

**SENATE JOURNAL
58TH LEGISLATURE
SEVENTY-SIXTH LEGISLATIVE DAY**

Helena, Montana
April 9, 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 Bohlinger, Ryan and Thomas, excused. Quorum present.

The presiding officer has authenticated the daily journal for the seventy-fifth legislative day.

REPORTS OF STANDING COMMITTEES

BILL REPORT

Correctly printed: **SJR 32, SR 7.**

Correctly enrolled: **SJR 2, SJR 4, SJR 7, SJR 8, SJR 15, SJR 16, SJR 23, SJR 24, SJR 26, SJR 27.**

Examined by the sponsor and found to be correct: **SB 24, SB 77, SB 85, SB 101, SB 135, SB 150, SB 163, SB 166, SB 180, SB 188, SB 197, SB 211, SB 220, SB 241, SB 249, SB 254, SB 262, SB 283, SB 292, SB 302, SB 315, SB 325, SB 329, SB 331, SB 341, SB 380, SB 409, SB 445, SB 460, SJR 9, SJR 14.**

Signed by the President at 2:00 p.m., April 7, 2003: **SB 85, SB 101, SB 135, SB 180, SB 188, SB 197, SB 211, SB 249, SB 262, SB 302.**

Signed by the President at 8:00 a.m., April 8, 2003: **SB 24, SB 150, SB 163, SB 166, SB 220, SB 241, SB 254, SB 445, SB 460, SJR 9, SJR 14.**

Signed by the President at 4:00 p.m., April 8, 2003: **SB 77, SB 283, SB 292, SB 315, SB 325, SB 329, SB 331, SB 341, SB 380, SB 409.**

Signed by the Secretary of the Senate at 8:30 a.m., April 8, 2003: **SB 85, SB 101, SB 135, SB 180, SB 188, SB 197, SB 211, SB 249, SB 262, SB 302.**

Signed by the Secretary of the Senate at 9:00 a.m., April 8, 2003: **SB 24, SB 150, SB 163, SB 166, SB 220, SB 241, SB 254, SB 445, SB 460, SJR 9, SJR 14.**

Signed by the Secretary of the Senate at 8:30 a.m., April 9, 2003: **SB 77, SB 283, SB 292, SB 315, SB 325, SB 329, SB 331, SB 341, SB 380, SB 409.**

Signed by the Speaker at 10:30 a.m., April 8, 2003: **SB 85, SB 101, SB 135, SB 180, SB 188, SB 197, SB 211, SB 249, SB 262, SB 302.**

Signed by the Speaker at 10:45 a.m., April 8, 2003: **SB 24, SB 150, SB 163, SB 166, SB 220, SB 241, SB 254, SB 445, SB 460, SJR 9, SJR 14.**

Signed by the Speaker at 9:35 a.m., April 9, 2003: **SB 77, SB 283, SB 292, SB 315, SB 325, SB 329, SB 331, SB 341, SB 380, SB 409.**

Delivered to the Governor for approval at 11:00 a.m., April 8, 2003: **SB 24, SB 150, SB 163, SB 166, SB 220, SB 241, SB 254, SB 445, SB 460.**

Delivered to the Governor for approval at 11:30 a.m., April 8, 2003: **SB 85, SB 101, SB 135, SB 180, SB 188, SB 197, SB 211, SB 249, SB 262, SB 302.**

Delivered to the Governor for approval at 10:15 a.m., April 9, 2003: **SB 77, SB 283, SB 292, SB 315, SB 325, SB 329, SB 331, SB 341, SB 380, SB 409.**

Delivered to the Secretary of State at 2:00 a.m., April 8, 2003: **SJR 9, SJR 14.**

MESSAGES FROM THE OTHER HOUSE

Senate amendments to House bills concurred in:

4/8/2003

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

HB 17, introduced by Newman
HB 20, introduced by Golie
HB 40, introduced by Newman
HB 50, introduced by Haines
HB 54, introduced by Newman
HB 67, introduced by Kaufmann
HB 76, introduced by McKenney
HB 98, introduced by McKenney
HB 104, introduced by Bergren
HB 110, introduced by Lange
HB 123, introduced by P. Clark
HB 127, introduced by Fritz
HB 134, introduced by Weiss
HB 145, introduced by McKenney
HB 155, introduced by Jent
HB 157, introduced by Haines
HB 161, introduced by Matthews
HB 169, introduced by Keane
HB 170, introduced by Parker
HB 171, introduced by Parker
HB 179, introduced by Matthews
HB 183, introduced by Steinbeisser
HB 210, introduced by Shockley
HB 218, introduced by Bookout-Reinicke
HB 220, introduced by Laszloffy
HB 222, introduced by Parker
HB 224, introduced by Shockley
HB 237, introduced by Brueggeman
HB 269, introduced by Bergren
HB 303, introduced by A. Olson
HB 337, introduced by Ripley
HB 481, introduced by Lewis
HB 499, introduced by Franklin
HB 527, introduced by Mendenhall
HB 532, introduced by Stoker

Senate amendments to House bills **not** concurred in:

4/8/2003

HB 107, introduced by A. Olson
HB 197, introduced by Becker
HB 201, introduced by Jent
HB 259, introduced by Maedje
HB 277, introduced by Lindeen
HB 298, introduced by Younkin
HB 304, introduced by A. Olson
HB 308, introduced by Musgrove
HB 642, introduced by Devlin

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

SB 57 - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free** Conference Committee to meet with a like committee from the Senate to confer on **SB 57**:

4/8/2003

Representative B. Thomas, Chair
Representative Gallus
Representative Lange

HB 308 - The House failed to concur in Senate amendments to **HB 308**, authorized the Speaker to appoint the following **Free** Conference Committee, and requested the Senate appoint a like committee to confer on **HB 308**:

4/8/2003

Representative Shockley, Chair
Representative Musgrove
Representative Stoker

HB 197 - The House failed to concur in Senate amendments to **HB 197**, authorized the Speaker to appoint the following **Free** Conference Committee, and requested the Senate appoint a like committee to confer on **HB 197**:

4/9/2003

Representative Noennig, Chair
Representative Becker
Representative B. Thomas

HB 304 - The House failed to concur in Senate amendments to **HB 304**, authorized the Speaker to appoint the following **Free** Conference Committee, and requested the Senate appoint a like committee to confer on **HB 304**:

4/8/2003

Representative A. Olson, Chair
Representative Rice
Representative B. Ryan

HB 298 - The House failed to concur in Senate amendments to **HB 298**, authorized the Speaker to appoint the following **Free** Conference Committee, and requested the Senate appoint a like committee to confer on **HB 298**:

4/8/2003

Representative Younkin, Chair
Representative Jacobson
Representative Noennig

HB 201 - The House failed to concur in Senate amendments to **HB 201**, authorized the Speaker to appoint the following **Free** Conference Committee, and requested the Senate appoint a like committee to confer on **HB 201**:

4/8/2003

Representative D. Brown, Chair
Representative Jent
Representative Wagman

HB 259 - The House failed to concur in Senate amendments to **HB 259**, authorized the Speaker to appoint the following **Conference** Committee, and requested the Senate appoint a like committee to confer on Senate amendments to **HB 259**:

4/8/2003

Representative Maedje, Chair
Representative Gallik
Representative Lake

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

HB 277 - The House failed to concur in Senate amendments to **HB 277**, authorized the Speaker to appoint the following **Conference** Committee, and requested the Senate appoint a like committee to confer on Senate amendments to **HB 277**:
4/8/2003

Representative Younkin, Chair
Representative Haines
Representative Lindeen

HB 642 - The House failed to concur in Senate amendments to **HB 642**, authorized the Speaker to appoint the following **Conference** Committee, and requested the Senate appoint a like committee to confer on Senate amendments to **HB 642**:
4/8/2003

Representative Devlin, Chair
Representative Golie
Representative Lambert

MOTIONS

FREE CONFERENCE COMMITTEES

SB 57 - Senator Stapleton moved the President be authorized to appoint a **Free** Conference Committee and request the House to appoint a like committee to confer on **SB 57**. Motion carried. The President appointed the following members:

Senator Wheat, Chairman
Senator Keenan
Senator Mangan

HB 197 - Senator Stapleton moved the Senate accede to the request of the House and that the President be authorized to appoint a **Free** Conference Committee to meet with a like committee from the House to confer on **HB 197**. Motion carried. The President appointed the following members:

Senator Perry, Chairman
Senator Mangan
Senator Curtiss

HB 308 - Senator Stapleton moved the Senate accede to the request of the House and that the President be authorized to appoint a **Free** Conference Committee to meet with a like committee from the House to confer on **HB 308**. Motion carried. The President appointed the following members:

Senator O'Neil, Chairman
Senator Cromley
Senator Pease

CONFERENCE COMMITTEE

HB 259 - Senator Stapleton moved the Senate accede to the request of the House and that the President be authorized to appoint a **Conference** Committee to meet with a like committee from the House to confer on Senate Amendments to **HB 259**. Motion carried. The President appointed the following members:

Senator DePratu, Chairman

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

Senator Curtiss
Senator Cocchiarella

FIRST READING AND COMMITMENT OF BILLS

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

SB 492, introduced by Johnson (by request of the Senate Finance Standing Committee), referred to Finance and Claims

**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 Keenan retained the chair.

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

SB 111 - House Amendments - Senator Nelson moved House amendments to **SB 111** be concurred in. Motion carried unanimously.

Senator Nelson assumed the chair.

SB 13 - House Amendments - Senator Mahlum moved House amendments to **SB 13** be concurred in. Motion carried unanimously.

SB 115 - House Amendments - Senator Mahlum moved House amendments to **SB 115** be concurred in. Motion carried unanimously.

SB 47 - Conference Committee Report No. 1 - Senator Gebhardt moved the Conference Committee report to **SB 47** be adopted. Motion carried with Senator Grimes voting nay.

Senator Ryan present at this time.

HB 56 - Conference Committee Report No. 1 - Senator Esp moved the Conference Committee report to **HB 56** be adopted. Motion carried unanimously.

HB 403 - Conference Committee Report No. 1 - Senator Anderson moved the Conference Committee report to **HB 403** be adopted. Motion carried unanimously.

Senator Tester excused at this time.

HB 758 - Senator Tropila moved **HB 758** be concurred in. After discussion, Senator Anderson moved **HB 758**, second reading copy, be amended. After discussion, Senator Anderson withdrew his amendment.

HB 758 - Senator Toole moved **HB 758**, second reading copy, be amended as follows:

1. Title, page 1, line 5.

Following: "MACHINES;"

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

Insert: "CHANGING THE VIDEO GAMBLING MACHINE TAX ON MACHINES ON A LICENSED PREMISES BASED ON THE TOTAL ANNUAL GROSS INCOME OF MACHINES ON A PREMISES; PROVIDING THAT THE INCREASED REVENUE IS TO BE DEPOSITED IN THE PREVENTION AND STABILIZATION ACCOUNT;"

2. Title, page 1, line 10.

Strike: "SECTION"

Insert: "SECTIONS 23-5-610 AND"

3. Page 1, line 19.

Insert: "**Section 2.** Section 23-5-610, MCA, is amended to read:

"23-5-610. (Temporary) Video gambling machine gross income tax -- credit -- records -- distribution -- quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax ~~of 15% of~~ based on the gross income from each location with video gambling ~~machine~~ machines issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented. The video gambling machine tax rate is based on the total annual gross income from machines at each location as follows:

(a) 15% of total gross income if the total annual gross income is less than \$150,000;

(b) 20% of the next \$300,000 of total annual gross income;

(c) 25% of the next \$300,000 of total annual gross income; and

(d) 30% of total annual gross income in excess of \$750,000.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine during the 12-month period ending December 31, 2001;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter,

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) Except as provided in subsection (7), the department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund.

(7) Receipts from the taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted. (Terminates December 31, 2005--sec. 10, Ch. 424, L. 1999.)

23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax -- credit -- records -- distribution -- quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax ~~of 15% of~~ based on the gross income from each location with video gambling ~~machine~~ machines issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented. The video gambling machine tax rate is based on the total annual gross income from machines at each location as follows:

(a) 15% of total gross income if the total annual gross income is less than \$150,000;

(b) 20% of the next \$300,000 of total annual gross income;

(c) 25% of the next \$300,000 of total annual gross income; and

(d) 30% of total annual gross income in excess of \$750,000.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine during the 12-month period ending December 31, 2001;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) ~~to~~ as follows:

(a) 18.8% to the prevention and stabilization account; and

(b) 81.2% to the general fund."

Renumber: subsequent sections

4. Page 2, line 15.

Insert: "NEW SECTION. Section 4. State special revenue account. There is a prevention and stabilization account in the state special revenue fund provided for in 17-2-102. Money in the account must be used by the department of public health and human service to finance, administer, and provide health and human services."

Renumber: subsequent sections

5. Page 2, line 23.

Insert: "NEW SECTION. Section 6. Coordination instruction. If a prevention and stabilization account or fund is established in any other legislation enacted by the 2003 legislature, then the reference to the prevention and stabilization account in [section 2] refers to that account or fund and [section 4] is void."

Insert: "NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent sections

6. Page 2, line 28.

Following: "to"

Insert: "gross income from video gambling machines received after June 30, 2003.

(3) [Section 3] applies to"

Amendment **not** adopted as follows:

Yeas: Bohlinger, Cobb, Cooney, Cromley, Ellingson, Grimes, Johnson, Schmidt, Toole.

Total 9

Nays: Anderson, Bales, Barkus, Black, Butcher, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Hansen, Harrington, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tropila, Wheat, Zook, Mr. President.

Total 39

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

Total 2

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

HB 758 - Senator Ellingson moved **HB 758**, second reading copy, be amended as follows:

1. Title, page 1, line 8.

Following: "ESTABLISHMENTS"

Insert: "LOCATED IN THE CITY OF HELENA"

2. Page 1, line 15.

Following: "--"

Insert: "Helena"

3. Page 1, line 16.

Following: "establishment"

Insert: "located in the city of Helena"

Amendment **not** adopted as follows:

Yeas: Anderson, Bohlinger, Cobb, Cooney, Cromley, Ellingson, Harrington, Johnson, Nelson, Schmidt, Stonington, Toole, Wheat.

Total 13

Nays: Bales, Barkus, Black, Butcher, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Story, Tash, Taylor, Tropila, Zook, Mr. President.

Total 35

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

Total 2

HB 758 - Senator Cooney moved **HB 758**, second reading copy, be amended as follows:

1. Title, page 1, line 10.

Following: "SMOKING"

Insert: "EXCEPT FOR CERTAIN SELF-GOVERNING LOCAL GOVERNMENTS IN WHICH THE VOTERS HAVE ADOPTED THE ORDINANCE THROUGH AN ELECTION"

2. Page 1, line 16.

Following: "law"

Insert: "-- exception"

Following: "."

Strike: "An"

Insert: "(1) Except as provided in subsection (2), an"

3. Page 1, line 19.

Following: line 18

Insert: "(2) This section does not apply to a self-governing local government in which the voters have adopted a local government ordinance through an election held prior to [the effective date of this act]."

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

Amendment **not** adopted as follows:

Yeas: Anderson, Bohlinger, Butcher, Cobb, Cooney, Cromley, Ellingson, Grimes, Harrington, Johnson, Nelson, Schmidt, Stonington, Taylor, Toole, Wheat.

Total 16

Nays: Bales, Barkus, Black, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Story, Tash, Tropila, Zook, Mr. President.

Total 32

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

Total 2

HB 758 - Senator Cooney moved **HB 758**, second reading copy, be amended as follows:

1. Title, line 7.

Strike: "STATE GENERAL FUND"

Insert: "PREVENTION AND STABILIZATION ACCOUNT"

2. Page 2, line 13 through line 14.

Following: "THE"

Strike: "STATE GENERAL FUND"

Insert: "[prevention and stabilization account established in section 14 of House Bill No. 722]"

3. Page 2, line 23.

Insert: "NEW SECTION. Section 4. Coordination instruction. If House Bill No. 722 is not passed and approved, then the bracketed language in [section 2 of this act], amending 23-5-612, is replaced with the phrase "state special revenue fund to the credit of the department of public health and human services for state matching funds for medicaid-funded services.""

Renumber: subsequent sections

Amendment **not** adopted as follows:

Yeas: Bohlinger, Cobb, Cooney, Cromley, Ellingson, Harrington, Johnson, Schmidt, Toole.

Total 9

Nays: Anderson, Bales, Barkus, Black, Butcher, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tropila, Wheat, Zook, Mr. President.

Total 39

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

Total 2

Senator Glaser rose on a point of information regarding rule 7-60-20 and the 8 amendments offered by Senator Cooney. Chairman Nelson ruled Senator Cooney was not trying to delay or obstruct business, and would allow the remaining amendments.

HB 758 - Senator Cooney moved **HB 758**, second reading copy, be amended as follows:

1. Title, line 6.

Following: "FEE"

Insert: "AND EXEMPTIONS FROM THE FEE"

2. Page 1, line 21.

Following: "(1)"

Insert: "(a)"

Strike: "The"

Insert: "Except as provided in subsection (1)(b), the"

3. Page 1.

Following: line 23

Insert: "(b) The fee in subsection (4) does not apply to an operator who has had a wholly nonsmoking place of business prior to [the effective date of this act] or who adopts a wholly nonsmoking place of business after [the effective date of this act]."

Amendment **not** adopted as follows:

Yeas: Bohlinger, Butcher, Cooney, Cromley, Ellingson, Grimes, Harrington, Johnson, Nelson, Schmidt, Stonington, Toole.

Total 12

Nays: Anderson, Bales, Barkus, Black, Cobb, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Story, Tash, Taylor, Tropila, Wheat, Zook, Mr. President.

Total 36

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

Total 2

HB 758 - Senator Cooney moved **HB 758**, second reading copy, be amended as follows:

1. Title, line 6 through line 7.

Following: "PROVIDING FOR" on line 6

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

Insert: "RETURN OF THE SURCHARGE FEE TO THE LOCAL GOVERNMENT IN WHICH THE GAMBLING MACHINE IS LOCATED"

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

2. Page 2, line 11.

Following: "machines."

Strike: "The annual permit surcharge fee must be prorated as provided in subsection (2)(a)."

3. Page 2, line 12.

Following: "must be"

Strike: "deposited"

4. Page 2, line 13 through line 14.

Following: "722H" on line 13

Strike: remainder of line 13 through "FUND." on line 14

Insert: "returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The surcharge fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury."

Amendment **not** adopted as follows:

Yeas: Anderson, Black, Bohlinger, Butcher, Cooney, Cromley, Ellingson, Johnson, Nelson, Toole.

Total 10

Nays: Bales, Barkus, Cobb, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tropila, Wheat, Zook, Mr. President.

Total 38

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

Total 2

HB 758 - Senator Cooney moved **HB 758**, second reading copy, be amended as follows:

1. Title, line 5 through line 7.

Following: "MACHINES;" on line 5

Strike: remainder of line 5 through "FUND." on line 7

2. Title, line 10.

Following: "SMOKING;"

Strike: "AMENDING SECTION 23-5-612, MCA;"

3. Title, line 11.

Following: "AND"

Insert: "AN"

Following: "APPLICABILITY"

Strike: "DATES"

Insert: "DATE"

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

4. Page 1, line 20 through page 2, line 14.

Strike: section 2 in its entirety

Renumber: subsequent sections

5. Page 2, line 26.

Following: "Applicability."

Strike: "(1) [Section 1]"

Insert: "[This act]"

6. Page 2, line 28.

Strike: subsection (2) in its entirety

Amendment **not** adopted as follows:

Yeas: Anderson, Bohlinger, Cobb, Cooney, Cromley, Ellingson, Harrington, Johnson, Schmidt, Stonington, Toole.
Total 11

Nays: Bales, Barkus, Black, Butcher, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Story, Tash, Taylor, Tropila, Wheat, Zook, Mr. President.
Total 37

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

Total 2

HB 758 - Senator Cooney moved **HB 758**, second reading copy, be amended as follows:

1. Title, line 10.

Strike: "IMMEDIATE"

2. Title, line 11.

Strike: "AND APPLICABILITY DATES"

3. Page 2, line 24.

Following: "effective"

Strike: "on passage and approval"

Insert: "July 1, 2004"

4. Page 2, line 26 through line 28.

Strike: section 5 in its entirety

Amendment **not** adopted as follows:

Yeas: Anderson, Bohlinger, Cooney, Cromley, Ellingson, Grimes, Harrington, Johnson, Schmidt, Stonington, Toole, Wheat.
Total 12

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

Nays: Bales, Barkus, Black, Butcher, Cobb, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Story, Tash, Taylor, Tropila, Zook, Mr. President.

Total 36

Absent or not voting: None.

Total 0

Excused: Tester, Thomas.

Total 2

HB 758 - Senator Cooney moved **HB 758**, second reading copy, be amended as follows:

1. Title, line 10.

Following: "SMOKING;"

Insert: "PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA;"

Following: "AN"

Strike: "IMMEDIATE"

2. Page 2, line 24.

Following: "date."

Strike: "[This act] is effective on passage and approval."

Insert: "If approved by the electorate, this act is effective January 1, 2005."

3. Page 2, line 28.

Strike: "June 30, 2003"

Insert: "January 1, 2005"

4. Page 2, line 29.

Following: line 28

Insert: "NEW SECTION. **Section 6. Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

- FOR imposing an annual permit surcharge fee on video gambling machines and exempting establishments with video gambling machines from local government smoking ordinances.
- AGAINST imposing an annual permit surcharge fee on video gambling machines and exempting establishments with video gambling machines from local government smoking ordinances."

Amendment **not** adopted follows:

Yeas: Anderson, Bohlinger, Cooney, Cromley, Ellingson, Grimes, Harrington, Johnson, McCarthy, Schmidt, Stonington, Toole.

Total 12

Nays: Bales, Barkus, Black, Butcher, Cobb, Cocchiarella, Curtiss, DePratu, Elliott, Esp, Gebhardt, Glaser, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Story, Tash, Taylor, Tropila, Wheat, Zook, Mr. President.

Total 36

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

Absent or not voting: None.
Total 0

Excused: Tester, Thomas.
Total 2

HB 758 - Senator Anderson moved **HB 758**, second reading copy, be amended as follows:

1. Title, page 1, line 8.

Following: "PREMISES"

Insert: "AND THAT HOLD LIQUOR LICENSES"

2. Title, page 1, line 10.

Following: "SMOKING"

Insert: "IN AREAS PRIMARILY USED FOR LIQUOR SERVICE AND WHERE FOOD SERVICE IS SECONDARY"

3. Page 1, line 15.

Following: "machines"

Insert: "and liquor license"

4. Page 1, line 16.

Following: "law"

Insert: "in areas used primarily for liquor service"

5. Page 1, line 17.

Following: "premises"

Insert: "and that holds a liquor license"

6. Page 1, line 18.

Following: "part 1"

Insert: ", in those areas in the establishment that are primarily used for liquor service and where food service is secondary"

Amendment **not** adopted as follows:

Yeas: Anderson, Bohlinger, Butcher, Cooney, Cromley, DePratu, Ellingson, Elliott, Grimes, Harrington, Johnson, McGee, Nelson, Schmidt, Stapleton, Stonington, Taylor, Toole, Wheat.

Total 19

Nays: Bales, Barkus, Black, Cobb, Cocchiarella, Curtiss, Esp, Gebhardt, Glaser, Hansen, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Story, Tash, Tropila, Zook, Mr. President.

Total 29

Absent or not voting: None.
Total 0

Excused: Tester, Thomas.
Total 2

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

Senator Tester present at this time.

HB 758 - Senator Tropila's motion that **HB 758** be concurred passed as follows:

Yeas: Bales, Barkus, Black, Cocchiarella, Curtiss, DePratu, Esp, Gebhardt, Glaser, Hansen, Kitzenberg, Laible, Mangan, McCarthy, McNutt, O'Neil, Pease, Perry, Roush, Ryan, Shea, Sprague, Squires, Stapleton, Story, Tash, Taylor, Tester, Tropila, Zook, Mr. President.

Total 31

Nays: Anderson, Bohlinger, Butcher, Cobb, Cooney, Cromley, Ellingson, Elliott, Grimes, Harrington, Johnson, Mahlum, McGee, Nelson, Schmidt, Stonington, Toole, Wheat.

Total 18

Absent or not voting: None.

Total 0

Excused: Thomas.

Total 1

Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Nelson 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 701, as amended by the Senate, concurred in as follows:

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

Total 44

Nays: Cobb, Cromley, Grimes, McNutt, Nelson.

Total 5

Absent or not voting: None.

Total 0

Excused: Thomas.

Total 1

MOTIONS

HB 758 - Cooney amendment number 761227 - Senator Grimes moved he be allowed to change his vote on Cooney amendment number 761227, second reading, from nay to yea. Motion carried.

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 9, 2003

HB 261 - Senator Stapleton moved **HB 261** be taken from second reading and rereferred to the committee on Finance. Motion carried.

Senator Pease moved to suspend the rules to allow the late drafting and introduction of a resolution pertaining to the Crow Butte holdings, and to urge the Montana delegation in Washington to obtain money that has been obligated to the Northern Cheyenne Tribe, but has not been received. Motion carried.

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Thursday, April 10, 2003. Motion carried.

Senate adjourned at 3:50 p.m.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate