SENATE JOURNAL 58TH LEGISLATURE EIGHTY-THIRD LEGISLATIVE DAY

Helena, Montana Senate Chambers April 17, 2003 State Capitol

Senate convened at 10:00 a.m. President Keenan presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

The President has authenticated the daily journal for the eighty-second legislative day.

REPORTS OF STANDING COMMITTEES

BILL REPORT

Correctly enrolled: SB 402, SB 408, SB 454.

Examined by the sponsor and found to be correct: SB 244, SB 370, SB 408.

Signed by the President at 2:30 p.m., April 16, 2003: SB 244, SB 370.

Signed by the President at 8:25 a.m., April 17, 2003: SB 408.

Signed by the Secretary of the Senate at 8:20 a.m., April 17, 2003: SB 244, SB 370, SB 408.

Signed by the Speaker at 8:25 a.m., April 17, 2003: SB 244, SB 370.

Signed by the Speaker at 8:30 a.m., April 17, 2003: SB 408.

Delivered to the Governor for approval at 8:45 a.m., April 17, 2003: SB 244, SB 370.

Delivered to the Governor for approval at 9:00 a.m., April 17, 2003: SB 408.

Examined by the sponsor and found to be correct: SB 46, SB 194, SB 230, SB 232, SB 243, SB 246, SB 270, SB 275, SB 282, SB 321, SB 344, SB 364, SB 386, SB 387, SB 400, SB 423, SB 441.

Signed by the President at 2:30 p.m., April 16, 2003: SB 46, SB 194, SB 230, SB 232, SB 243, SB 246, SB 270, SB 275, SB 282, SB 321, SB 344, SB 364, SB 386, SB 387, SB 400, SB 423, SB 441.

Signed by the Secretary of the Senate at 8:20 a.m., April 17, 2003: SB 46, SB 194, SB 230, SB 232, SB 243, SB 246, SB 270, SB 275, SB 282, SB 321, SB 344, SB 364, SB 386, SB 387, SB 400, SB 423, SB 441.

Signed by the Speaker at 9:00 a.m., April 17, 2003: SB 46, SB 194, SB 230, SB 232, SB 243, SB 246, SB 270, SB 275, SB 282, SB 321, SB 344, SB 364, SB 386, SB 387, SB 400, SB 423, SB 441.

Delivered to the Governor for approval at 9:45 a.m., April 17, 2003: SB 46, SB 194, SB 230, SB 232, SB 243, SB 246, SB 270, SB 275, SB 282, SB 321, SB 344, SB 364, SB 386, SB 387, SB 400, SB 423, SB 441.

JUDICIARY (Grimes, Chairman):

4/17/2003

HJR 36, be concurred in. Report adopted.

REPORTS OF SELECT COMMITTEES

FREE CONFERENCE COMMITTEE on Senate Bill 360 Report No. 1, April 17, 2003

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 360** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **Senate Bill 360** (reference copy -- salmon) be amended as follows:

STATE INTERNET/BBS COPY

1. Title, line 7.

Following: "STATE FUND"

Insert: "FOR CLAIMS FOR INJURIES OCCURRING ON OR AFTER JULY 1, 1990,"

2. Title, page 1, line 9. **Strike:** "A DELAYED" **Insert:** "AN IMMEDIATE"

3. Page 3, line 1.

Following: the second "fund"

Insert: "for claims for injuries occurring on or after July 1, 1990,"

4. Page 3, line 26 through line 27.

Strike: "JULY" on line 26 through "2005" on line 27

Insert: "on passage and approval"

For the Senate: For the House:

F. Thomas, Chairman McKenney, Chairman

Johnson Fisher Cocchiarella Wilson

MESSAGES FROM THE GOVERNOR

April 16, 2003

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

Dear Senator Keenan:

Please be informed that I have signed **Senate Bill 152** sponsored by Senator Cocchiarella, **Senate Bill 159** sponsored by Senator Johnson, **Senate Bill 284** sponsored by Senator Wheat, and **Senate Bill 334** sponsored by Senator Sprague et al. on April 16, 2003.

Sincerely,

JUDY MARTZ Governor

April 16, 2003

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

The Honorable Doug Mood

Speaker of the House State Capitol Helena, Montana 59620

Dear President Keenan and Speaker Mood:

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 Senate Bill 325, "AN ACT REVISING THE RESTRICTIONS ON SUBDIVISION ACTIVITIES UNDER THE SANITATION IN SUBDIVISIONS LAWS; AMENDING SECTION 76-4-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE", without my signature and recommend the attached amendments for the following reasons:

Section 76-4-121, MCA, of the Sanitation in Subdivisions Act provides that a person may sell, build on, or occupy any lot in a subdivision only if the county clerk and recorder has recorded the plat or survey of the subdivision. Section 76-4-122 provides the clerk and recorder cannot record the plat or survey unless one of three prerequisites has been met. Before filing, the clerk must determine either that (1) the local health officer and the reviewing authority under the Sanitation in Subdivisions Act has approved the subdivision, (2) the local governing body has certified that the subdivision is within a jurisdiction that has adopted a growth policy and the subdivision will be provided with adequate municipal facilities and adequate storm drainage, or (3) the plat contains a certification that it is exempt from review under the Sanitation in Subdivisions Act.

As passed, Senate Bill No. 325 amends section 76-4-121 by replacing the requirement that the clerk and recorder must have recorded the plat or survey with a requirement that either: (1) the reviewing authority under the Sanitation in Subdivisions Act must have approved the subdivision, or (2) the local governing body must have certified that the subdivision is within a jurisdiction that has adopted a growth policy and the subdivision will be provided with adequate municipal facilities and adequate storm drainage. Unfortunately, the bill does not allow the person to sell, build on, or occupy a lot in the situation in which the subdivision is exempt from review under the Act.

The amendments I am proposing would correct this oversight by amending 76-4121 to provide that the prohibition in the Sanitation in Subdivisions Act on sale, construction, and occupation of lots does not apply if the subdivision is exempt from review under that act. Please be advised that Senator McGee, the sponsor of the bill, has been informed of my recommendation and has no objections.

I urge your concurrence in the amendments.

Sincerely, JUDY MARTZ Governor

GOVERNOR'S AMENDMENTS TO SENATE BILL 325

1. Page 1, line 19. **Strike:** "or"

2. Page 1, line 23. **Following:** "drainage"

Insert: "; or

(3) the subdivision is otherwise exempt from review under 76-4-125"

MESSAGES FROM THE OTHER HOUSE

SB 375 - 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** 375:

4/16/2003

Representative Barrett, Chair Representative Brueggeman Representative Harris

SB 362 - 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 362**:

4/16/2003

Representative Shockley, Chair Representative Sales Representative Parker

SB 336 - The House acceded to the request of the Senate and authorized the Speaker to appoint the following Conference Committee to meet with a like committee from the Senate to confer on House amendments to SB 336:

4/16/2003

Representative Brueggeman, Chair Representative Lange Representative Golie

HB 13 - The House failed to concur in Senate amendments to **HB 13**, authorized the Speaker to appoint the following **Free** Conference Committee, and requested that the Senate appoint a like committee to confer on **HB 13**:

4/16/2003

Representative A. Olson, Chair Representative Barrett Representative Kaufmann

HB 559 - The House failed to concur in Senate amendments to **HB** 559, authorized the Speaker to appoint the following Conference Committee, and requested that the Senate appoint a like committee to confer on Senate amendments to **HB** 559.

4/16/2003

Representative Waitschies, Chair Representative Gallus Representative Andersen

MOTIONS

HB 608- Senator Elliott moved **HB 608** be taken from the committee on Finance and Claims, printed and placed on second reading the eighty-fifth legislative day. Motion carried as follows:

Yeas: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gebhardt, Hansen, Harrington, Kitzenberg, Laible, Mangan, McCarthy, McNutt, Nelson, O'Neil, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stonington, Tester, Thomas, Toole, Tropila, Wheat, Mr. President.

Total 29

Nays: Bales, Barkus, Black, Bohlinger, Butcher, Curtiss, DePratu, Esp, Glaser, Grimes, Johnson, Mahlum, Perry,

Stapleton, Story, Tash, Taylor, Zook. Total 18

Absent or not voting: None.

Total 0

Excused: Anderson, McGee, Pease.

Total 3

FIRST READING AND COMMITMENT OF BILLS

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

SB 493, introduced by Keenan (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 Stapleton in the chair.

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

- **SB 112 House Amendments** Senator McCarthy moved House amendments to **SB 112** be concurred in. Motion carried unanimously.
- **SB 130 Free Conference Committee Report No. 1 Senator McGee moved the Free Conference Committee report to SB 130 be adopted.** Motion carried unanimously.
- SB 294 House Amendments Senator Gebhardt moved House amendments to SB 294 be concurred in. Motion carried unanimously.
- **SB 304 Conference Committee Report No. 1 -** Senator Johnson moved the Conference Committee report to **SB 304** be adopted. Motion carried unanimously.
- **SB 330 Conference Committee Report No. 1 -** Senator Mangan moved the Conference Committee report to **SB 330** be adopted. Motion carried unanimously.
- **SB 347 Conference Committee Report No. 1 -** Senator Keenan moved the Conference Committee report to **SB 347** be adopted. Motion carried unanimously.
- **SB 375 Free Conference Committee Report No. 1** Senator Elliott moved the Free Conference Committee report to **SB 375** be adopted. Motion carried unanimously.
- **SB 395 Conference Committee Report No. 1** Senator Perry moved the Conference Committee report to **SB 395** be adopted. Motion carried with Senator Elliott voting nay.

***SB 461 - House Amendments - Senator Story moved House amendments to SB 461 be not concurred in. Motion carried unanimously.

SB 478 - **House Amendments** - Senator Story moved House amendments to **SB 478** be concurred in. Motion carried unanimously.

***SB 487 - House Amendments - Senator Pease moved House amendments to SB 487 be not concurred in. Motion carried unanimously.

HB 190 - **Free Conference Committee Report No. 1** - Senator Cobb moved the Free Conference Committee report to **HB 190** be adopted. Motion carried as follows:

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

Total 28

Nays: Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Hansen, Harrington, Kitzenberg, Mangan, McCarthy, Nelson, Pease, Roush, Ryan, Schmidt, Shea, Squires, Stonington, Tester, Toole, Tropila, Wheat.

Total 22

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 642 - Conference Committee Report No. 1 - Senator Story moved the Conference Committee report to **HB 642** be adopted. Motion carried unanimously.

SB 480 - House Amendments - Senator Black moved House amendments to SB 480 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 Stapleton 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 138, as amended by the House, 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
	at or not voting: None.
Total	0
Excus	ed: None.

SB 320, **as amended by the House**, 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

Total 0

Absent or not voting: None.

Total 0

Excused: None. Total 0

SB 483 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, 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: Hansen. Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 489, as amended by the Senate, 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.

Nays: Total	None.		
Abser Total	nt or not v 0	oting:	None.

Excused: None.

Total 0

Total 50

HB 509, as amended by the Free Conference Committee Report No. 1, 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

HB 705 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, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 49

Nays: Stapleton.

Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 735 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, 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: Johnson.

Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 741concurred in as follows:

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

Total 42

Nays: DePratu, Esp, Johnson, McCarthy, Stapleton, Story, Tash, Thomas.

Total 8

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 743 concurred in 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.

Nays: Curtiss.

Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HJR 31, as amended by the Free Conference Committee Report No. 1, adopted as follows:

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

Total 48

Nays: Esp, Stapleton.

Total 2

Absent or not voting: None.

Total 0

Excused: None.

Total 0

REPORTS OF SELECT COMMITTEES

FREE CONFERENCE COMMITTEE on House Bill 720 Report No. 1, April 17, 2003

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 720** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 720** (reference copy -- salmon) be amended as follows:

1. Title, line 7.

Following: "PERMIT"

Strike: "IS"

Insert: "AND AN OBJECTION TO AN APPLICATION FOR A WATER USE PERMIT ARE"

2. Title, line 13.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "85-2-308"

Insert: "AND 85-2-308"

3. Page 3, line 10.

Insert: "Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

- (b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.
- (2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 are not met.

- (3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.
- (4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.
- (5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.
- (6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under subsection (1), (2), or (4) this section and rules of the department.""

Renumber: subsequent section

For the House: For the Senate:

Hurwitz, Chairman Tash, Chairman

Younkin Bales Jent Nelson

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 this short week of session.

Senator Sprague was presented a work of art that included several of his "Spraguerisms" that people have attributed to him through his years in the Senate.

Senator Wheat introduced the choir from the Hawthorne Elementary School in Bozeman, who performed songs for the Senate.

MOTIONS

FREE CONFERENCE COMMITTEES

SB 314 - Senator Thomas moved the President be authorized to appoint a **Free** Conference Committee, and request the House to appoint a like committee to confer on **SB 314**. Motion carried. The President appointed the following members:

Senator Stapleton, Chair Senator Esp Senator McCarthy

SB 424 - Senator Thomas moved the President be authorized to appoint a **Free** Conference Committee, and request the House to appoint a like committee to confer on **SB 424**. Motion carried. The President appointed the following members:

Senator Story, Chair Senator Thomas Senator Nelson

HB 13 - Senator Thomas 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 13**. Motion carried. The President appointed the following members:

Senator Zook, Chair Senator Tash Senator Cooney

CONFERENCE COMMITTEES

HB 559 - Senator Thomas 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 559**. Motion carried. The President appointed the following members:

Senator Glaser, Chair Senator Story Senator Elliott

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 5:00 p.m., Monday, April 21, 2003. Motion carried.

Senate adjourned at 11:33 a.m.

ROSANA SKELTON Secretary of the Senate BOB KEENAN
President of the Senate