

**SENATE JOURNAL  
58TH LEGISLATURE  
FORTY-EIGHTH LEGISLATIVE DAY**

Helena, Montana  
March 7, 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 Butcher and Glaser, excused. Quorum present.

The presiding officer has authenticated the daily journal for the forty-seventh legislative day.

**REPORTS OF STANDING COMMITTEES**

**BUSINESS AND LABOR** (Mahlum, Chairman): 3/7/2003  
**HB 49**, be concurred in. Report adopted.  
**HB 50**, be amended as follows:

1. Title, page 1, line 6.

**Following:** "ACT;"

**Insert:** "REDEFINING THE TERM "BOTTLED WATER" TO CONFORM TO FEDERAL LAW;"

2. Page 1, lines 23 and 24.

**Strike:** subsection (2) in its entirety

**Renumber:** subsequent subsections

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

**Following:** "means" on page 1, line 29

**Strike:** remainder of line 29 through "consumption" on page 2, line 1

**Insert:** "water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients, except that it may optionally contain safe and suitable antimicrobial agents"

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

**HB 72**, be concurred in. Report adopted.

**ENERGY AND TELECOMMUNICATIONS** (Johnson, Chairman): 3/6/2003  
**HB 392**, be concurred in. Report adopted.  
**HJR 16**, be adopted. Report adopted.

**FISH AND GAME** (Sprague, Chairman): 3/7/2003  
**HB 101**, be concurred in. Report adopted.  
**HB 137**, be concurred in. Report adopted.  
**HB 187**, be concurred in. Report adopted.  
**HB 411**, be concurred in. Report adopted.

**FINANCE AND CLAIMS** (Zook, Chairman): 3/7/2003  
**HB 471**, be concurred in. Report adopted.  
**HB 636**, be concurred in. Report adopted.

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**LOCAL GOVERNMENT** (Bohlinger, Chairman):  
**HB 142**, be amended as follows:

3/6/2003

1. Page 1, line 15.

**Strike:** "other"

**Following:** "government,"

**Insert:** "other"

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

**HB 408**, be concurred in. Report adopted.

**HB 511**, be concurred in. Report adopted.

**MESSAGES FROM THE GOVERNOR**

February 27, 2003

The Honorable Doug Mood  
Speaker of the House  
State Capitol  
Helena, Montana 59620

The Honorable Bob Keenan  
President of the Senate  
State Capitol  
Helena, Montana 59620

**Re: House Bill 79**

Dear Speaker Mood and President Keenan:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments House Bill 79, "**AN ACT PROVIDING THAT AN INDIVIDUAL OR A NONPROFIT ORGANIZATION IS NOT LIABLE FOR CIVIL DAMAGES RESULTING FROM THE INDIVIDUAL'S OR ORGANIZATION'S PLACEMENT OF A SIGN OR MARKER WARNING OF A HAZARD IN WATER LEGALLY ACCESSIBLE TO THE PUBLIC; PROVIDING CRITERIA FOR THE PLACEMENT OF THE SIGNS OR MARKERS; AND REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO INFORM THE PUBLIC OF THE PLACEMENT, USE, AND SIGNIFICANCE OF WATER HAZARD SIGNS AND MARKERS**" for the following reasons.

**House Bill 79 is pre-empted by federal law.** Federal law preempts state law in regard to aids to maritime navigation without first obtaining authority to do so from the federal government. See, 14 U.S.C.S. Sec. 83 (2003); see also, 33 CFR Sec. 66.01. Currently, there exist numerous federally designated waterways in the state of Montana under the jurisdiction of the United States Coast Guard. House Bill 79 fails to address these federally designated waterways. Moreover, House Bill 79 will give an erroneous belief that it is legal to establish "white plastic milk bottle" buoys in federally designated waterways.

I recommend an amendment to House Bill 79 that addresses the jurisdictional concerns that specify that the provisions of this section apply only to the waters of this state that have been determined to be navigable for purposes of federal

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jurisdiction.

**House Bill 79 to include an effective date.** I also recommend that this bill be amended to have an effective date on passage and approval.

I have enclosed my amendments to that effect. Please be advised that Representative Jackson, the sponsor of the bill, has been informed of my recommendations and has no objections.

Sincerely,

JUDY MARTZ  
Governor

**GOVERNOR'S AMENDMENTS  
TO HOUSE BILL 79**

1. Title, line 7.

**Following:** "WATER"

**Insert:** "THAT IS UNDER THE JURISDICTION OF THE STATE AND THAT IS"

2. Title, line 8.

**Following:** "MARKERS;"

**Strike:** "AND"

3. Title, line 9.

**Following:** "MARKERS"

**Insert:** "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 2, line 5.

**Insert:** "(3) The provisions of this section apply only to the waters of this state that have not been determined to be navigable for purposes of federal jurisdiction over navigation aids."

5. Page 2, line 9.

**Insert:** "NEW SECTION. Section 3. {standard} Effective date. [This act] is effective on passage and approval."

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Speaker of the House  
State Capitol  
Helena, Montana 59620

The Honorable Bob Keenan  
President of the Senate  
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**RE: House Bill 311**

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In accordance with the powers vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with an amendment House Bill 311, "AN ACT INCLUDING EGGNOG IN THE DEFINITION OF "CLASS 1 MILK" INSTEAD OF IN THE DEFINITION OF CLASS II MILK TO CORRELATE WITH FEDERAL STANDARDS; REQUIRING THE DEPARTMENT OF LIVESTOCK TO ASSESS A FEE FOR ALL CLASSES OF MILK SOLD BY A PERSON LICENSED BY THE DEPARTMENT TO BE USED FOR THE ADMINISTRATION OF THE MILK INSPECTION AND MILK DIAGNOSTIC LABORATORY FUNCTIONS OF THE DEPARTMENT; PROVIDING THAT THE FEE MUST BE ESTABLISHED COMMENSURATE WITH COSTS OF THE PROGRAM; REQUIRING LICENSEES TO REPORT TO THE DEPARTMENT ON A MONTHLY BASIS THE VOLUME OF MILK PRODUCED, AMENDING SECTIONS 81-23-101 AND 81-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, for the following reason.

**House Bill 311 to include an effective date of July 1, 2003.** I recommend that House Bill 311 be amended to have an effective date of July 1, 2003. This bill has a current effective date on passage and approval, and if stands, will create a revenue shortfall for the last quarter of FY 03 in the Department of Livestock, Milk Control Bureau. Currently, fees are collected for the Department of Livestock after production and reporting--consequently, a FY quarter in arrears. An effective date of July 1, 2003 allows time for necessary rule changes to take place and allows time for a FY 04 (July 1, 2003) implementation date. This will assure that current revenue income and operation will not be interrupted.

I have enclosed my amendment to that effect. Please be advised that Representative Stoker, the sponsor of the bill, has been informed of my recommendation and has no objection.

Sincerely,

JUDY MARTZ  
Governor

**GOVERNOR'S AMENDMENTS  
TO HOUSE BILL 311**

1. Title, line 11.

**Strike:** "IMMEDIATE"

2. Page 4, line 11.

**Strike:** "on passage and approval"

**Insert:** "July 1, 2003"

**MESSAGES FROM THE OTHER HOUSE**

**House bills** passed and transmitted to the Senate for concurrence:

3/6/2003

**HB 60**, introduced by McKenney

**HB 176**, introduced by Pattison

**MOTIONS**

**HB 640** - Senator Mahlum moved **HB 640** be taken from the committee on Local Government and rereferred to the committee on Business and Labor. Motion carried.

**HB 186** - Senator Mahlum moved **HB 186** be taken from the committee on Business and Labor and rereferred to the committee on Highways and Transportation. Motion carried.

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**HB 384** - Senator Mahlum moved **HB 384** be taken from the committee on Business and Labor and rereferred to the committee on Public Health, Welfare and Safety. Motion carried.

**HB 501** - Senator Mahlum moved **HB 501** be taken from the committee on Business and Labor and rereferred to the committee on Public Health, Welfare and Safety. Motion carried.

**HB 539** - Senator Mahlum moved **HB 539** be taken from the committee on Business and Labor and rereferred to the committee on Taxation. Motion carried.

**FIRST READING AND COMMITMENT OF BILLS**

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

**SB 470**, introduced by Mangan, referred to Taxation.

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

**HB 60**, introduced by McKenney (by request of the Board of Public Education), referred to Finance and Claims.

**HB 141**, introduced by Lange, referred to Judiciary.

**HB 176**, introduced by Pattison (by request of the Department of Natural Resources and Conservation and the Office of Budget and Program Planning), referred to Finance and Claims.

**HB 205**, introduced by Franklin (by request of the State Auditor), referred to Public Health, Welfare and Safety.

**HB 241**, introduced by Shockley, referred to Fish and Game.

**HB 352**, introduced by Laszloffy, P. Clark, Lange, Mood, Wagman, referred to Fish and Game.

**HB 486**, introduced by Kaufmann, Gutsche, Haines, Harris, Jacobson, Roberts, referred to Fish and Game.

**HB 494**, introduced by Wilson, Younkin, referred to Public Health, Welfare and Safety.

**HB 517**, introduced by Wilson, referred to Taxation.

**HB 524**, introduced by Mendenhall, Grimes, referred to Public Health, Welfare and Safety.

**HB 545**, introduced by Haines, referred to Natural Resources.

**HB 553**, introduced by Gallik, Ballantyne, Becker, Branae, Buzzas, Callahan, Carney, Cohenour, Cooney, Cyr, Dowell, Ellingson, Erickson, Facey, Fritz, Gallus, Galvin-Halcro, Gibson, Golie, Gutsche, Harrington, Harris, Jacobson, Jent, Keane, Laslovich, Lawson, Mendenhall, Musgrove, Pease, Raser, D. Ryan, Schmidt, Small-Eastman, Tester, Toole, Wanzenried, Weiss, Wilson, referred to Agriculture, Livestock and Irrigation.

**HB 598**, introduced by Sales (by request of the House Fish, Wildlife, and Parks Standing Committee), referred to Fish and Game.

**HB 599**, introduced by Sales, referred to State Administration.

**HB 610**, introduced by Bergren, Nelson, Roush, referred to Local Government.

**HB 617**, introduced by Mendenhall, Grimes, referred to Natural Resources.

**HB 630**, introduced by A. Olson, Brueggeman, Lawson, Ripley, Rome, D. Ryan, Wilson, referred to Education and Cultural Resources.

**HB 635**, introduced by Forrester, Bohlinger, Cromley, A. Olson, referred to Local Government.

**HB 641**, introduced by Haines, referred to Energy and Telecommunications.

**HB 649**, introduced by P. Clark, referred to Fish and Game.

**HB 656**, introduced by Bitney, referred to Education and Cultural Resources.

**HB 659**, introduced by Kaufmann, Becker, Small-Eastman, referred to Finance and Claims.

**HB 660**, introduced by Buzzas, Branae, Carney, Cohenour, Cooney, Ellingson, Facey, Franklin, Gallik, Gallus, Galvin-Halcro, Gibson, Grimes, Haines, Harris, Hedges, Keane, Keenan, Kitzenberg, Lawson, Lenhart, Lewis, Mood, Newman, Parker, Shockley, Smith, Squires, Story, Tester, B. Thomas, Wilson, Witt, referred to Finance and Claims.

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- HB 661**, introduced by Barrett, referred to Fish and Game.
- HB 673**, introduced by Peterson, Brueggeman, Devlin, Hurwitz, Lake, Malcolm, A. Olson, Rice, Steinbeisser, Witt, referred to Natural Resources.
- HB 675**, introduced by Juneau, referred to Energy and Telecommunications.
- HB 676**, introduced by Lindeen, referred to Natural Resources.
- HB 677**, introduced by Lindeen, referred to Natural Resources.
- HB 678**, introduced by Lindeen, referred to Natural Resources.
- HB 680**, introduced by Noennig, referred to State Administration.
- HB 686**, introduced by Bergren, Keane, Lawson, B. Ryan, Weiss, referred to State Administration.
- HB 695**, introduced by R. Brown, Andersen, Barrett, Brueggeman, E. Clark, Everett, Fisher, Fuchs, Haines, Hedges, Hurwitz, Jackson, Mendenhall, Mood, Pattison, Ripley, Roberts, Rome, Schruppf, referred to Public Health, Welfare and Safety.
- HB 709**, introduced by Harris, referred to Natural Resources.
- HB 712**, introduced by Sinrud, Barkus, Forrester, Haines, Laible, Pattison, referred to Natural Resources.
- HB 720**, introduced by Hurwitz, Barrett, Rice, Ripley, referred to Agriculture, Livestock and Irrigation.
- HB 731**, introduced by Lehman (by request of the House State Administration Standing Committee), referred to State Administration.
- HB 733**, introduced by Schruppf, Brueggeman, Everett, Fuchs, Haines, Hedges, Lake, Morgan, Sinrud, referred to Judiciary.
- HB 734**, introduced by Lawson, referred to Public Health, Welfare and Safety.

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

- HJR 25**, introduced by Juneau, Ballantyne, Bergren, Black, Callahan, E. Clark, Cobb, Dickenson, Franklin, Galvin-Halcro, Golie, Hansen, Kitzenberg, Lehman, McKenney, Musgrove, Parker, Ripley, Roush, B. Ryan, D. Ryan, Schmidt, Tester, Tropila, Wilson, Witt, referred to State Administration.
- HJR 26**, introduced by Younkin, R. Brown, Cooney, Cromley, Ellingson, Gillan, Glaser, Keenan, Mahlum, Mood, Schmidt, Squires, Stapleton, Tester, F. Thomas, Wanzenried, Wheat, referred to Energy and Telecommunications.
- HJR 28**, introduced by Lange, Haines, referred to State Administration.
- HJR 29**, introduced by Gallus, R. Brown, Buzzas, Cohenour, Cooney, Dowell, Franklin, Gutsche, Hansen, Harris, Lawson, Lindeen, Newman, Parker, Schmidt, Wanzenried, Wilson, referred to Public Health, Welfare and Safety.
- HJR 31**, introduced by Facey, referred to Public Health, Welfare and Safety.
- HJR 32**, introduced by Haines, Andersen, Balyeat, Barrett, Bookout-Reinicke, E. Clark, Devlin, Everett, Fisher, Fuchs, Hedges, Hurwitz, Jackson, Lake, Lambert, Lange, Laszloffy, Lehman, Lewis, Maedje, Mendenhall, Mood, Morgan, A. Olson, B. Olson, Pattison, Peterson, Rice, Ripley, Roberts, Rome, Ross, Sales, Schruppf, Sinrud, Steinbeisser, Stoker, B. Thomas, Wagman, Witt, referred to Fish and Game.

**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 Mahlum in the chair.

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

**Senators Butcher and Glaser present at this time.**

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**HB 18** - Senator Wheat moved **HB 18** be concurred in. After discussion, Senator Grimes moved consideration of **HB 18** be passed for the day.

**HB 36** - Senator Anderson moved **HB 36** be concurred in. Motion carried unanimously.

**HB 45** - Senator Esp moved **HB 45** be concurred in. Motion carried unanimously.

**HB 65** - Senator D. Ryan moved **HB 65** be concurred in. Motion carried unanimously.

**HB 77** - Senator Wheat moved **HB 77** be concurred in. Motion carried unanimously.

**HB 194** - Senator Cobb moved **HB 194** be concurred in. Motion carried unanimously.

**HB 353** - Senator McGee moved **HB 353** be concurred in. Motion carried unanimously.

**HB 364** - Senator Nelson moved **HB 364** be concurred in. Motion carried unanimously.

**HB 366** - Senator Glaser moved **HB 366** be concurred in. Motion carried unanimously.

**HB 601** - Senator Sprague moved **HB 601** be concurred in. Motion carried unanimously.

**HJR 18** - Senator McNutt moved **HJR 18** be concurred in. Motion carried unanimously.

**HJR 22** - Senator Sprague moved **HJR 22** be concurred in. Motion carried unanimously.

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

**THIRD READING OF BILLS**

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

**HB 150** concurred in 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

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Excused: None.  
Total 0

**SPECIAL ORDERS OF THE DAY**

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

**MOTIONS**

**HB 154** - Senator Glaser moved that rule 30-70, sub. 2 be suspended for the day for the purpose of allowing Representative Shockley to act as sponsor of HB 154 for Representative Lenhart, who is in the hospital. The bill is scheduled to be heard this day in the Committee on Education. Motion carried.

Senator Thomas moved to suspend joint rule 40-50 to allow the late drafting and introduction of a bill dealing with emergency rules for budget reduction. Motion carried.

**HB 18** - Senator Zook moved **HB 18** be taken from second reading and rereferred to the committee on Finance and Claims. Motion carried.

**ANNOUNCEMENTS**

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 7:45 a.m., Saturday, March 8, 2003. Motion carried.

Senate adjourned at 2:39 p.m.

ROSANA SKELTON  
Secretary of the Senate

BOB KEENAN  
President of the Senate