

**SENATE JOURNAL
60TH LEGISLATURE
TWENTY-FIRST LEGISLATIVE DAY**

Helena, Montana
January 31, 2007

Senate Chambers
State Capitol

Senate convened at 1 p.m. President Cooney presiding. Invocation by Father Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

Yeas: Bales, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jent, Juneau, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, Pease, Perry, Peterson, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 45

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

Absent or not voting: None.
Total 0

Excused: Kaufmann.
Total 1

MOTIONS

SEN. CAROL WILLIAMS, SD 46, MISSOULA moved the Senate meet in joint session with the House of Representatives for the State of the Tribal Nations address.

Invocation by Honorable Chief Earl Old Person

Good afternoon Honorable Governor Brian Schweitzer, Lt. Governor John Bohlinger, members of the Montana Legislature, Ladies and Gentlemen. I would like to thank Scott Sales, Speaker of the House, and Mike Cooney President of the Senate for convening the joint session for the State of the Indian Address. I would like to also acknowledge the tribal leaders of Montana, would you please stand up.

It is with great honor and privilege that I stand before you today. And it's really touching to me in my heart, the flag song you have just heard honors not only our Indian warriors that defended this country but all Americans who joined together to defend the sacred soil. There are Americans Indians of this country and specifically those of Montana and the Crow tribe have a long standing history of volunteering to go to war for this country. 70% of young men and women from all the tribes throughout this country join in a time of war. Young men and women of the four branches of our military service, 18% are Indian today. I think the message I want to give this body is we're all in this together. Whatever we do in the war we're fighting today them bullets don't say that I'm going to kill that white man, or that Italian, or that Indian or that black person, all of us are in it together. We as leaders of this great state and this nation need to start talking peace through unity and start sharing in everything. You know we talk about when I read the papers all the time about the Democrats and the Republicans up here fighting over money. You as leaders represent all the people of this state, be careful with our money but help everyone with our money.

I was most honored to have stood in this very spot four years ago, before the great body of lawmakers to offer my message of peace through unity. I spoke of the endless possibilities for progress to benefit all Montanans, Indians and non-Indians through strong partnerships and cooperative efforts. Since that day four years ago, Montana has elected

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Brian Schweitzer, (I really didn't want to use this speech and I've kind of crumpled it up so now I'm having a hard time turning the pages) retained old friends both the House and the Senate, elected new friends and has achieved the second largest number of Indian legislators in the United States.

And we the Indian population of Montana with record voter turnouts have elected and have changed the power of the United States Senate by electing Jon Tester.

We proved to be a major factor in the shift in the balance of power. We as Indians have proven Montana Indians can no longer be taken for granted because we do get out and vote. Governor Schweitzer has commenced a new dialogue within Montana Indian leaders. He has appointed more Indian people in Montana boards and key decision making positions and formerly the Governor's American Indian council. That has never been done in the country before. However, the true state of the Indian nation remains unchanged. We continue to address the long standing issues of poverty, extreme unemployment rates and the standard of health care in tribes throughout the state of Montana. Our students rated at the bottom of the statewide academic scoring and we now suffer from a new onslaught of tragedy due to the current meth epidemic within our reservations. Unemployment in the state of Montana enjoys 2.8%; if you look at all the tribes in Montana, we're probably at 50% or more. We as tribes have given and given to this nation; take the Crow Tribe, and that's the only example that I can really give you because that's where I am from. Consisted of 38 million acres from the Black Hills to Lander, Wyoming, to Yellowstone to Three Forks up to the Milk River of 38 million acres, look at the Powder River Basin what it produces today, millions and millions and millions of dollars. Look at where the dams were built in Montana on Indian reservations, our lands were condemned and we received especially from the Crow tribe five and a half million dollars, and this great nation received hundreds of millions of dollars because of that dam. That what we need to talk about today is the equality of everyone. To sit here as leaders and we as leaders in Indian Country and not to do nothing, this should not make the difference. (rubs forearm skin)

It's standard in Indian Country, we Indians like to joke a lot and we tease each other a lot, I think that's what keeps us a little bit sane because we're so poor. I was looking at the federal budget, the billions of dollars that we spend in all of the continent of Africa and Greece and everywhere, billions of dollars. When my people can not be provided health care starting June 1st because Indian health does not have no money. My tribe is probably one of the largest taxpayers in Big Horn County but yet we do not receive services. Something is wrong here. Look at the Indian legislators and the Senators in here today, that needs to change. We need to do it together. A line that says this is the reservation, that shouldn't come into play because of jurisdictional problems. Sometimes on my reservation which is the size of Rhode Island, we have one police officer. Things have to change in this great state of ours. You need to realize that in your districts are not the only people you represent, you represent all the people no matter what color they are in this great state of ours. Them are the types of things that Indian nations are looking at today. Its very important. One of the things that I was looking at in the federal budget is the wild horses in the Pryors, BLM gets 40 billion a year when Indian health is in the red for 30 million this year, you know, we don't eat them horses and we don't ride them horses.

I know that the Governor has a lot of money and I know that the Republicans and Democrats are kind of fighting over it. But you know there is TSEP monies where only 33 programs were funded this year and there was 52 programs all together. But do you have the money? Why not fund all of the TSEP programs? That money goes for infrastructure and water and helps everyone in all the communities; that's what is needed.

You know gaming is a hot issues in this state. Certain people own thousands of machines when tribes are only allowed 100 a piece; that's not fair. For true economic opportunity for Tribes, Montana Tribes have been continually to be limited from utilizing gaming as a means of economic development too. Other tribes across the country have been successful at achieving economic self sufficiency through gaming which was the true intent of Congress when it pass the Indian Regulatory Act. The tribes in Montana deserve the opportunity to pursue self sufficiency without state generated restrictions.

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We've talked about energy but yet today Northwest Energy and PPL raise their rates anytime they want to because they monopolize the power that they're delivering. Last year they came to Montana and said give us 14% higher rates, the next year they're proposing 23%. You know my tribe alone can light the whole northwest, and California and Montana for the next 2,000 years, that's how much coal I have. And you the legislators through the water compact have given the tribe the opportunity and not taxing us. Where else can it be cheaper? We talk about power plants in Great Falls, Montana which would cost the people of Montana \$78 a kilowatt hour when I can do it for \$34 an hour. So I can maintain long contracts with the citizens of this state for a lot cheaper rate but the tribe is never looked upon. It's time that we start working together. It's time that big companies shouldn't monopolize things in this great state of ours. It's time for a lot of things, if you really realize it, what needs to be done in this great state. And we as Indian tribes need to work with you more. Because if you look at Indian tribes across the country, we own 40% of the energy of these United States and we are willing to start developing these vast resources. That's what we need to be doing; I don't know if you'll do it or not, but that's just the way it is.

I think one of the biggest things affecting Montana, and I commend the Attorney General, Tom Siebel, for taking that extra step to help fight the Meth problem we're have in this state. Tom is a very generous man for giving us all this money to fight our Meth problems. All of us need to thank the guy. But its time for this state to take the responsibility that we all have together to fight our Meth problems today.

I want to close with one thing, we are at war together and I talked about it earlier, we have a lot of men and women. This state alone, a lot of the families have given that ultimate sacrifice already. When you go to church Sunday or say your morning prayers or your evening prayers, don't forget about our young men and women, that they may come home safely, that we celebrate with them when they come home.

Thank you.

Benediction by Darrin Old Coyote

Chairman Carl Venne's Crow name means, "One Who Crosses the Big River and Becomes a Leader." Venne is currently serving as Crow Tribal Chairman. He is recognized as a strong leader with more then three decades of experience serving in Tribal Government. He joined the U.S. army, and is a combat veteran of the Vietnam conflict. Venne earned a degree in Law Enforcement from the University of Minnesota at St. Paul. Venne has worked as a law enforcement officer, he has worked in several Tribal Administrations and he has served as a counselor for Little Big Horn College. Recently, Venne has worked closely with the Crow legislature and he received strong support from the 2003 Montana Legislature, where he delivered the State of the Tribal Nations Address.

Most recently, Venne was elected the Chairman of the National Inter-Tribal Monitoring Association on Indian Trust Funds, President of the Council of Large Land-Based Tribes, Board member of the National Congress of American Indians, Chairman of the MT-Wyoming Tribal Leaders Council and member of the Montana Meth Project.

Dr. Barney Old Coyote

Dr. Barney Old Coyote is known as Young White Buffalo Bull Calf in the Apsaalooke Nation. Dr. Old Coyote is a retired federal employee who served as Assistant Secretary in the Department of Interior during the Johnson Administration. He is a founder and a member of many organizations including the Native American Studies Program at Montana State University in Bozeman, the Crow Cultural Committee, the Board of American Indian National Bank, the International Trade Commission, the Center for Development of Indian Law, and the National Alliance of Business Men.

In World War Two, Dr. Old Coyote and his brother enlisted in the army and served as "wind talkers" for General Jimmy Doolittle. The brothers would communicate strategic war information in the Crow language, which was a language that enemies with German and the Italian decent could not decode. Dr. Old Coyote is a

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decorated World War Two veteran with both a bronze and a silver star each with three oak clusters.

Darrin Old Coyote

Darrin N. Old Coyote's Crow name means Good Drum. He has lived on the Crow reservation all his life, except for the time he attended Concordia College for a school term. He has worked for the Lodge Grass School system in the bi-lingual program, and he is currently working for the Cultural Affairs Department of the Crow Tribal Executive Branch. Whether he is working or not, Darrin has become known throughout the country for his keen ability to work with youth.

He is the lead singer for the Black Whistle Drum group. Through this interest of singing and the ability to help today's youth through the traditional values of Crow, Darrin developed the "Our Way of Life" program. The program is a way to entertain audiences while discussing drug and alcohol prevention. He is a good voice for the youth of the Apsaalooke because he understands the problems they face today.

The Senate reconvened at 2:00 p.m.

Roll Call.

Yeas: Bales, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jent, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, Pease, Perry, Peterson, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 45

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

Absent or not voting: None.
Total 0

Excused: Juneau.
Total 1

SEN. JOE BALYEAT, SD 34, BOZEMAN moved **SEN. CHRISTINE KAUFMANN, SD 41, HELENA** be added to **SB 280**. Motion carried.

REPORTS OF STANDING COMMITTEES

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Cocchiarella, Chairman):
SB 116, introduced bill, be amended as follows:

1/31/2007

1. Page 2, line 19.
Following: "January"
Strike: "1"
Insert: "31"

2. Page 3, line 12.
Following: "telephone,"
Insert: "telefax,"
Strike: "method"
Insert: "connection"

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3. Page 3, line 20.

Strike: "A"

Insert: "(a) Except as provided in subsection (2)(b), a"

4. Page 3.

Following: line 22

Insert: "(b) By no later than January 31, 2009, a consumer reporting agency shall honor a request for the temporary lifting of a security freeze made by telephone or telefax or through a secure electronic connection designated by the consumer reporting agency within 15 minutes of receiving the request unless one of the following circumstances applies:

(i) the consumer fails to meet the requirements of subsections (1)(a) through (1)(c); or

(ii) the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented

by:

(A) a natural disaster or act of God, including fire, earthquake, or hurricane;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, or a labor strike or similar labor dispute disrupting operations;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, or computer hardware or software failures inhibiting response time;

(D) governmental action, including emergency orders or regulations or judicial or law enforcement action;

(E) receipt of a removal request outside of normal business hours; or

(F) maintenance of, updates to, or repair of the consumer reporting agency's systems, whether regularly scheduled or unexpected or unscheduled."

5. Page 3, line 26.

Following: "];"

Insert: "and"

6. Page 3, line 27 through line 28.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

7. Page 3, line 29.

Strike: "within" through "act]"

Insert: "by January 31, 2009,"

8. Page 3, line 30.

Strike: "media"

Insert: "connection"

9. Page 4.

Following: line 1

Insert: "(4) Only the attorney general may enforce the provisions of this section related to a failure to comply with the 15-minute requirement for the temporary lifting of a security freeze."

10. Page 4, line 24.

Following: "identification;"

Insert: "and"

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11. Page 4, line 26 through line 27.

Following: "3)]"

Strike: ";" on line 26 through "applicable" on line 27

12. Page 5, line 21.

Following: "request"

Insert: "or, after January 31, 2009, within 15 minutes of receiving a request by telephone or telefax or through a secure electronic connection"

13. Page 7, line 6.

Following: "(1)"

Insert: "(a)"

14. Page 7, line 7.

Following: "freeze"

Strike: ", "

Insert: "or"

15. Page 7, line 8.

Strike: "lift"

Insert: "lifting of a security freeze"

Strike: "or"

Insert: "but not for"

Following: "removal"

Insert: "of a security freeze"

16. Page 7.

Following: line 8

Insert: "(b) A consumer may prepay for multiple transactions, and a consumer reporting agency shall make a record of the payment and use."

17. Page 7, line 9.

Following: "fee"

Insert: "under [section 3]"

18. Page 7, line 20.

Following: "any"

Insert: "actual"

19. Page 7, line 25.

Strike: "a temporary lift"

Insert: "the temporary lifting"

20. Page 7, line 27.

Following: "agency for"

Insert: "actual"

21. Page 8, line 1.

Following: "any"

Insert: "actual"

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And, as amended, do pass. Report adopted.

SB 204, introduced bill, be amended as follows:

1. Title, line 5.

Following: "BUSINESSES"

Insert: "BY CLAIMANTS; ALLOWING ACCESS FOR COMPETITIVE ESTIMATES"

2. Page 1, line 11.

Following: "(1)"

Insert: "(a)"

3. Page 1, line 14.

Strike: "(a)"

Insert: "(i)"

Following: "that a"

Strike: "person insured"

Insert: "claimant"

4. Page 1, line 16.

Strike: "(b)"

Insert: "(ii)"

Strike: "an insured person"

Insert: "a claimant"

5. Page 1, line 17.

Strike: "an insured person"

Insert: "a claimant"

6. Page 1.

Following: line 18

Insert: "(b) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate."

7. Page 1, line 27.

Strike: "insured person"

Insert: "claimant"

8. Page 1, line 29.

Strike: "insured person"

Insert: "claimant"

9. Page 2, line 6.

Strike: "insured person"

Insert: "claimant"

10. Page 2, line 17.

Strike: "insured person"

Insert: "claimant"

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11. Page 2, line 18.

Strike: "insured person"

Insert: "claimant"

12. Page 2, line 19.

Strike: the first "insured person"

Insert: "claimant"

Strike: the second "insured person"

Insert: "claimant"

13. Page 2, line 20.

Strike: "insured person"

Insert: "claimant"

14. Page 2, line 22.

Strike: "an insured person"

Insert: "a claimant"

15. Page 2, line 24.

Strike: "insured"

Insert: "claimant"

Strike: "insured's"

Insert: "claimant's"

16. Page 2, line 29.

Strike: "insured person"

Insert: "claimant"

17. Page 3, line 1.

Strike: "insured person"

Insert: "claimant"

18. Page 3, line 2 through line 3.

Following: the second "charge" on line 2

Strike: "an" on line 2 through the first "customer" on line 3

Insert: "a claimant"

19. Page 3, line 6.

Strike: ", "

Insert: ":

(a)"

20. Page 3, line 8.

Following: "products"

Insert: ";

(b) "claimant" means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer"

And, as amended, do pass. Report adopted.

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SB 211, introduced bill, be amended as follows:

1. Page 1.

Following: line 28

Insert: "(3) "Electrical construction" means work performed by an individual, firm, or corporation in which an electrical connection is made to a supply of electricity or in which electricity is supplied to any electric equipment installation for which a permit is required by the authority having jurisdiction."

Renumber: subsequent subsections

2. Page 2.

Following: line 4

Insert: "(5) (a) "Electrical maintenance" means ordinary and customary installations in a plant or onsite in addition to modifications, additions, or repairs that are limited to replacing ballasts, relamping, trouble-shooting motor controls, and replacing motors, breakers, or magnetic starters in a kind-for-kind manner. Also included is the connection of specific items of specialized equipment that can be directly connected to an existing branch circuit panel by means of factory-installed leads.

(b) The term does not include installation of a new circuit to operate the equipment described in subsection (5)(a) or installation that requires the size of the supply conductors to be increased. These actions require installation by a licensed electrical contractor."

Renumber: subsequent subsections

3. Page 4, line 4.

Following: "business"

Strike: ", "

Insert: "or"

Strike: ", or calling"

Following: "of"

Insert: "or hold oneself out as being"

4. Page 5, line 21.

Strike: "procedures and"

Following: "rules"

Insert: "and applicable laws under Title 37 or Title 50"

5. Page 6, line 6.

Following: "union"

Insert: "or trade association"

6. Page 6, line 16.

Strike: "procedures and"

Following: "rules"

Insert: "and applicable laws under Title 37 or Title 50"

7. Page 6, line 23.

Following: "union"

Insert: "or trade association"

8. Page 7, line 3.

Strike: "procedures and"

Following: "rules"

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Insert: "and applicable laws under Title 37 or Title 50"

And, as amended, do pass. Report adopted.

SB 315, do pass. Report adopted.

FISH AND GAME (Tropila, Chairman):
SB 78, introduced bill, be amended as follows:

1/31/2007

1. Title, line 4.

Strike: "REASONABLE AND SAFE"

2. Title, line 6.

Strike: "ERECTION OF"

Insert: "OPTION TO ERECT"

Following: "FENCE"

Insert: "WITH IMPROVED ACCESS"

Strike: "PUBLIC"

Insert: "COUNTY ROAD"

Following: "RIGHT-OF-WAY"

Insert: "IF THE FENCE IS ABUTTED OR ATTACHED"

3. Title, page 1, line 7.

Strike: "FENCES"

Insert: "A FENCE"

4. Title, line 8.

Strike: "PUBLIC"

Insert: "COUNTY ROAD"

Following: "RIGHT-OF-WAY"

Insert: "WHEN THE FENCE IS ABUTTED OR ATTACHED"

5. Title, line 9.

Strike: "DO NOT PROVIDE REASONABLE AND SAFE"

Insert: "PREVENT"

Following: "ACCESS TO"

Strike: "THE"

Insert: "A"

6. Title, line 11.

Following: "REPLACEMENT"

Insert: "COSTS"

Following: "CIRCUMSTANCES;"

Insert: "AUTHORIZING THE ISSUANCE OF PERMITS FOR A FENCE TO ENCROACH IN A COUNTY ROAD RIGHT-OF-WAY; PROVIDING FOR LANDOWNER IMMUNITY;"

7. Page 1, line 18 through page 5, line 18.

Strike: everything after the enacting clause

"NEW SECTION. Section 1. Purpose -- intent. (1) The purpose of [sections 1 through 4] is to codify the current interpretation of access to streams and rivers by using a county bridge, its right-of-way, and

its abutments. [Sections 1 through 4] are not intended to expand the rights of recreationists or to diminish the rights of landowners.

(2) By enacting [sections 1 through 4], the legislature intends to maintain the delicate balance that is necessary to provide recreationists with access to public resources while protecting private property rights. The legislature recognizes that [sections 1 through 4] are intended to be a compromise solution to implementing stream access by means of bridges. Therefore, future attempts to broaden this statutory compromise should be resisted.

Insert: "NEW SECTION. Section 2. Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

- (1) "Access" means access to streams and rivers for uses as provided in Title 23, chapter 2, part 3.
- (2) "Board" means the board of county commissioners.
- (3) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.
- (4) "Improved access" means the erection, repair, or replacement of a portion of a fence that provides public access to a stream or river, including but not limited to gates, stiles, polyvinyl chloride overwire, or other methods designed to enhance public access as provided in [section 4(3)].
- (5) "Legal fence" has the meaning provided in 81-4-101.
- (6) "Landowner" means the entity that holds title to the land subject to a county road right-of-way easement or the entity's lessee or agent.
- (7) "Prevents public access" means a situation in which a fence allowed under [sections 1 through 4] creates a barrier or makes access to a stream or river more difficult."

Insert: "NEW SECTION. Section 3. Stream access location. (1) Subject to subsection (5), a person may gain access to a stream or river by using a county bridge, its right-of-way, and its abutments.

(2) Subject to subsection (5), a person may gain access to a stream or river by use of a county road right-of-way as described in 7-14-2112 and acquired pursuant to 7-14-2107.

(3) A person is required to stay within the road and bridge easement or right-of-way to gain access to a stream or river. Absent any definition in an easement or deed to the contrary, the width of a bridge right-of-way easement is the same as the right-of-way easement for the county road to which it is connected. The standard width of a right-of-way is provided for in 7-14-2112, and a right-of-way is acquired pursuant to 7-14-2107.

(4) The board of the county where a bridge on a county road is located may, by a reasonable exercise of the governing body's police power, condition access for purposes of public safety, but only to the extent necessary for public safety. The board may consult with the department on conditions of access.

(5) Access to streams and rivers from a county road or bridge created by prescription is dependent upon the use of the road or bridge during the prescription period.

(6) [Sections 1 through 4] may not be construed to require the county to construct or maintain areas for parking, paths, walkways, steps, ramps, or other accommodations in the county's reasonable exercise of its police power as provided in subsection (4), but the county may do so if the county chooses."

Insert: "NEW SECTION. Section 4. Fences within bridge right-of-way easements -- legal fence requirement -- cost reimbursement -- arbitration of disputes. (1) (a) Pursuant to the provisions of subsection (1)(b), a landowner may request authorization from the board to erect, repair, or replace a legal fence in the county road right-of-way by abutting or attaching the fence to a county bridge edge, guardrail, or abutment for the purpose of controlling livestock.

(b) (i) The board may, in its discretion, issue a permit to a requesting landowner in accordance with subsection (1)(a). The permit must be recorded with the clerk and recorder of the county.

(ii) The permit issued by the board may impose reasonable conditions as long as the fence is a legal fence that does not prevent public access or provides improved access.

(c) A legal fence that is located in the county road right-of-way and that is abutted or attached to a county bridge edge, guardrail, or abutment may not prevent public access to a stream or river at the bridge, guardrail, or abutment unless and to the extent required for public safety as considered necessary by the board. The conditions of the public access must remain substantially the same as existed prior to the erection, repair, or replacement of the fence. Where necessary, this may be accomplished by improved access.

(2) (a) The board or the county road supervisor, as provided for in 7-14-2122, shall inspect a fence that

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is located in the county road right-of-way and that is abutted or attached to a county bridge edge, guardrail, or abutment to determine if the fence is a legal fence or if the fence prevents public access to a stream or river.

(b) If the board determines that the fence is not a legal fence or that the fence prevents public access to the stream or river, the board shall alter the fence or require the landowner, at the landowner's expense, to alter the fence within a time set by the board, not to exceed 1 year, to the satisfaction of the board.

(c) (i) If a landowner fails to alter a fence pursuant to subsection (2)(b), the board shall remove or alter the fence at the landowner's expense. If the fence prevents public access, it must be considered an encroachment pursuant to 7-14-2134.

(ii) Following notification by certified mail to the landowner at the address last shown on property tax records of the county, the landowner shall reimburse the county for the costs of removal or alteration of a fence. If the reimbursement is not made prior to July 1 of the year following the year in which the notice was received, the cost becomes a lien upon the landowner's property and, upon notification by the board of the nonpayment of the costs, the county treasurer shall collect the assessment in the same manner and at the same time as taxes for county purposes are collected.

(3) (a) The landowner is responsible for the cost of erecting, repairing, or replacing a fence located in the county road right-of-way when the fence is abutted or attached to a county bridge edge, guardrail, or abutment.

(b) If a landowner provides improved access and adheres to the requirements of subsection (3)(c), a landowner may submit to the department a request for reasonable cost reimbursement for labor and materials for the erection, repair, or replacement of the portion of the fence that provides improved public access to the stream or river. The department is not responsible for the cost of the placement of a legal fence. The request for reimbursement must provide documentation of the costs. Upon determining that a portion of the fence provides improved access and finding the costs reasonable, the department shall reimburse the landowner exclusively for the portion of the fence that provides improved access.

(c) To be eligible for cost reimbursement, a landowner who has obtained a permit issued in accordance with subsection (1) and who provides a copy of the permit to the department must be given written authorization from the department for erecting, repairing, or replacing the portion of the fence that provides improved public access to the stream or river.

(d) The department and the county do not have financial responsibility for fence construction that was not approved pursuant to subsection (3)(c).

(4) (a) The board shall make a determination of whether a fence prevents public access based on:

(i) the board's own decision that a review is necessary and appropriate; or

(ii) the receipt by the board of a written request of the landowner, the department, or any other person.

(b) The board shall prepare a notice of the determination containing the facts pertinent to the determination and shall publish the notice once in a newspaper of general circulation in the area of the bridge and fence.

(5) The landowner, the department, or any other person may petition the district court for the county where the bridge is located to name a three-member arbitration panel, as provided in subsection (6), if the landowner, the department, or any other person disagrees with the board's determination on whether a fence prevents public access or whether the conditions of that access are impaired by the fence and files the petition within 30 days of publication of the determination.

(6) Each contesting party shall provide the names of three individuals willing to serve on an arbitration panel. The district court judge shall select the three members of the arbitration panel from those submitted by the contesting parties. The members of the arbitration panel must be residents of the county at the time of selection.

(7) (a) The arbitration panel may, by majority vote of the panel, accept, reject, or modify the determination.

(b) As part of that determination, if necessary, the arbitration panel may identify alterations that must be made to ensure that the fence is a legal fence and does not prevent public access. The arbitration panel may condition the public access to a stream or river at the county bridge edge, guardrail, or abutment, as necessary, to the extent required for public safety.

(8) The determination of the arbitration panel may be appealed to the district court within 30 days. The

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standards of review for an appeal are the same as for judicial review of contested cases provided for in 2-4-704.

(9) Costs of the arbitration panel, computed in the same manner as juror's fees under 3-15-201, must be borne by the petitioning party or parties. All other parties shall bear their own costs.

(10) (a) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another pursuant to 23-2-302 is not owed a duty by a landowner, the landowner's agent, the landowner's tenant, or the county other than that provided in subsection (10)(b). A landowner, the landowner's agent, the landowner's tenant, or the county is not liable for the condition of the right-of-way providing access.

(b) A landowner, the landowner's agent, the landowner's tenant, or the county is liable to a person making recreational use of waters or land described in subsection (10)(a) only for an act or omission that constitutes willful or wanton misconduct.

(c) A landowner or any member of the arbitration panel who participates in a decision regarding whether or not a fence prevents public access in accordance with this section is not liable to any person who is injured or whose property is damaged because of use of the public access except for an act or omission that constitutes willful and wanton misconduct."

Insert: "Section 5. Section 7-14-2112, MCA, is amended to read:

"7-14-2112. Width of roads. (1) The width of all county ~~roads, except bridges,~~ road rights-of-way, including a right-of-way adjacent to a bridge that is part of a county road but excluding alleys, or lanes, must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners on petition of an interested person.

(2) The width of all private highways and ~~byroads~~ byways, except bridges, must be at least 20 feet.

(3) ~~Nothing in this~~ This section shall may not be construed as increasing or decreasing the width of either kind of highway or road established or used as such prior to December 31, 1966."

Insert: "Section 6. Section 7-14-2134, MCA, is amended to read:

"7-14-2134. Removal of highway encroachment. (1) ~~If~~ Except as provided in subsection (4), if a highway is encroached upon by a fence, or building, or otherwise, the road supervisor or county surveyor of the district ~~must shall~~ give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor ~~must shall~~ immediately remove the same encroachment.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) A legal fence, as defined in 81-4-101, may be permitted in the county road right-of-way when it is abutted or attached to a county bridge edge, guardrail, or abutment for the purpose of controlling livestock if the fence does not prevent public access or if it provides improved access, as defined in [section 2], and the fence is erected following the criteria provided in [section 4]."

Insert: "NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 23, chapter 2, and the provisions of Title 23, chapter 2, apply to [sections 1 through 4]."

Insert: "NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

And, as amended, do pass. Report adopted.

JUDICIARY (Laslovich, Chairman):
SB 74, introduced bill, be amended as follows:

1/31/2007

1. Page 2, line 12.

Following: line 11

Insert: "(5) This part does not apply to a person who makes less than four loans a year and complies with the provisions of Title 31, chapter 1, part 1."

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2. Page 3, line 7.

Following: "suspension --"

Insert: "unlicensed activity --"

3. Page 3, line 25.

Following: "justified the"

Strike: "department refusing"

Insert: "department's refusal"

And, as amended, do pass. Report adopted.

SB 193, introduced bill, be amended as follows:

1. Title, line 6.

Following: "HOME;"

Insert: "REQUIRING THE AFFIDAVIT TO BE PROVIDED TO THE PARENTS AT THE SAME TIME, IF POSSIBLE;"

2. Page 2, line 11.

Following: "of the"

Insert: "emergency"

Following: "attorney"

Insert: "and provide a copy of the affidavit to the parents or guardian, if possible,"

3. Page 2, line 12.

Following: "the"

Insert: "emergency"

4. Page 2, line 13.

Following: "holidays, of"

Insert: "the"

Following: "emergency"

Strike: "placement"

Insert: "removal"

And, as amended, do pass. Report adopted.

SB 278, introduced bill, be amended as follows:

1. Page 1, line 16.

Following: "or a"

Insert: "public or"

2. Page 1, line 30.

Following: "or"

Insert: "public or"

3. Page 2, line 3.

Following: "or a"

Insert: "public or"

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4. Page 2, line 9.

Following: "or"

Insert: "public or"

5. Page 2, line 12.

Following: "or "

Insert: "public or"

6. Page 2, line 15.

Following: "or a"

Insert: "public or"

7. Page 2, line 26.

Following: "or"

Insert: "public or"

And, as amended, do pass. Report adopted.

SB 322, introduced bill, be amended as follows:

1. Title, line 7.

Following: "YEARS"

Insert: "IN CERTAIN CASES"

2. Page 2, line 3.

Following: "years"

Insert: "if the offender received a felony conviction under 61-7-103"

3. Page 2, line 18.

Following: "(2)"

Insert: "(a)"

Strike: "A"

Insert: "Except as provided in subsection (2)(b), a"

4. Page 2, line 19.

Following: "imprisonment"

Strike: "in the state prison"

Following: "term"

Insert: "of"

5. Page 2, line 19 through line 20.

Following: "~~year~~" on line 19

Strike: remainder of line 19 through "years" on line 20

Insert: "less than 30 days or more than 1 year"

6. Page 2, line 20.

Following: "\$~~5,000~~"

Strike: "in an amount not to exceed \$50,000"

Insert: "of not less than \$100 or more than \$5,000"

7. Page 2, line 22.

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Following: line 21

Insert: "(b) If the accident resulted in serious bodily injury or death of any person, a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed \$50,000, or by both fine and imprisonment."

And, as amended, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bill passed and transmitted to the Senate for concurrence:	1/31/2007
HB 64 , introduced by Clark	
House bill passed and transmitted to the Senate for concurrence:	1/31/2007
HB 65 , introduced by Villa	
House bill passed and transmitted to the Senate for concurrence:	1/31/2007
HB 72 , introduced by Van Dyk	
House bill passed and transmitted to the Senate for concurrence:	1/31/2007
HB 145 , introduced by Sonju	
House bill passed and transmitted to the Senate for concurrence:	1/31/2007
HB 190 , introduced by Thomas	
House joint resolution passed and transmitted to the Senate for concurrence:	1/31/2007
HJR 1 , introduced by Keane	
Senate joint resolution passed and transmitted to the Senate for concurrence:	1/31/2007
SJR 1 , introduced by Williams	

FIRST READING AND COMMITMENT OF BILLS

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

SB 398, introduced by Gebhardt, referred to Local Government.
SB 399, introduced by Kaufmann, Caferro, Wanzenried, Juneau, referred to Public Health, Welfare and Safety.
SB 400, introduced by Kaufmann, Caferro, Juneau, referred to Taxation.
SB 401, introduced by Kaufmann, Caferro, Wanzenried, Juneau, referred to Public Health, Welfare and Safety.
SB 402, introduced by Kitzenberg, Smith, Hansen, referred to Fish and Game.
SB 403, introduced by Lind, referred to Taxation.
SB 404, introduced by Lind, referred to Judiciary.
SB 405, introduced by Bales, Steinbeisser, Tash, Black, Brueggeman, Barkus, Curtiss, Jackson, Lewis,

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Gebhardt, Laible, referred to Natural Resources and Energy.

SB 406, introduced by Bales, Steinbeisser, Lewis, Tash, Black, Curtiss, Story, Gebhardt, referred to Local Government.

SB 407, introduced by Bales, Black, Lambert, referred to Natural Resources and Energy.

SB 408, introduced by Brown, referred to Judiciary.

SB 409, introduced by Brown, referred to Judiciary.

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

SJR 9, introduced by Gallus, Harrington, Williams, Weinberg, Kaufmann, Reinhart, Hamilton, Keane, Ankney, referred to State Administration.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Williams moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Bales in the chair.

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

SB 243 - Senator Balyeat moved consideration of **SB 243** be passed for the day. Motion carried.

SB 4 - Senator Harrington moved **SB 4** do pass. Motion carried with Senator McGee voting nay.

SB 89 - Senator Barkus moved **SB 89**, second reading copy, be amended as follows:

1. Page 1, lines 10 through 30.

Strike: line 10 through line 30 in their entirety

Amendment **not** adopted as follows:

Yeas: Bales, Barkus, Black, Brown, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gebhardt, Jackson, Laible, Lewis, McGee, O'Neil, Peterson, Ryan, Shockley, Stapleton, Steinbeisser, Story, Tash.

Total 22

Nays: Balyeat, Cocchiarella, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Jent, Juneau, Kaufmann, Kitzenberg, Larson, Laslovich, Lind, Moss, Murphy, Pease, Perry, Schmidt, Smith, Squires, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 28

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 89 - Senator Williams moved **SB 89** do pass. Motion carried unanimously.

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

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SB 81 - Senator Schmidt moved **SB 81** do pass. Motion carried unanimously.

SB 159 - Senator Harrington moved **SB 159** do pass. Motion carried unanimously.

SB 185 - Senator Hawks moved **SB 185** do pass. Motion carried unanimously.

Senator Williams moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Cooney in the chair. Chairman Bales 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 41 passed as follows:

Yeas: Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 46

Nays: Bales, Balyeat, Barkus, McGee.
Total 4

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 214 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SJR 2 adopted as follows:

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Yeas: Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Essmann, Gallus, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 46

Nays: Bales, Esp, Gebhardt, McGee.
Total 4

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 143 passed as follows:

Yeas: Balyeat, Barkus, Brown, Brueggeman, Cobb, Curtiss, Elliott, Esp, Essmann, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 43

Nays: Bales, Black, Cocchiarella, Gallus, Gebhardt, McGee, M.Tropila.
Total 7

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 227 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

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SB 282 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 25 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 32 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

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Excused: None.
Total 0

SB 67 passed as follows:

Yeas: Cocchiarella, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Jent, Juneau, Kaufmann, Kitzenberg, Larson, Laslovich, Lind, Moss, Pease, Ryan, Schmidt, Smith, Squires, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 26

Nays: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gebhardt, Jackson, Laible, Lewis, McGee, Murphy, O'Neil, Perry, Peterson, Shockley, Stapleton, Steinbeisser, Story, Tash.
Total 24

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 249 failed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gebhardt, Jackson, Laible, Laslovich, Lewis, Murphy, O'Neil, Perry, Peterson, Shockley, Stapleton, Steinbeisser, Story, Tash.
Total 24

Nays: Cocchiarella, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Jent, Juneau, Kaufmann, Kitzenberg, Larson, Lind, McGee, Moss, Pease, Ryan, Schmidt, Smith, Squires, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 26

Absent or not voting: None.
Total 0

Excused: None.
Total 0

MOTIONS

SEN. JOHN BRUEGGEMAN, SD 6, POLSON moved his vote be changed from no to yes on **SB 250**. Motion carried.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Williams moved that the Senate adjourn until 1 p.m., Thursday, February 1, 2007. Motion carried.

Senate adjourned at 3:12 p.m.

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JOHN MUDD
Secretary of the Senate

MIKE COONEY
President of the Senate