

**SENATE JOURNAL
58TH LEGISLATURE
THIRTY-FIRST LEGISLATIVE DAY**

Helena, Montana
February 12, 2003

Senate Chambers
State Capitol

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

Roll Call. All members present except Senators Elliott and Toole, excused. Quorum present.

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

REPORTS OF STANDING COMMITTEES

BILL REPORT

Correctly printed: **SB 368, SB 369, SB 370, SB 371, SB 372, SB 373, SB 374, SB 375, SB 376, SB 377, SB 378, SB 379.**

Correctly engrossed: **SB 190, SB 281, SB 283.**

BUSINESS AND LABOR (Mahlum, Chairman):
SB 198, introduced bill, be amended as follows:

2/12/2003

1. Title, page 1, line 4.

Strike: "FACILITIES"

Insert: "TOWERS"

2. Title, page 1, line 5.

Following: "CARRIER"

Insert: ", "MODIFICATION", "

3. Title, page 1, lines 6 through 8.

Strike: "FACILITY" on line 6

Insert: "TOWER"

Following: ";" on line 6

Strike: remainder of line 6 through "FACILITY;" on line 8

4. Title, page 1, line 9.

Following: "REQUIREMENTS;"

Strike: "AUTHORIZING" through "PERMITS;"

5. Title, page 1, line 10.

Strike: "SECTIONS"

Insert: "SECTION"

Strike: "AND 76-1-106"

6. Page 1, line 26.

Following: line 25

Insert: "(5) "Modification" means a change or alteration that increases the allowable height of a wireless telecommunications tower."

Renumber: subsequent subsections

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7. Page 3, line 2.

Following: "including"

Strike: "wire-based and"

8. Page 3, lines 6 through 16.

Strike: "facility" on line 6

Insert: "tower"

Following: "means" on line 6

Strike: ";" through "(i)" on line 7

Following: "tower" on line 7

Insert: "that exceeds 60 feet in height and that is"

Following: "signals" on line 7

Strike: ";" on line 7 through "stations" on line 16

9. Page 3, line 17.

Strike: "facilities"

Insert: "towers"

10. Page 3, line 18.

Following: "153"

Insert: "or towers used to communicate solely within or between utilities"

11. Page 3, line 20 through page 4, line 30.

Strike: sections 2 and 3 in their entirety

Renumber: subsequent sections

12. Page 5, line 3.

Strike: "facility"

Insert: "tower"

13. Page 5, line 6.

Strike: "facility"

Insert: "tower"

14. Page 5, line 7.

Strike: "facilities"

Insert: "towers"

15. Page 5, line 8.

Strike: "facility"

Insert: "tower"

16. Page 5, line 10.

Strike: "facility"

Insert: "tower"

17. Page 5, line 11.

Following: "(2)"

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Strike: "The" through "subsection (1)"

Insert: "In addition to the notification of intent required in subsection (1), a personal wireless telecommunications carrier"

18. Page 5, line 14.

Strike: "facility" in two places

Insert: "tower" in two places

19. Page 5, line 15.

Strike: "adjacent"

Insert: "adjoining"

20. Page 5, line 20 through line 23.

Strike: sections 5 in its entirety

Renumber: subsequent sections

21. Page 5, line 25.

Strike: "[Sections 3 through 5] are"

Insert: "[Section 2] is"

22. Page 5, line 27.

Strike: "[sections 3 through 5]"

Insert: "[section 2]"

23. Page 5, line 29 through line 30.

Strike: section 7 in its entirety

24. Page 6, line 4.

Strike: "facility"

Insert: "tower"

And, as amended, do pass. Report adopted.

SB 334, introduced bill, be amended as follows:

1. Title, page 1, lines 5 through 7.

Following: "STATE;" on line 5

Strike: remainder of line 5 through "THAT A" on line 6

Insert: "REQUIRING THAT A VACANCY IN THE ONE REQUIRED REPRESENTATIVE"

Following: "DAYS" on line 6

Strike: remainder of line 6 through "VACATED" on line 7

2. Page 1, line 19.

Following: line 18

Insert: "(3) If a vacancy occurs in the one required position, the vendor shall fill the position within 60 days after the vacancy occurs."

And, as amended, do pass. Report adopted.

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ENERGY AND TELECOMMUNICATIONS (Johnson, Chairman): 2/12/2003
SB 247, do pass. Report adopted.

FISH AND GAME (Sprague, Chairman): 2/12/2003
SB 209, do pass. Report adopted.
HB 79, be concurred in. Report adopted.
HB 248, be concurred in. Report adopted.

JUDICIARY (Grimes, Chairman): 2/11/2003
SB 298, introduced bill, be amended as follows:

1. Title, line 5 through line 6.

Following: "AGENCIES;" on line 5

Strike: remainder of line 5 through "OFFICE;" on line 6

2. Page 1, line 12.

Following: "(1)"

Strike: "(a) The"

Insert: "Except as provided in subsection (2), the"

3. Page 1, line 14.

Strike: "(b)"

4. Page 1, line 16 through line 17.

Strike: subsection (c) in its entirety

Insert: "(2) The proper place of trial for an action that challenges the issuance or denial of a permit or certificate by a state agency is in the county in which the permitted or authorized activity would occur. If an activity would occur in more than one county, any county in which the activity would occur is a proper place of trial."

5. Page 1, line 18.

Strike: "(2)"

Insert: "(3)"

And, as amended, do pass. Report adopted.

SB 328, introduced bill, be amended as follows:

1. Title, line 6.

Following: "MEANS OF A"

Insert: "NAME-BASED OR"

2. Page 1, line 15.

Following: "means of a"

Insert: "name-based or"

3. Page 1, line 30.

Strike: "includes"

Insert: "include"

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4. Page 2, line 1.

Strike: "includes"

Insert: "include"

And, as amended, do pass. Report adopted.

SB 329, introduced bill, be amended as follows:

1. Title, line 7.

Following: "ACADEMY;"

Insert: "EXTENDING THE TIME PERIOD FOR RECEIVING TRAINING FROM 6 MONTHS TO 1 YEAR FOR PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, JUVENILE DETENTION AND JUVENILE CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS;"

2. Page 2, line 15.

Strike: "6 months"

Insert: "1 year"

3. Page 2, line 14.

Following: "officer,"

Insert: "juvenile detention or juvenile corrections officer,"

4. Page 2, line 17.

Following: "officer's,"

Insert: "juvenile detention or juvenile corrections officer's,"

And, as amended, do pass. Report adopted.

HB 116, be amended as follows:

1. Page 1, line 20.

Following: "commission"

Insert: ", not to exceed 18,"

2. Page 1, line 22 through page 2, line 10.

Strike: subsections (a) through (r) in their entirety

Insert: "(a) representatives from state departments that are involved in issues of domestic abuse;
(b) representatives of private organizations that are involved in issues of domestic abuse;
(c) medical and mental health care providers who are involved in issues of domestic abuse;
(d) representatives from law enforcement, the judiciary, and the state bar of Montana;
(e) representatives of Montana Indian tribes;
(f) other concerned citizens; and
(g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee."

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

LOCAL GOVERNMENT (Bohlinger, Chairman):

2/12/2003

SB 112, introduced bill, be amended as follows:

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1. Page 1, line 21 through line 23.

Strike: line 21 through line 23 in their entirety

Insert: "(a) fund transfers pursuant to 15-1-122(3)(g);"

Renumber: subsequent subsections

2. Page 1, line 29 through page 2, line 1.

Strike: "A" on page 1, line 29 through "section." on page 2, line 1

3. Page 4, line 11.

Following: "(i)"

Strike: "the 50-cent vessel"

Insert: "50 cents a year for each vessel subject to the"

4. Page 4, line 12.

Following: "(ii)"

Strike: "the 50-cent snowmobile"

Insert: "50 cents a year for each snowmobile subject to the"

Following: "23-2-616(3);"

Insert: "and"

5. Page 4, line 13.

Following: "(iii)"

Strike: "the 50-cent off-highway vehicle"

Insert: "50 cents a year for each off-highway vehicle subject to the"

6. Page 4, line 13 through line 14.

Following: "23-2-803"

Strike: remainder of line 13 through "87-2-202" on line 14

7. Page 5, line 4.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

8. Page 5, line 6 through line 7.

Following: "surcharge" on line 6

Strike: remainder of line 6 through "purposes" on line 7

9. Page 5, line 9.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

10. Page 5, line 13.

Following: "surcharge" on line 13

Strike: "designated to the account in [section 1] for search and rescue purposes"

11. Page 5, line 15 through line 16.

Following: "surcharge" on line 15

Strike: remainder of line 15 through "purposes" on line 16

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12. Page 5, line 18.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

13. Page 5, line 22.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

14. Page 5, line 24 through line 25.

Following: "surcharge" on line 24

Strike: remainder of line 24 through "purposes" on line 25

15. Page 5, line 27.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

16. Page 6, line 1 through line 2.

Following: "fee" on line 1

Strike: remainder of line 1 through "purposes" on line 2

17. Page 6, line 4 through line 5.

Following: "fee" on line 4

Strike: remainder of line 4 through "purposes" on line 5

18. Page 6, line 7 through line 8.

Following: "fee" on line 7

Strike: remainder of line 7 through "purposes" on line 8

19. Page 6, line 11 through line 12.

Following: "fee" on line 11

Strike: remainder of line 11 through "purposes" on line 12

20. Page 6, line 14 through line 15.

Following: "fee" on line 14

Strike: remainder of line 14 through "purposes" on line 15

21. Page 6, line 17 through line 18.

Following: "fee" on line 17

Strike: remainder of line 17 through "purposes" on line 18

22. Page 6, line 21.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

23. Page 6, line 23.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

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24. Page 7, line 1 through line 2.

Following: "surcharge" on line 1

Strike: remainder of line 1 through "purposes" on line 2

25. Page 7, line 4.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

26. Page 7, line 15.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

27. Page 8, line 14.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

28. Page 9, line 8.

Following: "surcharge"

Strike: "designated to the account in [section 1] for search and rescue purposes"

29. Page 9, line 9 through line 10.

Following: "surcharge" on line 9

Strike: remainder of line 9 through "purposes" on line 10

30. Page 11, line 5.

Following: "in the"

Strike: "state general fund"

Insert: "search and rescue account provided for in [section 1]"

And, as amended, do pass. Report adopted.

SB 168, do pass. Report adopted.

SB 191, introduced bill, be amended as follows:

1. Page 4, line 23.

Strike: "it has not been determined"

Insert: "the investigator was unable to determine by a preponderance of the evidence"

2. Page 6, line 23 through line 29.

Strike: subsection (c) in its entirety

Insert: "(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to [the effective date of this act] and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or

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an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i)."

And, as amended, do pass. Report adopted.

SB 246, introduced bill, be amended as follows:

1. Title, lines 5 and 6.

Strike: "PROVIDING" on line 5 through "METHOD" on line 6

Insert: "REQUIRING A BOARD OF COUNTY COMMISSIONERS TO ALTER THE BOUNDARIES OF A FIRE SERVICE AREA TO EXCLUDE AN AREA THAT IS ANNEXED; REQUIRING THAT INFORMATION BE PROVIDED TO AN ANNEXING MUNICIPALITY"

2. Title, line 8 through line 10.

Strike: "DIRECTING" on line 8 through "ANNEXATION;" on line 10

3. Title, line 11.

Strike: "7-2-4716, 7-2-4732, 7-2-4736,"

Following: "7-33-2401"

Strike: ", "

Insert: "AND"

Strike: "AND 15-10-420,"

4. Page 1, line 15 through page 3, line 14.

Strike: section 1 through section 3 in their entirety

Renumber: subsequent sections

5. Page 4, line 8.

Strike: "same"

Strike: "required for the creation of a fire service area"

Insert: "provided in subsection (2)"

6. Page 4, line 10.

Following: "town"

Insert: ", using the procedures provided in subsection (2)"

7. Page 5, lines 2 and 3.

Strike: "The" on line 2 through "assessment." on line 3

8. Page 5, line 5 through page 7, line 4.

Strike: section 6 in its entirety

Renumber: subsequent section

And, as amended, do pass. Report adopted.

SB 288, introduced bill, be amended as follows:

1. Title, line 4 through line 5.

Strike: "INCREASING THE NUMBER OF"

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Insert: "ALLOWING TWO TO FOUR"

Strike: "FROM TWO TO FOUR" on line 5

2. Title, line 5 through line 6.

Strike: "AND" on line 5 through "CITY-COUNTY" on line 6

3. Page 2, line 22.

Following: "~~two~~"

Insert: "two to"

4. Page 2, line 23.

Following: "~~one~~" in both places

Insert: "one or" in both places

5. Page 3, line 7.

Strike: "and"

Insert: "but not to a county that has adopted"

And, as amended, do pass. Report adopted.

SB 325, do pass. Report adopted.

HB 94, be amended as follows:

1. Title, line 8.

Strike: "ITEM" in both places

Insert: "MATTER" in both places

2. Title, line 9.

Following: "AGENDA"

Insert: "AND PUBLIC COMMENT HAS BEEN ALLOWED"

3. Page 1, line 22.

Strike: "item"

Insert: "matter"

4. Page 1, line 23.

Strike: "item"

Insert: "matter"

Following: "agenda"

Insert: "and public comment has been allowed on that matter"

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

HB 238, be concurred in. Report adopted.

TAXATION (DePratu, Chairman):

2/12/2003

SB 320, introduced bill, be amended as follows:

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1. Page 1, line 20.

Following: "value"

Insert: "to account for a loss of taxable value resulting from a statutory change"

And, as amended, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

2/11/2003

HB 201, introduced by Jent

HB 206, introduced by Younkin

HB 303, introduced by A. Olson

HB 378, introduced by Small-Eastman

HB 420, introduced by Lake

MOTIONS

SB 201 - Senator Ryan moved **SB 201** be taken from the committee on Business and Labor and rereferred to the committee on Education and Cultural Resources. Motion **failed** as follows:

Yeas: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Hansen, Harrington, Mangan, McCarthy, Nelson, Pease, Roush, Ryan, Schmidt, Shea, Stonington, Tester, Tropila, Wheat.

Total 19

Nays: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Curtiss, DePratu, Esp, Gebhardt, Glaser, Grimes, Johnson, Kitzenberg, Laible, Mahlum, McGee, McNutt, O'Neil, Perry, Sprague, Squires, Stapleton, Story, Tash, Taylor, Thomas, Zook, Mr. President.

Total 29

Absent or not voting: None.

Total 0

Excused: Elliott, Toole.

Total 2

SB 373 - Senator Liable moved **SB 373** be taken from the committee on Education and Cultural Resources and rereferred to the committee on Judiciary. Motion carried.

HB 114 - Senator Thomas moved consideration of **HB 114** be passed for the day due to the absence of Senator Toole. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SB 380, introduced by Bales, referred to Education and Cultural Resources.

SB 381, introduced by Keenan, referred to Natural Resources.

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SB 382, introduced by Butcher, referred to Education and Cultural Resources.

SB 383, introduced by Bales, referred to Agriculture, Livestock and Irrigation.

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

SJR 18, introduced by Harrington, Newman, Cooney, Cyr, Ellingson, McCarthy, Nelson, Schmidt, Shea, Tester, Weiss, referred to Public Health, Welfare and Safety.

**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 Gebhardt in the chair.

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

SB 241 - Senator Shea moved **SB 241** do pass. Motion carried unanimously.

SB 268 - Senator Shea moved **SB 268** do pass. Motion **failed** as follows:

Yeas: Anderson, Bohlinger, Cocchiarella, Cooney, Cromley, Ellingson, Gebhardt, Hansen, Harrington, Kitzenberg, Mahlum, Mangan, McCarthy, Pease, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stonington, Taylor, Tropila, Wheat.

Total 24

Nays: Bales, Barkus, Black, Butcher, Cobb, Curtiss, DePratu, Esp, Glaser, Grimes, Johnson, Laible, McGee, McNutt, Nelson, O'Neil, Perry, Stapleton, Story, Tash, Tester, Thomas, Zook, Mr. President.

Total 24

Absent or not voting: None.

Total 0

Excused: Elliott, Toole.

Total 2

SB 268 - Senator Thomas moved **SB 268** be **indefinitely postponed**. After discussion, Senator Thomas **withdrew** his motion.

HB 93 - Senator Cocchiarella moved **HB 93** be concurred in. Motion carried unanimously.

HB 168 - Senator Johnson moved **HB 168** be concurred in. Motion carried unanimously.

HB 208 - Senator Wheat moved **HB 208** be concurred in. Motion carried unanimously.

HB 209 - Senator Wheat moved **HB 209** be concurred in. Motion carried unanimously.

HB 233 - Senator Anderson moved **HB 233** be concurred in. Motion carried unanimously.

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Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Gebhardt 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:

HB 47 concurred in as follows:

Yeas: Bales, Barkus, Black, Bohlinger, Cobb, Cocchiarella, Cooney, Cromley, DePratu, Ellingson, Gebhardt, Glaser, Grimes, Hansen, Harrington, 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, Tropila, Wheat, Zook, Mr. President.

Total 43

Nays: Anderson, Butcher, Curtiss, Esp, Johnson.

Total 5

Absent or not voting: None.

Total 0

Excused: Elliott, Toole.

Total 2

HB 88 concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, 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, Tropila, Wheat, Zook, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Elliott, Toole.

Total 2

HB 96 concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, 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, Tropila, Wheat, Zook, Mr. President.

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Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Elliott, Toole.
Total 2

HB 115 concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, 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, Tropila, Wheat, Zook, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Elliott, Toole.
Total 2

HB 143 concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, 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, Tropila, Wheat, Zook, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Elliott, Toole.
Total 2

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

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Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Thursday, February 13, 2003. Motion carried.

Senate adjourned at 2:30 p.m.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate