

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

Helena, Montana
March 2, 2001

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Beck presiding. Invocation by Reverend Ron Ellis of the Elkhorn Presbyterian Church in Helena. Pledge of Allegiance to the Flag.

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

Senator Keenan present at this time.

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

Miller, Chairman

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL (Miller, Chairman): 3/2/2001
Correctly printed: HB 138, HB 176, HB 234, HB 271, HB 369.
Correctly engrossed: HB 18, HB 20, HB 80, HB 97, HB 111, HB 113, HB 145, HB 185, HB 191, HB 192.

BUSINESS AND LABOR (Taylor, Chairman): 3/2/2001
HB 71, be amended as follows:

1. Title, line 5.

Following: "SECTIONS"

Insert: "39-3-405,"

Following: "39-3-406"

Insert: ", "

2. Page 1, following line 9.

Insert: "**Section 1.** Section 39-3-405, MCA, is amended to read:

"39-3-405. Overtime compensation. (1) ~~No An~~ employer ~~shall may not~~ employ any ~~of his employees~~ employee for a workweek longer than 40 hours unless ~~such the~~ employee receives compensation for ~~his~~ employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which ~~he~~ the employee is employed.

(2) ~~No An~~ overtime provision ~~shall does not~~ apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish ~~said the~~ students with board, lodging, or other facilities ~~shall may not~~ employ ~~said the~~ students for a workweek longer than 48 hours, unless ~~such the~~ students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which they are employed.

(4) The application of the overtime provisions of subsection (1) to the employment of firefighters and law enforcement officers by the state must be consistent with the Fair Labor Standards Act of 1938, as amended, and consistent with regulations promulgated under the act."

Renumber: subsequent sections

3. Page 5, lines 13 through 15.

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Strike: subsection (z) in its entirety

Renumber: subsequent subsection

4. Page 5, line 23.

Following: "salaries"

Insert: "and are applicable to employees of the state of Montana, except that the penalty provisions of 39-3-206 do not apply to minimum wage and overtime claims that are subject to the Fair Labor Standards Act of 1938, in which case liquidated damages as determined under the Fair Labor Standards Act of 1938 apply"

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

HB 172, be amended as follows:

1. Title, line 5.

Following: "COUNTIES"

Insert: "AND EMPLOYEES OF HOSPITAL DISTRICTS"

2. Title, line 5.

Following: ";

Insert: "REQUIRING AN INCREASE IN PAY TO OFFSET ANY REDUCTION IN LEAVE BENEFITS;"

3. Title, line 6.

Following: "COUNTIES"

Insert: "AND THE BOARD OF TRUSTEES OF HOSPITAL DISTRICTS"

4. Title, line 7.

Following: "HOSPITALS"

Strike: "AND"

Insert: ",

Following: "HOMES"

Insert: ", AND HOSPITAL DISTRICTS"

5. Page 1, line 12.

Following: "."

Insert: "(1)"

6. Page 1, line 13.

Following: "county"

Insert: "or an employee of a hospital district"

7. Page 1, following line 13.

Insert: "(2) For any reduction in leave benefits for an employee subject to subsection (1), there must be a corresponding increase in pay."

8. Page 2, line 1.

Following: "county"

Insert: "or the board of trustees of a hospital district"

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9. Page 2, line 2.

Following: "hospital"

Strike: "or"

Insert: ", "

Following: "home"

Insert: ", or hospital district"

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

HB 300, be concurred in. Report adopted.

HB 308, be concurred in. Report adopted.

HB 417, be concurred in. Report adopted.

HIGHWAYS AND TRANSPORTATION (Mohl, Chairman):

3/2/2001

HB 78, be concurred in. Report adopted.

HB 148, be amended as follows:

1. Page 1, line 20.

Following: "is"

Strike: "the" through "30th"

Insert: "5 days after the 25th"

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

HJR 30, be concurred in. Report adopted.

JUDICIARY (Grosfield, Chairman):

3/2/2001

HB 174, be amended as follows:

1. Title, line 4.

Following: "PERSON"

Strike: "UNDER 22 YEARS OF AGE"

2. Title, line 5.

Following: "VIOLATION OF"

Insert: "CRIMINAL POSSESSION OF DANGEROUS DRUGS OR"

3. Title, line 6.

Strike: "INCARCERATION"

Insert: "IMPRISONMENT"

4. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS 45-9-102 AND"

5. Page 1, line 11.

Following: line 10

Insert: "**Section 1.** Section 45-9-102, MCA, is amended to read:

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"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if ~~he~~ the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

(6) A person ~~of the age of 21 years or under~~ convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.""

Renumber: subsequent section

6. Page 1, line 16.

Strike: "incarcerated"

Insert: "imprisoned"

7. Page 1, line 18.

Following: line 17

Strike: "under 22 years of age"

8. Page 1, line 19.

Strike: "incarceration"

Insert: "imprisonment"

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

HB 256, be amended as follows:

1. Page 2, line 30.

Following: "whose"

Strike: "PURPOSEFUL"

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

HB 295, be concurred in. Report adopted.

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LOCAL GOVERNMENT (Mahlum, Chairman): 3/1/2001
HB 83, be concurred in. Report adopted.

HB 130, be concurred in. Report adopted.
HB 221, be concurred in. Report adopted.

STATE ADMINISTRATION (Hargrove, Chairman): 3/1/2001
HB 21, be amended as follows:

1. Page 2, line 10.
Strike: "2003"
Insert: "2005"

2. Page 2, line 27.
Strike: "2003"
Insert: "2005"

3. Page 2, line 28.
Strike: "2003"
Insert: "2005"

4. Page 3, line 23.
Strike: "2003"
Insert: "2005"

5. Page 3, line 24.
Strike: "2003"
Insert: "2005"

6. Page 5, line 11.
Strike: "2003"
Insert: "2005"

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

HB 74, be concurred in. Report adopted.
HB 152, be concurred in. Report adopted.
HB 204, be concurred in. Report adopted.

Senator Harrington excused at this time.

MESSAGES FROM THE OTHER HOUSE

Senate bills concurred in and returned to the Senate: 3/1/2001

SB 54, introduced by Roush
SB 93, introduced by Halligan
SB 214, introduced by Tash

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Senate joint resolution concurred in and returned to the Senate:

3/1/2001

SJR 5, introduced by Roush

MOTIONS

HB 559 - Senator Grosfield moved that **HB 559** be taken from the committee on Business and Labor and rereferred to the committee on Judiciary. Motion carried.

SB 468 - Senator Grosfield moved that **SB 468** be taken from the committee on Judiciary and rereferred to the committee on State Administration. Motion carried.

THIRD READING OF BILLS

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

HB 18, as amended by the Senate, concurred in as follows:

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

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Harrington, McCarthy.

Total 2

HB 20 concurred in as follows:

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

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Harrington, McCarthy.

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Total 2

HB 80 concurred in as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Cobb, 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 34

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

Total 14

Absent or not voting: None.

Total 0

Excused: Harrington, McCarthy.

Total 2

HB 97 concurred in as follows:

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

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Harrington, McCarthy.

Total 2

HB 111, as amended by the Senate, concurred in as follows:

Yeas: Berry, Bohlinger, Christiaens, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Franklin, Glaser, Halligan, Hargrove, Holden, Jergeson, Johnson, Kitzenberg, Mahlum, McNutt, Miller, Mohl, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Tester, Thomas, Toole, Waterman, Zook, Mr. President.

Total 38

Nays: Bishop, Butcher, Cobb, Cocchiarella, Ellis, Grimes, Grosfield, Keenan, Taylor, Wells.

Total 10

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Absent or not voting: None.
Total 0

Excused: Harrington, McCarthy.
Total 2

HB 113 concurred in as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McNutt, Miller, Mohl, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Harrington, McCarthy.
Total 2

Senator Harrington present at this time.

HB 145 concurred in as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McNutt, Miller, Mohl, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: McCarthy.
Total 1

HB 185 concurred in as follows:

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

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Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: McCarthy.

Total 1

HB 191 concurred in as follows:

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

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: McCarthy.

Total 1

HB 192 concurred in as follows:

Yeas: Berry, Bohlinger, 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, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.

Total 40

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

Total 9

Absent or not voting: None.

Total 0

Excused: McCarthy.

Total 1

SPECIAL ORDERS OF THE DAY

The Children's Choir of Hawthorne School in Bozeman, under the direction of Ellen Fraser, entertained the Senate

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with several vocal numbers.

**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 Toole in the chair.

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

HB 223 - Senator Halligan moved **HB 223** be concurred in. Motion carried unanimously.

SB 411 - Senator Kitzenberg moved **SB 411** do pass. Motion carried with Senators Johnson, Mohl, and O'Neil voting nay.

SJR 6 - Senator DePratu moved **SJR 6** be adopted. Motion carried unanimously.

SR 18 - Senator K. Miller moved **SR 18** be adopted. Motion **failed** as follows:

Yeas: Berry, Christiaens, DePratu, Doherty, Elliott, Halligan, Hargrove, Harrington, Holden, Johnson, McNutt, Miller, Pease, Roush, Sprague, Taylor, Tester, Wells, Zook.

Total 19

Nays: Bishop, Bohlinger, Butcher, Cocchiarella, Cole, Crismore, Ekegren, Ellingson, Ellis, Franklin, Grimes, Jergeson, Keenan, Kitzenberg, Mahlum, Mohl, Nelson, O'Neil, Ryan, Shea, Stapleton, Tash, Thomas, Waterman, Mr. President.

Total 25

Absent or not voting: Cobb, Glaser, Grosfield, Stonington, Toole.

Total 5

Excused: McCarthy.

Total 1

SR 18 - At the request of Majority Leader Thomas, the Senate re-voted on **SR 18**. Motion carried as follows:

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

Total 46

Nays: Butcher, Toole.

Total 2

Absent or not voting: Cobb.

Total 1

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Excused: McCarthy.
Total 1

Senator Grimes excused at this time.

HB 141 - Senator R. Holden moved **HB 141** be concurred in. Motion carried unanimously.

HB 154 - Senator Grosfield moved consideration of **HB 154** be placed below SB 325 on the second reading board. Motion carried.

HB 231 - Senator Ekegren moved **HB 231** be concurred in. Motion carried unanimously.

HB 258 - Senator J. Wells moved **HB 258** be concurred in. Motion carried unanimously.

HB 293 - Senator Franklin moved consideration of **HB 293** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

Senator Cobb excused at this time.

HB 325 - Senator Franklin moved **HB 325** be concurred in. Motion carried as follows:

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

Total 43

Nays: Halligan, Harrington, Miller, Tester.

Total 4

Absent or not voting: Cobb.

Total 1

Excused: Grimes, McCarthy.

Total 2

HB 154 - Senator Grosfield moved consideration of **HB 154** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

HJR 3 - Senator K. Miller moved **HJR 3** be concurred in. Motion carried with Senators Ellis and Roush voting nay.

HJR 4 - Senator Ekegren moved **HJR 4** be concurred in. Motion carried as follows:

Yeas: Berry, Bishop, Bohlinger, Butcher, DePratu, Ekegren, Ellingson, Elliott, Ellis, Glaser, Hargrove, Harrington, Holden, Kitzenberg, Mahlum, McNutt, Mohl, Pease, Ryan, Shea, Sprague, Stonington, Tash, Thomas, Toole, Waterman, Zook, Mr. President.

Total 28

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Nays: Christiaens, Cocchiarella, Cole, Crismore, Doherty, Franklin, Grosfield, Halligan, Jergeson, Johnson, Keenan, Miller, Nelson, O'Neil, Roush, Stapleton, Taylor, Tester, Wells.
Total 19

Absent or not voting: None.
Total 0

Excused: Cobb, Grimes, McCarthy.
Total 3

Senator Christiaens assumed the chair.

HJR 7 - Senator Toole moved **HJR 7** be concurred in. Motion carried unanimously.

HB 293 - Senator Stapleton moved **HB 293**, second reading copy, be amended as follows :

1. Page 1, line 12.

Following: "FOLLOWING"

Strike: "ANY"

Insert: "the final"

Amendment **adopted** with Senator Butcher voting nay.

HB 293 - Senator Franklin moved **HB 293, as amended**, be concurred in. After discussion, Senator Franklin made a **substitute motion** that consideration of **HB 293, as amended**, be passed for the day. Motion carried.

HB 154 - Senator Grosfield moved **HB 154**, second reading copy, be amended as follows :

1. Page 1, line 26.

Following: "SYSTEM"

Insert: ", "

Following: "NAD 83"

Insert: ", "

Amendment **adopted** unanimously.

HB 154 - Senator Sprague moved **HB 154**, as amended, be concurred in. Motion carried unanimously.

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

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Majority Leader Thomas moved that the Senate adjourn until 9:00 a.m., Saturday, March 3, 2001. Motion carried.

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Senate adjourned at 2:40 p.m.

ROSANA SKELTON
Secretary of Senate

TOM BECK
President of the Senate