

**SENATE JOURNAL
57TH LEGISLATURE / SPECIAL SESSION AUGUST 2002
SECOND LEGISLATIVE DAY**

Helena, Montana
August 6, 2002

Senate Chambers
State Capitol

Senate convened at 8:00 a.m. President Beck presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senators Berry and K. Miller, excused. Quorum present.

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL (Ekegren, Vice Chairman):
Correctly printed: SB 16, SR 1.

8/6/2002

FIRST READING AND COMMITMENT OF BILLS

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

SB 17, introduced by Christiaens, Shockley, Bohlinger, E. Clark, Jergeson (by request of the Department of Justice), referred to Judiciary.

SB 18, introduced by Christiaens, Shockley, Bohlinger, Jergeson, referred to Judiciary.

SB 19, introduced by Doherty, Gillan, Bixby, Callahan, Christiaens, P. Clark, Cocchiarella, Cyr, Ellingson, Elliott, R. Erickson, Facey, Franklin, Golie, Halligan, Jent, Jergeson, Juneau, Lindeen, Matthews, McCarthy, Nelson, Newman, Raser, Roush, Ryan, Tester, Toole, referred to Finance.

SB 20, introduced by Ryan, referred to Taxation.

SB 21, introduced by Toole, referred to Taxation.

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 1 passed as follows:

Yeas: Bishop, Bohlinger, Butcher, Christiaens, Cobb, Cocchiarella, Cole, Crismore, DePratu, Doherty, Ekegren, Ellingson, Elliott, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Keenan, Kitzenberg, Mahlum, McCarthy, McNutt, Mohl, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stapleton, Stonington, Tash, Taylor, Tester, Thomas, Toole, Waterman, Wells, Zook, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Berry, Miller.

Total 2

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SB 2 passed as follows:

Yeas: Bishop, Bohlinger, Butcher, Cobb, Cole, Crismore, DePratu, Ellis, Glaser, Grimes, Grosfield, Hargrove, Johnson, Keenan, Mahlum, McNutt, Mohl, O'Neil, Sprague, Stapleton, Tash, Taylor, Thomas, Wells, Zook, Mr. President.
Total 26

Nays: Christiaens, Cocchiarella, Doherty, Ekegren, Ellingson, Elliott, Franklin, Halligan, Harrington, Holden, Jergeson, Kitzenberg, McCarthy, Nelson, Pease, Roush, Ryan, Shea, Stonington, Tester, Toole, Waterman.
Total 22

Absent or not voting: None.
Total 0

Excused: Berry, Miller.
Total 2

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Majority Leader Thomas moved that the Senate stand in recess until the hour of 3:00 p.m. this legislative day. Motion carried.

Senate recessed at 8:12 a.m.

Senate reconvened at 3:00 p.m.

Roll Call. All members present except Senators Berry and Miller, excused. Quorum present.

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL (Ekegren, Vice Chairman): 8/6/2002
Correctly printed: SB 17, SB 18, SB 19, SB 20, SB 21, SR 2, SR 3, SR 4.
Examined by the sponsor and found to be correct: SR 1.
Signed by the President at 12:02 p.m., August 6, 2002: SR 1.
Delivered to the Secretary of State at 1:55 p.m., August 6, 2002: SR 1.

JUDICIARY (Grosfield, Chairman): 8/6/2002
SB 17, introduced bill, be amended as follows:

1. Title, page 1, line 12.

Following: "SECTIONS"

Insert: "46-12-204, 46-18-202, 46-18-256,"

2. Page 1, line 16.

Insert: "**Section 1.** Section 46-12-204, MCA, is amended to read:

"46-12-204. Plea alternatives. (1) A defendant may plead guilty, not guilty, or, with the consent of the court and the prosecutor, nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

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(2) The court may not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

(4) The court may not accept a plea of nolo contendere in a case involving a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303."

Insert: "Section 2. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- (a) prohibition of the offender's holding public office;
- (b) prohibition of the offender's owning or carrying a dangerous weapon;
- (c) restrictions on the offender's freedom of association;
- (d) restrictions on the offender's freedom of movement;
- (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;
- (f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program."

Insert: "Section 3. Section 46-18-256, MCA, is amended to read:

"46-18-256. Sexually transmitted disease testing -- test procedure. (1) Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines established by the centers for disease control, U.S. department of health and human services, to detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

- (a) the convicted person; and
- (b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-1502,

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finding a youth to be a delinquent youth or a youth in need of intervention.

(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

STATE ADMINISTRATION (Hargrove, Chairman):

8/6/2002

SR 2, be adopted. Report adopted.

SR 3, be adopted. Report adopted.

SR 4, be adopted. Report adopted.

TAXATION (DePratu, Chairman):

8/6/2002

SB 6, introduced bill, be amended as follows:

1. Title, line 4.

Strike: "REMOVING"

Insert: "LIMITING"

2. Title, line 5 through line 6.

Strike: "; PROVIDING" on line 5 through "EXCESS OF" on line 6

Insert: "TO AN ALLOCATION OF"

Strike: "TO TANF"

Strike: "SECTION" through "REPEALING"

3. Page 1, line 11 through page 2, line 4.

Strike: section 1 through section 3 in their entirety

Insert: "Section 1. Section 2, Chapter 502, Laws of 2001, is amended to read:

"Section 2. **Fund transfer allocation.** The department of public health and human services shall ~~transfer~~ \$3,415,928 allocate \$700,000 of the TANF block grant received as federal special revenue to the affordable housing revolving loan account provided for in 90-6-133."

Renumber: subsequent section

And, as amended, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

8/6/2002

HB 1, introduced by Lewis

HB 3, introduced by Kasten

HB 4, introduced by Kasten

HB 5, introduced by Lewis

HB 6, introduced by Bookout-Reinicke

HB 7, introduced by Lewis

HB 8, introduced by Lewis

HB 9, introduced by Fisher

HB 10, introduced by Balyeat

HB 12, introduced by Kasten

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House joint resolution passed and transmitted to the Senate for concurrence:

8/6/2002

HJR 1, introduced by Devlin

MOTIONS

Majority Whip Stapleton moved that the legislature convene itself in a concurrent special session to consider legislation to: (1) amend the Montana Constitution to: (a) allow for the use of the portion of the coal severance tax permanent trust fund in excess of \$650 million to be used to fund public elementary and secondary schools; (b) reduce the amount of coal severance tax revenue dedicated to the coal severance tax permanent trust fund; (2) implement the proposed constitutional changes to be effective upon approval of the proposed constitutional amendment; and (3) revise election laws to allow the constitutional amendment to appear on the ballot in November 2002. After a lengthy discussion, the motion received the following vote:

Yeas: Cobb, Crismore, DePratu, Ellis, Glaser, Grimes, Grosfield, Keenan, Kitzenberg, Mohl, Stapleton, Tash, Thomas, Wells, Mr. President.

Total 15

Nays: Bishop, Bohlinger, Butcher, Christiaens, Cocchiarella, Cole, Doherty, Ekegren, Ellingson, Elliott, Franklin, Halligan, Hargrove, Harrington, Holden, Jergeson, Johnson, Mahlum, McCarthy, McNutt, Nelson, O'Neil, Pease, Roush, Ryan, Shea, Sprague, Stonington, Tester, Toole, Waterman, Zook.

Total 32

Absent or not voting: None.

Total 0

Excused: Berry, Miller, Taylor.

Total 3

FIRST READING AND COMMITMENT OF BILLS

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

HB 1, introduced by Lewis, referred to Finance.

HB 3, introduced by Kasten (by request of the Office of Budget and Program Planning), referred to Finance.

HB 4, introduced by Kasten (by request of the Office of Budget and Program Planning), referred to Finance.

HB 5, introduced by Lewis (by request of the Office of Budget and Program Planning), referred to Finance.

HB 6, introduced by Bookout-Reinicke (by request of the Office of Budget and Program Planning), referred to Finance.

HB 7, introduced by Lewis (by request of the Office of Budget and Program Planning), referred to Finance.

HB 8, introduced by Lewis (by request of the Office of Budget and Program Planning), referred to Finance.

HB 9, introduced by Fisher (by request of the Office of Budget and Program Planning), referred to Finance.

HB 10, introduced by Balyeat (by request of the Office of Budget and Program Planning), referred to Finance.

HB 12, introduced by Kasten (by request of the Office of Budget and Program Planning), referred to Finance.

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

HJR 1, introduced by Devlin, referred to Taxation.

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Majority Leader Thomas moved that the Senate adjourn until 8:00 a.m., Wednesday, August 7, 2002. Motion carried.

Senate adjourned at 4:16 p.m.

SUSAN ANDERSEN
Assistant Secretary of the Senate

TOM BECK
President of the Senate