

**HOUSE JOURNAL
ADDENDUM
56TH LEGISLATURE**

Helena, Montana
1999

House Chambers
State Capitol

REPORTS OF STANDING COMMITTEES

BILLS (Rehbein, Chairman):

Correctly enrolled on 4/23/1999: **HB 310, HB 321, HB 337, HB 366.**

Correctly enrolled on 4/28/1999: **HB 2, HB 5, HB 13, HB 20, HB 90, HB 127, HB 182,
HB 260, HB 540, HB 566, HJR 2.**

Signed by the Speaker at 11:20 a.m., April 22, 1999: **HB 11, HB 15, HB 57, HB 302, HB 374, HB 420, HB 470,
HB 528, HB 533, HB 626, HB 648.**

Signed by the Speaker at 10:50 a.m., April 23, 1999: **HB 310, HB 321, HB 337, HB 350, HB 366.**

Signed by the Speaker at 10:52 a.m., April 29, 1999: **HB 2, HB 5, HB 13, HB 20, HB 90, HB 127, HB 182,
HB 260, HB 540, HB 566, HJR 2.**

Delivered to the Secretary of State on April 26, 1999: **HB 5, HB 8, HB 18, HB 26, HB 35,
HB 36, HB 37, HB 38.**

Delivered to the Secretary of State on April 30, 1999: **HB 540** (referendum), **HJR 2.**

Delivered to the Governor for his approval at 11:17 a.m., April 22, 1999: **HB 14, HB 129, HB 174, HB 314,
HB 341, HB 478, HB 515, HB 530, HB 557, HB 641, HB 647, HB 669, HB 670, HB 674.**

Delivered to the Governor for his approval at 11:25 a.m., April 22, 1999: **HB 79, HB 115, HB 158, HB 183,
HB 245, HB 593, HB 596, HB 607, HB 614, HB 661.**

Delivered to the Governor for his approval at 1:15 p.m., April 23, 1999: **HB 92, HB 100, HB 185, HB 350,
HB 459, HB 506, HB 512, HB 616.**

Delivered to the Governor for his approval at 9:05 a.m., April 26, 1999: **HB 11, HB 15, HB 57, HB 302, HB 374,
HB 420, HB 470, HB 528, HB 533, HB 626, HB 648.**

Delivered to the Governor for his approval at 10:00 a.m., April 30, 1999: **HB 2, HB 5, HB 13, HB 20, HB 90,
HB 127, HB 182, HB 260, HB 310, HB 321, HB 337, HB 366, HB 566.**

MESSAGES FROM THE GOVERNOR

April 22, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 99** sponsored by Representative Hagener, **House Bill 109** sponsored by Representative Mercer, **House Bill 132** sponsored by Representative Kasten, **House Bill 180** sponsored by Representative Soft et al., **House Bill 186** sponsored by Representative Peck, **House Bill 187** sponsored by Representative Tropila, **House Bill 189** sponsored by Representative Barnett, **House Bill 221** sponsored by Representative Trexler, **House Bill 266** sponsored by Representative Guggenheim et al., **House Bill 275** sponsored by Representative Barnhart et al., **House Bill 405** sponsored by Representative Fuchs, **House Bill 532** sponsored by Representative Anderson, **House Bill 621** sponsored by Representative Witt et al., **House Bill 638** sponsored by Representative Somerville, **House Bill 652** sponsored by Representative Guggenheim, **House Bill 656** sponsored

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by Representative Bookout-Reinicke, **House Bill 657** sponsored by Representative Davies, and **House Bill 659** sponsored by Representative Menahan on April 22, 1999.

Sincerely,

MARC RACICOT
Governor

April 23, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 6** sponsored by Representative McCann, **House Bill 7** sponsored by Representative McCann, **House Bill 58** sponsored by Representative Younkin, **House Bill 74** sponsored by Representative Mood, **House Bill 95** sponsored by Representative Story, **House Bill 113** sponsored by Representative Younkin, **House Bill 128** sponsored by Representative Gillan et al., **House Bill 203** sponsored by Representative Shockley, **House Bill 486** sponsored by Representative Anderson et al., **House Bill 513** sponsored by Representative Witt et al., **House Bill 560** sponsored by Representative Hanson et al., **House Bill 584** sponsored by Representative Juneau et al., and **House Bill 592** sponsored by Representative Hibbard et al. on April 23, 1999.

Sincerely,

MARC RACICOT
Governor

April 26, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 348** sponsored by Representative Facey et al., **House Bill 430** sponsored by Representative Squires et al., and **House Bill 482** sponsored by Representative Mangan et al. on April 26, 1999.

Sincerely,

MARC RACICOT
Governor

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April 27, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 79** sponsored by Representative Brainard, **House Bill 100** sponsored by Representative Simon, **House Bill 245** sponsored by Representative Simon, **House Bill 314** sponsored by Representative Raney, **House Bill 389** sponsored by Representative Davies, **House Bill 459** sponsored by Representative R. Clark et al., **House Bill 512** sponsored by Representative Soft et al., **House Bill 515** sponsored by Representative Grinde et al., **House Bill 530** sponsored by Representative McGee et al., **House Bill 557** sponsored by Representative Ewer et al., **House Bill 593** sponsored by Representative Harper et al., **House Bill 607** sponsored by Representative Soft et al., **House Bill 614** sponsored by Representative Wagner, **House Bill 616** sponsored by Representative Lindeen et al., **House Bill 620** sponsored by Representative Tuss et al., **House Bill 641** sponsored by Representative Squires, **House Bill 651** sponsored by Representative Hanson, **House Bill 658** sponsored by Representative E. Clark et al., **House Bill 660** sponsored by Representative Menahan et al., and **House Bill 674** sponsored by Representative Hibbard et al. on April 27, 1999.

Sincerely,

MARC RACICOT
Governor

April 28, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 92** sponsored by Representative Somerville, **House Bill 115** sponsored by Representative McGee, **House Bill 158** sponsored by Representative Ohs, **House Bill 183** sponsored by Representative Dale, **House Bill 185** sponsored by Representative Menahan, **House Bill 551** sponsored by Representative Cobb, **House Bill 586** sponsored by Representative Dale et al., **House Bill 596** sponsored by Representative Somerville et al., and **House Bill 670** sponsored by Representative Eggers et al. on April 28, 1999.

Sincerely,

MARC RACICOT
Governor

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April 29, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 11** sponsored by Representative McCann, **House Bill 302** sponsored by Representative Krenzler, **House Bill 341** sponsored by Representative Lenhart, **House Bill 478** sponsored by Representative Golie et al., **House Bill 528** sponsored by Representative Juneau et al., and **House Bill 647** sponsored by Representative Raney et al. on April 29, 1999.

Sincerely,

MARC RACICOT
Governor

April 30, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 15** sponsored by Representative Zook, **House Bill 129** sponsored by Representative Stovall, **House Bill 174** sponsored by Representative Hibbard, **House Bill 374** sponsored by Representative Hurdle et al., **House Bill 420** sponsored by Representative Dale et al., **House Bill 506** sponsored by Representative Sliter et al., **House Bill 536** sponsored by Representative Kasten et al., **House Bill 661** sponsored by Representative Rehbein et al., and **House Bill 669** sponsored by Representative Story et al. on April 30, 1999.

Sincerely,

MARC RACICOT
Governor

May 5, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

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Please be informed that I have signed **House Bill 20** sponsored by Representative Kitzenberg et al., **House Bill 57** sponsored by Representative Mercer, **House Bill 90** sponsored by Representative Hagener, **House Bill 310** sponsored by Representative Molnar et al., **House Bill 470** sponsored by Representative Kasten, **House Bill 533** sponsored by Representative Gallus et al., **House Bill 626** sponsored by Representative Harper, and **House Bill 648** sponsored by Representative Menahan et al. on May 5, 1999.

Sincerely,

MARC RACICOT
Governor

May 6, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 5** sponsored by Representative McCann, **House Bill 13** sponsored by Representative Johnson, **House Bill 182** sponsored by Representative Ahner, **House Bill 260** sponsored by Representative Mood et al., **House Bill 321** sponsored by Representative Fuchs et al., and **House Bill 366** sponsored by Representative Kasten et al. on May 6, 1999.

Sincerely,

MARC RACICOT
Governor

May 10, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Mercer:

Please be informed that I have signed **House Bill 2** sponsored by Representative Zook, **House Bill 127** sponsored by Representative Johnson, **House Bill 337** sponsored by Representative E. Bergsagel et al., and **House Bill 566** sponsored by Representative Brainard et al. on May 10, 1999.

Sincerely,

MARC RACICOT
Governor

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April 23, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Bruce Crippen
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker Mercer and President Crippen:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto House Bill 91, **AN ACT REQUIRING A COUNTY TO CONDUCT A MAIL BALLOT ELECTION AT MUNICIPAL GOVERNMENT EXPENSE WHEN A MUNICIPALITY REQUESTS AN ELECTION TO APPROVE OR DISAPPROVE THE APPLICATION OF THE MUNICIPALITY'S BUILDING CODE JURISDICTION TO ALL OR PART OF AN AREA NOT TO EXCEED 4 1/2 MILES BEYOND THE MUNICIPALITY'S CORPORATE LIMITS; ESTABLISHING A MORATORIUM ON THE APPLICATION AND ENFORCEMENT OF MUNICIPAL BUILDING CODES IN EXISTING AREAS OF EXTENDED JURISDICTION UNTIL AN ELECTION IS HELD; AMENDING SECTIONS 13-19-106, 50-60-101, AND 50-60-301, AND 50-60-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE,"** for the following reasons.

Section 50-60-101, MCA, was amended by the Legislature in 1997 to provide that before a municipality could extend its jurisdictional area for building code enforcement, to include all or part of an area within 4 1/2 miles of the corporate limits of a municipality, the written consent of the county in which the municipality is located must first be obtained.

House Bill 91 further changes the municipal jurisdiction extension process by requiring a majority of qualified electors from an affected area to approve an extension of jurisdiction through a special mail ballot election.

House Bill 91 also suspends, effective July 1, 1999, the previously-approved jurisdiction of a municipality outside the corporate limits of the municipality until such time as the qualified electors in the affected area approve the extension of jurisdiction through a special mail ballot election.

Going beyond that to require a complex notice procedure and an election every time an extension of the jurisdictional area of a municipality is proposed will not further enhance our representative form of government. It will require additional expense, and compromise the protection that consumers and homeowners rely upon as a result of a generation of building code enforcement in Montana.

For these reasons, I am vetoing House Bill 91.

Sincerely,

MARC RACICOT
Governor

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April 30, 1999

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Bruce Crippen
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker Mercer and President Crippen:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby line-item veto portions of House Bill 14, "**AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2001; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AMENDING SECTION 17-7-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE,**" for the following reasons.

House Bill 14 appropriates funds from the capital projects fund for certain building projects, contingent upon authorization and sale of general obligation long-range building program bonds. The bill initially included the construction of a reception unit at the Montana State Prison, but that project was removed from the bonding list altogether and language was added to require that the reception unit project as well as other corrections building projects be funded with federal money to the maximum extent possible.

There are two provisions in House Bill 14 that place restrictions on the ability of the Department of Corrections to carry out building projects authorized by the 56th Legislature. In section 2, subsection 2(b), federal funds are required to be used in place of general obligation bonds to the maximum extent possible. And in section 9 of the bill the budget amendment process is altered to prohibit the Department of Corrections from transferring excess funds from one project to another project within that agency. Section 9 also requires the reduction of bonding authority for correction projects (other than the reception unit project) by the amount of federal funds received or expected to be received.

One of the conditions upon which federal funds for corrections projects may be received is that they not be used to supplant state funding. For that reason I believe it is essential that the two sections described above be deleted from House Bill 14. In addition, I do not believe that the Department of Corrections' building projects should be treated differently than other agency building projects.

Section 13 of House Bill 14 terminates section 9 on July 1, 2005. My proposal to delete section 9 from the bill renders section 13 unnecessary and meaningless, and so I have removed it as well.

Sincerely,

MARC RACICOT
Governor

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The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Bruce Crippen
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker Mercer and President Crippen:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto House Bill 350, **“AN ACT GENERALLY REVISING CAMPAIGN CONTRIBUTION PROVISIONS; ELIMINATING LIMITATIONS ON CONTRIBUTIONS TO AND BY POLITICAL PARTY COMMITTEES; PROVIDING THAT THE LIMITS APPLY TO AN ELECTION CYCLE AND DEFINING “ELECTION CYCLE”; REVISING DISCLOSURE REQUIREMENTS; REQUIRING DISCLOSURE ON THE INTERNET; PROHIBITING ACCEPTANCE OR DEPOSIT OF CONTRIBUTIONS AFTER A CERTAIN NUMBER OF DAYS FOLLOWING A GENERAL ELECTION AND PROVIDING A PENALTY; REVISING REPORTING REQUIREMENTS; REQUIRING A CLOSING REPORT BEFORE AN ELECTED CANDIDATE MAY ASSUME OFFICE; PROVIDING FOR A TRANSFER OF FUNDS; PROVIDING AN APPROPRIATION FOR ONLINE INTERNET ACCESS TO INFORMATION COLLECTED BY THE COMMISSIONER OF POLITICAL PRACTICES; AND AMENDING SECTIONS 2-16-501, 13-37-117, 13-37-208, 13-37-216, 13-37-225, 13-37-226, 13-37-228, 13-37-230, AND 13-37-240, MCA,”** for the following reasons.

House Bill 350 includes a provision that requires the disclosure of certain campaign finance information on the Internet, a worthy objective. But that is about the only provision in House Bill 350 with which I can agree. The bill has a number of other results that I do not believe are in the best interests of the public, candidates, or political parties.

First of all, while the goal of enhancing public access to campaign financial reports through the Internet is laudable, House Bill 350 would fund the Internet site by transferring \$200,000 from a Montana Department of Justice special revenue account that is used to fund the Natural Resource Damage program, workers' compensation fraud activities required by an agreement between the Department of Justice and the State Fund, and fraud detection and prosecution conducted pursuant to a cooperative agreement between the Department of Justice and the Legislative Auditor. The account also includes drug forfeiture funds used as the State's match for grant-funded drug enforcement activities.

I question whether any of these funds may be lawfully diverted for the Internet project, regardless of the project's merits. With respect to Natural Resource Damage Program funds, the Legislature, in House Bill 92, funded the Program's operation for the upcoming biennium through a loan from the Coal Severance Tax Permanent Fund, to be repaid with interest from the proceeds of the ongoing litigation against ARCO. Federal law limits the use of those proceeds to restoration activities and assessment and litigation costs. Diverting them to pay for the Internet project is not consistent with federal law. If the intent was that the proposed transfer use surplus funds from the 1999 biennium, it is inconsistent with the terms of House Bill 92, which requires that any unexpended funds for the 1999 biennium that remain on June 30, 1999, must be returned to the general fund.

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Use of other funds in the special revenue account are also in violation of existing law, because the terms of the inter-agency contracts that provide funding for white collar fraud detection and prosecution limit the purposes for which those funds can be used.

House Bill 350 also amends existing laws that place restrictions on campaign contributions. Where existing limits on contributions from an individual and a political committee (other than a political party committees) apply separately to each contested election (the primary and the general election), House Bill 350 applies these limits to an election cycle, defined in the bill to begin on the date a candidate files for office through the date of the general election. Using the Governor/ Lieutenant Governor race as an example, under current law an individual may contribute an amount up to \$400 for a contested primary and \$400 for the general election. Under House Bill 350, the limit is \$400 for the entire election cycle. The bill also permits candidates to accept contributions through the tenth day after the general election, but if the funds are the candidate's own, then the ten day limit does not apply.

These changes to the campaign laws cause several potential problems. It is not clear from the language of House Bill 350 whether a candidate may receive unlimited contributions before he or she chooses to file, or whether the candidate is instead completely prohibited from receiving campaign funds for pre-filing campaign expenses, such as those associated with testing-the-waters activities. It appears that the bill would allow a candidate to collect an unlimited amount of contributions until such time as the candidate officially files as a candidate with the Secretary of State. Moreover, changing the limits to apply to an "election cycle" rather than to an "election" results in a decided advantage to a candidate who has an uncontested primary race and can spend a greater amount on the general election than the candidate who must divide campaign funds between a contested primary and the general election. Another decided advantage is given to wealthy candidates who are not restricted from continuing to contribute to their own campaigns beyond the tenth day after the general election. Further, if a successful candidate has not retired all campaign debt within one week after the general election, the successful candidate may not take office, a vacancy is considered to occur, and the incumbent remains in office until the vacancy is filled.

The provision in the bill that restricts the acceptance of contributions beyond the tenth day after the general election poses a possible conflict with the first amendment. The United States Supreme Court has determined that campaign contributions enjoy a certain level of constitutional protection granted to other forms of speech and association. While courts have recognized a governmental interest in placing limits on the amount of campaign donations, it is not clear that there is a justifiable interest in the ten day limit, and thus that provision of House Bill 350 may not withstand a legal challenge.

Finally, House Bill 350 removes any limits on the amount of contributions that may be made by political party committees. Under current law, party committees may contribute \$15,000 for a Governor/Lieutenant Governor race, \$5,000 for other statewide races, \$2,000 for Public Service Commissioner races, \$800 for state Senate races, and \$500 for other races. Removing these limits altogether -- at a time when the public perceives the costs of elections as unreasonably high and associates large campaign contributions with improper motives -- would be unfortunate in my opinion. Public trust in elected officials needs to be inspired, not placed in further jeopardy.

For these reasons, I have vetoed House Bill 350.

Sincerely,

MARC RACICOT
Governor

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April 30, 1999

The Honorable Bruce Crippen
President of the Senate
State Capitol
Helena, MT 59620

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Crippen and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto Senate Bill 441, **“AN ACT REQUIRING THE DEPARTMENT OF REVENUE, UNDER CERTAIN CONDITIONS, TO USE TWO OF THE THREE METHODS OF DETERMINING THE MARKET VALUE OF PROPERTY, WHICH INCLUDE THE CAPITALIZATION OF NET INCOME METHOD, THE SALES OF COMPARABLE PROPERTY METHOD, AND THE COST-LESS-DEPRECIATION METHOD, THAT PROVIDE A SIMILAR MARKET VALUE; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN APPLICABILITY DATE”** for the following reasons.

First, Senate Bill 441 violates the Montana Constitution as interpreted by the Montana Supreme Court. Second, Senate Bill 441 will result in increased appraised values and therefore increased taxes for certain centrally-assessed properties.

Article VIII, section 3 of the 1972 Montana Constitution requires an equalization of values for property taxes. This equalized standard ensures that each property owner pays taxes only in proportion to the worth of his or her property. Implementation of Senate Bill 441 would violate the equalization requirement.

As the title of the bill recognizes, there are three generally-accepted methods of determining the market value of a property. The methods outlined in the title respectively are: (1) the property’s ability to generate income for the owner; (2) the selling price of comparable properties in the open market; and (3) the construction costs of the property less depreciation. This bill assumes that only two of the three appraisal methods will produce a similar value and limits the State’s examination to those two methods alone. The third appraisal method, apparently assumed to result in a different value, must be disregarded according to the language of the bill.

The Montana Supreme Court has consistently struck down property tax appraisals that disregard one of the appraisal methods. In *DeVoe v. DOR*, the Montana Supreme Court held the Department of Revenue could not rely exclusively on the cost method when valuing properties. Instead, the State must consider all available information when appraising commercial properties. The Court concluded that absent a due consideration of all available information about market and economic conditions accurate market values could not be determined.

Subsequently, in *Albright v. DOR*, the Montana Supreme Court held the failure to properly value property is a violation of our state constitution. The Court rejected the argument that the State should determine market value based on a limited number of appraisal methods, noting that the framers of the Constitution anticipated and intended that the State utilize a number of different approaches to appraise, assess and equalize the valuation of all property as required by Article VIII, section 3. As in the *DeVoe* case, the Court recognized that absent the integration of all

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relevant economic and market influences, property appraisals would be “skewed” and values would not be equalized as required by our state constitution.

A failure to consider a valid appraisal method is a failure to consider all relevant market and economic conditions. Some properties would not be properly appraised at market value while other properties would be. This is a violation of the equalization provisions of the Montana Constitution. Therefore, I must conclude the Constitution requires the State to consider all the information it has available to it and to use all applicable appraisal methods to determine the most accurate property value possible.

The sponsor of Senate Bill 441, Senator Christiaens, intended to address a very specific issue concerning how certain commercial properties are appraised for Montana property tax purposes. However, as amended, the bill far exceeds the scope of the sponsor’s original intent, because it applies to the tax appraisals of all types of property and results in unintended consequences.

One unintended consequence is unequalized property values in violation of our state constitution, as discussed above, and its underlying principles of equity. The fairness of our property tax system is grounded upon the concept that property owners should pay only their fair share of taxes as determined by the true worth of their property. If values are not equalized then some property owners will be paying more than their fair share of taxes while others pay less.

Another unintended consequence of this bill is that it will increase the appraised values of some properties. The situation originally addressed by the sponsor was one in which the appraised value of certain commercial property decreased by disregarding one of the appraisal methods.

An opposite result will now occur with regard to other types of properties. Centrally- assessed properties such as railroads, airlines, utilities, and telecommunications properties, will realize an increase in their appraised values, and therefore increased taxes, if the Department is required to accept the value indicated by the two more similar approaches. This would seem to fly in the face of the tax relief and economic development programs the 56th Legislature enacted.

As a matter of law and equity, we cannot impose artificial limits on how the market value of property is determined for property tax purposes. The State must consider all the relevant factors when determining the market value of a property. Accordingly, I have vetoed this bill.

Sincerely,

MARC RACICOT
Governor

May 10, 1999

The Honorable Bruce Crippen
President of the Senate
State Capitol
Helena, MT 59620

The Honorable John Mercer
Speaker of the House
State Capitol

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Helena MT 59620

Dear President Crippen and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto Senate Bill 445, **"AN ACT REQUIRING GUIDES, PROFESSIONAL GUIDES, AND OUTFITTERS WHO WISH TO OPERATE ON MONTANA RIVERS TO OBTAIN AND DISPLAY AN OUTFITTER BOAT TAG; PROVIDING RESTRICTIONS ON OUTFITTING AND GUIDING ACTIVITY ON THE BEAVERHEAD AND BIG HOLE RIVERS; URGING THE DEPARTMENTS OF FISH, WILDLIFE, AND PARKS TO FACILITATE A CONSENSUS PROCESS FOR ADDRESSING RIVER CONFLICTS AND TO DEVELOP RIVER RECREATION MANAGEMENT PLAN PROPOSALS AND SUGGESTING REQUIREMENTS TO BE INCLUDED IN THE PLANS; ESTABLISHING AN ACCOUNT; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO DEVELOP RULES REGARDING IMPLEMENTATION OF RECREATION RESOURCE MANAGEMENT PLANS FOR THE BEAVERHEAD AND BIG HOLE RIVERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"** for the following reasons.

Senate Bill 445, as it was originally introduced, addressed concerns of local groups in southwestern Montana about the increasing amount of floating use on parts of the Beaverhead and Big Hole Rivers. The bill limited commercial use of the two rivers beginning in March, 2000, and urged local groups to develop river management plans by October, 2000, in time for consideration by the Department of Fish, Wildlife, and Parks and possible legislative action by the Legislature in 2001.

The objectives of the introduced bill were laudable. However, in the final hours of the legislative session, amendments were added to Senate Bill 445, which pose significant legal and implementation problems. Although it is quite possible that some of the results of the amendments were unintentional, the agencies of state government that are directed to implement the bill may not legally interpret it in any manner other than that which is consistent with the clear meaning of its language.

The first rule of statutory construction requires that when construing a statute, a court must simply ascertain and declare what is in plain terms or in substance contained in the statute, "not to insert what has been omitted or to omit what has been inserted." Section 1-2-101, MCA. The Montana Supreme Court has consistently held that when the terms of a statute are plain, unambiguous, direct, and certain, the statute speaks for itself and there is no room for construction.

The language in section 1 of Senate Bill 445 states that beginning March 1, 2000, a person may not operate as a guide or outfitter "on the waters of this state" without first obtaining an outfitter boat tag that is to be issued if a person meets "all of the following requirements." One requirement set forth in the bill is that the individual must have filed with the Montana Board of Outfitters by January 1, 1999, an operating plan that includes either the Beaverhead or Big Hole River. The result may have been unintentional, but the language is plain, unambiguous, direct, and certain -- a guide or outfitter whose business did not include the Beaverhead or Big Hole River as of January 1, 1999, and who therefore cannot qualify for a tag, may not operate on any of Montana's waters after March 1, 2000.

Section 1 of Senate Bill 445 further limits the amount of use that an individual who is issued a tag may make of the Beaverhead and Big Hole Rivers, by measuring the historic use by that outfitter through 1998, or, in the case of licensed outfitters without any historic use on the two rivers, by imposing an annual cap of 250 launches. Whereas the introduced bill created a moratorium on new commercial use of the two rivers, the amendments to Senate Bill

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445 actually allow some room for growth in commercial use even though those amendments have been characterized as a “moratorium.”

In addition, several parts of the bill are contradictory. In one subsection the bill requires that any outfitter who receives a tag is allowed a minimum of 90 launches a year, but the next subsection directs the Board of Outfitters to develop rules that *limit* the number of outfitters who are guaranteed a minimum of 90 launches. Section 1 requires the Board of Outfitters to adopt rules limiting the amount of commercial use of the two rivers, using historic use as the basis for such rules. Yet section 2 directs the Fish, Wildlife, and Parks Commission to adopt rules to implement recreation resource management plans for the two rivers, and “urges” that historic use *not* be the basis for allocations for outfitter use. How to coordinate the two sets of rules, set by two different boards, would be a conundrum at best.

Finally, Senate Bill 445 provides that management plans similar to those facilitated for the Big Hole and Beaverhead Rivers may be submitted to the Commission for other of the State’s rivers, and that if implementation of a management plan results in a reduction in recreational use on a river, rules must provide that the reduction will be made in “commercial and nonresident use rather than in noncommercial, resident use.” If the requirement means that before restricting any resident use, nonresident use must be restricted, even to the point that it is precluded altogether, it arguably results in unconstitutional discrimination under the U.S. Constitution’s Equal Protection Clause of the Fourteenth Amendment or the Privileges and Immunities Clause.

In vetoing Senate Bill 445, I offer a possible solution to the problems believed to exist on the Big Hole and Beaverhead Rivers, and to other state waters as well, with respect to the apparent rapid increase in floating use and the possibility that certain rivers could become overrun by outfitters trying to establish historic use before any plan could be completed. Under rulemaking authority given to the Fish, Wildlife, and Parks Commission by House Bill 626, which takes effect June 1, 1999, the Commission may adopt rules addressing conflicts on rivers, including the regulation of commercial use based on recreational use of fishing or floating. The Commission did not have this expanded authority before passage of House Bill 626 and could only adopt and enforce rules addressing conflicts that posed threats to health, safety, or property. Given the broader authority granted by House Bill 626, the Commission could establish moratoriums on new commercial use and develop river recreation management plans for the Big Hole and Beaverhead Rivers as well as other state waters when the need arises, and adopt rules implementing those plans. In this way, the problems could be addressed relatively soon and would not have to await consideration by the 2001 Legislature.

I intend to urge the Commission to undertake a rulemaking effort patterned after Senate Bill 445, to create a moratorium on new commercial use by adopting without delay short-term rules in reference to the Big Hole and Beaverhead Rivers. I have already asked the Department of Fish, Wildlife, and Parks to begin preparing recommendations to the Commission along this line.

Sincerely,

MARC RACICOT
Governor

MARILYN MILLER
Chief Clerk of the House

JOHN MERCER
Speaker of the House