

**MINUTES**

**MONTANA SENATE  
57th LEGISLATURE - SPECIAL SESSION  
COMMITTEE ON RULES**

**Call to Order:** By **CHAIR FRED THOMAS**, on July 26, 2002 at 9:35 A.M., in Room 325 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Fred Thomas, Chair (R)  
Sen. Tom A. Beck, Vice Chair (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Steve Doherty (D)  
Sen. Lorents Grosfield (R)  
Sen. Bob Keenan (R)  
Sen. Ken Miller (R)  
Sen. Linda Nelson (D)  
Sen. Mike Taylor (R)  
Sen. Jon Tester (D)

**Members Excused:** Sen. Mike Halligan (D) Proxy  
Sen. Don Hargrove (R) Proxy  
Sen. Walt McNutt (R) Proxy

**Members Absent:** None.

**Staff Present:** Fredella D. Haab, Committee Secretary  
Greg Petesch, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action:

**CHAIRMAN FRED THOMAS** called the meeting to order and asked **Mr. Greg Petesch, Legislative Branch**, to walk through the process of the Special Session Rule changes.

**Greg Petesch** said the procedure for the temporary Senate Special Session Rules was the same as for the Joint Rules. We started as a basis with the temporary rules adopted for the 2000 Special Session. There were changes that were proposed after I had

discussions with **SEN. THOMAS** and I will point them out as we go through the rules. The change to S30-60 reflects one of the things that was different from the 2000 Special Session and that is the proposed elimination of the ability to have a "Call of the Senate" during the special session. The majority of these rule changes will reflect that concept. The first one reflects the concept that the "Call of the Senate" will not be available.

The second change is to S40-60 also allows more than one reading per day and that is to allow expediting processing of your business. The change to S40-60 also allowed second reading on the same day that you get the printing report without delay.

S50-50 is the call for the Senate implementation provision and the same is true for S50-60 and S50-80. S50-90 required that a reconsideration motion can be disposed of when made and if you reconsider third reading action you can take further action on that same legislative day. One of the reasons for this is that you don't know how long the session is going to last.

S50-170 proposed change also reflects the concept that passing second reading can be placed on third reading on the same day if necessary. The proposed change for S50-190 was an amendment that wasn't considered in Rules Committee by the 2000 Special Session but was adopted by separate motion made by **SEN. HARP** on the floor at the beginning of the session. This was in place for the 2000 Special Session but was not a Rules' Committee proposal.

S50-200 is the change that gets rid of the ability for the "Call of the Senate" and then the changes to S70-30 are also new proposals for this Special Session. You are going to have some confirmation. This eliminates the requirement that the Senate State Administration have a three-day, preliminary report that they circulate prior to giving the formal report to the Senate. That is proposed to be eliminated because of the time consideration again. If you have this three-day requirement for a preliminary report, it could prolong the duration of the session.

The changes to the questions requiring more than a majority vote would reflect the elimination of the "Call of the Senate."

**CHAIRMAN THOMAS** asked for a motion on the proposed changes.

**SEN. MILLER** moved **THE ADOPTION OF THE PROPOSED CHANGES OF THE RULES**.

**CHAIRMAN THOMAS** asked for any discussion or questions.

**SEN. JON TESTER** had questions on S50-190 number four. Could you tell me exactly what that means?

**Mr. Petesch** said the way the rules would work is that if a Senator wanted to vote in absentia the Committee of the Whole would have to vote to allow that to happen. Currently you do not allow absent voting. You allow pairs. You do not allow absent voting. When someone proposed to vote in an absentia, the Committee of the Whole would have to approve a motion to allow that to happen.

**SEN. TESTER** asked if it did away with pairs on third reading?

**Mr. Petesch** said the pairs are still within the rules. **SEN. TESTER** said that this allowed voting in absentia on second reading. Has that ever been allowed in the past? **Mr. Petesch** agreed that it is done in the House but it has never been done in the Senate.

**PRES. BECK** stated that they had the rule available in the last special session. We did it on the floor. We didn't do it previously but he didn't recall using it.

**SEN. STEVE DOHERTY** stated that it was used.

**SEN. TESTER** had a further question. Do the people who vote in absentia get paid?

**CHAIRMAN THOMAS** said that wasn't in our Rules and he didn't know. That's not the question before us now if they get paid or not.

**SEN. TESTER** thought the answer would be helpful. **Mr. Petesch** said they would have to be in attendance for that legislative day at some point to receive pay.

**SEN. COCCHIARELLA** remembered having great debates with **CHAIRMAN THOMAS** over pairs versus absentee voting processes and you argued vehemently against absentee voting. She wanted to know what he envisioned here as to the process of absentee voting.

**CHAIRMAN THOMAS** stated that upon reflecting back upon your arguments that you had made, I thought in this case you were right. We have already prepared the absentia voting slip because we copied them from the House of Representatives and put the State Senate on them.

**SEN COCCHIARELLA** said that if he had agreed with me for the first time and thinks this is a bright idea she wanted to know the procedure for being sure that you are voting as that member would vote.

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**CHAIRMAN THOMAS** thought that it would be up to the leadership of each party and they would control the slips for absentee voting. They would be handled as the absentee slips and pairs are now handled. That is the direction of our caucus. Whatever the direction the Democrats take, that would be up to them.

**SEN. COCCHIARELLA** knew that when the rules changed and this was a very careful consideration in the House, we made sure that the whips of each caucus contacted or that legislator contacted the leadership to be sure that their wishes were reflected in their absentee vote. On the way over here I listened to a long discussion on NPR about people stealing ballots and absentee ballots at is happening in Texas. She thought they needed to make sure that we add to the rules that every effort will be made for each member's vote are gathered in advanced or to contact that legislator before a vote is made for them. There was controversy the only time that we used this in that session. I think we have to be sure if we are going to do this, just like the House did it, we do outreach or that person who is gone and has given the word on how they are going to vote - not that it be turned over to you, or you, or somebody else. There are too many times we have differences in representing our constituents that are not exactly the party's point of view.

**Motion:** **SEN. COCCHIARELLA** moved to amend this rule in some way to say that the absentee votes will only be made if that absent member has made their wishes know somehow.

**SEN. TESTER** asked how in the House did they make some of their wishes known on second reading. A debate should be such that an amendment would be put on that bill that would change it. There has been many bills that have an amendment put on it on second reading and it changes my vote and I had to be there to hear the discussion on that amendment. If you are voting on absentia on second reading when it is amended how can you possibly know how that person would vote.

**SEN. COCCHIARELLA** said what they did in the House and when someone left, our whips were responsible to contact that person or that person contacted them. We always knew in advance what the agenda was on second reading. I know special sessions are different and the agenda can be anything all day long and several times a day. I am just r=trying to protect that person's representation of its constituents and make sure we have some integrity in this process rather than a blanket pocket full of votes for Fred or a pocket full for Steve. That would not be acceptable as a legislator having someone or just anyone or that

person made an amendment and she might want to withdraw that motion for an amendment to say that I could say who would be placing my vote for me that I would think would best represent how I would fell on an issue which may be different than Steve's and most likely different than Fred's.

**CHAIRMAN THOMAS** said she could change her motion if she wished.

**SEN. COCCHIARELLA** said she withdrew her motion so she could think about it.

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**CHAIRMAN THOMAS** said this proposed rule as it is written does not give that vote to the leadership. If you were gone one day, you could tell the leadership that she wanted to vote with **SEN.**

**MILLER** today in my absence or **SEN. NELSON** and that is up to you to make those specific instructions clear as a bell. That is the way we operate on our side of the aisle. That is the way we will operate and while there may be a prospect of somebody wanting to vote while they are not there on second reading, it does not give us the latitude in anyway to vote on how we want. Different legislators, in particular our big tent on the Republican side of the aisle, we have a lot of different feelings, thoughts and philosophy and we have to be very careful to match those to how things are voted and make sure that there is a clear case in front of them before they left. **SEN. MILLER** is going to be gone for a few days. We have discussed in general where he is at on things and he has made it very clear where he is at on things. He has made it very clear on how he wants to vote. I think your points are all right on but I don't think we need a rule to do it. I know we don't have a problem in doing that on our side of the aisle and I don't think we need a rule on how to take care of our senators and their district because it is their vote not ours.

**SEN. TESTER** said the point is different because we are talking about second reading now and the bill can be amended and debated. Before we were talking third reading when the bill would not be amended and there was no debate. The discussion was already over. The other side of the coin is that, I respect **SEN.**

**MILLER'S** wanting to be gone, but I have plenty of excuses not to be here myself. Everybody does and I think we have to prioritize the legislators where we will be on August 5th and for however long it will take to get the job done. The fact is that have people sitting in the assembly that need to be somewhere. We have the possibility of getting this wrapped up a whole lot quicker.

**PRES. BECK** didn't look for this rule to be used during the Special Session. It is there in the event that someone wants to record a vote on Second Reading or for that purpose. I take a Special Session in a whole different vein than a regular session. This has been totally out of our control. On a regular session you know you are going to be here. You know you are going to be here up to ninety days. A special session, people have made commitments. I am saying this on **SEN. BISHOP'S** behalf. He had already made his commitment to go to Alaska. **Rosana Skelton, Secretary to the Senate**, won't be here because she had made a commitment. I mean those are things we can't help. It's not that they don't want to be here but it would be big bucks out of their pockets if they don't show up. I personally hope we don't even use this rule, but I guess what we are trying to say is let's make it available if someone wants to record a vote on second reading. I do agree with the fact that we have to be in contact with that person. There are probably times when we can't even be with **SEN. BISHOP**, but I can tell you when **SEN. MILLER** is gone, he will have his cell phone and we will be in contact with him if he wants to record a vote. That's the theory I want to see used if we pass this rule. It is just for the convenience of people who can't be here that would like to record their vote.

**SEN. LORENTS GROSFIELD** didn't disagree with **SEN. TESTER** about amending the bill on second reading and now it is a different bill. If I knew how **SEN. MILLER** was going to vote on it and then it changed and I didn't know how he would vote, I wouldn't be able to vote for him.

**SEN. LINDA NELSON** said if there is going to be a recorded vote on second reading it means it has been a long and contentious debate probably. If we are all sitting there listening diligently trying to make up our own mind while trying to think how the other person is going to make up their mind, and then, as a whip myself, thinking I would have to be not only making up my mind but discussing this and letting someone know on the telephone what is going on, I think it is a major burden and think it is difficult to cast a knowledgeable vote for someone else in this circumstance.

**PRES. BECK** stated that it is not a mandatory thing that you have to cast their vote. Let's make that clear.

**SEN. MIKE TAYLOR** has had the pleasure of serving with the senators for six years and I think the integrity of the Senate has been kept for the six years that he had the pleasure of being in the Senate. I don't believe anybody would try to use this amendment in the wrong direction. With the communication factors

that are available to us even though **SEN. BISHOP** might be out of contact a lot, even on top of Denali hones work some time. What I hear the president saying is that every attempt will be made to convey if an amendment is placed on a bill that changes the content of it to that person so they have the ability to make that vote. I think that's good enough. I think it shows we are concerned about the issues. We are concerned that the constituents are represented in the right process and I would say that this is the right direction to go.

**SEN. DOHERTY** had a question. Normally when we propose amendments or changes and things like that **Mr. Petesch** usually explains them but I haven't heard a reason why we are doing any of these things. I can count noses and know what the results are going to be but can someone explain to me why these changes are needed? Why are these changes needed?

**CHAIRMAN THOMAS** asked which change was he speaking to?

**SEN. DOHERTY** said the elimination of the call, moving an on blanket suspension of the rules to move bills from committee to second and third all in one day as opposed to our normal practice of taking them up individually and to allow absentee voting on second.

**CHAIRMAN THOMAS** was happy to address them. First of all we do have a special session in front of us. I think time is of the essence as well as our deliberate action and it very contemplative of everything we are doing is of the essence as well. No time is a big deal. This is a special session and every effort should be made to make it as quick and concise time frame wise as possible. Therefore, you have several things in here that allow those time to move and not to inhibit things from moving along. Voting in absentia was allowed in the last special session and that is where we started on these rules for this special session we are going to have. The only addition to them is the for the "Call of the Senate." As I discussed with you earlier on this week, with **SEN. BISHOP** gone from the session, and my understanding is he is not likely to be here during the session, I don't want the Senate to be subject to a "Call of the Senate" because I don't think it is need or necessary rule in this day and age and I am not willing to recommend to this Rules Committee or the Senate as a whole, that they establish a rule that would allow us to be inhibited time wise for the example of embarrassing somebody or trying to inhibit the majority that is elected by this state of doing their business. That is why I requested specifically the "Call of the Senate" be taken out. I further iterate this now.

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**SEN. DOHERTY** thought, having discussed this matter before with you, that before the railroad begins running on time quickly and efficiently, I think a few matters need to be put on the table. I had visited with respected past members of the Senate on both sides of the aisle. The conclusion was this is extraordinary. This is extraordinary. It is a special session we understood that. We would like to get it done quickly. Everybody understands that. The substance of these recommended rule changes does violence to the Senate as a deliberating body and as a body which I have enjoyed mutual respect between the parties and individuals. The Call of the Senate is an atom bomb kind of rule. It is there to prevent legislators not attending in order to remove the ability to do its business.

The last time there was a "Call of the Senate," according to people much older and wise than I, it was done by the Republican party in the mid eighties. It was lifted when **SEN. MANNING** was taken from his sick bed and managed to totter onto the floor of the Senate in order to case a vote. It apparently passed or didn't pass by one vote. I would make the same pledge publicly that I made now. That if a "Call of the Senate" is made to embarrass a particular member, a call can be lifted by 2/3 vote of the Senate. It is not an automatic thing that happens. We are deliberating people. If there is mischief afoot, the Senate can lift the "Call of the Senate" by itself. I make the pledge that if there was mischief afoot I would join with whomever wanted to lift the "Call of the Senate." Your point is you don't want **SEN. BISHOP** to be embarrassed. I may not want **SEN. TESTER** to be embarrassed if he has to go take care of his farm and be gone. I certainly would object to anybody having a "Call of the Senate" if he were called away for some emergency. That was number one.

Number two: More than one reading of blanket suspension of the rules can advance the session. That is remarkable. I have not known in my time in the Senate, in the majority or the minority, during special sessions, when we were close to getting out of here, do you think it would be impossible to get a 2/3 suspension to get the heck out of town. I don't. It is done on a bill by bill basis, because the Senate deliberates. When we need to move something people get together and say "let's move it" and it is done. Do we need an advance to increase the skids. That's all it does. It diminishes the deliberative process of the Senate.

The last one is absentee voting. There is a constitutional provision, and I know we don't like to talk about the constitution around here, but pairing on third is suspect. We

have always know that and there has been this gentleman/gentlewoman agreement that we are not going to upset the apple cart here and that we will allow pairs on third reading. We have been very devote of the fact that we don't allow absentee vote on second reading. That it was done in the 2000 special session was wrong. Flat out wrong. It has never been done other than that in the Senate and if you are willing to toss out that tradition of people making up their mind and casting an intelligent and informed vote on the basis of debate. I have voted for stuff and then changed my mind as a result of the debate, where I walked in and was absolutely sure I was voting one way and as a result of my colleagues debate, I changed my mind. That is why people elected us and that is why they sent us up here.

It's about mutual respect. If you want to get the job done, you are going to get the job done. We know that. You've got the votes to do it. It is a question about do we violence the integrity of the body as an institution and you don't need to do this. There is no need to do this. Absolutely none and I would urge you not to do it.

*{Tape : 1; Side : A; Approx. Time Counter : 31.3}*

**CHAIRMAN THOMAS** stated that the rules were very similar to prior utilized rules. I think your characterization of these are absolutely out of order and should be stricken from the record. It only leaves me to one belief is that you guys are up to mischief in the session has to do with politics. It doesn't have anything to do with respect or mutual respect or that kind of baloney you talked about. It has to do about politics, it has to do about getting something in the paper, and it has something to do with the U.S. Senate race. If you want respect let's make it mutual. Any further discussion.

**SEN. MILLER** couldn't agree with him more. It is pretty obvious that the reality of this is geared towards **SEN. BISHOP** and myself. It is to allow our constituents to be represented. You may not think I have not put my priorities in order and that is fine. My priorities belong to my family apart from being a Senator. I sure wish my pocketbook, which we have spent and bought for this vacation for my family, prepaid for, is non refundable to Florida. Now with that said I made the decision to go forward with that. A special session is unique. We didn't know this was coming and I think that it is important that my constituents be represented. I have a cell phone. I'll be in contact. I want to vote. If there is a discussion coming up and these individuals who worked with eight years and pretty well know me, just as you do, on whether it is going to be something I

would not support at all if they can't reach me on the cell phone. All we are talking about is common sense, respect for my constituents, respect for me as a Senator and to be able to do my job and cast my votes for them in the Senate during the special session. That is all it is about.

**PRES. BECK** spoke to **SEN. DOHERTY** and the other side of the aisle. I have always tried to be pretty fair as President of the Senate. What I am saying on these particular, there is nothing in these amendments that is going to limit the debate of these bills. There is nothing in these amendments that we are going to railroad through. I am saying this in all honesty. When we talk about going from second to third reading on the same day, we will probably be meeting twice in a day. We will do all the ramifications that have to be done. The bill will be read over the rostrum in a proper form. We will have second reading. We might come back in the same afternoon and do third readings on that bill as we go through the process. If there seems to be a problem, you will identify with that. If we start to try to play politics on the floor too as the majority party, you will tell us when we are out of line and I expect you to do that. These rule changes, especially the "Call of the Senate," remember this five members of that legislature, whether you've got control of them, or whether we have control of them, can stand up and put that call in. Now we have to go to the 2/3. Now we can play the games. I do not want to get in that position because we do have a member in Alaska. You know that we do. The first thing we have to do is we have to make every effort to get some sheriff to find this guy and head him home. I mean the reality of that happening is very slim, I agree with that. The reality of us abusing the system by getting rid of the call is very slim also. I am saying, go along with these rules because we are not up to any hanky panky with them. We are trying to expedite the process. This is a special session. We want to get in town and we want to go home. The longer we drag this out I don't think it is a benefit for you guys or for us either one. Let's get in here, get our work done, and let's go home.

**SEN. DOHERTY** appreciated the president's comments. I know them to be solid. What I was saying to **SEN. MILLER** it was not an attempt to embarrass anybody. If I had bought the tickets I'd be gone but your constituents will be served on third reading. The notion of absentee votes on second reading I think is wrong. The Senate ought not to follow the House's example. I really believe that.

**SEN. NELSON** told the committee that they were not up to mischief. We really are not up to mischief. We are not looking for a Call of the House. We believe you should be able to trust us in this

too. We realize we are not driving the bus but we would at least like to be on the bus. We don't intend to do anything like that. We don't feel that you have to alter the rules to prevent us from the right to do that. We just think that it is very important that we all try to get along with this and that we work as a cohesive body and I hope we are able to do that.

**CHAIRMAN THOMAS** asked for further discussion and seeing none ask for a voice vote on adoption of the rules.

**MOTION: CARRIED BY VOICE VOTE.**

ADJOURNMENT

Adjournment: 10:10 A.M.

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SEN. FRED THOMAS, CHAIR

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FREDELLA D. HAAB, Secretary

FT/FH

**EXHIBIT**(rus-7aad)