

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

Helena, Montana
February 14, 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. Quorum present.

Mr. President: We, your committee on Bills and Journals, having examined the daily journals for the twenty-first, twenty-second, twenty-fourth, and twenty-fifth legislative days, find the same to be correct.

Senator Brown, Chair

BILLS AND JOURNALS:

2/14/2011

Correctly printed: **SB 89, SB 267, HB 19, HB 21, HB 60, HB 74.**

Correctly engrossed: **SB 54, SB 206, SB 229, SJ 10.**

LEGISLATIVE ADMINISTRATION (Brown, Chairman):

2/14/2011

MR. PRESIDENT:

We, your committee on Legislative Administration recommend that employment of the following attaches of the Senate be terminated as of 12:00 p.m., Saturday, February 12, 2011:

TITLE

NAME

Pages:

Anna Williams, Bozeman
Catherine Alvernaz, Glasgow
Lauren Buechler, Malta
Hailey Muller, Billings
Jeanne Breakall, Twin Bridges

and recommend that the following attaches of the Senate be employed as of 8:00 a.m., Monday, February 14, 2011:

TITLE

NAME

Pages:

John Miller, Judith Gap
Morgan Simkins, Missoula
Sean Van Horsen, Helena
Megan Henke, Chester
Brendan Hooks, Helena
Shadya Jarecke, Joliet
Katie Lesh, Miles City

Report Adopted.

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REPORTS OF STANDING COMMITTEES

JUDICIARY (Murphy, Chairman):

2/14/2011

SB 42, introduced bill, be amended as follows:

1. Title, line 7.

Following: "SAMPLES"

Insert: "IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE"

2. Title, line 8 through line 9.

Following: "TESTING" on line 8

Strike: remainder of line 8 through "TESTING" on line 9

3. Title, line 10.

Following: "61-8-404,"

Strike: "AND"

Following: "61-8-405,"

Insert: "AND 61-8-409,"

4. Page 1, line 24 through page 2, line 8.

Strike: section 2 in its entirety

Renumber: subsequent sections

5. Page 3, line 1 through line 2.

Following: ",~~but~~" on line 1

Strike: remainder of line 1 through "refusal,"

Insert: "except as provided in subsection (5), but"

6. Page 3, line 7.

Strike: "(6)"

Insert: "(7)"

7. Page 3, line 8.

Insert: "(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, or 61-8-406 or a similar statute in another jurisdiction, the officer may obtain a search warrant to collect a sample of the person's blood for testing."

Renumber: subsequent subsections

8. Page 3, line 12.

Following: "subsection"

Strike: "(6)(b)"

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Insert: "(7)(b)"

9. Page 3, line 25.

Following: "subsection"

Strike: "(6)(b)"

Insert: "(7)(b)"

10. Page 6, line 8.

Insert: "**Section 5.** Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given except as provided in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through ~~(8)~~ (9) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Renumber: subsequent sections

11. Page 6, line 9 through line 10.

Strike: section 6 in its entirety

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

SB 97, do pass. Report adopted.

SB 268, do pass. Report adopted.

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MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence: 2/12/2011

HB 42, introduced by Hollenbaugh

HB 93, introduced by Furey

HB 179, introduced by Knox

HB 307, introduced by Burnett

House joint resolution passed and transmitted to the Senate for concurrence: 2/12/2011

HJR 6, introduced by Connell

FIRST READING AND COMMITMENT OF BILLS

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

SB 340, introduced by Vincent, referred to Local Government.

SB 341, introduced by Moore, referred to Business, Labor, and Economic Affairs.

SB 342, introduced by Buttrey, Balyeat, Vincent, Hinkle, Essmann, Brown, Sonju, Mowbray, Jackson, Olson, Priest, referred to Business, Labor, and Economic Affairs.

SB 343, introduced by Jackson, Taylor, Murphy, O'Hara, Edmunds, Walker, Vincent, Mowbray, McGillvray, Harris, Lewis, G. Bennett, Salomon, Blewett, Augare, Gallus, Larsen, Ingraham, Beck, Zinke, Mehlhoff, Caferro, O'Neil, Hendrick, Facey, Vance, Branae, Kaufmann, Osmundson, Arntzen, Hawks, Wanzenried, Moss, Loney, Arthun, Priest, J. Peterson, Regier, Blasdel, Sesso, Reichner, Brodehl, Connell, Skees, Hoven, Read, Skattum, Hamlett, K. Williams, Hale, Lavin, referred to Agriculture, Livestock and Irrigation.

SB 344, introduced by Priest, referred to Judiciary.

SB 345, introduced by Wittich, referred to Local Government.

**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 Ripley in the chair.

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

SB 58 - Senator Moss moved **SB 58** do pass. Motion carried as follows:

Yeas: Augare, Balyeat, Blewett, Branae, Brown, Caferro, Erickson, Facey, Gallus, Gillan, Hamlett, Hawks, Hutton, Jackson, Jent, Kaufmann, Keane, Larsen, Moore, Moss, Mowbray, Shockley, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 33

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Nays: Arthun, Barrett, Brenden, Buttrey, Essmann, Hinkle, Jones, Lake, Lewis, Murphy, Olson, Priest, Ripley, Sonju, Steinbeisser, Vincent, Walker.
Total 17

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 185 - Senator Wanzenried moved **SB 185** do pass. Motion carried as follows:
Yeas: Augare, Blewett, Branae, Caferro, Erickson, Facey, Gallus, Gillan, Hamlett, Hawks, Jent, Kaufmann, Keane, Larsen, Moss, Mowbray, Shockley, Steinbeisser, Stewart-Peregoy, Tropila, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy, Zinke.
Total 26

Nays: Arthun, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Hinkle, Hutton, Jackson, Jones, Lake, Lewis, Moore, Murphy, Olson, Priest, Ripley, Sonju, Tutvedt, Vincent, Walker, Wittich, Mr. President.
Total 24

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 54 - Senator Moore moved **HB 54** be concurred in. Motion carried as follows:
Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Hutton, 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 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

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HB 89 - Senator Balyeat moved **HB 89** be concurred in. Motion carried as follows:

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

Total 48

Nays: Facey, Tropila.

Total 2

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Essmann moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Peterson in the chair. Chairman Ripley moved the Committee of the Whole report be adopted. Report adopted as follows:

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

Total 46

Nays: Balyeat, Brenden, Sonju, Vincent.

Total 4

Absent or not voting: None.

Total 0

Excused: None.

Total 0

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 89 passed as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Hutton, Jackson, Jent,

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Jones, Kaufmann, Keane, Lake, 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 49

Nays: Larsen.

Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 21 concurred in as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Hutton, 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 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 60 concurred in as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Hutton, 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 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

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Excused: None.
Total 0

SPECIAL ORDERS OF THE DAY

Senator Brown introduced the pages for the week of February 14-19, 2011.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Essmann moved that the Senate adjourn until 2:00 p.m., Tuesday, February 15, 2011. Motion carried.

Senate adjourned at 2:58 p.m.

MARILYN MILLER
Secretary of the Senate

JIM PETERSON
President of the Senate