

**SENATE JOURNAL
62ND LEGISLATURE
THIRTY-THIRD LEGISLATIVE DAY**

Helena, Montana
February 10, 2011

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Peterson presiding. Invocation by Chaplain Keith Johnson. Pledge of Allegiance to the Flag. Roll Call. All members present, except Senators Augare and Hutton, excused. Quorum present.

Senator Gallus noted the passing of former Senator J.D. Lynch's wife.

MOTIONS

Senator Essmann moved the Senate recess and proceed to the House of Representatives for the State of the Judiciary address. Upon adjournment of the joint session, the Senate will reconvene. Motion carried.

The Senate recessed and proceeded to the House of Representatives.

President Peterson assumed the chair.

Senator Essmann moved that the body resolve itself into a joint session for the purpose of receiving the State of the Judiciary address. Motion carried.

Senator Essmann moved that the President be authorized to appoint a committee of four to notify the Honorable Chief Justice and Justices of the Supreme Court of the State of Montana that the House and Senate were in Joint session and ready to receive the State of the Judiciary address. Motion carried. President Peterson appointed Senator Jent, Senator Shockley, Representative Fitzpatrick, and Representative Driscoll. The committee was discharged to escort Chief Justice McGrath and the Supreme Court Justices into the House chambers. The committee escorted Chief Justice McGrath to the rostrum.

Chief Justice McGrath delivered the following address to the Joint session:

Mr. Speaker, Mr. President, Members of the Court, Honored Guests, Members of this Joint Assembly:

Thank you for giving me this opportunity. It is indeed an honor to be here speaking on behalf of Montana's Judiciary.

It is very gracious of you, and appropriate I might add, to provide this opportunity to both the Executive and Judicial Branches of Montana's government.

In Montana, our courts process 1,000 cases each day, 365,000 per year. That, of course, includes all matters, including misdemeanors. But it adds up to one case for every three Montana residents.

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At 1,000 cases per day, our courts are busy and, in our larger communities, the workload for court employees is very heavy.

Many people come to court because their lives are in crisis. They include victims of crime, and people charged with crimes, children suffering from child abuse, ranchers who can't irrigate because of a water dispute, businesses being wrongfully sued by disgruntled employees, workers injured on the job, neighbors fighting over disputed property boundaries, entrepreneurs challenging the government's interpretation of legislation and mothers seeking child support to buy diapers. They come because they *know* they have rights. They *know* that there are laws that will protect them. They *know* they will get an answer to their problem.

And they know they will be treated fairly, by an independent judge--not a person beholden to money interests or partisanship or social status. Rather, a judge who will listen to their grievance and make a decision based on the merits of each individual case.

If you listen to the grievances being expressed by the demonstrators in the Middle East these past few weeks--what you hear--they want what we have. They want a right to be heard by their government. They want to be governed by the rule of law and not by fiat as determined by despotic rulers and autocratic administrations.

Our founders developed a system that has become the blueprint for political and economic success for the modern world.

In the words of historian Joseph Ellis, American success is: "about the triumph of representative government bottomed on the principle of popular sovereignty, a market economy fueled by the energies of our citizens, a secular state unaffiliated with any official religion, and the rule of law that presumes the equality of all."

What our founders knew was that if this republic they had created was going to succeed, it had to be based upon the rule of law, and that rule of law requires an independent and impartial manner of resolving disputes--be they commercial matters, family crises, criminal charges or removal of public officers. And as Ronald Reagan said: "our heritage of individual liberty is dependent on the rule of law."

And the system works!

Speaking to the Supreme Court in 1982, President Reagan, after noting that he occasionally disagreed with some of their decisions, stated:

"I know that the Supreme Court of the United States is the only group . . . in history that has exercised significant authority over such a long period of time without having need for battalions of fighting men to enforce their decisions It's a healthy reflection of the fact that the vast majority of our citizens respect and abide by the decisions of the judiciary as a matter of course."

Ted Olson served as the U.S. Solicitor General in a Republican Administration. His wife was killed on 9/11.

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Some of you have heard me quote his remarks, written in *The Wall Street Journal*, before, but I think it is worth the repetition:

"Every day, thousands and thousands of judges--jurists whose names we never hear, from our highest court to our most local tribunal--resolve controversies, render justice, and help keep the peace by providing a safe, reliable, efficient and honest dispute resolution process. The pay is modest, the work is frequently quite challenging, and the outcome often controversial. For every winner in these cases, there is a loser. Many disputes are close calls, and the judge's decision is bound to be unpopular with someone.

But in this country we accept the decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision. Our courts are essential to an orderly, lawful society. And a robust and productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law. . . . Americans understand that no system is perfect and no judge immune from error, but also that our society would crumble if we did not respect the judicial process."

The Judiciary in Montana understands that we have the responsibility described by the President and strive daily to ensure that we uphold these traditions.

Those 1,000 people per day that end up in our courts know that our Justice System is based on the rule of law and not individual whim. Our disputes are resolved within an orderly system that provides all parties the opportunity to be heard, and is based upon law.

In fact, our economy depends on this independent system. Investors and other businesses have the right to rely on an orderly and prompt dispute resolution process. They have the freedom to enter contracts and the ability to have those contracts enforced. They know that even in the most remote courthouse in Montana, they will get a fair hearing and a timely decision.

Furthermore, individual citizens have the rights enunciated in our Constitution and the ability to enforce those rights whether they are in Libby or Terry, Billings or Butte.

And all of us have the right to expect the courts to make those decisions based on the merits of each individual case--by judges independent of bias, prejudice or political influence.

As an independent third branch of government, our responsibilities are great but our needs are small.

Our budget is less than two percent of the general fund. Yet we recognize that with judicial independence comes the corresponding responsibility, to be accountable:

- Accountable to the people who elect us, and;
- Accountable to the Legislature, especially as to how we spend public funds.

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In an effort to be more accountable, the Judicial Branch has undertaken a series of performance measures. At the Supreme Court, a number of new case processing measures have been implemented.

Last session, I told you that the Court is very much aware of concerns about backlogged cases. Significant improvements have been made—I can now tell you that our caseload is current. We have no cases over a year old and our average time to resolve a case is less than 100 days. And, because we are current, we were able to shift personnel from the Supreme Court to our most crowded District Courts in Gallatin and Cascade counties.

District Court performance standards are now being developed. Surveys of court users are completed and formulas have been adapted to accurately measure case loads and case timeliness. The efforts you made last session to add 3 District Court Judges in Yellowstone, Flathead and Lewis and Clark counties are just beginning to show improvement. The people in those communities and the Judicial Branch thank you for that assistance.

Also last session, we experienced significant budget reductions--including vacancy savings and across-the-board cuts. Plus, at the request of the executive branch, we reduced our appropriated budget by a significant amount. Our branch consists of 54 independently elected officials, 46 of whom are elected from their local community. As the vast majority of our budget consists of personnel costs, it is hard to find additional areas to cut.

We have done a good job of managing our resources; we have found the waste. Additional budget reductions will fall on the backs of the overworked local judiciary and inevitably result in delay and court backlogs. Of course the losers under that scenario are your constituents, especially small business and working people.

We have learned that backlogged courts are bad for business. We are trying hard to remedy that problem. However, we do have ways that the Judiciary can help with future budgets.

Drug courts and Treatment courts in general can and do save taxpayer dollars. And the last two sessions, Legislators had the foresight to fund a small portion of these programs.

Not long ago 50 percent of the children in foster care were there because of their parents' use of drugs--methamphetamine in particular.

An incredibly high percentage--up to 90 percent--of prison inmates (both male and female) are incarcerated with chemical dependency problems--as many as half for meth. And, of course, many of our prisoners have severe mental illness problems.

All of these social problems cause a tremendous drain on state and local government budgets. That is why the new governor of Georgia announced, in his inaugural address last month, that he was proposing increased funding for drug courts as a cost-saving measure.

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Treatment courts divert some of these people to less expensive and more effective alternatives.

- They can keep kids out of Pine Hills or even more expensive out-of-state placements.
- They divert new commitments from our state prisons to less expensive alternatives in the community.
- Drug courts reunite shattered families and turn participants into productive members of society.

Recently, we issued a report that catalogs the success of Montana's drug courts. Some of the highlights include:

- The re-offense rates for those participants that had been discharged for 2 years or more are remarkable,
 - only 1.2% were arrested for a felony, and
 - only 10.5% committed misdemeanors.
 - That means that only 10 percent committed as much as a misdemeanor, a significant drop in recidivism.
- Adult Drug Court graduates had a 17.6 percent increase in employment during the program,
 - Family Drug Court graduates had an incredible 61.8 percent increase in employment.

One more:

- In two and one-half years, 20 participants were pregnant--14 gave birth while in the program,
 - 12 of those babies were born drug free--an immense saving of taxpayer dollars.

Many of our judges in Montana are committed to addressing these problems in their communities--problems they see every day.

Treatment courts are a strain on judges' time and energy. However, they are very rewarding as well. They do see good things happen in a courtroom--not a common occurrence in our courts.

Nationally, it has been proven that Treatment courts are by far the most effective thing we can do to address drug abuse and the problems that go with it.

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We also propose to continue our Court Help Program, to assist individual Montana citizens with court service areas, places where you can get proper forms and assistance with the court process without unnecessary expense. Not all legal matters need attorneys. There are many ways we can simplify the process and provide people with helpful solutions.

Most people cannot afford an attorney--so they come to court without. Fully 30 percent of our Court's cases are presented with at least one party not represented by an attorney. In Flathead, it's 80 percent of the domestic relations cases.

- These cases tend to be very messy,
- These cases are time consuming,
- These cases are very frustrating--not only for the Judge but the parties themselves.

This program provides some direction--some explanation of how to navigate through the process,

- It does not offer legal advice.

Since the program began, our two full-time centers in Kalispell and Billings have assisted 12,000 individuals and small businesses navigate through the complexity of our court system. We do this with volunteers who are recruited and trained by the limited staff that we have. Because our tiny budget is leveraged by volunteer labor, this program operates in 24 counties--all across our state.

This program does significantly increase judicial efficiency and it does reduce court backlog.

Finally, we hope to be able to introduce some new efficiencies at the Water Court thanks to suggestions from the Legislative Audit Committee. Started in 1979, the task is to quantify every water right, in every drainage, in the state of Montana--all 220,000 claims--a monumental task. We are working with Representative McNutt and Senator Wanzon on a proposal that will be coming your way soon.

The way our citizens approach the court system is changing dramatically; clearly our courts must adapt to these changing times.

Thanks to you, last session, for providing some funding for these important programs. I hope they will be able to continue. We believe our proposals will help to ensure that the small business owner, the man injured through no fault of his own, the mom, the defendant wrongly accused, and the child crying in the crib get their opportunity to resolve their crises. We also hope that by making the court system more efficient and responsive to the public's needs, we can avoid coming to you in a future session asking for more Judges.

While I have been Chief Justice for only a short period of time, I have enjoyed the experience immensely. I thank the people of Montana for giving me this opportunity.

Thank you again for inviting me to speak with you today.

I know all of you have a lot to do in the next 57 days!

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Good luck this Session!

The committee escorted the Chief Justice, and the Court, and honored guests from the Joint session.

Senator Essmann moved that the Joint session be adjourned. Motion carried.

The joint session adjourned and the Senate resumed.

BILLS AND JOURNALS: 2/10/2011

Correctly printed: **SB 195, SB 217, SJR 9.**

Correctly engrossed: **SB 57, SB 215.**

REPORTS OF STANDING COMMITTEES

JUDICIARY (Murphy, Chairman): 2/10/2011
SB 185, do pass. Report adopted.

STATE ADMINISTRATION (Shockley, Chairman): 2/9/2011
HB 89, be amended as follows:

1. Title, page 1, line 6.

Strike: "LEGISLATIVE"

Insert: "STATE DISTRICT"

2. Page 1, line 23.

Strike: "legislative"

Following: the first "candidates"

Insert: "for a state district office, including but not limited to candidates for the legislature, the public service commission, or for a district court judge,"

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

TAXATION (Tutvedt, Chairman): 2/10/2011
SB 110, introduced bill, be amended as follows:

1. Title, line 6.

Strike: "; AND PROVIDING AN EFFECTIVE DATE"

2. Page 1, line 12.

Strike: "2011"

Insert: "2014"

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3. Page 2, line 11.

Strike: section 3 in its entirety

And, as amended, do pass. Report adopted.

HB 21, be concurred in. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

2/9/2011

HB 40, introduced by K. Peterson

HB 43, introduced by MacLaren

HB 102, introduced by Menahan

HB 181, introduced by Arntzen

HB 231, introduced by Brodehl

HB 300, introduced by Flynn

HB 315, introduced by MacDonald

HB 356, introduced by Hiner

HB 367, introduced by MacLaren

FIRST READING AND COMMITMENT OF BILLS

SB 298, introduced by Vincent, referred to Local Government.

SB 299, introduced by Hamlett, Brown, referred to Natural Resources.

SB 300, introduced by Hamlett, Brown, referred to Agriculture, Livestock and Irrigation.

SB 301, introduced by Ripley, Brenden, referred to Fish and Game.

SB 302, introduced by Ripley, Brenden, referred to Local Government.

SB 303, introduced by Brenden, Ripley, Arthun, Jones, Berry, J. Peterson, Walker, Murphy, Lewis, Hutton, Steinbeisser, Olson, Hinkle, Vincent, Keane, Jackson, Debby Barrett, Tutvedt, Priest, Moore, referred to Local Government.

SB 304, introduced by Shockley, Augare, referred to Judiciary.

SB 305, introduced by Jackson, Klock, Olson, referred to Energy and Telecommunications.

SB 306, introduced by Murphy, Vincent, G. Bennett, Olson, Keane, Brown, Buttrey, Yates, Hale, referred to Natural Resources.

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

HB 30, introduced by C. Smith, referred to Public Health, Welfare and Safety.

HB 123, introduced by McClafferty (by request of the Education and Local Government Interim Committee), referred to Local Government.

HB 185, introduced by Berry, Taylor, O'Hara, MacLaren, referred to Judiciary.

HB 198, introduced by K. Peterson, Howard, Hollandsworth, Berry, Erickson, McGillvray, Fitzpatrick, Reichner, Driscoll, O'Hara, Belcourt, Reinhart, Mehlhoff, C. Smith, Facey, Knox, Buttrey, F. Smith, referred to Judiciary.

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HB 211, introduced by Ingraham, referred to Local Government.

HB 212, introduced by Ingraham, referred to Local Government.

HB 219, introduced by McGillvray, Essmann, Blasdel, referred to Taxation.

HB 255, introduced by Wilmer, Hawks, Welborn, Boland, Skattum, McChesney, Wilmer, Hiner, Sesso, Price, O'Neil, McNally, Sands, Swanson, Driscoll, Pease-Lopez, Connell, MacDonald, Flynn, Furey, Hunter, Miller, Schmidt, McNutt, More, Malek, McClafferty, Mehlhoff, B. Bennett, Noonan, Kary, McNiven, Hands, Menahan, Randall, Belcourt, Squires, Reinhart, Arntzen, Reichner, Dick Barrett, Court, Hendrick, Hollenbaugh, O'Hara, F. Smith, Roberts, Lavin, Skees, Phillips, Yates, K. Williams, Hansen, Gibson, Lewis, Jent, Tropila, Branae, Vincent, Blewett, Keane, Windy Boy, Van Dyk, Zinke, Debby Barrett, Ripley, Augare, Wanzenried, Hamlett, Wittich, Knudsen, Brodehl, Stewart-Peregoy, Caferro, Essmann, J. Peterson, Brown, Small, Gillan, Lake, Stahl, Evans, Miller, Kerns, Greef, Ankney, Facey, referred to State Administration.

HB 256, introduced by Wilmer, referred to State Administration.

HB 261, introduced by Rosendale, Taylor, Lavin, McNiven, referred to Fish and Game.

HB 279, introduced by F. Smith, Belcourt, Evans, Hiner, Pease-Lopez, Malek, Hollenbaugh, Small, O'Neil, Stahl, Read, McChesney, Arntzen, Roberts, Augare, Sands, referred to State Administration.

HB 292, introduced by Kennedy, F. Smith, Evans, Cuffe, Hale, G. Bennett, Klock, Skees, O'Neil, Arntzen, C. Smith, Connell, Yates, Milburn, Brodehl, Hinkle, K. Peterson, Blasdel, Kerns, Hoven, McNiven, Greef, Ankney, Hendrick, Harris, More, Regier, Sonju, Read, Miller, Vance, Rosendale, Flynn, Salomon, Washburn, Lavin, Osmundson, Kary, Berry, Knox, Blyton, Murphy, Skattum, Small, Wagner, Reichner, Welborn, Warburton, referred to Judiciary.

HB 294, introduced by Cook, referred to Agriculture, Livestock and Irrigation.

HB 297, introduced by Berry, referred to State Administration.

HB 298, introduced by McNutt, referred to Highways and Transportation.

HB 319, introduced by McNutt, referred to Highways and Transportation.

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

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

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

SB 210 - Senator Tutvedt moved **SB 210** do pass. Motion carried as follows:

Yeas: Arthun, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 47

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Nays: Wittich.

Total 1

Absent or not voting: None.

Total 0

Excused: Augare, Hutton.

Total 2

SB 247 - Senator Moss moved **SB 247** do pass. Motion carried as follows:

Yeas: Arthun, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Van Dyk, Vincent, Vuckovich, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 44

Nays: Hinkle, Tutvedt, Walker, Wittich.

Total 4

Absent or not voting: None.

Total 0

Excused: Augare, Hutton.

Total 2

SB 248 - Senator Gillan moved **SB 248** do pass. Motion carried as follows:

Yeas: Arthun, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Augare, Hutton.

Total 2

Senator Essmann moved the committee rise and report. Motion carried. Committee arose.

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Senate resumed. President Peterson in the chair. Chairman Hamlett moved the Committee of the Whole report be adopted. Report adopted as follows:

Yeas: Arthun, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Augare, Hutton.
Total 2

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 195 passed as follows:

Yeas: Arthun, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.
Total 47

Nays: Van Dyk.
Total 1

Absent or not voting: None.
Total 0

Excused: Augare, Hutton.
Total 2

SB 217 passed as follows:

Yeas: Arthun, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju,

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Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.
Total 47

Nays: Balyeat.
Total 1

Absent or not voting: None.
Total 0

Excused: Augare, Hutton.
Total 2

SJR 9 adopted as follows:

Yeas: Arthun, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Hinkle, Hutton, Jackson, Jones, Lake, Lewis, Moore, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Tutvedt, Vincent, Walker, Wittich, Mr. President.
Total 26

Nays: Augare, Blewett, Branae, Caferro, Erickson, Facey, Gallus, Gillan, Hamlett, Hawks, Jent, Kaufmann, Keane, Larsen, Moss, Mowbray, Stewart-Peregoy, Tropila, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy, Zinke.
Total 24

Paired: Essmann, Hutton, Aye; Augare, Gillan, No.

Absent or not voting: None.
Total 0

Excused: None.
Total 0

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Essmann moved that the Senate adjourn until 1:00 p.m., Friday, February 11, 2011. Motion carried.

Senate adjourned at 2:04 p.m.

MARILYN MILLER
Secretary of the Senate

JIM PETERSON
President of the Senate