

SENATE JOURNAL  
TWENTY-SIXTH LEGISLATIVE DAY - FEBRUARY 2, 2005

SENATE JOURNAL  
59TH LEGISLATURE  
TWENTY-SIXTH LEGISLATIVE DAY

Helena, Montana  
February 2, 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 Senators Grimes, Schmidt, and Toole, excused. Quorum present.

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

Nays: Balyeat, O'Neil, Shockley.  
Total 3

Absent or not voting: None.  
Total 0

Excused: Grimes, Schmidt, Toole.  
Total 3

REPORTS OF STANDING COMMITTEES

**BILLS AND JOURNAL:** 2/2/2005  
Correctly printed: **SB 55, SB 153, SB 162, SB 197, SB 236, SB 244, SB 248, SB 254, SB 354, SB 355, SB 356, SB 357, SB 358, SB 359, SJR 15.**  
Correctly engrossed: **SB 137, SB 151, SB 156, SB 203, SB 249.**

**FISH AND GAME** (Tropila, Chairman): 2/2/2005  
**SB 55**, do pass. Report adopted.

**PUBLIC HEALTH, WELFARE AND SAFETY** (Cromley, Chairman): 2/2/2005  
**SB 137**, introduced bill, be amended as follows:

1. Page 1, line 23.  
**Strike:** "(a)"

2. Page 1, line 25 through line 26.  
**Strike:** lines 25 through 26 in their entirety

And, as amended, do pass. Report adopted.

**SB 153**, do pass. Report adopted.  
**SB 156**, introduced bill, be amended as follows:

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1. Title, line 6.

**Following:** "SUFFICIENT"

**Insert:** "AND SUSTAINABLE"

2. Title, line 7.

**Strike:** "INCREASING FROM 150% OF"

**Insert:** "SETTING"

**Following:** "THE"

**Insert:** "PERCENTAGE OF"

**Following:** "LEVEL"

**Insert:** ", AS APPLIED TO A PERCENTAGE OF THE FAMILY INCOME,"

3. Title, lines 8 and 9.

**Following:** "LEVEL"

**Strike:** "THE AMOUNT" on line 8 through "PROGRAM" on line 9.

4. Page 2, line 2.

**Following:** "sufficient"

**Insert:** "and sustainable"

**Strike:** "increase"

**Insert:** "set"

5. Page 2, line 3.

**Strike:** "to"

**Insert:** "at"

And, as amended, do pass. Report adopted.

**SB 203**, introduced bill, be amended as follows:

1. Page 1, line 12.

**Strike:** "or devices"

2. Page 1, line 19.

**Following:** line 18

**Insert:** "(a) the term "contraceptive":

(i) means the use of any process, device, or method to prevent pregnancy, including steroidal, chemical, or barrier methods for preventing the union of an ovum with the spermatozoon or the subsequent implantation of the fertilized ovum in the uterus, including emergency contraceptives; and

(ii) does not include mifepristone or RU-486;"

**Renumber:** subsequent subsections

And, as amended, do pass. Report adopted.

**SB 249**, introduced bill, be amended as follows:

1. Page 1, line 20.

**Following:** "programs,"

**Insert:** "youth correctional facilities,"

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2. Page 2, lines 20 and 21.

**Strike:** "prior to" line 20 through "report" on line 21

3. Page 3, lines 2 and 3.

**Strike:** "prior to" on line 2 through "report" on line 3

And, as amended, do pass. Report adopted.

**MESSAGES FROM THE OTHER HOUSE**

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

2/2/2005

**HB 71**, introduced by Lake

**HB 100**, introduced by Maedje

**HB 397**, introduced by Dowell

**MOTIONS**

Senator Mangan moved **SB 331** and **SB 342** be moved from Senate Local Government to Senate Judiciary. Motion carried.

Senator Wheat moved action on **SB 143** be reconsidered. Motion carried as follows:

Yeas: Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gillan, Grimes, Harrington, Hawks, Laible, Larson, Laslovich, Lind, Mangan, Moss, Pease, Ryan, Schmidt, Shockley, Smith, Squires, Story, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 27

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gallus, Gebhardt, Hansen, Keenan, Kitzenberg, Lewis, McGee, O'Neil, Perry, Roush, Stapleton, Steinbeisser, Tash.

Total 22

Absent or not voting: None.

Total 0

Excused: Toole.

Total 1

Senator Wheat moved **SB 143** be re-referred to Senate Energy and Telecommunications. Motion carried as follows:

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

Total 32

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Grimes, Keenan, Lewis, McGee, O'Neil, Perry, Stapleton, Steinbeisser, Tash.

Total 17

Absent or not voting: None.

Total 0

Excused: Toole.

Total 1

Senator Cobb moved action be reconsidered on **SB 240**. Motion carried as follows:

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Yeas: Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Smith, Squires, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 32

Nays: Bales, Balyeat, Barkus, Curtiss, Esp, Essmann, Keenan, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.  
Total 17

Absent or not voting: None.  
Total 0

Excused: Toole.  
Total 1

Senator Cobb moved to refer **SB 240** to Senate Finance and Claims. Motion failed as follows:

Yeas: Bales, Balyeat, Black, Brueggeman, Cobb, Esp, Essmann, Gebhardt, Grimes, Keenan, Kitzenberg, Laible, Lewis, Mangan, McGee, O'Neil, Pease, Perry, Shockley, Stapleton, Steinbeisser, Story, Tropila.  
Total 23

Nays: Barkus, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Larson, Laslovich, Lind, Moss, Roush, Ryan, Schmidt, Smith, Squires, Tash, Weinberg, Wheat, Williams, Mr. President.  
Total 26

Absent or not voting: None.  
Total 0

Excused: Toole.  
Total 1

Senator McGee moved that his vote on **SB 134** be changed from "nay" to "aye". Motion carried.

Senator Perry moved that his vote be changed on **SB 134** from "nay" to "aye". Motion carried.

Senator Shockley moved that his vote on **SB 151** be changed from "aye" to "nay". Motion carried.

Senator Lind moved **SB 216** be taken from 2nd reading and placed in Senate Taxation. Motion carried.

Senator Cooney moved **SB 110** be taken from 2nd reading and referred 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 354**, introduced by Gallus, Maedje, referred to Business, Labor, and Economic Affairs.  
**SB 355**, introduced by Shockley, Cromley, Laslovich, referred to Judiciary.  
**SB 356**, introduced by Essmann, referred to Energy and Telecommunications.  
**SB 357**, introduced by Squires, referred to Public Health, Welfare and Safety.  
**SB 358**, introduced by Keenan, referred to Finance and Claims.  
**SB 359**, introduced by Story, referred to Education and Cultural Resources.

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

**SJR 15**, introduced by Williams, referred to Public Health, Welfare and Safety.

**SECOND READING OF BILLS**

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(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 Gillan in the chair.

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

**SB 119** - Senator Ellingson moved consideration of **SB 119** be placed below SB 244 on the second reading board. Motion carried.

**SB 119** - Senator Ellingson moved consideration of **SB 119** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

**SB 151** - Senator Weinberg moved **SB 151** do pass.

**SB 151** - Senator Mangan moved **SB 151**, second reading copy, be amended as follows:

1. Title, line 8.

**Strike:** "DELETING"

**Insert:** "REVISING"

2. Page 2, line 12.

**Following:** line 11

**Insert:** "(b) has, prior to designation by the department of commerce, a population of less than 8,500 according to the most recent federal census or federal estimate;"

**Renumber:** subsequent subsections

Amendment adopted with Senators Bales, Elliott, McGee, and Steinbeisser voting nay.

**SB 151** - Senator Weinberg moved **SB 151**, as amended, do pass. Motion carried as follows:

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

Total 38

Nays: Bales, Balyeat, Cobb, Curtiss, Elliott, Keenan, McGee, O'Neil, Shockley, Steinbeisser, Tash.

Total 11

Absent or not voting: None.

Total 0

Excused: Toole.

Total 1

**SB 248** - Senator Joe Balyeat moved **SB 248** do pass. Motion carried unanimously.

**SB 197** - Senator Gebhardt moved **SB 197** do pass. Motion carried unanimously.

**SB 216** - Senator Lind moved consideration of **SB 216** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

**SB 244** - Senator Squires moved **SB 244** do pass. Motion carried unanimously.

**SB 254** - Senator Gebhardt moved **SB 254** do pass. Motion carried unanimously.

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**SB 162** - Senator Mangan moved **SB 162** do pass. Motion carried unanimously.

**SB 236** - Senator Lind moved **SB 236** do pass. Motion carried as follows:

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

Total 25

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

Total 24

Absent or not voting: None.

Total 0

Excused: Toole.

Total 1

Senator Ellingson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Gillan moved the Committee of the Whole report be adopted. Report adopted with Senators Bales, Joe Balyeat, Grimes, Keenan, 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:

**SB 104** passed as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Essmann, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Tash, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 41

Nays: Balyeat, Cobb, Esp, Gallus, Gebhardt, Keenan, O'Neil, Story.

Total 8

Paired: Roush, Aye; Gallus, No.

Absent or not voting: None.

Total 0

Excused: Toole.

Total 1

**SB 112** passed as follows:

Yeas: 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, Stapleton, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 34

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Gebhardt, Keenan, McGee, O'Neil, Shockley, Steinbeisser, Story, Tash.

Total 15

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Absent or not voting: None.  
Total 0

Excused: Toole.  
Total 1

**SB 134** 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, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Toole.  
Total 1

**SJR 1** adopted 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, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Toole.  
Total 1

**SJR 240 failed** (due to 2/3 vote requirement) as follows:

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

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

Absent or not voting: None.  
Total 0

Excused: Toole.  
Total 1

**SPECIAL ORDERS OF THE DAY**

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President Tester announced that the Senate and House will be in joint session tomorrow (the 27th Legislative Day) to hear the State of Judiciary address.

**ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 12:00 p.m., Thursday, February 3, 2005. Motion carried.

Senate adjourned at 3:36 p.m.

BILL LOMBARDI  
Secretary of Senate

JON TESTER  
President of the Senate