

SENATE JOURNAL  
TWENTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 4, 2005

SENATE JOURNAL  
59TH LEGISLATURE  
TWENTY-EIGHTH LEGISLATIVE DAY

Helena, Montana  
February 4, 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. Quorum present.

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, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 48

Nays: Balyeat, Shockley.  
Total 2

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

REPORTS OF STANDING COMMITTEES

**BILLS AND JOURNAL:** 2/4/2005  
Correctly printed: **SB 55, SB 137, SB 153, SB 156, SB 367, SB 368, SB 369, SB 370, SB 371, SB 372, SB 373, SB 374, SB 375, SB 376, SB 377, SB 378, SB 379, SB 380, SJR 18.**  
Correctly engrossed: **SB 119, SB 229, SB 245, SB 250, SB 261, SB 292.**

**TAXATION** (Elliott, Chairman): 2/4/2005  
**SB 229**, introduced bill, be amended as follows:

1. Title, line 6.  
**Strike:** "REDUCING"  
**Insert:** "INCREASING"

2. Page 3, line 2.  
**Strike:** "five"  
**Insert:** "10"

And, as amended, do pass. Report adopted.

**SB 245**, introduced bill, be amended as follows:

1. Title, line 7.  
**Following:** "MEMBER;"  
**Insert:** "REQUIRING A SUBSEQUENT ELECTION OF A BOARD MEMBER APPOINTED TO FILL A VACANCY;"

2. Title, line 8.

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**Strike:** "AND"

**Insert:** ", "

**Following:** "7-6-1544, "

**Insert:** "AND 7-6-1546,"

3. Page 2, line 6 through line 8.

**Strike:** subsection (3) in its entirety

**Renumber:** subsequent subsections

4. Page 2, line 11 through line 12.

**Strike:** "majority" on line 11

**Insert:** "plurality"

**Strike:** "first" on line 11 through "school"

**Following:** "election" on line 12

**Insert:** "conducted under 13-1-104"

5. Page 2, line 14.

**Strike:** "(4)"

**Insert:** "(3)"

6. Page 2, line 16.

**Strike:** "(4)"

**Insert:** "(3)"

7. Page 2.

**Following:** line 16

**Insert:** "**Section 3.** Section 7-6-1546, MCA, is amended to read:

**"7-6-1546. Resort area district board -- vacancy. (1)** If a vacancy on the board occurs by death, resignation, or removal from the resort area district, the remaining directors shall appoint a director to fill the vacancy. The term of the appointment coincides with the term that became vacant.

**(2) An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a plurality of the votes cast in the election, the appointee's term expires and the board shall initiate the process to fill the vacancy as provided in subsection (1).**"

And, as amended, do pass. Report adopted.

**SB 250**, introduced bill, be amended as follows:

1. Title, line 7 through line 8.

**Strike:** "AN" on line 7 through "APPLICABILITY" on line 8

**Insert:** "A DELAYED EFFECTIVE"

2. Page 1, line 15 through line 16.

**Strike:** ", as" on line 15 through "15-30-142" on line 16

3. Page 1, line 18.

**Following:** "shares"

**Strike:** ", "

**Insert:** "of stock or securities, of"

**Following:** "or"

**Insert:** "of"

**Following:** "stock"

**Insert:** "or instruments"

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4. Page 1, line 19.

**Following:** "companies"

**Insert:** "that are"

5. Page 1, line 24.

**Strike:** "on passage and approval"

**Insert:** "January 1, 2006"

6. Page 1, lines 26 and 27.

**Strike:** "**Retroactive applicability**" on line 26

**Insert:** "Applicability"

**Strike:** "retroactively," on line 26 through "1-2-109," on line 27

**Strike:** "2004"

**Insert:** "2005"

And, as amended, do pass. Report adopted.

**SB 261**, introduced bill, be amended as follows:

1. Page 1, line 25.

**Strike:** "file"

**Insert:** "record"

2. Page 2, line 5.

**Following:** "~~present the~~"

**Insert:** "owner shall record the"

**Strike:** "must be presented to"

**Insert:** "in the office of"

3. Page 2, line 6.

**Strike:** "manufactured home"

**Insert:** "real property"

4. Page 2, lines 7 and 8.

**Following:** "title" on line 7

**Insert:** "and a certified copy of the recorded statement of intent"

**Strike:** "The" on line 7 through "treasurer." on line 8

5. Page 2, line 12.

**Following:** "a"

**Insert:** "certified"

**Following:** "intent"

**Insert:** ", a copy of the receipt for the fee required in 61-3-203,"

6. Page 2, line 14.

**Following:** "form"

**Insert:** ", which the owner shall record,"

7. Page 2, lines 19 and 20.

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**Following:** "intent" on line 19

**Insert:** "and the statement of title acceptance provided for in subsection (3)(b)"

**Strike:** "and" on line 19 through "title" on line 20

8. Page 2, line 24.

**Following:** "improvement"

**Insert:** "to real property"

9. Page 2, line 24 and line 25.

**Strike:** "On" on line 24 through "purposes." on line 25

10. Page 3, line 2.

**Strike:** "files"

**Insert:** "records"

11. Page 3, line 5.

**Strike:** "have" through "or"

**Insert:** "restore"

12. Page 3, line 17.

**Strike:** "and to the county treasurer"

**Insert:** "of justice"

**Strike:** "county treasurer"

**Insert:** "department of justice"

13. Page 3, line 24.

**Strike:** "manufactured home"

**Insert:** "real property"

14. Page 3, line 25.

**Following:** "form"

**Insert:** ", which the owner shall record,"

15. Page 4, line 2 through line 3.

**Strike:** "On" on line 2 through "purposes." on line 3

And, as amended, do pass. Report adopted.

**SB 292**, introduced bill, be amended as follows:

1. Title, line 5.

**Following:** "LAWS;"

**Insert:** "CHANGING THE START OF THE PERIOD TO CONTEST THE VALIDITY OF CERTAIN BONDS;"

2. Title, line 20.

**Strike:** "EXEMPTING IRRIGATION DISTRICT SPECIAL TAXES FROM MILL LEVY REQUIREMENTS;"

3. Title, line 21.

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**Following:** "SECTIONS"  
**Insert:** "7-7-104,"

4. Title, line 22.  
**Following:** "20-9-410,"  
**Insert:** "AND 20-9-464,"

5. Title, line 23.  
**Strike:** "85-7-1953" through "85-8-618,"

6. Page 1, line 27.  
**Insert:** "**Section 1.** Section 7-7-104, MCA, is amended to read:  
"7-7-104. **Limitation on action to test bond validity.** ~~No~~ A local government general obligation bond of any issue, ~~whereof in which~~ the preliminary proceedings have been submitted to and approved by the attorney general, may not be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity ~~thereof~~ of the bonds is brought within 30 days after the date of ~~sale~~ the adoption of the resolution calling for the sale of bonds of the local government."  
**Renumber:** subsequent sections

7. Page 15, line 19.  
**Insert:** "**Section 20.** Section 20-9-464, MCA, is amended to read:  
"20-9-464. **Statute of limitations -- action to test validity.** ~~No~~ A bond of any issue, ~~whereof in which~~ the preliminary proceedings have been submitted to and approved by the attorney general, ~~shall may not~~ be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of ~~said~~ the bonds, unless an action to contest the validity ~~thereof shall be~~ of the bonds is brought within 30 days after the date of ~~sale~~ the adoption of the resolution calling for the sale of bonds of the school district."  
**Renumber:** subsequent sections

8. Page 15, line 20 through page 20, line 27.  
**Strike:** section 19 through section 27 in their entirety  
**Renumber:** subsequent sections

9. Page 21, line 17.  
**Strike:** "28"  
**Insert:** "21"

10. Page 21, line 19.  
**Strike:** "28"  
**Insert:** "21"

11. Page 21, line 20.  
**Strike:** "29"  
**Insert:** "22"

12. Page 21, line 21.  
**Strike:** "29"  
**Insert:** "22"

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And, as amended, do pass. Report adopted.

**MESSAGES FROM THE GOVERNOR**

February 4, 2005

The Honorable Jon Tester  
President of the Senate  
State Capitol  
Helena, Montana 59620

Dear Senator Tester:

President Tester:

I am writing to inform you and your colleagues that I have this day signed HB 1.

Sincerely,

BRIAN SCHWEITZER  
Governor

**MESSAGES FROM THE OTHER HOUSE**

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

2/4/2005

**HB 171**, introduced by Cohenour  
**HB 183**, introduced by Franklin  
**HB 206**, introduced by Noonan  
**HB 313**, introduced by Sesso  
**HB 381**, introduced by Callahan

**MOTIONS**

Senator Williams moved that additional sponsors be added to SJR 16. Motion carried.

**FIRST READING AND COMMITMENT OF BILLS**

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

**SB 367**, introduced by Cooney, referred to State Administration.  
**SB 368**, introduced by Cocchiarella, referred to Business, Labor, and Economic Affairs.  
**SB 369**, introduced by Cocchiarella, referred to Business, Labor, and Economic Affairs.  
**SB 370**, introduced by Squires, Lenhart, referred to Local Government.  
**SB 371**, introduced by Harrington, referred to Energy and Telecommunications.  
**SB 372**, introduced by Toole, referred to Energy and Telecommunications.  
**SB 373**, introduced by Essmann, Stapleton, referred to Business, Labor, and Economic Affairs.  
**SB 374**, introduced by Wheat, Wanzenried, referred to Judiciary.  
**SB 375**, introduced by Wheat, referred to Judiciary.  
**SB 376**, introduced by Wheat, referred to Natural Resources.  
**SB 377**, introduced by Wheat, referred to Natural Resources.  
**SB 378**, introduced by Wheat, referred to Judiciary.  
**SB 379**, introduced by Wheat, referred to Business, Labor, and Economic Affairs.

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

**SJR 18**, introduced by Toole, 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 Williams in the chair.

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

**SB 55** - Senator Tash moved **SB 55** do pass. Motion carried unanimously.

**SB 119** - Senator Schmidt moved **SB 119** do pass.

**SB 119** - Senator O'Neil moved **SB 119**, second reading copy, be amended as follows:

1. Page 3, line 6.

**Following:** "services"

**Insert:** ";

(v) a public defender with no direct conflict of interest, if one is available"

Amendment **not** adopted as follows:

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

Total 25

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

Total 25

Absent or not voting: None.

Total 0

Excused: None.

Total 0

*Amendment passed Legislative Day 24 reads as follows:*

1. Page 3, line 6.

**Strike:** "an interest in"

**Insert:** "knowledge of"

2. Page 4, line 26.

**Following:** "HEARING"

**Insert:** "before the court"

**SB 119** - Senator Schmidt moved **SB 119**, as amended, do pass. Motion carried as follows:

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, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 45

Nays: Balyeat, Curtiss, McGee, O'Neil, Shockley.

Total 5

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Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 137** - Senator Lewis moved **SB 137** do pass.

**SB 137** - Senator O'Neil moved **SB 137**, second reading copy, be amended as follows:

1. Title, page 1, line 5.

**Following:** the second "ACT"

**Strike:** remainder of line 5 through "LAWS" on line 13

**Insert:** "MAKING IT A CRIMINAL OFFENSE FOR A PERSON TO PERFORM A BODY PIERCING ON AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OF AGE WITHOUT PARENTAL CONSENT"

2. Title, page 1, line 13.

**Following:** "45-5-623,"

**Strike:** remainder of line 13 through "50-2-130, "on line 14

3. Page 1, line 18 through page 5, line 28.

**Strike:** section 1 through section 15 in their entirety

**Renumber:** subsequent sections

4. Page 6, lines 11 and 12.

**Strike:** "AND "BODY PIERCING" HAVE"

**Insert:** "has"

**Strike:** "[section 2]"

**Insert:** "50-2-116"

5. Page 6, line 17.

**Following:** "or both."

**Insert:** "(3) "Body piercing", as used in this section, means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature."

6. Page 6, line 20 through page 11, line 4.

**Strike:** section 17 through section 20 in their entirety

**Renumber:** subsequent section

Amendment **not** adopted unanimously.

**SB 137** - Senator Lewis moved **SB 137** do pass. Motion carried with Senators Gebhardt and O'Neil voting nay.

**SB 153** - Senator Cobb moved **SB 153** do pass. Motion carried unanimously.

**SB 156** - Senator Cooney moved **SB 156** do pass. Motion carried as follows:



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Yeas: Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 36

Nays: Bales, Balyeat, Barkus, Curtiss, Esp, Essmann, Gebhardt, Lewis, McGee, O'Neil, Shockley, Steinbeisser, Story, Tash.  
Total 14

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 Williams 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 170** 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 196** passed as follows:

at, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lewis, Lind, Mangan, 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, McGee, Perry, Stapleton, Steinbeisser, Story, Tash.  
Total 17

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

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**SPECIAL ORDERS OF THE DAY**

Michaela Becker was introduced and given a certificate of achievement in the national Punt, Pass, and Kick Contest. The Hawthorne Elementary School Choir performed two songs, "One Wish" and "My America".

**ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 8:00 a.m., Saturday, February 5, 2005. Motion carried.

Senate adjourned at 2:56 p.m.

BILL LOMBARDI  
Secretary of Senate

JON TESTER  
President of the Senate