

**SENATE JOURNAL
61ST LEGISLATURE
FORTY-EIGHTH LEGISLATIVE DAY**

Helena, Montana
March 4, 2009

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Story presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senators Gillan, Jent, and Squires, excused. Quorum present.

BILLS AND JOURNALS: 3/4/2009

Correctly printed: **SB 322, SB 464, SB 476, HB 126.**

Senator Gillan present.

Senator Jent present.

REPORTS OF STANDING COMMITTEES

AGRICULTURE, LIVESTOCK AND IRRIGATION (Steinbeisser, Chairman): 3/4/2009
HB 90, be concurred in. Report adopted.
HB 100, be concurred in. Report adopted.

ENERGY AND TELECOMMUNICATIONS (Black, Chairman): 3/3/2009
HB 207, be concurred in. Report adopted.
HB 208, be concurred in. Report adopted.

FINANCE AND CLAIMS (Bales, Chairman): 3/4/2009
SB 216, do pass. Report adopted.

FISH AND GAME (Barkus, Chairman): 3/4/2009
HB 74, be concurred in. Report adopted.
HB 296, be concurred in. Report adopted.

JUDICIARY (Perry, Chairman): 3/4/2009
HB 121, be concurred in. Report adopted.
HB 122, be concurred in. Report adopted.
HB 205, be concurred in. Report adopted.
HB 242, be concurred in. Report adopted.
HB 287, be amended as follows:

1. Page 1, line 21.

Following: "UTILITY"

Strike: "AND THE PUBLIC SERVICE COMMISSION"

2. Page 1, line 27.

Following: "utility"

Insert: "within a utility's right-of-way or easement"

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3. Page 1, line 29.

Following: line 28

Insert: "(4) Nothing in this section may be construed to expand a utility's right-of-way or easement."

And, as amended, be concurred in. Report adopted.

MOTIONS

Senator J. Peterson moved the Senate recess for caucuses. Motion carried.

Senate in recess.

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

Senator Windy Boy moved to reconsider the indefinite postponement vote on **SB 488**. Motion carried.

Senator Windy Boy moved to reconsider the action on second reading on **SB 488**.

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gillan, Hamlett, Hinkle, Jackson, Jent, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.

Total 43

Nays: Gebhardt, Hansen, Hawks, Juneau, Kaufmann, Wanzenried.

Total 6

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

Senator R. Brown moved to re-refer **HB 71** from Health and Human Services to Finance and Claims. Motion carried.

Senator Esp move to re-refer **SB 433** from Senate Finance and Claims to Senate Local Government.

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hinkle, Jackson, Keane, Laible, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.

Total 35

Nays: Branae, Cooney, Erickson, Hansen, Hawks, Jent, Juneau, Kaufmann, Larsen, Moss, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried.

Total 14

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

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MESSAGES FROM THE GOVERNOR

February 26, 2009

The Honorable Robert Story
President, Montana State Senate
Capitol Station
Helena, MT 59620

Dear President Story:

Attached is a list of interim board and commission appointments requiring confirmation by the Montana State Senate. We have supplied the following information for each appointment:

Reference to a statute and a brief description of the statute
Name, address, and phone number(s) for each appointee
Appointee qualifications and term of appointment
Brief biographies

Additional information, including a complete list of gubernatorial appointees, is available online at: <http://boards.mt.gov/>. Meanwhile, please don't hesitate to contact our office if my staff or I can be of assistance to you.

Sincerely yours,

BRIAN SCHWEITZER
Governor

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

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

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

SB 278 - Senator Kaufmann moved **SB 278** do pass. Motion **failed** as follows:

Yeas: Branae, Cooney, Erickson, Essmann, Gillan, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Larsen, Moss, Schmidt, J. Tropila, Wanzenried, Williams.
Total 17

Nays: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Gallus, Gebhardt, Hamlett, Hinkle, Jackson, Laible, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, M. Tropila, Tutvedt, Windy Boy, Zinke, Mr. President.
Total 32

Absent or not voting: None.
Total 0

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Excused: Squires.

Total 1

SB 278 - Senator J. Peterson moved **SB 278** be **indefinitely postponed**. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Hinkle, Jackson, Laible, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, M. Tropila, Tutvedt, Windy Boy, Zinke, Mr. President.

Total 31

Nays: Branae, Cooney, Erickson, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Larsen, Moss, Schmidt, J. Tropila, Wanzenried, Williams.

Total 18

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

Senator McGee assumed the chair.

SB 291 - Senator Black moved **SB 291** do pass. Motion carried as follows:

Yeas: Bales, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Esp, Essmann, Gebhardt, Hamlett, Hinkle, Jackson, Jent, Laible, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Tutvedt, Windy Boy, Zinke, Mr. President.

Total 28

Nays: Balyeat, Branae, Cooney, Curtiss, Erickson, Gallus, Gillan, Hansen, Hawks, Juneau, Kaufmann, Keane, Larsen, Laslovich, Moss, Schmidt, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams.

Total 21

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

Senator Black re-assumed the chair.

SB 327 - Senator Curtiss moved **SB 327** do pass.

SB 327 - Senator McGee moved **SB 327**, second reading copy, be amended as follows:

1. Title, line 8.

Following: "DEATH"

Strike: "OR INJURY"

2. Title, line 9.

Following: "PENALTIES;"

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Insert: "PROVIDING FOR AN ADDITIONAL SENTENCE FOR A PERSON CONVICTED OF ASSAULT OR AGGRAVATED ASSAULT ON A PREGNANT WOMAN;"

Following: "45-5-102"

Strike: "₂"

Insert: "AND"

Following: "45-5-103,"

Strike: "45-5-201, AND 45-5-202,"

3. Page 1, line 17.

Strike: "[sections 1 through & 6]"

Insert: "45-5-102, 45-5-103, and [section 5]"

4. Page 4, line 3 through line 20.

Strike: section 4 through section 5 in their entirety

Insert: "NEW SECTION. Section 4. Additional sentence for assault or aggravated assault on pregnant woman.

(1) An offender who is convicted of committing the offense of assault, as defined in 45-5-201, against a pregnant woman shall, in addition to the punishment provided for commission of the offense, be sentenced to a term of imprisonment in a state prison of not more than 10 years, except as provided in 46-18-222.

(2) An offender who is convicted of committing the offense of aggravated assault, as defined in 45-5-202, against a pregnant woman shall, in addition to the punishment provided for commission of the offense, be sentenced to a term of imprisonment in a state prison of not more than 20 years, except as provided in 46-18-222.

(3) An additional sentence imposed pursuant to this section must be imposed pursuant to the requirements of 46-1-401 and must run consecutively to the sentence imposed for the offense, except as provided in 46-18-222."

Renumber: subsequent sections

5. Page 4, line 22.

Strike: "[Sections 1 through 8]"

Insert: "Sections 45-5-102, 45-5-103, and [section 4]"

6. Page 5, line 2.

Strike: "[sections 1 through 8]"

Insert: "45-5-102, 45-5-103, or [section 4]"

7. Page 5, line 14.

Strike: "[SECTION 1] IS"

Insert: "[Sections 1 and 4 through 6] are"

8. Page 5, line 16.

Strike: "[SECTION 1]"

Insert: "[sections 1 and 4 through 6]"

Amendment adopted as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Esp, Essmann, Gallus, Gebhardt, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Keane, Laible, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, Tutvedt, Windy Boy, Zinke, Mr. President.

Total 39

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Nays: Erickson, Gillan, Juneau, Kaufmann, Larsen, Moss, Schmidt, M. Tropila, Wanzenried, Williams.
Total 10

Absent or not voting: None.
Total 0

Excused: Squires.
Total 1

SB 327 - Senator Curtiss moved **SB 327**, as amended, do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Hamlett, Hansen, Hinkle, Jackson, Jent, Keane, Laible, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, Tutvedt, Windy Boy, Zinke, Mr. President.
Total 35

Nays: Branae, Cooney, Erickson, Gallus, Gillan, Hawks, Juneau, Kaufmann, Larsen, Moss, Schmidt, M. Tropila, Wanzenried, Williams.
Total 14

Absent or not voting: None.
Total 0

Excused: Squires.
Total 1

SB 379 - Senator Perry moved **SB 379** do pass. Motion **failed** as follows:

Yeas: Barkus, Barrett, Black, Brenden, T. Brown, Brueggeman, Curtiss, Esp, Gebhardt, Hinkle, Jackson, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Zinke, Mr. President.
Total 20

Nays: Bales, Balyeat, Branae, R. Brown, Cooney, Erickson, Essmann, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Schmidt, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy.
Total 29

Absent or not voting: None.
Total 0

Excused: Squires.
Total 1

SB 379 - Senator Williams moved **SB 379** be **indefinitely postponed**. Motion carried as follows:

Yeas: Branae, R. Brown, Brueggeman, Cooney, Erickson, Esp, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Peterson, Schmidt, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Mr. President.
Total 30

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Nays: Bales, Balyeat, Barkus, Barrett, Black, Brenden, T. Brown, Curtiss, Essmann, Hinkle, Jackson, McGee, Murphy, Perry, Ripley, Shockley, Steinbeisser, Tutvedt, Zinke.
Total 19

Absent or not voting: None.
Total 0

Excused: Squires.
Total 1

Senator Peterson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Story in the chair. Chairman Black moved the Committee of the Whole report be adopted. Report adopted unanimously.

MOTIONS

Senator Bales **SB 291** re-referred to Finance and Claims. Motion carried.

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 322 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Squires.
Total 1

SB 464 passed as follows:

Yeas: Barrett, Black, Branae, T. Brown, Brueggeman, Cooney, Erickson, Esp, Essmann, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 36

Nays: Bales, Balyeat, Barkus, Brenden, R. Brown, Curtiss, Gebhardt, Hinkle, Jackson, Keane, Laible, Perry, Tutvedt.

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Total 13

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

SB 476 passed as follows:

Yeas: Bales, Balyeat, Barrett, Branae, Brenden, T. Brown, Brueggeman, Curtiss, Erickson, Esp, Essmann, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Williams, Windy Boy, Zinke, Mr. President.

Total 39

Nays: Barkus, Black, R. Brown, Cooney, Gebhardt, Hinkle, Jackson, Laslovich, Tutvedt, Wanzenried.

Total 10

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Peterson moved that the Senate adjourn until 1:00 p.m., Thursday, March 5, 2009. Motion carried.

Senate adjourned at 2:52 p.m.

MARILYN MILLER
Secretary of the Senate

ROBERT STORY
President of the Senate