

**SENATE JOURNAL
58TH LEGISLATURE
SIXTIETH LEGISLATIVE DAY**

Helena, Montana
March 21, 2003

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Keenan presiding. Invocation by Pastor Keith Johnson.

President Keenan introduced the Lewis and Clark Cadet Color Guard of the Civil Air Patrol, who won the State competition for the 4th year in a row and who also won the Rocky Mountain Region Competition in 2003. Colors were presented by the Color Guard, followed by the Pledge of Allegiance.

Roll Call. All members present, except Senators Schmidt and Tester, excused. Quorum present.

The presiding officer has authenticated the daily journal for the fifty-ninth legislative day.

COMMUNICATIONS AND PETITIONS

Senator Cocchiarella read the following letter from U. S. Senator Max Baucus, who was not able to be in Montana to address a joint session of the Montana Legislature on this day:

Dear Members of the Senate:

I regret that I could not be with you today. Circumstances in Washington - the war in Iraq and key votes on the federal budget-require that I remain here to represent Montana in these historic times.

I deeply appreciate the invitation to speak to you, and want to say a few words on what I am doing in Washington to move Montana and our country forward.

First, let me say that we Montanans, as Americans, support our troops, who are now in harm's way. They make us proud. They make great sacrifices - some give their lives, or already have - to protect our country, our security, our democracy, our freedom. To them, we truly owe our full support. And we pray for their safe return.

We, as Montana's elected leaders, must work together to move Montana forward.

I know you face immense hurdles this session, but I have seen first hand what can be done when we work together.

We have our share of tough issues in Washington. What's why I believe strongly in working with Montana's Congressional Delegation. I'm very proud that Conrad, Denny, and I meet once a month in Washington to be effective for Montana.

Mike Mansfield started these meetings. Called them "good government meetings." With the recent commemoration of his 100th birthday, we look to his example of working together.

Here's what I'm working on together with my colleagues in Congress:

- I'm working with a group of moderate senators to craft an economic stimulus plan that will provide tax cuts to boost the economy. I'll do everything in my power to provide significant aid to states, like Montana, that are facing budget deficits.

- We'll write and pass a new highway bill that will bring even more dollars and good-paying highway jobs

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

to Montana. This year, I'm working with Denny on the highway bill. He's on the House transportation committee; I'm on the Senate Highway committee.

- I'm committed to passing a real prescription drug benefit that works in rural areas like Montana. My amendment to the budget resolution would ensure that seniors in traditional Medicare will get the same drug benefit as seniors that move into a private Medicare plan. I'm working hard on the Finance Committee to make sure Montanans can get quality, affordable health care - no matter where they live.

- I'm committed to establishing an asbestos health-care fund so we can ensure residents in Libby get the health care they need and deserve for years to come. We need to do everything we can to help them get clean bills of health.

- I'm committed to helping farmers and ranchers weather this drought. I've walked through the fields, seen the dust blow. Congress passed a drought aid package that falls well short of what we were pushing for. I'll keep fighting for meaningful disaster assistance this year.

- I'm committed to working to provide full funding for the "No Child Left Behind Act". I've met with Montana education leaders and teachers. We can't let these new education reforms become an unfunded mandate.

Finally, let me mention one last initiative. Creating jobs. Boosting the economy.

My top priority continues to be working with the private sector, delegation, governor, Legislature and local elected officials to boost Montana's economy and create more good-paying jobs in our state. Our kids shouldn't have to leave Montana to find good jobs and raise their families.

I'm pleased to announce that we will hold our 3rd Montana Economic Development Summit this year in Billings. Again, this is a joint effort with Judy, Conrad, Denny, the Economic Development Action Group and the Governor's Office of Economic Opportunity. We're all very glad to be working together.

This year, we'll focus on recruiting new businesses to Montana. And we'll focus on the Governor's idea to develop a strategy centered on Montana's existing and emerging industry clusters.

I encourage all of you to attend the 3rd Montana Economic Development Summit. We want you to be a big part of it. Again, we all need to work together to improve our state's economy. Mark your calendars. May 28-29 in Billings.

As the bicentennial of the Lewis and Clark expedition draws near, I think it's important for all of us to look to their example of working together.

Separately, they were Meriwether Lewis and William Clark. Together, they were Lewis and Clark. There would have been no Lewis with Clark - no Clark without Lewis. And neither of them would have accomplished what they did without their team. They succeeded by sheer will. But more than anything else, the Corps of Discovery was a success because they worked together.

Thank you for your time. I wish you well in your deliberations and in doing what's right for Montana.

Sincerely,

Max (Baucus)

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

REPORTS OF STANDING COMMITTEES

BILL REPORT

Correctly printed: **SB 482, SJR 28.**

Correctly engrossed: **HB 157, HB 190, HB 315, HB 480, HB 610, HB 618, HJR 17.**

Correctly enrolled: **SB 107, SB 118, SB 132, SB 139, SB 160, SB 173, SB 253.**

EDUCATION AND CULTURAL RESOURCES (Glaser, Chairman): 3/20/2003
HB 639, be concurred in. Report adopted.

FINANCE AND CLAIMS (Zook, Chairman): 3/20/2003
SB 89, do pass. Report adopted.
HB 272, be concurred in. Report adopted.

HIGHWAYS AND TRANSPORTATION (Butcher, Chairman): 3/21/2003
HB 414, be concurred in. Report adopted.
HB 458, be concurred in. Report adopted.
HB 549, be concurred in. Report adopted.

JUDICIARY (Grimes, Chairman): 3/20/2003
HB 222, be amended as follows:

1. Page 12, line 15.

Following: line 14

Insert: "NEW SECTION. Section 6. Coordination instruction. If House Bill No. 29 and [this act] are both passed and approved, then [section 1 of House Bill No. 29], amending 53-30-402, is void."

Renumber: subsequent section

And, as amended, be concurred in. Report adopted.

HB 289, be amended as follows:

1. Title, line 16.

Following: "SECTION"

Strike: "61-8-401"

Insert: "61-8-404"

And, as amended, be concurred in. Report adopted.

HB 317, be amended as follows:

1. Page 2, line 3 through line 4.

Following: "affected" on line 3

Strike: remainder of line 3 through "shelter" on line 4

2. Page 2, line 4.

Following: " ; "

Strike: "and"

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

3. Page 2, line 5.

Following: line 4

Insert: "(b) require the defendant to pay all reasonable costs of necessary care of the affected animal that are incurred by a public or private animal control agency or humane animal treatment shelter; and"

4. Page 2, line 5.

Strike: "(b)"

Insert: "(c)"

And, as amended, be concurred in. Report adopted.

NATURAL RESOURCES (Tash, Chairman):
HB 584, be amended as follows:

3/21/2003

1. Title, line 5.

Following: "ACT;"

Insert: "AMENDING SECTION 75-10-743, MCA;"

2. Title, line 6.

Following: "REPEALING"

Insert: "SECTION 75-10-752, MCA, AND"

3. Page 1.

Following: line 10

Insert: "**Section 1.** Section 75-10-743, MCA, is amended to read:

"75-10-743. (Temporary) Orphan share state special revenue account -- reimbursement of claims -- payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) unencumbered funds remaining in the abandoned mines state special revenue account;

(e) interest income on the account;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection

(6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) ~~(a)~~ On August 21, 2002, \$1,000 is transferred from the orphan share fund to the general fund. If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.

~~(b) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.~~

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. (Terminates June 30, 2005--sec. 30, Ch. 415, L. 1997.)"

Renumber: subsequent sections

4. Page 1, line 11.

Following: "Section"

Insert: "75-10-752, MCA, and section"

Strike: "is"

Insert: "are"

And, as amended, be concurred in. Report adopted.

PUBLIC HEALTH, WELFARE AND SAFETY (O'Neil, Chairman):

3/20/2003

HB 557, be concurred in. Report adopted.

HB 585, be concurred in. Report adopted.

HB 703, be amended as follows:

1. Page 5, line 30.

Strike: "including"

Insert: "which may include"

2. Page 6, line 3 through line 4.

Following: "efforts" on line 3

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

Strike: "1" on line 3 through "2" on line 4

And, as amended, be concurred in. Report adopted.

March 22, 2003

The Honorable Bob Keenan
President of the Senate
State Capitol
Helena, Montana 59620

Dear Senator Keenan:

Please be informed that I have signed **Senate Bill 51** sponsored by Senator Bohlinger and **Senate Bill 69** sponsored by Senator Nelson on March 20, 2003.

Sincerely,

JUDY MARTZ
Governor

March 20, 2003

The Honorable Bob Keenan
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Doug Mood
Speaker of the House
State Capitol
Helena, MT 59620

RE: House Bill 87

Dear President Keenan and Speaker Mood:

As of today, I have received additional information that removes the need for the amendment proposed on March 19, 2003. Therefore, I am requesting that you reject the proposed amendment on **House Bill No. 87**.

Sincerely,

JUDY MARTZ
Governor

March 20, 2003

The Honorable Doug Mood
Speaker of the House

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

State Capitol
Helena, Montana 59620

The Honorable Bob Keenan
President of the Senate
State Capitol
Helena, Montana 59620

Dear Speaker Mood and President Keenan:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments House Bill 94, **"AN ACT REVISING AND CLARIFYING THE PUBLIC PARTICIPATION AND NOTICE REQUIREMENTS FOR OPEN MEETINGS; PROVIDING THAT AN AGENDA FOR AN OPEN MEETING MUST INCLUDE AN ITEM ALLOWING PUBLIC COMMENT ON ANY PUBLIC MATTER WITHIN THE JURISDICTION OF THE AGENCY CONDUCTING THE MEETING; CLARIFYING THAT AN AGENCY MAY NOT TAKE ACTION ON ANY MATTER DISCUSSED UNLESS SPECIFIC NOTICE OF THAT MATTER IS INCLUDED ON AN AGENDA AND PUBLIC COMMENT HAS BEEN ALLOWED; CLARIFYING THAT THE GOVERNOR'S DUTY TO ENSURE THAT AGENCIES HAVE POLICIES AND PROCEDURES TO FACILITATE PUBLIC PARTICIPATION APPLIES TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; AMENDING SECTION 2-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"** for the following reasons.

As passed, House Bill No. 94 requires that public bodies of state and local government include on the agenda of a "meeting," as defined in the open meeting law, an item allowing public comment on any public matter that is within the jurisdiction of the body. The bill also prohibits a public body from taking action on any matter unless it has accepted public comment.

One of the main functions of many public bodies of state government is to decide contested case matters. HB 94 would require these state government boards and commissions to allow the public to comment on contested case matters. This is inconsistent with the Montana Administrative Procedure Act, which provides that the decision on a contested case must be based on the record. The record must be developed in an adversarial adjudicative process similar to court procedures. Public comment on contested cases, and other adjudicative proceedings, is therefore inappropriate.

Also, House Bill No. 94 may allow two opportunities for comment on the same matter at the same public meeting. This could occur when the agenda for the meeting contains an item inviting public comment on a matter. House Bill No. 94 may require the public body to accept public comment under that item and again during the "open mike" period that the bill requires. This second comment opportunity would unnecessarily lengthen meetings for the public-spirited Montanans who serve on our state and local government boards and commissions.

The amendments I am proposing would eliminate duplicative comment periods during a meeting and exempt contested case and other adjudicative proceedings from the public comment requirement. Rep. Lawson has been contacted and agrees with these amendments.

Sincerely,

JUDY MARTZ
Governor

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

GOVERNOR'S AMENDMENTS
TO **HOUSE BILL 94**

1. Title, line 10.

Following: line 9

Insert: "CLARIFYING WHAT CONSTITUTES A PUBLIC MATTER;"

2. Page 1, line 18.

Following: "(1)"

Insert: "(a)"

3. Page 1, line 22.

Following: "matter"

Insert: "that is not on the agenda of the meeting and that is"

4. Page 1, line 27.

Following: line 26

Insert: "(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings."

MESSAGES FROM THE OTHER HOUSE

HB 224 - The House acceded to the request of the Senate and herewith transmits **HB 224** for reconsideration:

3/20/2003

FIRST READING AND COMMITMENT OF BILLS

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

SB 483, introduced by Keenan, Zook (by request of the Senate Finance Standing Committee), referred to Finance and Claims.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Pease in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

HB 443 - Senator McGee moved **HB 443** be concurred in. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Butcher, Curtiss, DePratu, Esp, Gebhardt, Glaser, Grimes, Laible, Mahlum, Mangan, McGee, McNutt, O'Neil, Perry, Roush, Shea, Sprague, Stapleton, Story, Tash, Taylor, Thomas, Zook, Mr. President.

Total 28

Nays: Bohlinger, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Hansen, Harrington, Johnson,

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

Kitzenberg, Nelson, Pease, Ryan, Squires, Stonington, Toole, Tropila, Wheat.
Total 19

Absent or not voting: None.
Total 0

Excused: McCarthy, Schmidt, Tester.
Total 3

HB 656 - Senator Cooney moved **HB 656** be concurred in. Motion carried unanimously.

Senator Grimes excused at this time.

HB 683 - Senator McGee moved **HB 683** be concurred in. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cromley, Curtiss, DePratu, Esp, Gebhardt, Glaser, Harrington, Johnson, Kitzenberg, Laible, Mahlum, McCarthy, McGee, McNutt, Nelson, O'Neil, Perry, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Thomas, Tropila, Wheat, Zook, Mr. President.
Total 38

Nays: Cooney, Ellingson, Elliott, Hansen, Mangan, Pease, Roush, Ryan, Toole.
Total 9

Absent or not voting: None.
Total 0

Excused: Grimes, Schmidt, Tester.
Total 3

HJR 4 - Senator Laible moved **HJR 4** be concurred in. Motion carried unanimously.

HJR 5 - Senator Cooney moved **HJR 5** be concurred in. Motion carried unanimously.

HJR 8 - Senator Glaser moved **HJR 8**, second reading copy, be amended as follows:

1. Title, line 5.

Strike: "STATE-TRIBAL RELATIONS COMMITTEE"

Insert: "LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE"

2. Page 1, line 18.

Following: "12 times that"

Strike: "on"

Insert: "of"

3. Page 2, line 9.

Strike: "State-Tribal Relations Committee,"

Insert: "Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to work"

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

4. Page 2, line 11.

Following: "state"

Insert: "to"

5. Page 2, line 28.

Strike: "Committee reports"

Insert: "appropriate committee report"

6. Page 2, line 30.

Strike: "Committee"

Insert: "committee"

Amendment **adopted** unanimously.

HJR 8 - Senator Mangan moved **HJR 8**, as amended, be concurred in. Motion carried with Senator Butcher voting nay.

HB 30 - Senator Curtiss moved **HB 30** be concurred in. Motion carried unanimously.

HB 60 - Senator Tropila moved **HB 60** be concurred in. Motion carried unanimously.

HB 123 - Senator Shea moved **HB 123** be concurred in. Motion carried unanimously.

HB 176 - Senator Nelson moved **HB 176** be concurred in. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 46

Nays: McGee.

Total 1

Absent or not voting: None.

Total 0

Excused: Black, Schmidt, Tester.

Total 3

Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Pease moved the Committee of the Whole report be adopted. Report adopted unanimously.

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 8:00 a.m., Saturday, March 22, 2003. Motion carried.

SENATE JOURNAL
SIXTIETH LEGISLATIVE DAY - MARCH 21, 2003

Senate adjourned at 2:49 p.m.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate