

SENATE JOURNAL  
NINETEENTH LEGISLATIVE DAY - JANUARY 25, 2005

SENATE JOURNAL  
59TH LEGISLATURE  
NINETEENTH LEGISLATIVE DAY

Helena, Montana  
January 25, 2005

Senate Chambers  
State Capitol

Senate convened at 1:00 p.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senator McGee, excused. Quorum present.

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

REPORTS OF STANDING COMMITTEES

**BILLS AND JOURNAL:** 1/25/2005  
Correctly printed: **SB 18, SB 86, SB 123, SB 178, SB 183, SB 188, SB 204, SB 208, SB 233, SB 291, SB 292, SB 293, SB 294, SB 295, SB 296, SB 297, SB 298, SB 299, SB 300, SJR 4.**  
Correctly engrossed: **SB 41, SB 115, SB 149, SB 181, SB 240.**

**FINANCE AND CLAIMS** (Cooney, Chairman): 1/25/2005  
**SB 41**, introduced bill, be amended as follows:

1. Page 1, line 23.  
**Following:** "disability"  
**Insert:** "and illness"

And, as amended, do pass. Report adopted.

**SB 240**, introduced bill, be amended as follows:

1. Page 2, line 6.  
**Strike:** ", public employees' retirement board,"

And, as amended, do pass. Report adopted.

**JUDICIARY** (Wheat, Chairman): 1/25/2005  
**SB 18**, do pass. Report adopted.  
**SB 149**, introduced bill, be amended as follows:

1. Title, line 6 through line 7.

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**Following:** "AMENDING" on line 6  
**Strike:** "SECTIONS" on line 6 through "18-7-107" on line 7  
**Insert:** "SECTION 18-4-302"

2. Title, line 7.  
**Following:** "AN"  
**Strike:** "EFFECTIVE"  
**Insert:** "APPLICABILITY"

3. Page 1, line 11 through page 3, line 6.  
**Strike:** everything after the enacting clause  
**Insert:** "**Section 1.** Section 18-4-302, MCA, is amended to read:

**"18-4-302. Methods of source selection -- authorization for alternative procurement methods -- limitation on service contracts.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122.

(5) (a) Except as provided in subsections (5)(b) through (5)(d), an agency may not enter into a contract for the purchase of services under this chapter unless the contract provides that only citizens of the United States, legal resident aliens, or individuals with a valid visa will perform the services under the contract or any subcontract under the contract.

(b) The provisions of subsection (5)(a) do not apply if expressly prohibited by the laws of the United States or by regulations or treaties adopted pursuant to federal law.

(c) The provisions of subsection (5)(a) do not apply if the department determines that there is no responsible vendor meeting the requirements of subsection (5)(a), that the cost of complying with subsection (5)(a) would create an economic hardship for the state, or that a contract in compliance with subsection (5)(a) would not be in the best interests of the state.

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(d) The provisions of subsection (5)(a) do not apply to the board of investments provided for in 2-15-1808 or a university system unit as defined in 17-7-102.(Subsection (4) terminates June 30, 2005--sec. 29, Ch. 181, L. 2001.)""

**Insert:** "NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

**Insert:** "NEW SECTION. Section 3. Applicability. [This act] applies to solicitations issued on or after October 1, 2005."

And, as amended, do pass. Report adopted.

**SB 181**, introduced bill, be amended as follows:

1. Page 2, line 2.

**Following:** "owner."

**Insert:** "The term does not include money, in any form, identification documents, or wallets, purses, bags, or similar items that are generally used to carry money or documents. For purposes of subsection (2)(a), all personal property in a vehicle is presumed to be the property of the owner of the vehicle unless there is evidence on or attached to an item of personal property indicating that it belongs to someone other than the owner of the vehicle or unless there is a signed statement of ownership as provided in subsection (2)(c).

(c) A person, other than the owner of a vehicle subject to a lien under subsection (2)(a), who claims ownership of an item of personal property in the vehicle may provide the lienholder with a signed statement containing the person's name, address, and phone number, a description of the personal property, a statement that the person is the lawful owner of the personal property, and a request for return of the personal property. Upon receipt of the signed statement, the lienholder shall release the personal property to the person submitting the statement. The signed statement must be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing. Receipt of property under this subsection (2)(c) by a person with the intent to deprive the lawful owner of the property must be treated as theft under 45-6-301."

And, as amended, do pass. Report adopted.

**SB 204**, do pass. Report adopted.

**SB 208**, do pass. Report adopted.

**SJR 4**, be adopted. Report adopted.

**NATURAL RESOURCES** (Roush, Chairman):

1/25/2005

**SB 233**, do pass. Report adopted.

**MESSAGES FROM THE OTHER HOUSE**

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

1/25/2005

**HB 66**, introduced by Jent

**HB 110**, introduced by Furey

**HB 112**, introduced by Musgrove

**HB 160**, introduced by Jacobson

**HB 175**, introduced by Cohenour

**HB 178**, introduced by Taylor

**HB 188**, introduced by Bergren

**HB 205**, introduced by Parker

**HB 250**, introduced by Becker

**House joint resolution** passed and transmitted to the Senate for concurrence:

1/25/2005

**HJR 5**, introduced by Small-Eastman

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**FIRST READING AND COMMITMENT OF BILLS**

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

- SB 291**, introduced by Ryan, referred to Education and Cultural Resources.  
**SB 292**, introduced by Barkus, Ryan, referred to Taxation.  
**SB 293**, introduced by Black, Arntzen, Bergren, Butcher, Dickenson, Franklin, Furey, Gutsche, Hansen, Harris, Henry, Hiner, Kitzenberg, Lindeen, Matthews, Musgrove, Parker, Roush, Sesso, Stahl, Tester, Windham, Witt, referred to Highways and Transportation.  
**SB 294**, introduced by Hawks, referred to Local Government.  
**SB 295**, introduced by Gebhardt, referred to Highways and Transportation.  
**SB 296**, introduced by Black, Bales, Essmann, Hansen, Roush, Tester, Tropila, Witt, referred to Taxation.  
**SB 297**, introduced by Black, Gebhardt, Gillan, Jent, Lake, Laslovich, Lindeen, Perry, Squires, Wanzenried, Warden, referred to Business, Labor, and Economic Affairs.  
**SB 298**, introduced by Tropila, Bergren, Golie, Kitzenberg, McNutt, Musgrove, Smith, Stahl, Steinbeisser, referred to Fish and Game.  
**SB 299**, introduced by Toole, referred to Business, Labor, and Economic Affairs.  
**SB 300**, introduced by Toole, referred to Business, Labor, and Economic Affairs.

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

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

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

**SB 115** - Senator Elliott moved the amendment (amendment #3 section #3) be divided. Thereupon, amendment #3 section #3 was adopted unanimously.

**SB 115** - Senator Tester moved **SB 115**, second reading copy, be amended as follows:

1. Title, line 11.

**Following:** "~~AND~~"

**Strike:** " "

**Insert:** "AND"

2. Title, line 11 through line 12.

**Following:** "DATES" on line 11

**Strike:** remainder of line 11 through "DATE" on line 12

3. Page 11, line 8.

**Following:** "(g)"

**Strike:** "property of"

**Strike:** "is"

**Insert:** "are"

4. Page 18, line 4.

**Strike:** section 15 in its entirety

Amendment adopted as follows:

Yeas: Balyeat, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Gallus, Gebhardt, Gillan, Grimes, Harrington, Hawks, Kitzenberg, Laible, Larson, Lewis, Lind, Pease, Roush, Ryan, Schmidt, Shockley, Smith,

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Squires, Stapleton, Steinbeisser, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 34

Nays: Bales, Barkus, Black, Curtiss, Elliott, Esp, Essmann, Hansen, Keenan, Laslovich, Mangan, Moss, O'Neil, Perry, Story.  
Total 15

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 115** - Senator Tester moved **SB 115**, second reading copy, be amended as follows:

1. Title, line 11.  
**Following:** "~~AND~~"  
**Strike:** " "  
**Insert:** "AND"

2. Title, line 11 through line 12.  
**Following:** "DATES" on line 11  
**Strike:** remainder of line 11 through "DATE" on line 12

3. Page 11, line 8.  
**Following:** "(g)"  
**Strike:** "property of"  
**Strike:** "is"  
**Insert:** "are"

4. Page 18, line 4.  
**Strike:** section 15 in its entirety

Amendment adopted unanimously.

**SB 115** - Senator Tester moved **SB 115**, as amended, do pass. Motion carried as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Esp, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 44

Nays: Balyeat, Elliott, Essmann, O'Neil, Shockley.  
Total 5

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 86** - Senator Smith moved **SB 86** do pass. Motion carried unanimously.

**SB 123** - Senator Black moved **SB 123** do pass. Motion carried unanimously.

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**SB 178** - Senator Barkus moved **SB 178** do pass. Motion carried unanimously.

**SB 183** - Senator Laible moved **SB 183** do pass. Motion carried unanimously.

**SB 188** - Senator Cocchiarella moved **SB 188** do pass. Motion carried unanimously.

**SB 226** - Senator Steinbeisser moved **SB 226** do pass. Motion **failed** as follows:

Yeas: Black, Keenan, Pease, Perry, Ryan, Squires, Steinbeisser, Weinberg.  
Total 8

Nays: Bales, Balyeat, Barkus, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Roush, Schmidt, Shockley, Smith, Stapleton, Story, Tash, Toole, Tropila, Wheat, Williams, Mr. President.  
Total 41

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 226** - Senator Elliott moved **SB 226** be **indefinitely postponed**. Motion carried as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Schmidt, Shockley, Smith, Squires, Stapleton, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 46

Nays: Balyeat, Ryan, Steinbeisser.  
Total 3

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 194** - Senator Laible moved consideration of **SB 194** be passed for the day. Motion carried.

Senator Ellingson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Gallus 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 29** passed as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

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Total 47

Nays: Balyeat, Curtiss.  
Total 2

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 38** passed as follows:

Yeas: Balyeat, Barkus, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Essmann, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Steinbeisser, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 39

Nays: Bales, Black, Curtiss, Esp, Gebhardt, Keenan, O'Neil, Shockley, Stapleton, Story.  
Total 10

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 42** passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 48

Nays: Steinbeisser.  
Total 1

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 44** passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Curtiss, Esp, Essmann, Gallus, Gebhardt, Grimes, Keenan, Laible, Lewis, Moss, O'Neil, Pease, Perry, Roush, Ryan, Shockley, Stapleton, Steinbeisser, Story, Tash, Tropila, Weinberg.  
Total 29

Nays: Cooney, Cromley, Ellingson, Elliott, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Schmidt, Smith, Squires, Toole, Wheat, Williams, Mr. President.  
Total 20

Absent or not voting: None.  
Total 0

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Excused: McGee.  
Total 1

**SB 46** passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 94** passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SB 105** passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cromley, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Wheat, Williams, Mr. President.  
Total 45

Nays: Cooney, Ellingson, Lind, Weinberg.  
Total 4

Absent or not voting: None.  
Total 0

Excused: McGee.  
Total 1

**SPECIAL ORDERS OF DAY**

President Tester had Senator Ryan lead the body in singing Happy Birthday to Senator Roush.



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**ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 1:00 p.m., Wednesday, January 26, 2005. Motion carried.

Senate adjourned at 2:44 p.m.

BILL LOMBARDI  
Secretary of Senate

JON TESTER  
President of the Senate