

SENATE JOURNAL
TWENTY-NINTH LEGISLATIVE DAY - FEBRUARY 5, 2005

SENATE JOURNAL
59TH LEGISLATURE
TWENTY-NINTH LEGISLATIVE DAY

Helena, Montana
February 5, 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 Senator Wheat, excused. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gillan, Grimes, 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, Williams, Mr. President.
Total 44

Nays: Balyeat, Gallus, Gebhardt, O'Neil, Shockley.
Total 5

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL: 2/5/2005
Correctly printed: **SB 206, SB 231, SB 235, SB 277, SB 314, SB 381, SB 382, SB 383, SB 384, SJR 9, SJR 19.**
Correctly engrossed: **SB 260, SB 269.**

NATURAL RESOURCES (Roush, Chairman): 2/5/2005
SB 269, introduced bill, be amended as follows:

1. Title, line 6.

Following: "STATUTES;"

Insert: "PROVIDING FOR THE PROCESSING OF GROUND WATER APPLICATIONS IN THE UPPER MISSOURI RIVER BASIN, JEFFERSON RIVER BASIN, MADISON RIVER BASIN, AND TETON RIVER BASIN;"

2. Title, line 7.

Following: "85-2-329,"

Insert: "85-2-330,"

Following: "85-2-340,"

Strike: "AND"

Insert: "85-2-341,"

Following: "85-2-342,"

Insert: "AND 85-2-343,"

3. Page 1.

Following: line 9

Insert: "NEW SECTION. Section 1. Ground water permit applications in the upper Missouri, Jefferson, Madison, and Teton River basins. (1) In addition to the criteria provided in 85-2-311, the department may

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grant a permit to appropriate ground water, as defined in 85-2-102, in the upper Missouri River basin, Jefferson River basin, Madison River basin, and Teton River basin only if the applicant proves by a preponderance of evidence that:

- (a) the proposed appropriation of ground water:
 - (i) will not induce surface water infiltration; and
 - (ii) will not reduce ground water discharge to surface water within 1 year; or

(b) the augmentation plan submitted by the applicant provides surface flow rate and volume replacement water, for the same reach as the depletion, substantially corresponding to the timing, flow rate, volume, and quality of reduction in surface flows resulting from operation of the proposed diversion. If needed, an application for a beneficial water use permit or for a change in appropriation right must be submitted with the augmentation plan.

(2) An applicant who concludes that subsections (1)(a)(i) and (1)(a)(ii) cannot be met may file an augmentation plan with the initial application and proceed as provided in subsection (9).

(3) An application to appropriate ground water under this section must be processed as provided in this section.

(4)(a) An application for ground water without an augmentation plan must contain a report prepared by a hydrologist or professional engineer that concludes in the professional opinion of the preparer that the proposed appropriation of ground water:

- (i) will not induce surface water infiltration; and
 - (ii) will not reduce ground water discharge to surface water within 1 year.
- (b) If an applicant fails to submit the report with the application, the application may not be accepted.

(5) Upon receipt of a correct and complete ground water application pursuant to the requirements of 85-2-302, the department shall provide notice of the receipt of the application pursuant to 85-2-307(1) and include a statement that any person who desires further notice of the department's actions in processing the ground water application containing the report has 10 days to file a request with the department for further notification.

(6) (a) A department hydrologist or a hydrologist under contract with the department shall review the report submitted with the ground water application in subsection (4) and in a written decision shall state if the report has proven that the proposed appropriation of ground water:

- (i) will not induce surface water infiltration; and
- (ii) will not reduce ground water discharge to surface water within 1 year.

(b) The hydrologist's written decision must be mailed to any person who requested further notice of the department's actions pursuant to subsection (5).

(c) The applicant or any person with standing pursuant to 85-2-308(3) has 30 days to request a hearing before a department hearing examiner to show cause by a preponderance of the evidence why that determination was incorrect. After the deadline in this subsection (6)(c) has passed, any person with standing pursuant to 85-2-308 has 10 days to intervene as a party, as a matter of right, in the show cause hearing. The applicant, any other person who requested a hearing, and any timely intervenors are considered parties and may present evidence to the department at the show cause hearing.

(7) The provisions of Title 2, chapter 4, part 6, apply to the hearing before the department, and the provisions of Title 2, chapter 4, part 7, apply to judicial review of the department's decision.

(8) If the department determines that the requirements of subsection (1)(a) are not met, the department shall terminate the application unless the applicant submits an augmentation plan as provided in subsection (1)(b) within 90 days that provides surface flow rate and volume replacement water, for the same reach as the depletion, substantially corresponding to the timing, flow rate, volume, and quality of reduction in surface flows resulting from operation of the proposed diversion.

(9) If an augmentation plan is received pursuant to subsection (8) or is received initially with the ground water application and the application is correct and complete, the department shall provide notice of the application and augmentation plan following the procedures in 85-2-307. Objections to the application and augmentation plan must be filed pursuant to 85-2-308, and the provisions of 85-2-309 through 85-2-315 apply."

Renumber: subsequent sections

4. Page 1, line 17 through line 18.

Strike: "and that" on line 17 through "any time" on line 18

Insert: "for which a permit is necessary as provided in [section 1]"

5. Page 1.

Following: line 23

Insert: "**Section 3.** Section 85-2-330, MCA, is amended to read:

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"85-2-330. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

- (a) an application for a permit to appropriate ground water as provided in [section 1];
- (b) an application for a permit to appropriate water for a nonconsumptive use;
- (c) an application for a permit to appropriate water for domestic, municipal, or stock use;
- (d) an application to store water during high spring flows; or
- (e) emergency temporary appropriations as provided for in 85-2-113(3)."

Renumber: subsequent sections

6. Page 2, line 1 through line 2.

Strike: "and that" on line 1 through "any time" on line 2

Insert: "for which a permit is necessary as provided in [section 1]"

7. Page 2.

Following: line 9

Insert: "**Section 5.** Section 85-2-341, MCA, is amended to read:

"85-2-341. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

- (a) an application for a permit to appropriate ground water as provided in [section 1];
- (b) an application for a permit to appropriate water for a nonconsumptive use;
- (c) an application for a permit to appropriate water for domestic, municipal, or stock use;
- (d) an application to store water during high spring flows; or
- (e) temporary emergency appropriations as provided for in 85-2-113(3)."

Renumber: subsequent sections

8. Page 2, line 17 through line 18.

Strike: "and that" on line 17 through "at any time" on line 18

Insert: "for which a permit is necessary as provided in [section 1]"

9. Page 2.

Following: line 23

Insert: "**Section 7.** Section 85-2-343, MCA, is amended to read:

"85-2-343. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

- (a) an application for a permit to appropriate ground water as provided in [section 1];
- (b) an application for a permit to appropriate water for a nonconsumptive use;
- (c) an application for a permit to appropriate water for domestic, municipal, or stock use;
- (d) an application to store water during high spring flows;
- (e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; or
- (f) temporary emergency appropriations as provided for in 85-2-113(3)."

Insert: "NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1]."

Renumber: subsequent sections

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And, as amended, do pass. Report adopted.

SJR 9, be adopted. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

2/5/2005

HB 227, introduced by Galvin-Halcro

HB 262, introduced by Lange

HB 377, introduced by Keane

MOTIONS

Senator Squires moved that **SB 357** be moved from Senate Public Health, Welfare and Safety to Senate Judiciary. Motion carried.

Senator Cooney moved **SB 249** be referred to Senate Finance and Claims. Motion carried.

Senator Ellingson moved to amend Senate Rules to read that bills passed on 2nd reading and referred to Senate Finance and Claims be placed on 3rd reading when they leave committee unamended. He further moved that 2nd reading bills referred to Senate Finance and Claims that leave the committee amended be placed on 2nd reading for discussion. Motion carried.

Senator Ellingson moved that this matter be referred to the Senate Rules committee. Motion carried.

Senator Squires moved that **SB 72** be moved from Senate State Administration to Senate Business and Labor. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SB 381, introduced by Moss, referred to Judiciary.

SB 382, introduced by Elliott, Black, Clark, Lambert, Malcolm, McGee, Perry, Shockley, Smith, referred to Local Government.

SB 383, introduced by Cocchiarella, referred to Education and Cultural Resources.

SB 384, introduced by Gebhardt, referred to State Administration.

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

SJR 19, introduced by Elliott, Campbell, Cooney, Ellingson, Furey, Harrington, Kaufmann, Kitzenberg, Maedje, Shockley, Toole, Villa, Wheat, Wiseman, referred to Judiciary.

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

HJR 38, introduced by McNutt, referred to Taxation.

HJR 84, introduced by Kaufmann, referred to Taxation.

HJR 115, introduced by McNutt, referred to Taxation.

HJR 158, introduced by McKenney, referred to Taxation.

HJR 193, introduced by Waitschies, referred to Taxation.

HJR 194, introduced by Matthews, referred to Taxation.

HJR 302, introduced by Driscoll, referred to Taxation.

**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

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second reading. Motion carried. Senator Esp in the chair.

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

SB 231 - Senator Laslovich moved **SB 231** do pass. Motion carried as follows:

Yeas: Balyeat, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Ellingson, Elliott, Essmann, Gallus, Gillan, Hansen, Harrington, Hawks, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Toole, Tropila, Weinberg, Williams, Mr. President.
Total 34

Nays: Bales, Barkus, Cromley, Curtiss, Esp, Gebhardt, Grimes, Keenan, Kitzenberg, Laible, McGee, Stapleton, Steinbeisser, Story, Tash.
Total 15

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

SB 249 - Senator Cobb moved **SB 249** do pass. Motion carried unanimously.

SB 260 - Senator Perry moved **SB 260** do pass.

SB 260 - Senator Perry moved **SB 260**, second reading copy, be amended as follows:

1. Title, line 5.

Following: "DAYS"

Insert: "UNLESS GOOD CAUSE IS SHOWN"

2. Page 1, line 14.

Strike: "issued within 90 days after a hearing."

3. Page 1, line 17.

Following: "findings."

Insert: "A final decision must be issued within 90 days after a contested case hearing unless, for good cause shown, the period is extended for an additional time not to exceed 90 days."

Amendment adopted unanimously.

SB 260 - Senator Perry moved **SB 260**, as amended, do pass. Motion carried unanimously.

SB 277 - Senator Steinbeisser moved **SB 277** do pass. Motion carried unanimously.

SB 206 - Senator Lewis moved **SB 206** do pass. Motion carried unanimously.

SB 235 - Senator Mangan moved **SB 235** do pass. Motion carried unanimously.

SB 314 - Senator Larson moved **SB 314** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, 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, O'Neil, Pease, Perry, Roush, Ryan, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Williams, Mr. President.

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Total 47

Nays: Grimes, Schmidt.
Total 2

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

SB 249 - Senator Cooney made a **substitute motion** that **SB 249** 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 Esp 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 55 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, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

SB 119 passed as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Essmann, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Williams, Mr. President.
Total 41

Nays: Balyeat, Curtiss, Gallus, Gebhardt, Keenan, McGee, O'Neil, Shockley.
Total 8

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

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SB 137 passed as follows:

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

Nays: Gebhardt, O'Neil.
Total 2

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

SB 153 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, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

SB 156 passed as follows:

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

Nays: Bales, Balyeat, Barkus, Curtiss, Esp, Gebhardt, Keenan, Lewis, McGee, O'Neil, Shockley, Story, Tash.
Total 13

Absent or not voting: None.
Total 0

Excused: Wheat.
Total 1

UNFINISHED BUSINESS

Senate President Pro Tempore Harrington takes the Chair.

President Tester and Minority Leader Keenan had a brief exchange about the development of an effective education funding formula and the plausibility of accomplishing this before the session's end.

SPECIAL ORDERS OF THE DAY

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The Trinitas Choir from the University of Great Falls performed in the Chamber.

Senator Squires thanked the pages for their service throughout the week.
Senator McGee won the ugly tie contest for the week.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 1:00 p.m., Monday, February 7, 2005. Motion carried.

Senate adjourned at 9:30 a.m.

BILL LOMBARDI
Secretary of Senate

JON TESTER
President of the Senate