

SENATE JOURNAL
TWENTY-THIRD LEGISLATIVE DAY - JANUARY 22, 2005

SENATE JOURNAL
59TH LEGISLATURE
TWENTY-THIRD LEGISLATIVE DAY

Helena, Montana
January 29, 2005

Senate Chambers
State Capitol

Senate convened at 8:00 a.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senators Grimes and Williams, excused. Quorum present.

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

Nays: Balyeat, Gebhardt, O'Neil, Shockley.
Total 4

Absent or not voting: None.
Total 0

Excused: Grimes, Williams.
Total 2

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL: 1/29/2005
Correctly printed: **SB 181, SB 198, SB 204, SB 208, SB 209, SB 223, SB 236, SB 240, SB 333, SB 334, SB 335, SB 336, SB 337, SB 338, SB 339, SB 340, SJR 4.**
Correctly engrossed: **SB 80, SB 216.**

NATURAL RESOURCES (Roush, Chairman): 1/29/2005
SB 216, introduced bill, be amended as follows:

1. Title, page 1, line 4.

Following: "FEES"

Insert: "SUBJECT TO VOTER APPROVAL"

2. Page 2, line 7.

Following: "jurisdiction"

Insert: "as provided in subsection (3)"

3. Page 2.

Following: line 11

Insert: "(3)(a) A fee for each household may be assessed if the fee question wins approval of a majority of the qualified electors in the jurisdiction voting in an election conducted pursuant to this subsection (3).

(b) An election conducted pursuant to this subsection (3) may be held in conjunction with a regular or primary election or may be a special election. A petition supporting the proposed fee must be signed by at least 15% of the qualified electors in the jurisdiction and filed in the office of the county clerk and recorder at least 90 days before the election.

(c) The petition must include:

(i) the purpose for which the money will be used;

(ii) the approximate amount to be raised;

(iii) the durational limit, if any, on the fee.

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(d) Notice of the election must be prepared by the governing body and given as provided by law. The form of the ballot must reflect the content of the petition and must include a statement of the impact of the election on a household."

Renumber: subsequent subsections

4. Page 2.

Following: line 19

Insert: "(6) As used in this section, "household" means a single residence or a single unit in a multiunit residence."

And, as amended, do pass. Report adopted.

SB 236, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

1/29/2005

HB 44, introduced by Dickenson

HB 80, introduced by Campbell

HB 116, introduced by Barrett

HB 127, introduced by Mendenhall

HB 153, introduced by Noennig

HB 184, introduced by McAlpin

MOTIONS

Minority Leader Keenan moved action on the Committee of the Whole report be reconsidered. Motion carried.

Minority Leader Keenan moved **SB 41** be segregated from the Committee of the Whole report. Motion carried.

Minority Leader Keenan moved that **SB 41** be referred to Senate Finance and Claims. Motion carried.

Senator Black moved to adopt the Committee of the Whole report. Motion carried.

Senator Cromley moved that **SB 267** be moved from Senate Public Health, Welfare, and Safety to Senate Finance and Claims. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SB 333, introduced by Smith, Campbell, Dowell, Gillan, Hansen, Lenhart, Musgrove, Tropila, Wilson, Windham, referred to Education and Cultural Resources.

SB 334, introduced by Smith, Campbell, Cooney, Gillan, Hansen, Lenhart, Musgrove, Tropila, Wilson, referred to Taxation.

SB 335, introduced by Williams, referred to Education and Cultural Resources.

SB 336, introduced by Larson, Bixby, Eaton, Lenhart, Lindeen, Moss, Pease, Small-Eastman, Tester, referred to Energy and Telecommunications.

SB 337, introduced by Weinberg, Jopek, referred to Natural Resources.

SB 338, introduced by Joe Balyeat, John Balyeat, Barkus, Curtiss, Essmann, Everett, Gebhardt, Hansen, Laslovich, Perry, Shockley, Steinbeisser, Tash, referred to Business, Labor, and Economic Affairs.

SB 339, introduced by Joe Balyeat, Andersen, Black, Roush, Tash, Tropila, referred to Fish and Game.

SB 340, introduced by Essmann, Himmelberger, Larson, referred to Taxation.

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**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 Cooney in the chair.

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

SB 80 - Senator Perry moved **SB 80** do pass.

SB 80 - Senator Gebhardt moved **SB 80**, second reading copy, be amended as follows:

1. Page 1, line 26.

Strike: "\$100"

Insert: "\$10"

Amendment **not** adopted as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Keenan, Kitzenberg, Laible, Lewis, O'Neil, Roush, Ryan, Shockley, Steinbeisser, Story, Tash, Tropila.
Total 24

Nays: Cobb, Cooney, Cromley, Ellingson, Gillan, Grimes, Hansen, Harrington, Hawks, Larson, Laslovich, Lind, Mangan, McGee, Moss, Pease, Perry, Schmidt, Smith, Squires, Stapleton, Toole, Weinberg, Wheat, Williams, Mr. President.
Total 26

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 80 - Senator Gebhardt moved **SB 80**, second reading copy, be amended as follows:

1. Title, lines 6 and 7.

Strike: "; AND" on line 6 through "DATE" on line 7

2. Page 2, line 22.

Strike: section 4 in its entirety

Amendment adopted as follows:

Yeas: Bales, Balyeat, Barkus, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Keenan, Kitzenberg, Laible, Lewis, McGee, O'Neil, Roush, Squires, Stapleton, Steinbeisser, Story, Tash, Tropila, Weinberg.
Total 26

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Nays: Black, Cooney, Cromley, Ellingson, Gillan, Grimes, Hansen, Harrington, Hawks, Larson, Laslovich, Lind, Mangan, Moss, Pease, Perry, Ryan, Schmidt, Shockley, Smith, Toole, Wheat, Williams, Mr. President.
Total 24

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 80 - Senator Perry moved **SB 80**, second reading copy, be amended as follows:

1. Page 2, line 14.
Strike: "or are immediately capable of being consumed"

Amendment adopted as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cromley, Curtiss, Elliott, Essmann, Gallus, Hansen, Harrington, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, McGee, Moss, Pease, Perry, Roush, Ryan, Shockley, Squires, Stapleton, Steinbeisser, Tash, Tropila, Weinberg.
Total 32

Nays: Cocchiarella, Cooney, Ellingson, Esp, Gebhardt, Gillan, Grimes, Hawks, Lind, Mangan, O'Neil, Schmidt, Smith, Story, Toole, Wheat, Williams, Mr. President.
Total 18

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 80 - Senator Perry moved **SB 80**, as amended, do pass. Motion carried as follows:

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

Nays: Elliott, Gallus, Gebhardt, Shockley.
Total 4

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 181 - Senator Steinbeisser moved **SB 181** do pass. Motion carried as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cromley, Ellingson, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Stapleton, Steinbeisser, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 38

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Nays: Balyeat, Cooney, Curtiss, Elliott, Esp, Keenan, Laible, Lewis, McGee, Smith, Squires, Story.
Total 12

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 198 - Senator Kitzenberg moved **SB 198** do pass.

SB 198 - Senator McGee moved **SB 198**, second reading copy, be amended as follows:

1. Page 1, line 30.
Strike: "sexual orientation,"

Amendment **not** adopted as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Lewis, McGee, O'Neil, Pease, Perry, Stapleton, Steinbeisser, Story, Tash.
Total 20

Nays: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lind, Mangan, Moss, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 30

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 198 - Senator McGee moved **SB 198**, second reading copy, be amended as follows:

1. Page 1, line 20.
Strike: "(1)"

2. Page 1, line 28 through page 2, line 3.
Strike: "(2)" on page 1, line 28 through "." on page 2, line 3

Amendment **not** adopted as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Grimes, Keenan, Laible, Lewis, McGee, O'Neil, Pease, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.
Total 21

Nays: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 29

Absent or not voting: None.
Total 0

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Excused: None.
Total 0

SB 198 - Senator McGee moved **SB 198**, second reading copy, be amended as follows:

1. Title, page 1, line 5 through line 6.

Following: "PROPERTY" on line 5

Strike: ", " on line 5 through "BUS" on line 6

2. Page 1, line 10.

Following: "declarations"

Insert: "-- requiring policies prohibiting harassment"

3. Page 1, line 17.

Strike: "The" through "to"

Insert: "School districts shall"

4. Page 1, line 20 through page 3, line 13.

Strike: section 2 through section 5 in their entirety

Re-number: subsequent section

5. Page 3, line 15.

Strike: "[Sections 1 through 5] are"

Insert: "[Section 1] is"

6. Page 3, line 17.

Strike: "[sections 1 through 5]"

Insert: "[section 1]"

Amendment **not** adopted as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis, McGee, O'Neil, Pease, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.

Total 22

Nays: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 28

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 198 - Senator O'Neil moved **SB 198**, second reading copy, be amended as follows:

1. Page 3, line 14.

Insert: "(3) A teacher who witnesses a student harassing, intimidating, or bullying another student may subject the

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student who harassed, intimidated, or bullied the other student to reasonable physical discipline."

Amendment **not** adopted as follows:

Yeas: Bales, Balyeat, Barkus, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Lewis, McGee, O'Neil, Perry, Stapleton, Steinbeisser, Story, Tash.
Total 18

Nays: Black, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Shockley, Smith, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 31

Absent or not voting: None.
Total 0

Excused: Squires.
Total 1

SB 198 - Senator Kitzenberg moved **SB 198** do pass. Motion carried as follows:

Yeas: Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 30

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.
Total 20

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 204 - Senator Shockley moved **SB 204** do pass. Motion carried as follows:

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

Nays: Gallus, Laslovich, Toole, Weinberg.
Total 4

Absent or not voting: None.
Total 0

Excused: Stapleton.
Total 1

SB 208 - Senator Perry moved **SB 208** do pass. Motion carried as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Essmann, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Larson, Lewis, Lind, Mangan, Moss, Pease, Perry, Roush, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila,

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Weinberg, Wheat, Williams.
Total 40

Nays: Balyeat, Cobb, Esp, Gebhardt, Laible, O'Neil, Ryan, Mr. President.
Total 8

Absent or not voting: None.
Total 0

Excused: Laslovich, McGee.
Total 2

SB 209 - Senator Wheat moved **SB 209** do pass. Motion carried unanimously.

SB 223 - Senator Barkus moved **SB 223** do pass. Motion carried unanimously.

SB 233 - Senator Cromley assumed the chair.

SB 233 - Senator Kitzenberg moved **SB 233** do pass. Motion carried unanimously.

SB 240 - Senator Cooney moved **SB 240** do pass. Motion carried as follows:

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

Nays: Gebhardt, Grimes, Lewis, McGee, O'Neil.
Total 5

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 243 - Senator Cooney reassumed the chair.

SB 243 - Senator Cocchiarella moved **SB 243** do pass. Motion carried with Senator Lind voting nay.

SJR 4 - Senator Cobb moved **SJR 4** be adopted. Motion carried with Senator Esp voting nay.

SB 221 - Senator Barkus moved **SB 221** do pass. Motion carried unanimously.

SB 233 - Senator Cooney made a **substitute motion** that **SB 233** be segregated from the Committee of the Whole report and the remainder of the report be adopted. Motion carried.

Senator Ellingson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Cooney moved the Committee of the Whole report be adopted. Report adopted with Senators Cobb and McGee voting nay.

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:

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SB 8 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, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 45 passed as follows:

Yeas: Barkus, Black, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Essmann, Gallus, Gillan, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 37

Nays: Bales, Balyeat, Brueggeman, Curtiss, Gebhardt, Grimes, Laible, McGee, O'Neil, Shockley, Steinbeisser, Story, Tash.
Total 13

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 149 passed as follows:

Yeas: Brueggeman, Cobb, Cocchiarella, Cooney, Curtiss, Ellingson, Elliott, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lewis, Lind, Mangan, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Tash, Toole, Tropila, Wheat, Williams, Mr. President.
Total 34

Nays: Bales, Balyeat, Barkus, Black, Cromley, Esp, Essmann, Keenan, Laible, McGee, Moss, O'Neil, Stapleton, Steinbeisser, Story, Weinberg.
Total 16

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SPECIAL ORDERS OF THE DAY

Senator Squires recognized each of the pages individually and thanked them for their service in the Montana Senate.

Senator Perry was the winner of the weekly ugly tie contest.

ANNOUNCEMENTS

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Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 1:00 p.m., Monday, January 31, 2005. Motion carried.

Senate adjourned at 12:08 p.m.

BILL LOMBARDI
Secretary of Senate

JON TESTER
President of the Senate