a request to that effect in HB 456.

My objections to the current structure of Section 2 should in no way be construed as a lack of support for the program contemplated by HB 456 or as any indication of a lack of present intention to include it in my proposed budget to the 2003 Legislature. I believe that the program is one of great merit and I would certainly hope that it will be proposed for continuation as a part of my next budget. I firmly believe, however, that any decisions as to the program's inclusion in my next budget proposal or the potential funding sources for the program are constitutionally placed in the discretion of the executive branch. My objections in this case are based solely on my desire to respect the integrity of our multi-branch form of government and to maintain the clear lines of authority drawn between our respective branches.

Representative Gutsche, the sponsor of the bill, has been advised of my recommendations.

Sincerely,  
JUDY MARTZ  
Governor

c: Legislative Services Division  
Office of Budget Program and Planning

GOVERNOR'S AMENDMENTS TO **HOUSE BILL NO. 456**  
(Reference Bill)  
Drafted by the Office of the Governor  
April 13, 2001

1. Title, line 7  
**Following:** first "AND"  
**Strike:** "REQUIRING"  
**Insert:** "REQUESTING"

2. Title, line 8  
**Following:** "TO"

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**Strike:** "INCLUDE"

**Insert:** "CONSIDER THE INCLUSION OF"

3. Page 4, line 18

**Following:** "Department"

**Strike:** "shall include"

**Insert:** "is requested to consider for inclusion"

April 13, 2001

The Honorable Dan McGee  
Speaker of the House  
State Capitol  
Helena, MT 59620

The Honorable Tom Beck  
President of the Senate  
State Capitol  
Helena, MT 59620

Dear Speaker McGee and President Beck:

In accordance with the powers vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments **House Bill 609**, "AN ACT ALLOWING THE AGRICULTURAL LANDS ADVISORY COMMITTEE MORE DISCRETION IN DETERMINING THE UNDERLYING BASIS FOR ITS RECOMMENDATIONS FOR AGRICULTURAL PRODUCTIVE LAND VALUES FOR PROPERTY TAX PURPOSES; AND AMENDING SECTION 15-7-201, MCA" for the following reasons.

I am in full agreement with the objectives of HB 609 and with its specific measures. I recommend however, that the bill be amended to replace the maximum allowable water costs for irrigated land, albeit at a higher level than current law. I have enclosed my recommended amendment to that effect.

As you know, agricultural costs are deducted from gross income in valuing irrigated land for tax purposes. The reduction for water costs allows the irrigated land sector to receive assessment reductions that other agricultural sectors (i.e., grazing, hayland, dryland farming) do not receive. Moreover, irrigated land uses alfalfa as the base crop for valuation. Therefore, irrigated land assessments do not necessarily provide an accurate reflection of high income grossing crops such as irrigated beets and potatoes. These crops can incur higher water costs than irrigated alfalfa (the base crop) and still produce a positive net income.

Farmers would not irrigate their land if they could produce greater net income from dryland farming. To assess irrigated land at the same rate as a neighbor's non-irrigated farmland with comparable productivity would be inequitable. Thus, while I am in full agreement that an increase in the amount of allowable water costs is warranted, I do not believe that an entire removal of the limit is appropriate. Such a removal could potentially lead to the situation referenced above where irrigated land values would be lower than non-irrigated land with comparable productivity. Accordingly, I recommend that the limit on allowable water costs be reinstated in the law, albeit at \$40 instead of the current \$35.

Representative Story, the sponsor of the bill, is aware of and agrees with my recommendation.

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Sincerely,  
JUDY MARTZ  
Governor

c: Legislative Services Division  
Office of Budget Program and Planning  
Department of Agriculture  
Department of Revenue

GOVERNOR'S AMENDMENTS TO **HOUSE BILL NO. 609**  
(Reference Bill)  
Drafted by the Office of the Governor  
April 13, 2001

1. Page 2, line 14

**Following:** "land."

**Insert:** "Total allowable water costs may not exceed \$40 for each acre of irrigated land."

**MESSAGES FROM THE OTHER HOUSE**

Senate amendments to House bills concurred in:

4/16/2001

**HB 42**, introduced by Masolo  
**HB 73**, introduced by R. Brown  
**HB 121**, introduced by D. Mood  
**HB 144**, introduced by Noennig  
**HB 151**, introduced by Newman  
**HB 165**, introduced by Gutsche  
**HB 254**, introduced by Davies  
**HB 256**, introduced by C. Younkin  
**HB 261**, introduced by Jent  
**HB 273**, introduced by R. Erickson  
**HB 295**, introduced by Jent  
**HB 313**, introduced by Masolo  
**HB 319**, introduced by Galvin-Halcro  
**HB 320**, introduced by Laible  
**HB 334**, introduced by Lenhart  
**HB 340**, introduced by C. Younkin  
**HB 345**, introduced by Mangan  
**HB 382**, introduced by J. Whitaker  
**HB 395**, introduced by B. Thomas  
**HB 397**, introduced by Jackson  
**HB 403**, introduced by Gillan  
**HB 409**, introduced by A. Peterson  
**HB 418**, introduced by C. Younkin  
**HB 437**, introduced by Jacobson  
**HB 442**, introduced by Jayne  
**HB 452**, introduced by J. Whitaker

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**HB 454**, introduced by P. Clark  
**HB 463**, introduced by Lee  
**HB 491**, introduced by J. Tropila  
**HB 492**, introduced by P. Clark  
**HB 496**, introduced by Jent  
**HB 499**, introduced by Facey  
**HB 502**, introduced by Story  
**HB 517**, introduced by Mangan  
**HB 526**, introduced by Branae  
**HB 539**, introduced by Mangan  
**HB 552**, introduced by Shockley  
**HB 560**, introduced by Noennig  
**HB 563**, introduced by P. Clark  
**HB 569**, introduced by Esp  
**HB 570**, introduced by Shockley  
**HB 578**, introduced by Callahan  
**HB 620**, introduced by Devlin  
**HB 623**, introduced by Mangan  
**HB 643**, introduced by Juneau

**Senate amendments to House joint resolutions concurred in:**

4/16/2001

**HJR 1**, introduced by McCann  
**HJR 13**, introduced by Wolery  
**HJR 31**, introduced by Schmidt

**Free Conference Committees appointed:**

**SB 19** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free Conference Committee** to meet with a like committee from the Senate to confer on **SB 19**:

4/13/2001

Representative D. Mood, Vice Chairman  
Representative R. Brown  
Representative Dell

**SB 505** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free Conference Committee** to meet with a like committee from the Senate to confer on **SB 505**:

4/13/2001

Representative D. Mood, Vice Chairman  
Representative R. Brown  
Representative Dell

**SB 506** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free Conference Committee** to meet with a like committee from the Senate to confer on **SB 506**:

4/13/2001

Representative Story, Vice Chairman  
Representative Devlin  
Representative Forrester

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**SB 508** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free Conference Committee** to meet with a like committee from the Senate to confer on **SB 508**:

4/13/2001

Representative D. Mood, Vice Chairman  
Representative R. Brown  
Representative Dell

**SB 512** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free Conference Committee** to meet with a like committee from the Senate to confer on **SB 512**:

4/13/2001

Representative Story, Vice Chairman  
Representative Devlin  
Representative Forrester

**SB 521** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free Conference Committee** to meet with a like committee from the Senate to confer on **SB 521**:

4/13/2001

Representative D. Mood, Vice Chairman  
Representative R. Brown  
Representative Dell

**Conference committee report #1 adopted:**

**4/13/2001**

**SB 348**, introduced by Elliott  
**SB 390**, introduced by Cobb  
**SB 429**, introduced by Sprague

**Free Conference committee report #1 adopted:**

4/13/2001

**HB 473**, introduced by C. Younkin

**Free conference committee report #1 not adopted:**

**4/16/2001**

**HB 293**, introduced by Harris

**MOTIONS**

**SB 322** - Majority Leader Thomas moved that the President be authorized to appoint a **Free Conference Committee**, and request that the House appoint a like committee to confer on **SB 322**. Motion carried. The President appointed the following members:

Senator Crismore, Chairman  
Senator Cole  
Senator Shea

**HB 119** - Majority Leader Thomas moved that the Conference Committee on **HB 119** be **dissolved** and that the President be authorized to appoint a new **Conference Committee** to meet with a like committee from the House to confer on Senate amendments to **HB 119**. Motion carried. The President appointed the following members:

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Senator Wells, Chairman  
Senator Beck  
Senator Shea

**FIRST READING AND COMMITMENT OF BILLS**

The following Senate resolution was introduced, read first time, and referred to committee:

**SR 24**, introduced by Hargrove (by request of the Senate State Administration Standing Committee), referred to State Administration.

**ANNOUNCEMENTS**

Committee meetings were announced by committee chairmen.

Majority Leader Thomas moved that the Senate adjourn until 11:00 a.m., Tuesday, April 17, 2001. Motion carried.

Senate adjourned at 5:23 p.m.

ROSANA SKELTON  
Secretary of Senate

TOM BECK  
President of the Senate