

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

Helena, Montana
January 17, 2003

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Keenan presiding.

Sergeant-at-Arms Cramer escorted President Jefferson and the Lewis and Clark color guard to the well of the Senate. Invocation by Pastor Keith Johnson. President Jefferson led the Senate in the Pledge of Allegiance and gave a short speech to the Senate commemorating the beginning of the Lewis and Clark expedition.

Sergeant-at-Arms Cramer escorted the group from the chambers.

Roll Call. All members present. Quorum present.

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

REPORTS OF STANDING COMMITTEES

BILLS REPORT

Correctly printed: **SB 222, SB 223, SB 224, SB 225.**

Correctly engrossed: **SB 68.**

BUSINESS AND LABOR (Mahlum, Chairman):
SB 144, do pass. Report adopted.

1/16/2003

JUDICIARY (Grimes, Chairman):
SB 30, introduced bill, be amended as follows:

1/17/2003

1. Page 1, line 30.

Following: line 29

Insert: "(5) If a jury trial is requested, the court shall take necessary steps to protect the confidentiality and best interests of the child, including:

(a) scheduling the matter for trial at the earliest date possible, with the matter taking precedence over all other matters;

(b) determining whether the testimony of the child is relevant and necessary;

(c) if the child's testimony is relevant, deciding whether the child will testify by deposition or by other alternative means; and

(d) any other protective measures."

And, as amended, do pass. Report adopted.

SB 39, introduced bill, be amended as follows:

1. Title, line 5 through line 7.

Following: "'AN ACT"

Strike: line 5 through "DATE" on line 7 in their entirety

Insert: "PROHIBITING UNLAWFUL POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER BY A PERSON IN A MOTOR VEHICLE; PROHIBITING CONSUMPTION OF AN ALCOHOLIC BEVERAGE

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

BY A PERSON DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE ON A HIGHWAY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 11 through page 2, line 17.

Strike: everything after the enacting clause

Insert: "NEW SECTION. Section 1. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a motor vehicle, including a bus, taxi, or limousine, that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100."

Insert: "NEW SECTION. Section 2. Unlawful consumption of alcoholic beverage while driving or in actual physical control of motor vehicle on highway. (1) A person commits the offense of unlawful consumption of an alcoholic beverage in a motor vehicle if the person knowingly consumes an alcoholic beverage while the person is driving or in actual physical control of a motor vehicle on a highway.

(2) A person convicted of the offense of unlawful consumption of an alcoholic beverage in a motor vehicle shall be fined an amount not to exceed \$100."

Insert: "NEW SECTION. Section 3. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains not less than 0.5% of alcohol by volume.

(2) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(3) "Camper" has the meaning provided in 61-1-129.

(4) "Highway" has the meaning provided in 61-1-201, including the shoulders of the highway.

(5) "Motor home" has the meaning provided in 61-1-130.

(6) "Motor vehicle" has the meaning provided in 61-1-102.

(7) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open, has a broken seal, or the contents of which are partially removed or are immediately capable of being consumed.

(8) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment."

Insert: "NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61 apply to [sections 1 through 3]."

Insert: "NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval."

And, as amended, do pass. Report adopted.

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

SB 68, introduced bill, be amended as follows:

1. Title, line 5.

Following: "THAT A"

Strike: "PRIOR CONVICTION"

Insert: "CIRCUMSTANCE OR FACT"

2. Title, line 7.

Following: "PLEADED"

Strike: "OR"

Insert: "AND"

Following: "ADMITTED"

Strike: "AND"

Insert: "OR"

3. Page 2, line 3 through line 4.

Following: "EXCEPT" on line 3

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

Insert: "as provided"

And, as amended, do pass. Report adopted.

LOCAL GOVERNMENT (Bohlinger, Chairman):

1/17/2003

SB 24, introduced bill, be amended as follows:

1. Title, line 4.

Following: "COUNTY"

Insert: "OR MUNICIPALITY"

2. Page 1, line 10.

Following: "electronic"

Insert: "county"

3. Page 1.

Following: line 15

Insert: "NEW SECTION. Section 2. Convenience fee for electronic municipal government services. (1) The municipality may charge a convenience fee and may allow municipal departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services."

Renumber: subsequent sections

4. Page 1, line 17.

Following: "instruction."

Insert: "(1)"

5. Page 1.

Following: line 18

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

Insert: "(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 5, part 41, and the provisions of Title 7, chapter 5, part 41, apply to [section 2]."

And, as amended, do pass. Report adopted.

SB 45, introduced bill, be amended as follows:

1. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "18-8-212"

Insert: "AND 85-1-219"

2. Page 1.

Following: line 16

Insert: "**Section 2.** Section 85-1-219, MCA, is amended to read:

"85-1-219. State-owned works -- department approval -- bids -- procurement of goods and services. (1)

For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;
(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department shall solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

(c) the proposed construction costs are \$50,000 or less;

(d) an exigency exists; ~~or~~

(e) the cost of goods, nonconstruction services, or professional services is \$15,000 or less; or

(f) the cost of architectural, engineering, and land surveying services is \$20,000 or less.

(4) (a) Except as provided in subsection (4)(b), the provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded for construction under this section.

(b) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed construction costs are \$50,000 or less.

(c) The requirements of Title 18, chapter 4, do not apply to contracts for which the cost of goods or nonconstruction services is \$15,000 or less.

(d) (i) ~~The~~ Except as provided in subsection (4)(d)(ii), the department may contract for professional services by direct negotiation when the cost of professional services covered by the contract does not exceed \$15,000.

(ii) The department may contract for architectural, engineering, and land surveying services by direct negotiation when the cost of the services covered by the contract does not exceed \$20,000.

(iii) The department may not separate service contracts or split or break projects for the purpose of circumventing the provisions of Title 18, chapter 8, part 2."

Renumber: subsequent section

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

And, as amended, do pass. Report adopted.

SB 98, introduced bill, be amended as follows:

1. Page 1.

Following: line 19

Insert: "NEW SECTION. Section 2. Coordination instruction. If House Bill No. 51 and [this act] are both passed and approved, then the phrase "a personal-care facility" in subsection (5) of [section 1] must read "an assisted living facility"."

And, as amended, do pass. Report adopted.

SB 114, do pass. Report adopted.

SB 150, do pass. Report adopted.

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

1/16/2003

SB 105, do pass. Report adopted.

STATE ADMINISTRATION (Cobb, Chairman):

1/16/2003

SJR 3, introduced bill, be amended as follows:

1. Title, page 1, lines 12 and 13.

Following: "REFUNDING" on line 12

Strike: "OR" through "FOR" on line 13

Insert: "OF"

Following: "IS" on line 13

Strike: "SUBSEQUENTLY"

2. Page 2, line 21.

Following: "(3)"

Strike: "at" through "refund"

Insert: "refunding 100% of"

3. Page 2, line 22.

Following: the first "member"

Strike: "or" through "the member"

Insert: "of the Montana National Guard or other reserve component of the United States armed forces"

4. Page 2, lines 22 and 23.

Following: "for the" on line 22

Strike: "subsequent" on line 22 through "year" on line 23

Insert: "term in which the member was called to active duty"

And, as amended, do pass. Report adopted.

ADVERSE COMMITTEE REPORT

JUDICIARY (Grimes, Chairman):

1/17/2003

SB 116, do **not** pass.

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

MOTIONS

SB 116 - Senator Grimes moved **SB 116** be taken from Committee Reports and rereferred to the committee on Judiciary. Motion carried.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

1/16/2003

HB 34, introduced by Jacobson

HB 35, introduced by Jacobson

HB 37, introduced by Sinrud

HB 41, introduced by Noennig

HB 45, introduced by Lawson

HB 91, introduced by Facey

HB 179, introduced by Matthews

HB 182, introduced by Rome

MOTIONS

SB 82 - Senator Kitzenberg moved that Elliott be added as sponsor to **SB 82**. Motion carried.

SB 96 - Senator Kitzenberg moved that Black, Grimes, Keenan, Nelson, Shea and Tester be added as sponsors to **SB 96**. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SB 226, introduced by DePratu, Bergren, Bookout-Reinicke, Brueggeman, Carney, P. Clark, Cocchiarella, Cooney, Golie, Juneau, Kitzenberg, Laible, Lenhart, Mahlum, McCarthy, Musgrove, Pattison, Pease, Rice, Ripley, D. Ryan, Wilson, Windy Boy, referred to Judiciary.

SB 227, introduced by Wheat, referred to Local Government.

SB 228, introduced by Taylor, DePratu, Grimes, F. Thomas, referred to Business and Labor.

SB 229, introduced by F. Thomas, R. Brown, referred to Business and Labor.

SB 230, introduced by Cromley, referred to Business and Labor.

SB 231, introduced by Cromley, referred to Business and Labor.

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

HB 16, introduced by Haines (by request of the Office of Budget and Program Planning), referred to Finance and Claims.

HB 21, introduced by Smith, referred to State Administration.

HB 34, introduced by Jacobson (by request of the Department of Administration), referred to State Administration.

HB 35, introduced by Jacobson (by request of the Department of Military Affairs), referred to Business and Labor.

HB 36, introduced by Lawson (by request of the Department of Administration), referred to Business and Labor.

HB 37, introduced by Sinrud, referred to State Administration.

HB 39, introduced by Gallik (by request of the Department of Military Affairs), referred to State Administration.

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

HB 41, introduced by Noennig (by request of the Legislative Council), referred to Legislative Administration.

HB 45, introduced by Lawson (by request of the Department of Administration), referred to Business and Labor.

HB 46, introduced by Haines (by request of the Department of Natural Resources and Conservation), referred to Finance and Claims.

HB 49, introduced by Haines (by request of the Department of Public Health and Human Services), referred to Business and Labor.

HB 50, introduced by Haines (by request of the Department of Public Health and Human Services), referred to Business and Labor.

HB 65, introduced by Matthews (by request of the Department of Labor and Industry), referred to Business and Labor.

HB 91, introduced by Facey, referred to Legislative Administration.

HB 117, introduced by Kaufmann (by request of the Department of Revenue), referred to Business and Labor.

HB 172, introduced by Gallik (by request of the Department of Administration), referred to Business and Labor.

HB 179, introduced by Matthews (by request of the State Auditor), referred to Business and Labor.

HB 182, introduced by Rome (by request of the Department of Commerce), referred to Business and Labor.

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

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

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

SB 28 - Senator Mangan moved **SB 28** do pass. After discussion, **SB 28** was moved to the bottom of the second reading board for purpose of amendment.

SB 36 - Senator Grimes moved **SB 36** do pass. Motion carried unanimously.

SB 56 - Senator Keenan moved **SB 56** do pass. Motion carried unanimously.

SB 64 - Senator Keenan moved **SB 64** do pass. Motion carried unanimously.

SB 28 - Senator Perry moved **SB 28**, second reading copy, be amended as follows :

1. Title, line 15 through line 16.

Strike: "INCREASING" on line 15 through "\$30;" on line 16

2. Page 3, line 25.

Strike: "\$30"

Insert: "\$15"

3. Page 3, line 30.

Strike: "\$30"

Insert: "\$15"

Amendment **not** adopted as follows:

Yeas: Bales, Bohlinger, Butcher, Cromley, Curtiss, Ellingson, Esp, Glaser, Grimes, Mahlum, O'Neil, Perry, Ryan,

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

Stapleton, Stonington, Thomas, Toole, Zook, Mr. President.
Total 19

Nays: Anderson, Barkus, Black, Cobb, Cocchiarella, Cooney, DePratu, Elliott, Gebhardt, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mangan, McCarthy, McGee, McNutt, Nelson, Pease, Roush, Schmidt, Shea, Sprague, Squires, Story, Tash, Taylor, Tester, Tropila, Wheat.
Total 31

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 28 - Senator Mangan moved **SB 28** do pass. Motion carried as follows:

Yeas: Anderson, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Grimes, Hansen, Harrington, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Shea, Sprague, Squires, Stapleton, Stonington, Story, Taylor, Tester, Thomas, Tropila, Wheat, Zook, Mr. President.
Total 42

Nays: Bales, Glaser, Johnson, McGee, Ryan, Schmidt, Tash, Toole.
Total 8

Absent or not voting: None.
Total 0

Excused: None.
Total 0

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

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:

SB 5, requiring 2/3 of the entire Legislature, received the following vote:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 40 passed as follows:

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

Total 49

Nays: Curtiss.

Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 71 passed as follows:

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

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 126 passed as follows:

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

Total 50

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 152 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 47

Nays: Curtiss, Grimes, McGee.
Total 3

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SJR 2 adopted as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

MOTIONS

SB 28 - Senator Zook moved that **SB 28** be taken from third reading and rereferred to Finance and Claims. Motion carried.

SENATE JOURNAL
TENTH LEGISLATIVE DAY - JANUARY 17, 2003

SB 65 - Senator DePratu moved that **SB 65** be taken from the committee on State Administration and referred to the committee on Taxation. Motion carried.

SB 138 - Senator DePratu moved **SB 138** be taken from the committee on Energy and Telecommunications and referred to the committee on Taxation. Motion carried.

ANNOUNCEMENTS

Senator Stapleton introduced the Senate pages, gave a brief overview of their future plans, and thanked them for their work this week.

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Monday, January 20, 2003. Motion carried.

Senate adjourned at 2:39 p.m.

ROSANA SKELTON
Secretary of Senate

BOB KEENAN
President of the Senate