

**SENATE JOURNAL  
THIRTY-FOURTH LEGISLATIVE DAY**

Helena, Montana  
February 11, 1999

Senate Chambers  
State Capitol

Senate convened at 1:00 p.m. President Crippen presiding. Invocation by Reverend Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

Mr. President: We, your committee on Bills and Journal, having examined the daily journal for the thirty-third legislative day, find the same to be correct.

Miller, Chairman

**REPORTS OF STANDING COMMITTEES**

**BILLS AND JOURNAL** (Miller, Chairman): 2/11/1999  
Correctly printed: SB 81, SB 299, SB 424, SB 425, SB 426, SB 427, SB 428, SB 429, SB 430, SB 431, SB 432, SB 433, SB 434, SB 435, SB 436, SB 437, SB 438, SJR 9.  
Correctly engrossed: SB 111, SB 229, SB 242, SB 245, SB 301, SB 348.  
Correctly enrolled: SB 21, SB 55, SB 77.  
Examined by the sponsor and found to be correct: SB 21, SB 55, SB 77.  
Signed by the President at 11:20 a.m., February 11, 1999: SB 6, SB 76.  
Signed by the Speaker at 1:52 p.m., February 10, 1999: SB 4, SB 28, SB 30, SB 34, SB 51, SB 106, SB 141.

**AGRICULTURE, LIVESTOCK AND IRRIGATION** (Jabs, Chairman): 2/11/1999  
**SB 327**, introduced bill, be amended as follows:

1. Title, line 4.

**Following:** "FEE FOR"

**Insert:** "RECORDING,"

**Following:** "RERECORDING"

**Insert:** ", OR TRANSFERRING"

2. Page 1, line 12.

**Strike:** "establish,"

3. Page 1, line 13.

**Following:** "charge"

**Strike:** ", "

**Following:** "fee"

**Insert:** "of \$100"

4. Page 1, lines 19 and 20.

**Strike:** "The" on line 19 through "\$100." on line 20

5. Page 1, line 27.

**Following:** "FOR"

**Insert:** "RECORDING,"

**Following:** "RERECORDING"

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**Insert:** ", OR TRANSFERRING"

6. Page 1, line 29.

**Following:** "for"

**Insert:** "recording,"

**Following:** "rerecording"

**Insert:** ", or transferring"

7. Page 1, line 30.

**Following:** "for"

**Insert:** "recording,"

**Following:** "rerecording"

**Insert:** ", or transferring"

And, as amended, do pass. Report adopted.

**BUSINESS AND INDUSTRY** (Hertel, Chairman):  
**SB 240**, introduced bill, be amended as follows:

2/11/1999

1. Title, page 1, line 8.

**Following:** "CONTRACTOR;"

**Insert:** "ALLOWING SUBCONTRACTORS TO PARTICIPATE IN MAKING REQUIRED DEPOSIT OBLIGATIONS AND TO RECEIVE A PRO RATA SHARE OF THE INTEREST EARNED ON THOSE DEPOSITS;"

**Following:** "ENFORCEMENT;"

**Insert:** "AMENDING SECTION 18-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE"

2. Title, page 1, line 9.

**Strike:** "PROVIDING"

3. Page 1, line 13 through line 29.

**Strike:** section 1 in its entirety

**Insert:** "**Section 1.** Section 18-1-301, MCA, is amended to read:

**"18-1-301. Contractor withdrawals -- deposit of obligations.** (1) The contractor under any contract made or awarded by the state of Montana or any department, agency, or political subdivision ~~thereof~~ of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district, including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances ~~thereto~~ to a road or highway, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under ~~such the~~ the contract ~~which that~~ are retained by the state of Montana or any department, agency, or political subdivision ~~thereof~~ of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district pursuant to the terms of ~~such the~~ the contract, provided the contractor shall deposit with the contracting agency:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

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(2) Deposited obligations ~~shall~~ must be at least equal in value to the amount so withdrawn from payments retained under ~~such~~ the contract.

(3) Except as provided in subsection (4), all interest accrued in the accounts of deposits required under this section must be paid to the contractor.

(4) The contractor shall extend to the contractor's subcontractors the opportunity to participate in making the deposits required in subsection (1). Interest accrued in deposit accounts in which subcontractors participate must be distributed on a pro rata basis by the contractor to the participating subcontractors."

**Insert:** "NEW SECTION. Section 2. Limit on retainage for public contracts. (1) The maximum retainage applied to construction contracts administered by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district may not exceed 5% if the contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by a government entity, as provided for in subsection (1), from a contractor is the maximum retainage percentage that a contractor may withhold from a subcontractor.

(3) For the purposes for this section, "retainage" means the ratio, in percent, of funds retained to the total amount to be paid to the contractor by the government entity."

**Renumber:** subsequent sections

4. Page 2, line 2.

**Strike:** "A"

**Insert:** "Except for residential construction, a"

5. Page 2, line 15 through line 17.

**Strike:** section 3 in its entirety

**Renumber:** subsequent sections

6. Page 2, lines 19 and 21.

**Strike:** "1"

**Insert:** "2"

7. Page 2, lines 22 and 23.

**Strike:** "2"

**Insert:** "3"

8. Page 2, line 24 through line 25.

**Strike:** subsection (3) in its entirety

9. Page 2, following line 25.

**Insert:** "NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 1999."

10. Page 2, line 27.

**Strike:** "October"

**Insert:** "July"

And, as amended, do pass. Report adopted.

**SB 331**, do pass. Report adopted.

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**SB 347**, introduced bill, be amended as follows:

1. Page 7, line 23.

**Strike:** "by"

**Insert:** "on a date set by the board but no later than"

And, as amended, do pass. Report adopted.

**SB 410**, do pass. Report adopted.

**EDUCATION AND CULTURAL RESOURCES** (Toews, Chairman):

2/11/1999

**SB 199**, introduced bill, be amended as follows:

1. Page 7, line 17.

**Strike:** "average daily population (ADP) of the facility for the prior year"

**Insert:** "following information:

- (i) the number of youth detained in the facility over 9 consecutive days during the prior year; and
- (ii) the total number of days the youth in subsection (2)(a)(i) were detained"

2. Page 7, line 19.

**Strike:** "ADP by the per-pupil ANB entitlement set in 20-9-306(10)"

**Insert:** "number of youth detained and the total number of days detained as provided in subsection (2) by a maximum of \$20 a day for each youth"

3. Page 7, line 21.

**Following:** " \_ "

**Insert:** "The total amount of funds expended under this section may not exceed \$100,000 for each of the fiscal years 2000 and 2001. If funds available are insufficient to pay the maximum of \$20 a day for each youth pursuant to this section, any remaining funds must be prorated based on the total number of youth who qualify for educational services under this section."

4. Page 7, line 24.

**Following:** "services"

**Insert:** "provided by certified personnel"

And, as amended, do pass. Report adopted.

**LOCAL GOVERNMENT** (Sprague, Chairman):

2/10/1999

**SB 239**, introduced bill, be amended as follows:

1. Title, line 6.

**Following:** "CHARGES;"

**Insert:** "AUTHORIZING THE DEPARTMENT OF REVENUE TO ASSESS FEES TO PAY FOR THE COST OF DEVELOPING ANY DATABASES NECESSARY TO PROVIDE THE INFORMATION;"

2. Page 1.

**Following:** "boundaries." on line 25

**Insert:** "The department of revenue shall use funds from the property valuation improvement fund to develop any property valuation and assessment system databases necessary to provide the required information."

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(5) The department of revenue may assess a fee on solid waste management boards, as provided in 2-6-110, as reimbursement for the cost of developing any property valuation and assessment system databases necessary to provide the information required by subsection (4). The revenue collected from the fee imposed by the department of revenue may not exceed the cost of developing the necessary databases. The department shall deposit the fee in the property valuation improvement fund."

And, as amended, do pass. Report adopted.

**SB 294**, do pass. Report adopted.

**SB 321**, do pass. Report adopted.

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

2/10/1999

**SB 292**, do pass. Report adopted.

**SB 356**, introduced bill, be amended as follows:

1. Title, line 6.

**Following:** "NEEDS;"

**Insert:** "REQUIRING THAT AT LEAST ONE MEMBER BE A CURRENT OR FORMER HIGHWAY CONSTRUCTION CONTRACTOR;"

2. Page 1.

**Following:** line 25

**Insert:** "(3) Of the members appointed, at least one must be a current or former highway construction contractor. If the member appointed will be actively engaged in the business of highway construction during any part of the member's service on the commission, the member may not vote on the award of any highway construction contract involving the member's highway construction business."

**Renumber:** subsequent subsections

And, as amended, do pass. Report adopted.

**HB 141**, be concurred in. Report adopted.

**MOTIONS**

**SB 111** - Senator DePratu moved consideration of SB 111, on second reading this legislative day, be passed for the day. Motion carried.

**HB 211** - Senator Sprague moved that HB 211 be taken from the committee on Local Government and rereferred to the committee on Business and Industry. Motion carried.

**MESSAGES FROM THE OTHER HOUSE**

House bills passed and transmitted to the Senate for concurrence:

2/10/1999

**HB 236**, introduced by J. Barnett

**HB 334**, introduced by J. Quilici

**HB 430**, introduced by C. Squires

House joint resolution passed and transmitted to the Senate for concurrence:

2/10/1999

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**HJR 15**, introduced by J. Stovall

**FIRST READING AND COMMITMENT OF BILLS**

The following Senate bills were introduced, read first time, and referred to committees:

**SB 439**, introduced by J. Hertel, L. Grosfield, referred to Business and Industry.

**SB 440**, introduced by S. Bartlett, G. Beck, A. Bishop, J. Bohlinger, R. Buzzas, V. Cocchiarella, S. Doherty, B. Eggers, J. Ellingson, D. Ewer, T. Facey, E. Franklin, K. Galvin-Halcro, M. Guggenheim, G. Gutsche, T. Hagener, M. Halligan, H. Harper, D. Harrington, J. Hurdle, G. Jergeson, C. Juneau, S. Kitzenberg, B. Krenzler, J. Lynch, L. McCulloch, R. Peck, G. Roush, D. Shea, S. Stang, E. Swanson, J. Tester, C. Tuss, M. Waterman, B. Wilson, referred to Business and Industry.

**SB 441**, introduced by C. Christiaens, G. Devlin, A. Ellis, J. McKenney, B. Pavlovich, J. Tester, C. Tuss, D. Wagner, referred to Taxation.

**SB 442**, introduced by S. Stang, M. Halligan, referred to State Administration.

**SB 443**, introduced by M. Halligan, referred to Judiciary.

**SB 444**, introduced by D. Mahlum, referred to Taxation.

**SB 445**, introduced by C. Swysgood, B. Tash, referred to Fish and Game.

**SB 446**, introduced by M. Taylor, R. Bitney, E. Clark, B. DePratu, S. Fisher, L. Grinde, D. Haines, D. Hedges, W. McNutt, D. Mood, B. Pavlovich, P. Sliter, R. Somerville, B. Tash, J. Witt, C. Younkin, referred to Business and Industry.

**SB 447**, introduced by E. Franklin, K. Mesaros, R. Peck, J. Quilici, L. Taylor, M. Taylor, referred to Finance and Claims.

**SB 448**, introduced by E. Franklin, C. Christiaens, D. Eck, J. Ellingson, K. Galvin-Halcro, G. Golie, M. Halligan, J. McKenney, K. Mesaros, B. Ryan, C. Tuss, D. Wyatt, referred to Finance and Claims.

**SB 449**, introduced by B. DePratu, referred to Taxation.

**SB 450**, introduced by J. Lynch, D. Harrington, R. Menahan, referred to Judiciary.

**SB 451**, introduced by J. Lynch, D. Harrington, R. Menahan, referred to Judiciary.

**SB 452**, introduced by T. Beck, referred to Business and Industry.

**SB 453**, introduced by T. Beck, referred to Business and Industry.

**SB 454**, introduced by T. Beck, referred to Local Government.

**SB 455**, introduced by J. Tester, R. Peck, referred to Judiciary.

**SB 456**, introduced by B. Wilson, C. Christiaens, F. Thomas, referred to Judiciary.

**SB 457**, introduced by V. Cocchiarella, referred to State Administration.

**SB 458**, introduced by F. Thomas, M. Brainard, referred to Fish and Game.

**SB 459**, introduced by F. Thomas, D. Berry, B. DePratu, D. Mood, M. Taylor, referred to Business and Industry.

**SB 460**, introduced by A. Ellis, P. Bergsagel, L. Grinde, J. Harp, J. Hertel, T. Keating, B. Keenan, W. McNutt, K. Miller, M. Sprague, referred to Education and Cultural Resources.

**SB 461**, introduced by B. Glaser, referred to Judiciary.

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

**SJR 10**, introduced by M. Cole, T. Beck, B. Crippen, S. Doherty, L. Grinde, J. Harp, J. Mercer, E. Swanson, J. Wells, referred to State Administration.

**THIRD READING OF BILLS**

The following bills having been read three several times, title and history agreed to, were disposed of in the

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following manner:

**SB 81** passed as follows:

Yeas: Bartlett, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Mohl, Nelson, Roush, Shea, Sprague, Stang, Taylor, Tester, Thomas, Waterman, Wilson, Mr. President.

Total 42

Nays: Beck, Devlin, Keating, Keenan, Miller, Swysgood, Toews, Wells.

Total 8

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**SB 299** passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**MOTIONS**

Senator Harp moved that the Senate stand in recess until the hour of 1:45 p.m. for purpose of party caucuses.  
Motion carried.

Senate recessed at 1:11 p.m.

Senate reconvened at 1:55 p.m.

Roll Call. All members present. Quorum present.

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**MOTIONS**

Senator Harp moved that items 12 through 16 on the second reading board this legislative day be placed below item 2 in order to allow consideration of Senate bills first. Motion carried.

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

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

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

**SB 352** - Senator D. Mahlum moved SB 352 do pass. Motion carried unanimously.

**SB 325** - Senator J. Hertel moved SB 325 do pass. Motion carried unanimously.

**SB 229** - Senator F. Thomas moved SB 229 do pass. Motion carried as follows:

Yeas: Beck, Berry, Bohlinger, Cocchiarella, Cole, Crismore, DePratu, Devlin, Ellis, Grimes, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, McNutt, Mesaros, Miller, Mohl, Nelson, Swysgood, Taylor, Tester, Thomas, Toews, Wells, Mr. President.

Total 30

Nays: Bartlett, Bishop, Christiaens, Doherty, Eck, Ekegren, Ellingson, Franklin, Glaser, Halligan, Jergeson, Lynch, Mahlum, McCarthy, Roush, Shea, Sprague, Stang, Waterman, Wilson.

Total 20

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Bartlett rose on a point of personal privilege regarding the previous discussion on SB 229. The debate left the body with the impression that the School Board's Association had been left out of the working group that created SB 407 in the 1997 session. She presented evidence that they had been invited to participate and had been fully informed as to meeting times and dates and could have fully participated.

**SB 242** - Senator K. Miller moved SB 242, second reading copy, be amended as follows:

1. Title, page 1, line 4 through page 9.

**Following:** the second "ACT" on line 4

**Strike:** remainder of line 4 through "COMBINATION" on line 9

**Insert:** "ALLOWING ONLY ONE APPRENTICE TO WORK IN EACH SHOP THAT EMPLOYS A QUALIFIED MASTER ELECTRICIAN OR A QUALIFIED JOURNEYMAN ELECTRICIAN; PROVIDING REQUIREMENTS FOR EMPLOYMENT OF ADDITIONAL APPRENTICES"



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2. Page 1, lines 24 through 27.

**Following:** "~~electrician~~"

**Strike:** remainder of line 24 through "COMBINATION" on line 27

**Insert:** "Except as provided in subsection (3), only one apprentice may be employed in each shop that employs a qualified master electrician or a qualified journeyman electrician"

**Following:** " \_ "

**Insert:** "(3) For employment of each additional apprentice, there must be a minimum of two additional journeymen or master electricians, or a combination of the two, who are regularly employed."

**Renumber:** subsequent subsection

Amendment **adopted** unanimously.

**SB 242** - Senator Miller moved SB 242, as amended, do pass. Motion carried as follows:

Yeas: Beck, Berry, Bohlinger, Cole, Crismore, Devlin, Ekegren, Ellis, Grimes, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, McNutt, Mesaros, Miller, Mohl, Swysgood, Taylor, Thomas, Toews, Wells.  
Total 26

Nays: Bartlett, Bishop, Christiaens, Cocchiarella, DePratu, Doherty, Eck, Ellingson, Franklin, Glaser, Halligan, Jergeson, Lynch, Mahlum, McCarthy, Nelson, Roush, Shea, Sprague, Stang, Tester, Waterman, Wilson, Mr. President.  
Total 24

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 245** - Senator M. Waterman moved SB 245 do pass. Motion carried unanimously.

**SB 301** - Senator Keating moved SB 301 do pass. Senator Jergeson expressed a conflict of interest in SB 301 due to his employment by MSU Northern. Senator Keating's motion carried with Senators Cocchiarella, Toews and Waterman voting nay.

**SB 348** - Senator S. Bartlett moved SB 348 do pass. Motion carried unanimously.

Senator Harp moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Crippen in the chair. Chairman Franklin moved the Committee of the Whole report be adopted. Report adopted.

**ANNOUNCEMENTS**

Committee meetings were announced by committee chairmen.

Majority Leader Harp moved that the Senate adjourn until 1:00 p.m., Friday, February 12, 1999. Motion carried.

Senate adjourned at 2:57 p.m.

ROSANA SKELTON

BRUCE CRIPPEN

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Secretary of Senate

President of the Senate