

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

SENATE JOURNAL  
59TH LEGISLATURE  
TWENTY-SEVENTH LEGISLATIVE DAY

Helena, Montana  
February 3, 2005

Senate Chambers  
State Capitol

Senate convened at 12:00 p.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senators Cobb, Gillan, and Schmidt, excused. Quorum present.

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

Nays: Balyeat, Shockley.  
Total 2

Absent or not voting: None.  
Total 0

Excused: Cobb, Gillan, Schmidt.  
Total 3

REPORTS OF STANDING COMMITTEES

**BILLS AND JOURNAL:** 2/3/2005  
Correctly printed: **SB 170, SB 235, SB 360, SB 361, SB 362, SB 363, SB 364, SB 365, SB 366, SJR 16, SJR 17.**  
Correctly engrossed: **SB 196, SB 256, SB 314.**

**AGRICULTURE, LIVESTOCK AND IRRIGATION** (Hansen, Chairman): 2/3/2005  
**SB 314**, introduced bill, be amended as follows:

1. Title, page 1, line 5.

**Strike:** "SIGNIFICANT"

**Insert:** "OWNERSHIP"

2. Page 1, line 14.

**Strike:** ""Significant interest"" through "or 20% "

**Insert:** ""Ownership interest" means some portion of equity ownership interest or some portion of"

3. Page 1, line 22 through line 24.

**Following:** "shall" on line 22

**Strike:** "own" on line 22 through "represent" on line 24

**Insert:** "hold an ownership interest in irrigable land within the division of the district that the individual would represent"

4. Page 1, line 25.

**Strike:** "citizen"

**Insert:** "resident"

And, as amended, do pass. Report adopted.

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

**ENERGY AND TELECOMMUNICATIONS** (Toole, Chairman):

2/3/2005

**SB 235**, do pass. Report adopted.

**SB 256**, introduced bill, be amended as follows:

1. Title, page 1, line 5.

**Following:** "UTILITIES"

**Strike:** ", INCLUDING COOPERATIVE UTILITIES"

2. Title, page 1, line 5.

**Strike:** "69-8-311,"

3. Title, page 1, line 6.

**Following:** the first "MCA;"

**Strike:** "REPEALING SECTION 69-8-605, MCA;"

4. Page 3, line 23 through line 24.

**Strike:** the first "the" on line 23 through "attached" on line 24

**Insert:** "100 kilowatts"

5. Page 8, line 7 through line 8.

**Following:** "69-5-112,"

**Insert:** "and"

**Following:** "69-8-402"

**Strike:** ", and Title 69, chapter 8, part 6"

6. Page 8, line 19 through line 28.

**Strike:** section 3 in its entirety

**ReNUMBER:** subsequent sections

7. Page 10.

**Following:** line 12

**Insert:** "(5) Notwithstanding other net metering provisions that might potentially conflict, the commission shall establish, by rule or tariff process, the requirements necessary to ensure that:

(a) customer-generators are fully compensated for the value of their power production to the utility system;

and

(b) costs related to the customer-generators are not shifted to the utility or other customers or customer classes."

8. Page 10, line 13.

**Strike:** section 6 in its entirety

**ReNUMBER:** subsequent section

And, as amended, do pass. Report adopted.

**MESSAGES FROM THE OTHER HOUSE**

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

2/3/2005

**HB 14**, introduced by Golie

**HB 218**, introduced by B. Olson

**HB 242**, introduced by Lambert

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

**MOTIONS**

Minority Leader Keenan moved to reconsider action on SB 240. Motion carried.

Majority Leader Ellingson moved that the Senate proceed to the House of Representatives for the purpose of receiving State Of The Judiciary address from the Honorable Chief Justice Karla Gray, and further moved that the Senate stand adjourned upon adjournment of the joint session. Motion carried.

**FIRST READING AND COMMITMENT OF BILLS**

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

**SB 360**, introduced by Harrington, referred to Business, Labor, and Economic Affairs.

**SB 361**, introduced by Joe Balyeat, Barkus, R. Brown, Grimes, Keenan, Lange, McGee, Perry, Wagman, referred to Taxation.

**SB 362**, introduced by Joe Balyeat, Joh. Balyeat, Barkus, R. Brown, Grimes, Keenan, Lange, McGee, Perry, Wagman, referred to Taxation.

**SB 363**, introduced by Williams, referred to Education and Cultural Resources.

**SB 364**, introduced by Lind, referred to Energy and Telecommunications.

**SB 365**, introduced by Ellingson, referred to Energy and Telecommunications.

**SB 366**, introduced by Toole, referred to Taxation.

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

**SJR 16**, introduced by Williams, Cocchiarella, Cooney, Ellingson, Elliott, Franklin, Gallus, Harrington, Hawks, Juneau, Larson, Laslovich, Mangan, Moss, Pease, Raser, Roush, Ryan, Schmidt, Smith, Squires, Tester, Tropila, Weinberg, Wheat, Wilson, Wiseman, referred to Public Health, Welfare and Safety.

**SJR 17**, introduced by Lind, referred to Energy and Telecommunications.

**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 Harrington in the chair.

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

**SB 170** - Senator Mangan moved **SB 170** do pass. Motion carried unanimously.

**SB 196** - Senator Wheat moved **SB 196** do pass.

**SB 196** - Senator Grimes moved **SB 196**, second reading copy, be amended as follows:

1. Page 2, line 18.

**Following:** line 17

**Insert:** "(9) This section has no applicability to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure."

Amendment adopted as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hawks, Keenan, Kitzenberg, Laible, Lewis, Lind, McGee, O'Neil, Perry, Roush, Schmidt, Shockley, Stapleton, Steinbeisser, Story, Tash, Tropila.

Total 30

Nays: Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Hansen, Harrington, Larson, Laslovich, Mangan, Moss, Pease, Ryan, Smith, Squires, Toole, Weinberg, Wheat, Williams, Mr. President.

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

Total 20

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 196** - Senator Wheat moved **SB 196**, as amended, do pass. Motion carried as follows:

Yeas: Balyeat, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, McGee, Moss, O'Neil, Pease, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 33

Nays: Bales, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis, Perry, Stapleton, Steinbeisser, Story, Tash.  
Total 17

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

Senator Ellingson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Harrington 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 151** passed as follows:

Yeas: Black, Brueggeman, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, 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, Barkus, Cobb, Curtiss, Keenan, Laible, McGee, O'Neil, Shockley, Steinbeisser, Story, Tash.  
Total 13

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 162** 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

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 197** 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 236** passed as follows:

Yeas: Cochiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 27

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Kitzenberg, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.  
Total 23

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 244** passed as follows:

Yeas: Bales, Balyeat, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 47

Nays: Barkus, Esp, Perry.  
Total 3

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

**SB 248** passed as follows:

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

Nays: Esp, Larson, Mangan, Smith.  
Total 4

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 254** 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 240** passed as follows:

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

Nays: Balyeat, Esp, Grimes, Lewis, O'Neil, Shockley.  
Total 6

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SPECIAL ORDERS OF THE DAY**

The Senate was escorted into the House Chambers by House Sergeant-At-Arms Clark.

Speaker Matthews yielded the chair to President Tester.

Senate Majority Leader Ellingson moved that the body resolve itself into a joint session and further moved that a Committee of Four be appointed to notify the Honorable Chief Justice Karla Gray that the joint session is ready to

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

receive her address.

President Tester appointed Senator Shockley, Senator Wheat, Representative Ripley, and Representative Harris and discharged the committee to escort the Honorable Chief Justice Karla Gray into the House Chambers.

Senate Sergeant-At-Arms Dick admitted the Committee of Four and the Honorable Chief Justice Karla Gray into the House Chambers.

The Pledge of Allegiance was recited and Fr. Jerry Lowney gave the invocation.

President Tester introduced the Honorable Chief Justice Karla Gray and she made the following remarks:

Speaker Matthews, President Tester, Members of the 59<sup>th</sup> Montana Legislature, distinguished guests, fellow Montanans:

"I am honored to report to this joint session of the 59<sup>th</sup> Montana Legislature—and the people we all serve—on Montana's Judicial Branch of government: who we are, our successes and our challenges. Before I do that, let me express my sincere thanks for this time in your crowded schedule. It is important for you to hear about the Judicial Branch; but this time together is perhaps equally important because it provides an opportunity for members of all three Branches of Montana's government to be together in one place, to symbolically remind all of us of our shared commitment to serving the people of Montana as well as we possibly can in our separate, but equally important, roles. In the overall scheme of things, sharing this time together cements the lovely reality that far more binds us together in our government than has ever separated us.

Let me start with who we are in the Judicial Branch, beginning with the dedicated judges of Montana's Courts of Limited Jurisdiction, who are an integral part of nearly every community and, most assuredly, the backbone of our Montana judicial system. These 107 justices of the peace, city court and municipal court judges, together with their experienced and committed employees, handle more than 300,000 cases each year. Their dedication, professionalism and commitment to delivering timely and quality justice to the citizens of our state are a model for us all.

Next, please be aware of the 42 men and women who serve as District Court judges in all 56 counties in Montana, divided into 22 judicial districts. District Court cases involve the most complicated problems human beings can devise, both civil and criminal. On a daily basis, District Court judges make decisions dramatically affecting individuals, families, businesses and communities. They and their talented staff are passionately dedicated to the law, the Constitution and the public and, for that, we owe them immense gratitude.

Many of you already know my colleagues on the Supreme Court. Montana's highest court—together with our hardworking and dedicated judicial assistants, law clerks and staff attorney—work with incredible diligence to handle a heavy and ever more complex caseload. In 2004, the Supreme Court resolved 800 cases, nearly half by written opinion. In addition, we totally revamped the ethical rules for Montana attorneys, made our first trip ever to Glendive—so the folks in eastern Montana would have the opportunity to experience an oral argument before the Montana Supreme Court—and worked on improvements in various areas related to the administration of justice such as access to justice issues. The Justices are enormously dedicated to serving the people of Montana and to upholding the people's document—our Montana Constitution.

With that abbreviated background on the Judicial Branch, let me touch on just a few of our many accomplishments in recent years. And let me start by confessing that when I stood before the joint session four years ago, as the new Chief Justice, I envisaged a very different term as Chief. But—as the old saying or “curse” goes—“may we live in interesting times.” And did those folks ever serve up some interesting times for the Judicial Branch—including the Chief Justice—in 2001, when they enacted state assumption of District Court expenses during the closing days of the 57<sup>th</sup> Legislature!

State assumption was a visionary action by the Legislature. But I believe I can say---without fear of contradiction—that state assumption was much more complex, more labor-intensive and more costly than anyone anticipated. And so, most of the Judiciary's biggest recent accomplishments have related to state assumption, which came into being just 2½ years ago. To a large extent, the “major” dust has now settled regarding this challenging and complicated transition. In less than three years, we have created order out of what seemed chaos. We have brought order and timeliness to the process of paying the bills the Legislature obligated us to pay, and all

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

District Courts are operating under a unified set of policies relating to state assumption. In one fell swoop, the District Court employees who came to us with state assumption on July 1, 2002, grew our Branch from a mere 103 FTE to 375 FTE. Those employees are now working under a single Judicial Branch compensation and classification plan. I am confident in reporting that, while state assumption continues to be a work in progress, we have successfully accomplished a major transition that in other states typically has taken many years and many more resources.

I also want to highlight just some of the major successes in Montana's Youth Courts achieved as part of state assumption. Chief probation officers, under the support and guidance of District Court judges wearing their Youth Court "hats," have worked steadily and creatively to achieve uniformity and consistency across the 22 judicial districts. By the time this 59th Legislature adjourns, Youth Courts in our state will share a single, automated risk assessment system. This new web-based system will dramatically improve the Youth Courts' ability to identify the needs of at-risk youth, efficiently target prevention and intervention services for those youth, and enhance public safety in our communities. We will roll this assessment tool out with a statewide information-gathering system which ultimately will provide a statewide "report card" on how well our Youth Courts are doing business. We also have centralized the purchase of drug testing kits through a state contract at a much-reduced cost. And, as a final example, we have adopted uniform complaint resolution forms and procedures to investigate and process any complaints against Youth Court staff. These are monumental strides for the Youth Court system—and the Montana children, families and communities they serve. These accomplishments also are shining examples of the wisdom of state assumption.

Much of the credit for success of state assumption lies, of course, with the District Court Council created by the 2001 Legislature in the state assumption legislation. This Council, which I chair, has four District Court voting members, and representatives of juvenile probation, Clerks of District Court, court reporters and the Montana Association of Counties. Needless to say, all very busy people. But the District Court Council—with the extremely able and seemingly tireless staff from the Court Administrator's office—gives whatever time and energy is needed to the challenges of quickly, but carefully, transitioning District Courts into state assumption. Moving away from state assumption-related matters, I am proud to tell you that our District Court judges continue to approach the administration of justice creatively. A number of what are commonly called "problem-solving courts" have been established in Montana, through the dedication and commitment of judges and members of various communities who are attempting to solve underlying problems such as drug and alcohol dependency, which impact so heavily on the safety of families and communities. The newest of these started just recently in Judge Tom McKittrick's court in Great Falls. I hope to visit it soon, as I have visited several of the others. These newer approaches to the administration of justice are incredibly rigorous for the participants and, so far, very successful. I was moved to tears when I spoke at a "graduation ceremony" in the Gallatin County treatment court, where I had the honor of meeting a man who had been a drug addict with a life in shambles for 20+ years, and who was drug-free for the first time, employed and tending to his family—all as a result of the 18-month treatment court program. These problem-solving courts are very labor intensive and, therefore, somewhat costly on the "front end." I am proud that some Montana judges and their communities have begun, and maintained, these creative courts with federal and local monies. When the Judicial Branch becomes financially healthy, I hope we can work together to fund these special courts—and more like them—throughout the state.

Finally, in the area of information technology, where our resource needs are so great, I am pleased to report that—even with limited resources the Judicial Branch has made important improvements in the past 18 months. We have installed FullCourt, a modern case management system, in 100 of the approximately 160 Courts of Limited Jurisdiction. This step alone substantially improves the way judicial business is done in our busiest courts. Even more exciting, we will electronically link these courts and create a single repository for Limited Court information by September of this year, with the assistance of a federal grant. Working in partnership with the Department of Justice and others who depend on criminal justice information, convictions and sentences will be reported quickly and electronically. As you can readily imagine, this will dramatically increase the accuracy and timeliness of data and will eliminate the slow, labor intensive, paper-based processes currently in place. From a technology standpoint, Montana's Courts of Limited Jurisdiction are in better shape than they have ever been.

The Judiciary continues to face major challenges, of course, so I need to visit with you about just some of our budget proposals to address those challenges. As with all branches of government and the people we serve, our needs are many. But we have limited our budget request to those proposals which are truly essential for the Judicial Branch to function effectively, efficiently and in a manner which provides accessibility of public records in the Judicial Branch to the people of Montana.



SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

Of course, this brings me immediately back to the information technology needs of Montana's Judiciary. In our modern world, efficiency demands technology; and accountability demands technology in equal measure. As we all know, technology has revolutionized government's capacity to collect and sort data, provide information and enhance services. Regrettably, the extensive information technology common in the Legislative and Executive Branches simply does not exist in many areas of the Judicial Branch. And I must point out that no funding for IT hardware, software, connectivity or staff came along with state assumption. It is not a "fault" thing—simply a truism that in those hectic last days of the 2001 Session no one was thinking about the IT-related costs of a hugely expanded Judicial Branch.

Montana's District Courts, especially, are in dire need of modern information technology tools. We are grateful that both former Governor Martz and Governor Schweitzer included, in their budgets, one-time-only money to modernize information technology in the District and Limited Jurisdiction Courts more rapidly, so we can finally get all Montana's trial courts on the same page at the same time. It is inefficient, wasteful and disruptive to be installing new systems in some courts, while still "patching" old systems in other courts. We ask your support for these proposals.

Stable, long-term and adequate funding is essential to maintain modern information technology in all our courts in the Twenty-First century. We desperately need technology to effectively manage court operations, to report data to the Legislature in a timely, consistent and reliable manner, and to be accountable to those who pay for and rely on court services. Had Montana's fiscal situation been less dire two years ago, we would have fought for general fund funding for the Judiciary's ongoing IT needs, but it simply was not going to happen. So, instead, and at our request, the 2003 Legislature increased the IT surcharge to increase resources for court technology. The increase helped, but our experience in the past 18 months has proven beyond a doubt that the surcharge is not an adequate, efficient or long-term solution for funding well-planned, cost-effective information technology for Montana's courts. Consequently, we have proposed several solutions for funding essential court technology, and Governor Schweitzer's budget joins us in recommending general fund funding for operating basic IT tools for Montana's courts. In addition, we will present bonding legislation for improvements in our information technology. We urge you to thoughtfully consider and approve these proposals; without them, Montana's courts simply cannot do their work or efficiently exchange information with the other Branches, other governments, private businesses and citizens having business with the courts.

Our next major challenge is to more fully implement the vision of state assumption which was set out in the interim study done before the 2001 Session called "Simplification in the 21<sup>st</sup> Century." That vision of state assumption is to "provide a uniform, timely and quality judicial system" for Montana. As recognized by the "Simplification" report, the District Courts came into the state system with very uneven staffing and staff compensation levels. Many judicial districts still lack basic, minimum levels of staffing, which creates too many delays in the judicial process. I ask for your support for our conservative proposal for additional staff in the District Courts. Similarly, we have proposed a very modest amount to start moving employees doing the same work in different District Courts toward pay equity; the existing inequities are simply unfair and result from the pre-assumption 56-county approach. Please help us take these important steps in furthering the goals the Legislature set for state assumption.

In order to get a handle on Court workloads and needs, the Judiciary is also requesting—and both former Governor Martz and Governor Schweitzer recommend—a one-time-only appropriation for a comprehensive judicial workload assessment study. Such a study will provide logical, measurable data for assessing judicial and staff resource needs, and will help us all answer the questions about court resource needs that have bedeviled Legislative and Judicial policymakers for decades. Such a study has been successfully completed in other states struggling with similar resource issues, but at a significantly higher cost. Neither we nor you currently have the tools and standards necessary for making responsible resource allocation decisions and for ensuring that we have clear, measurable standards for accountability to the public we serve.

Paying the costs of indigent defense remains a very serious problem in the District Court variable budget, which covers criminal defense for the poor, counsel for indigent Montanans facing commitment to a mental facility or the loss of parental rights, and counsel for the most vulnerable of our citizens—children involved in court proceedings—among other things. Some of you will remember that last session I requested, cajoled, nudged and, indeed, pleaded for adequate funding of these costs the Legislature obligated us to pay. I asked not to be forced into a supplemental appropriation situation this session. But fiscal times were dire in Montana, and the needed funds were not provided. Unfortunately, but not surprisingly, the expenses for these variable budget services have

SENATE JOURNAL  
TWENTY-SEVENTH LEGISLATIVE DAY - FEBRUARY 3, 2005

far exceeded the amount funded by the 2003 Legislature. The Judiciary currently is anticipating a supplemental request of about \$6.8 million because, frankly, how many Montanans require these services simply is not a matter which we or anyone can control, unless you want prosecutors to dismiss cases involving people entitled to state-funded legal representation. So far, we have kept the wolf from the door by delaying purchases and reducing operating expenses. We cannot, however, continue to starve other portions of the Judicial Branch's budget to pay these bills you obligated us to pay. That was not the vision for state assumption. I urge you to support our crucial request for supplemental funding for these essential services.

The Judicial Branch has had many successes and faces more challenges. I am proud of our successes and confident that you will fairly and constructively help us address the remaining challenges. I am most proud that Montanans who seek resolution of their disputes through our courts—established expressly for that purpose—have their cases handled fairly by judges and staff who are competent and committed. The Judicial Branch continues working to ensure that every Montanan has equal access to our courts, and that the administration of justice is fair, impartial and accountable to the people we serve. We believe in these goals and strive to meet them every day.

I know that all of you aspire to correlative goals on behalf of your—and our—constituents. As elected officials, we are all committed to serving our constituents with dignity and to giving them the best that is in us. Let us remember together that we are part of a system of government—three separate branches with built-in checks and balances—that is the envy of people around the world. Let us remember together the sacrifices that have been made—and continue to be made—to protect our form of government and to enable others to attain it. If we keep these fundamental ideas close to our hearts and minds, these will be our proudest moments—and we will have faithfully discharged our duties to the people we all serve.

Thank you for your valuable time and considerate attention. The Judicial Branch applauds the critical work you do. On behalf of Montana's Judges, Justices and staff, I wish you a productive and successful 59<sup>th</sup> Legislative Session."

President Tester thanked the Honorable Chief Justice Karla Gray and requested that the Committee of Four escort her out of the House Chambers.

**ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the joint session be adjourned. Motion carried.

Joint session adjourned 1:30 p.m.

Senate adjourned until 1:00 p.m., Friday, February 4, 2005.

BILL LOMBARDI  
Secretary of Senate

JON TESTER  
President of the Senate