

**SENATE JOURNAL
57TH LEGISLATURE
FORTY-SEVENTH LEGISLATIVE DAY**

Helena, Montana
March 1, 2001

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Beck presiding. Invocation by Reverend Sam Hughes of the Calvary Baptist Church in Helena. Pledge of Allegiance to the Flag.

Roll Call. All members present except Senators Halligan, McCarthy and Taylor, excused. Quorum present.

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

Miller, Chairman

Senator Halligan present at this time.

COMMUNICATIONS AND PETITIONS

February 12, 2001

State of Montana
Fifty-seventh Legislature
State Capitol
Helena, Montana

Dear Senators and Representatives:

As required by 3-1-1126, MCA, the Montana Judicial Standards Commission submits this report to the legislature for the preceding biennium covering the calendar years 1999 and 2000.

Article VII, Section 11, of the 1972 Montana Constitution directs the legislature to create a five member Judicial Standards Commission to accept and consider complaints against Montana judicial officers. The 1973 legislature created the commission and it is attached to the Montana Supreme Court for administrative purposes. The work, investigations, and recommendations of the commission are independent of the Supreme Court. Access to commission records is limited to the commission and its staff.

As in the past, the great majority of complaints against judicial officers concern dissatisfaction with a judge's ruling or decision. The commission cannot, and does not, act on such complaints. It can only consider those matters that may constitute willful misconduct, willful and persistent failure to perform duties, violation of canons of judicial ethics or habitual intemperance.

The commission has repeatedly prepared forms and instructions clearly stating that the Judicial Standards Commission cannot act upon or change judicial decisions. Despite such continuing efforts, most complaints still pertain to a judge's decision and are filed by unsuccessful litigants. These complaints are called "Judicial Opinion" in the attached statistical information.

The commission, by rule, requires that complaints be verified.

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The commission report to the fifty-sixth legislature, (1999 session), showed that five (5) complaints were still pending at the close of 1998. The five (5) pending complaints from 1998 were all reviewed and dismissed early in 1999.

During the calendar year 1999, thirty-nine (39) complaints were filed against judicial officers. After consideration and investigation, no formal charges were ordered filed by the commission. One (1) letter of admonition was written and twenty-five (25) complaints were dismissed. There were thirteen (13) complaints still pending as of December 31, 1999. Of the thirteen complaints pending at the end of 1999, eleven (11) were dismissed; one (1) complaint was closed with a letter of admonition and one (1) was closed with a letter of caution. Action on all 1999 pending complaints was completed by July of 2000.

During the calendar year 2000, forty-three (43) complaints against judicial officers were filed with the commission. After consideration and investigation, no formal charges were ordered filed by the commission. Twenty-one (21) complaints were dismissed; one (1) letter of caution sent; and one (1) letter of admonition sent. Two (2) files were closed without further action as the respondent judge left judicial office.

There were eighteen (18) complaints pending as of December 31, 2000. Of the eighteen (18) complaints pending at the end of 2000, fourteen (14) have since been dismissed; one (1) was closed as the judge is no longer in office; and three (3) complaints are still pending as of this date.

Since 1995, the commission has kept continuous and accurate records of complaints filed against judicial officers. If more than one complaint was filed against a judicial office, and if some action was required, the commission would report such action.

In 1999, there were twenty-four (24) complaints filed against judicial officers who had previous complaints filed against them during the biennium of 1997-998. Of the twenty-four (24) complaints filed, twenty-two (22) complaints were dismissed; one (1) letter of caution sent and one (1) letter of admonition sent by the commission.

During 2000, twenty-eight (28) complaints were filed against judicial officers who had previous complaints filed against them in the past biennium of 1998-99. Of the twenty-eight (28) complaints filed, eighteen (18) complaints have been dismissed; two (2) letters of caution have been sent and eight (8) complaints were still pending as of December 31, 2000.

The revised rules for the Judicial Standards Commission were adopted and published in 1999. Copies of the Canons of Judicial Conduct and Rules for the Judicial Standards Commission are available to the public by contacting the executive secretary at 406-444-2614.

During the 2001-2001 biennium it will be necessary to conduct an unknown number of factual investigations to determine if the complaints have merit. This will, as in the past, require an expenditure of funds for necessary investigative costs. Budget requirements will be submitted through the office of the Supreme Court Administrator.

Should any member of the legislature, or staff, have questions or desire further information, they may contact Sharon Parrish, the commission's executive secretary, or any member of the commission.

Very truly yours,

JOHN WARNER, Chairman
JUDICIAL STANDARDS COMMISSION

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REPORTS OF STANDING COMMITTEES

BUSINESS AND LABOR (Taylor, Chairman): 3/1/2001
HB 138, be concurred in. Report adopted.
HB 234, be concurred in. Report adopted.

JUDICIARY (Grosfield, Chairman): 3/1/2001
HB 176, be concurred in. Report adopted.

STATE ADMINISTRATION (Hargrove, Chairman): 3/1/2001
HB 271, be concurred in. Report adopted.

TAXATION (DePratu, Chairman): 3/1/2001
HB 369, be concurred in. Report adopted.

MESSAGES FROM THE GOVERNOR

February 28, 2001

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

Dear Senator Beck:

Please be informed that effective February 22, 2001, I have appointed the following individual as Supreme Court Judge of the Montana Supreme Court, in accordance with Montana Code Annotated 3-1-1011:

Mr. Jim Rice, Jr., 1525 Williamsburg Rd. Helena, MT 59602 and fulfills the qualifications for being a nominee of the Judicial Standards Commission.

I am attaching a copy of Mr. Rice's biographical information for your convenience when considering Senate confirmation.

If you have questions regarding this appointment, please call Susan Ames, Appointments Advisor, at extension 0575.

Sincerely,

JUDY MARTZ
Governor

MOTIONS

HB 334 - Senator McNutt moved that **HB 334** be taken from the committee on Natural Resources and rereferred to the committee on Local Government. Motion carried.

HB 219 - Senator Grosfield moved that **HB 219** be taken from the committee on Highways and Transportation and

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referred to the committee on Judiciary. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

HB 63, introduced by Dell (by request of the State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee), referred to State Administration.

HB 107, introduced by Eggers, referred to Fish and Game.

HB 146, introduced by Shockley (by request of the Department of Corrections), referred to Judiciary.

HB 151, introduced by Newman (by request of the Department of Corrections), referred to Judiciary.

HB 319, introduced by Galvin-Halcro, R. Brown, Schmidt, Waddill, referred to Highways and Transportation.

HB 452, introduced by J. Whitaker, Lewis, D. Mood, Newman, Olson, referred to State Administration.

HB 492, introduced by P. Clark, Gutsche, referred to Agriculture, Livestock and Irrigation.

HB 529, introduced by Pattison, Bales, Brueggeman, Clancy, Cocchiarella, Devlin, Jackson, Kasten, Kitzenberg, Matthews, McCann, McKenney, Mohl, D. Mood, Musgrove, Olson, Ripley, Roush, Sliter, Steinbeisser, Story, B. Thomas, J. Tropila, Waitschies, J. Whitaker, Wolery, referred to Highways and Transportation.

HB 539, introduced by Mangan, referred to Business and Labor.

HB 543, introduced by R. Brown, Beck, Clancy, Dale, G. Forrester, Kasten, McGee, McNutt, D. Mood, A. Peterson, Sliter, Wolery, referred to Natural Resources.

HB 547, introduced by Davies, Adams, Brueggeman, Kasten, Pattison, Walters, referred to Judiciary.

HB 573, introduced by Bales, Clancy, Grosfield, Olson, Shea, Wolery, referred to Natural Resources.

HB 574, introduced by Golie, referred to Business and Labor.

HB 579, introduced by Juneau, referred to Business and Labor.

HB 582, introduced by Gutsche, referred to Public Health, Welfare and Safety.

HB 589, introduced by Facey, referred to Local Government.

HB 596, introduced by Bitney, referred to Business and Labor.

HB 605, introduced by D. Mood, referred to Natural Resources.

HB 612, introduced by R. Brown, McGee, Sliter, referred to State Administration.

The following House joint resolutions were introduced, read first time, and referred to committees:

HJR 23, introduced by Wanzenried, Bookout-Reinicke, Dell, Grosfield, Keane, Lewis, Lindeen, Schrupf, referred to Highways and Transportation.

HJR 27, introduced by Bales, Clancy, Olson, referred to Natural Resources.

HJR 30, introduced by Story, referred to Highways and Transportation.

**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 Tash in the chair.

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

HB 18 - Senator Cocchiarella moved **HB 18** be concurred in. Motion carried unanimously.

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HB 20 - Senator Grimes moved **HB 20** be concurred in. Motion carried unanimously.

Senator Taylor present at this time.

HB 80 - Senator Bohlinger moved **HB 80** be concurred in. Motion carried as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Cobb, Cocchiarella, Cole, Crismore, DePratu, Ekegren, Ellis, Glaser, Grimes, Grosfield, Hargrove, Holden, Jergeson, Johnson, Kitzenberg, Mahlum, McNutt, Miller, Mohl, Nelson, O'Neil, Roush, Sprague, Stapleton, Tash, Taylor, Tester, Thomas, Wells, Zook, Mr. President.

Total 35

Nays: Christiaens, Doherty, Ellingson, Elliott, Franklin, Halligan, Harrington, Keenan, Pease, Ryan, Shea, Stonington, Toole, Waterman.

Total 14

Absent or not voting: None.

Total 0

Excused: McCarthy.

Total 1

Senator Tester excused at this time.

HB 94 - Senator Thomas moved consideration of **HB 94** be passed for the day. Motion carried.

HB 97 - Senator Hargrove moved **HB 97** be concurred in. Motion carried unanimously.

HB 111 - Senator Christiaens moved **HB 111** be concurred in. Motion carried with Senators Butcher, Taylor, and J. Wells voting nay.

HB 113 - Senator Zook moved **HB 113** be concurred in. Motion carried unanimously.

HB 145 - Senator Cocchiarella moved **HB 145** be concurred in. Motion carried unanimously.

HB 185 - Senator Shea moved **HB 185** be concurred in. Motion carried unanimously.

HB 191 - Senator R. Holden moved **HB 191** be concurred in. Motion carried unanimously.

HB 192 - Senator Stonington moved **HB 192** be concurred in. Motion carried as follows:

Yeas: Berry, Bishop, Bohlinger, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Kitzenberg, Mahlum, McNutt, Mohl, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stonington, Tash, Taylor, Thomas, Toole, Waterman, Wells, Zook, Mr. President.

Total 41

Nays: Butcher, Elliott, Johnson, Keenan, Miller, Nelson, Stapleton.

Total 7

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Absent or not voting: None.
Total 0

Excused: McCarthy, Tester.
Total 2

HB 223 - Senator Halligan moved consideration of **HB 223** be passed for the day. Motion carried.

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

MOTIONS

HB 489 - Senator DePratu moved that **HB 489** be taken from the committee on Taxation and rereferred to the committee on Business and Labor. Motion carried.

HB 94 - Senator Thomas moved that consideration of **HB 94** be postponed until the fiftieth legislative day, March 5, 2001. Motion carried.

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Friday, March 2, 2001. Motion carried.

Senate adjourned at 2:28 p.m.

ROSANA SKELTON
Secretary of Senate

TOM BECK
President of the Senate