

**SENATE JOURNAL  
59TH LEGISLATURE  
EIGHTY-FIFTH LEGISLATIVE DAY**

Helena, Montana  
April 20, 2005

Senate Chambers  
State Capitol

Senate convened at 9:30 a.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senators Gillan, McGee, and Tropila, excused. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, 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, Weinberg, Wheat, Williams, Mr. President.

Total 43

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

Total 4

Absent or not voting: None.

Total 0

Excused: Gillan, McGee, Tropila.

Total 3

**REPORTS OF STANDING COMMITTEES**

**BILLS AND JOURNAL:**

4/20/2005

Correctly enrolled: **SB 114, SB 154, SB 175, SB 287, SB 339, SB 445, SB 489.**

Examined by the sponsor and found to be correct: **SB 133.**

Signed by the Speaker at 11:00 a.m., April 20, 2005: **SB 133.**

Signed by the Secretary of the Senate at 9:00 a.m., April 20, 2005: **SB 133.**

Signed by the President at 8:00 a.m., April 20, 2005: **SB 133.**

Delivered to the Governor for approval at 11:20 a.m., April 20, 2005: **SB 133.**

Examined by the sponsor and found to be correct: **SB 525.**

Signed by the Speaker at 2:55 p.m., April 20, 2005: **SB 525.**

Signed by the Secretary of the Senate at 3:05 p.m., April 20, 2005: **SB 525.**

Signed by the President at 3:00 p.m., April 20, 2005: **SB 525.**

Delivered to the Governor for approval at 3:15 p.m., April 20, 2005: **SB 525.**

**REPORTS OF SELECT COMMITTEES**

CONFERENCE COMMITTEE  
on House Amendments to **Senate Bill 260**  
Report No. 1, April 20, 2005

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered House amendments to **Senate Bill 260** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that **Senate Bill 260** (reference copy -- salmon) be amended as follows:

1. Title, page 1, line 5 through line 7.

**Strike:** "AND MUST" on line 5 through "FINAL" on line 7

**Insert:** "; PROVIDING A PROCEDURE FOR ISSUING A FINAL WRITTEN DECISION THAT DIFFERS FROM AN ORAL PRONOUNCEMENT OF A "

2. Title, page 1, line 8.

**Following:** "DATE"

**Insert:** "AND AN APPLICABILITY DATE"

3. Page 1, line 17.

**Strike:** "HEARING"

**Insert:** "is considered to be submitted for a final decision"

4. Page 1, line 18.

**Strike:** "90"

**Insert:** "30"

5. Page 1, line 19 through line 24.

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

**Insert:** "(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency."

6. Page 2, line 10.

**Following:** line 9

**Insert:** "NEW SECTION. Section 3. Applicability. [This act] applies to contested case hearings commenced after [the effective date of this act]."

For the Senate:

Wheat, Chairman  
Ellingson  
Perry

For the House:

Stoker, Chairman  
Harris  
McGillvray  
Parker

**FREE CONFERENCE COMMITTEE**  
on **House Bill 592**  
Report No. 1, April 20, 2005

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 592** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 592** (reference copy -- salmon) be amended as follows:

1. Page 2, line 21.

**Following:** "due."

**Insert:** "The penalty accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return."

2. Page 3, line 16.

**Strike:** "1%"

**Insert:** "1.2%"

3. Page 3, line 17.

**Strike:** "15%"

**Insert:** "12%"

4. Page 3, line 19 through line 20.

**Strike:** "if" on line 19 through "\$3,000" on line 20

5. Page 3, line 21 through line 22.

**Strike:** "If" on line 21 through "apply." on line 22

For the House:

Waitschies, Chairman  
Branae  
Facey  
Ross

For the Senate:

Elliott, Chairman  
Black  
Harrington

#### MESSAGES FROM THE GOVERNOR

April 20, 2005

The Honorable Gary Matthews  
Speaker of the House  
State Capitol  
Helena, Montana 59620

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

Dear Speaker Matthews and President Tester:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments House Bill 757, "**AN ACT ESTABLISHING THE MONTANA ESSENTIAL FREIGHT RAIL ACT; CREATING A REVOLVING LOAN ACCOUNT; PROVIDING FUNDING FOR THE MONTANA ESSENTIAL FREIGHT RAIL ACT REVOLVING LOAN ACCOUNT; PROVIDING GUIDELINES FOR APPLICATIONS AND ELIGIBILITY FOR A LOAN FROM THE REVOLVING LOAN ACCOUNT; PROVIDING FOR MANAGEMENT OF THE ACCOUNT; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR FUNDING THE ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE**" for the following reasons.

Sincerely,

BRIAN SCHWEITZER  
Governor

GOVERNOR'S AMENDMENTS  
TO HOUSE BILL 757

**MESSAGES FROM THE OTHER HOUSE**

**Senate bill** concurred in and returned to the Senate: 4/20/2005

**SB 293**, introduced by Black

**Governor's amendments to Senate bills** concurred in and returned to the Senate: 4/20/2005

**SB 120**, introduced by Keenan

**SB 428**, introduced by Stapleton

**Governor's amendments to House bills** concurred in and returned to the Senate: 4/20/2005

**HB 7**, introduced by Callahan

**HB 11**, introduced by McNutt

**HB 728**, introduced by Lange

**HB 757**, introduced by L. Jones

**SB 120** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free** Conference Committee to meet with a like committee from the Senate to confer on **SB 120**:

4/20/2005

Representative Kaufmann, Chair

Representative Caferro

Representative McNutt

Representative Ripley

**SB 415** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following Conference Committee to meet with a like committee from the Senate to confer on House amendments to **SB 415**:

4/20/2005

Representative A. Olson, Chair  
Representative Gallik  
Representative Groesbeck  
Representative Himmelberger

Conference Committee Report No.1 adopted:

4/20/2005

**SB 260**, introduced by Perry  
**HB 5**, introduced by Wells  
**HB 584**, introduced by Harris

### MOTIONS

Senator Ellingson moved action on **SB 293** be reconsidered and the bill be placed back on 2nd reading. Motion carried.

Majority Leader Ellingson moved a **free** conference committee on **SB 120** be appointed. President Tester appointed Senators Cooney (Ch), Tester, and Keenan.

Majority Leader Ellingson moved a conference committee on **HB 7** be appointed. President Tester appointed Senators Schmidt (Ch), Weinberg, and Brueggeman.

### 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 Gebhardt in the chair.

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

**HB 5 - Conference Committee Report No. 1** - Senator Ellingson moved the Conference Committee report to **HB 5** be adopted. Motion carried unanimously.

**SB 415 - Governor's Amendments** - Senator Tester moved Governor's amendments to **SB 415** be concurred in. Motion carried as follows:

Yeas: Cobb, Cooney, Cromley, Ellingson, Elliott, Gallus, Hansen, Harrington, Hawks, Kitzenberg, Laslovich, Lewis, Lind, Moss, Pease, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 26

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Curtiss, Esp, Essmann, Gebhardt, Gillan, Grimes, Keenan, Laible, Larson, Mangan, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.  
Total 24

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 428 - Governor's Amendments** - Senator Stapleton moved Governor's amendments to **SB 428** be **not** concurred in. Motion carried with Senator Laslovich voting nay.

**SB 293 - Governor's Amendments** - Senator Black moved Governor's amendments to **SB 293** be **not** concurred in. Motion carried as follows:

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

Nays: Balyeat, Barkus, Gallus, O'Neil, Shockley, Stapleton.  
Total 6

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

Senator Ellingson moved the committee rise, report progress, and beg leave to sit again. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Gebhardt 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:

**HB 584** concurred in as follows:

Yeas: Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 33

Nays: Bales, Balyeat, Barkus, Black, Curtiss, Essmann, Gebhardt, Grimes, Keenan, Mangan, McGee, O'Neil, Shockley, Stapleton, Steinbeisser, Story, Tash.  
Total 17

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 319** passed as follows:

Yeas: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Squires,

Stapleton, Toole, Weinberg, Wheat, Williams, Mr. President.  
Total 31

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Keenan, Laible, Lewis, McGee, O'Neil, Smith, Steinbeisser, Story, Tash, Tropila.  
Total 19

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

### ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

**Senate recessed 9:51 a.m.**  
**Senate reconvened 12:04 p.m.**

Roll Call. All members present, except Senator Gillan, excused. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, 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 44

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

Absent or not voting: None.  
Total 0

Excused: Gillan.  
Total 1

### 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 Gebhardt in the chair.

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

**SB 120 - Conference Committee Report No. 1** - Senator Cooney moved the Conference Committee report to **SB 120** be adopted. Motion carried as follows:

Yeas: Cocchiarella, Cooney, Cromley, 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 28

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.  
Total 22

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 260 - Conference Committee Report No. 1** - Senator Perry moved the Conference Committee report to **SB 260** be adopted. Motion carried unanimously.

**HB 757 - Governor's Amendments** - Senator Black moved Governor's amendments to **HB 757** be concurred in. Motion carried unanimously.

**SB 516** - Senator Elliott moved consideration of **SB 516** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

**HB 592 - Free Conference Committee Report No. 1** - Senator Elliott moved the Free Conference Committee report to **HB 592** be adopted. Motion carried unanimously.

Senator Ellingson moved the committee rise, report progress, and beg leave to sit again. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Gebhardt 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:

**HB 5** concurred in as follows:

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

Nays: Bales, Balyeat, Barkus, Curtiss, Esp, Keenan, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.  
Total 14

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0



## SPECIAL ORDERS OF THE DAY

President Pro Tempore Harrington takes the Chair.

President Pro Tempore Harrington then introduced each termed out Senator and invited them to address the body.

### **Majority Leader Ellingson:**

Ellingson thanked the body for the opportunity to serve the people and then left the members of the Senate with two of his favorite quotes.

*"I still view myself as the luckiest man in the world"*

-Lou Gehrig-

Ellingson remarked, in reference to the quote, that he felt lucky to have served and lucky to have a great family at home.

*"Both life and death are part of the same adventure"*

-Teddy Roosevelt-

Ellingson remarked, in reference to the quote, that saying goodbye to his time in the Senate is a death but that there are many adventures to come.

### **Senator Grimes:**

Grimes addressed the Senate by quipping, "I used to be the young guy." He went on to say that he was proud to have served in such a distinguished body. Grimes noted that although he lived fairly close to Helena, he understood the burden that most Senators undertake by traveling to Helena for the session. He finds this sacrifice admirable in that Senators endure it for the sake of serving the people of Montana.

Grimes noted that when he speaks to former Senators, they always ask if the body is still holding it together---preserving the integrity. Grimes says that he will always cherish the tradition of shaking the hand of a foe after a fierce debate.

Grimes said that every legislator has taught him something so he will leave the body with a piece of advice. He cautioned Senators not to become intoxicated with being an officeholder because many people in our districts could do a better job. We are lucky to have served.

### **Minority Leader Keenan:**

Keenan addressed the body by saying that he learned long ago that the key to being effective on 2nd reading is to keep your opening under a minute in length. He then said, "I wish you all a good summer, a good fall, and I'll see you in December".

### **Senator Roush:**

Roush thanked the body for allowing him to serve. He was born on Helena on 1934 and has since lived many different places, but says that every time he comes back he is always treated well. He thanked his fellow Senators, his wife, and his four children.

### **President Tester:**

Tester opened with the quote, "Time flies when you're having fun". He noted that time has flown these last seven years. Tester said that when he first came here he was a dirt farmer and he'll always be a dirt farmer. He noted that he has learned a great deal from the group of legislators that were here his first year (prior to term limits) and very few people have had that opportunity. Tester said that when he first met with the Tribune editorial board he was told that Senator Cobb was one of the best legislators and he told himself at that moment that he would strive to be the best legislator. He noted that he finished his time in the Senate still not having attained that goal ahead of Senator Cobb.

## ANNOUNCEMENTS

**Senate recessed 1:12 p.m.**  
**Senate reconvened 3:29 p.m.**

Roll Call. All members present. Quorum present.

Yeas: Bales, 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, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 46

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

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

### **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 Tester in the chair.

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

**HB 7 - Governor's Amendments** - Senator Laible moved Governor's amendments to **HB 7** be **not** concurred in. Motion carried unanimously.

**HB 11 - Governor's Amendments** - Senator Cooney moved Governor's amendments to **HB 11** be concurred in. Motion carried with Senator Joe Balyeat voting nay.

**HB 728 - Governor's Amendments** - Senator Essmann moved Governor's amendments to **HB 728** be concurred in. Motion carried unanimously.

**HB 769 - Governor's Amendments** - Senator Smith moved Governor's amendments to **HB 769** be concurred in. Motion carried with Senators Esp and Grimes voting nay.

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:

**HB 592** concurred in 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 120** passed as follows:

Yeas: Barkus, Black, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Squires, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 35

Nays: Bales, Balyeat, Brueggeman, Cobb, Esp, Essmann, Gebhardt, Grimes, Keenan, Lewis, McGee, O'Neil, Shockley, Smith, Stapleton.  
Total 15

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 260** passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, 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 49

Nays: Cromley.  
Total 1

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SPECIAL ORDERS OF THE DAY**

Senator Squires thanked the pages.

**Senate recessed 4:53 p.m.**

**Senate reconvened 6:03 p.m.**

#### **ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 10:00 a.m., Thursday, April 21, 2005. Motion carried.

Senate adjourned at 6:03 p.m.

**BILL LOMBARDI**  
Secretary of Senate

**JON TESTER**  
President of the Senate