

**SENATE JOURNAL  
58TH LEGISLATURE  
TWELFTH LEGISLATIVE DAY**

Helena, Montana  
January 21, 2003

Senate Chambers  
State Capitol

Senate convened at 1:00 p.m. President Keenan presiding. Invocation by Father Steve Brehe of St. Peter's Episcopal Parish in Helena. Pledge of Allegiance to the Flag.

Roll Call. All members present except Senators Butcher and Tash, excused. Quorum present.

The presiding officer has authenticated the daily journal for the eleventh legislative day.

**Senator Butcher present at this time.**

**COMMUNICATIONS AND PETITIONS**

January 17, 2003

Bob Keenan, President  
Montana Senate  
State Capitol  
Helena, MT 9620

Dear President Keenan:

The Committee on Committees has made the following appointments effective immediately, as authorized by statute:

**Legislative Council**

Senator Duane Grimes  
Senator Fred Thomas  
Senator Vicki Cocchiarella  
Senator Brent Cromley

**Environmental Quality Council**

Senator Dan McGee  
Senator Bob Story

**Legislative Audit committee**

Senator John Esp

**Legislative Consulting Panel to Microbusiness Advisory Council**

Senator Don Ryan  
Senator Sherm Anderson

**Capitol Complex Advisory Council**

Senator Duane Grimes

Sincerely,

Senator Tom Zook  
Chair, Committee on Committees

**REPORTS OF STANDING COMMITTEES**

**BILLS REPORT**

Correctly printed: **SB 232, SB 233, SB 234, SB 235, SB 236, SB 237, SB 238, SB 239, SJR 9.**

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**BUSINESS AND LABOR** (Mahlum, Chairman):  
**SB 108**, introduced bill, be amended as follows:

1/21/2003

1. Title, page 1, line 20.  
**Following:** "SETTLEMENTS"  
**Strike:** "AND LUMP-SUM ADVANCE PAYMENTS"

2. Page 11, line 25.  
**Following:** "settlements"  
**Strike:** "and lump-sum advances"

3. Page 11, line 26.  
**Following:** "settlements"  
**Strike:** "and lump-sum advances"

4. Page 11, line 30.  
**Following:** "settlement"  
**Strike:** "or lump-sum advance"

And, as amended, do pass. Report adopted.

**SB 143**, introduced bill, be amended as follows:

1. Page 2, line 21.  
**Following:** "agreement"  
**Insert:** "and shall notify the commissioner on March 1 of each year in which the charitable organization issues qualified charitable gift annuities"

2. Page 2, line 28.  
**Following:** "except"  
**Insert:** ": (a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or  
(b)"

3. Page 3, line 11.  
**Following:** "20," in two places  
**Strike:** "part 3,"

And, as amended, do pass. Report adopted.

**SB 180**, introduced bill, be amended as follows:

1. Title, page 1, line 6.  
**Strike:** "6"  
**Insert:** "4"

2. Page 1, line 11.  
**Strike:** "6"  
**Insert:** "4"

And, as amended, do pass. Report adopted.

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**NATURAL RESOURCES** (Tash, Chairman):  
**SB 88**, introduced bill, be amended as follows:

1/20/2003

1. Page 1, line 13.

**Following:** "85-2-521."

**Insert:** "The code commissioner shall change any references to this chapter that are within 85-2-521 to "Title 85, chapter 2"."

And, as amended, do pass. Report adopted.

**SB 103**, introduced bill, be amended as follows:

1. Title, line 7.

**Following:** " ;"

**Insert:** "PROVIDING FOR THE REPAYMENT OF CONTINGENT FUND TRANSFERS;"

2. Title, line 8.

**Strike:** "SECTION"

**Insert:** "SECTIONS 75-10-621, 75-10-704, AND"

**Following:** "DATE"

**Insert:** "AND A CONTINGENT TERMINATION DATE"

3. Page 1, line 12.

**Insert:** "**Section 1.** Section 75-10-621, MCA, is amended to read:

**"75-10-621. Hazardous waste/CERCLA special revenue account.** (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

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- (ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and
- (iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. ~~Unused~~ Except as provided in subsection (6), unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to 75-10-743(10), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.

(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to 75-10-743(10).

(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."

**Insert: "Section 2.** Section 75-10-704, MCA, is amended to read:

**"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) ~~The~~ Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties

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to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action

(9)(a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to 75-10-743(10), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.

(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to 75-10-743(10)."

**Renumber:** subsequent sections

4. Page 3, line 9.

**Strike:** "[section 2]"

**Insert:** "[section 4]"

5. Page 4.

**Following:** line 3

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**Insert:** "NEW SECTION. Section 6. Contingent termination. If 75-10-743 terminates June 30, 2005, then [sections 1 and 2] terminate June 30, 2005."

And, as amended, do pass. Report adopted.

**PUBLIC HEALTH, WELFARE AND SAFETY** (O'Neil, Chairman): 1/20/2003  
**SB 94**, do pass. Report adopted.  
**SB 111**, do pass. Report adopted.

**STATE ADMINISTRATION** (Cobb, Chairman): 1/21/2003  
**SB 61**, do pass. Report adopted.  
**SB 117**, do pass. Report adopted.  
**SB 132**, do pass. Report adopted.

**MESSAGES FROM THE OTHER HOUSE**

**House bills** passed and transmitted to the Senate for concurrence: 1/20/2003

**HB 29**, introduced by A. Olson  
**HB 43**, introduced by Cohenour  
**HB 48**, introduced by Newman  
**HB 58**, introduced by Erickson  
**HB 62**, introduced by Lehman  
**HB 67**, introduced by Kaufmann  
**HB 69**, introduced by Smith  
**HB 70**, introduced by Parker  
**HB 106**, introduced by Erickson

**FIRST READING AND COMMITMENT OF BILLS**

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

**SB 240**, introduced by Stonington, referred to Natural Resources.  
**SB 241**, introduced by Shea, referred to Business and Labor.  
**SB 242**, introduced by Perry, Black, R. Brown, Cobb, DePratu, Kitzenberg, Lindeen, McGee, McNutt, Nelson, Pease, Peterson, Roush, Shea, Sprague, Stonington, Tester, F. Thomas, Wagman, Wheat, Wilson, Younkin, referred to Agriculture, Livestock and Irrigation.

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

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

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

**Senator Tester excused at this time.**

**SB 24** - Senator Mangan moved **SB 24** do pass. Motion carried with Senators Elliott, Sprague and Taylor voting nay.

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**Senator Tester present at this time.**

**SB 30** - Senator O'Neil moved **SB 30** do pass. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Curtiss, DePratu, Esp, Gebhardt, Glaser, Grimes, Kitzenberg, Laible, Mahlum, McGee, McNutt, O'Neil, Perry, Ryan, Sprague, Stapleton, Story, Taylor, Thomas, Tropila, Zook, Mr. President.

Total 28

Nays: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Hansen, Harrington, Johnson, Mangan, McCarthy, Nelson, Pease, Roush, Schmidt, Shea, Squires, Stonington, Tester, Toole, Wheat.

Total 21

Absent or not voting: None.

Total 0

Excused: Tash.

Total 1

**SB 45** - Senator Gebhardt moved **SB 45** do pass. Motion carried unanimously.

**SB 68** - Senator Cromley moved **SB 68** do pass. Motion carried unanimously.

**SB 83** - Senator McGee moved **SB 83** do pass. Motion carried unanimously.

**SB 98** - Senator Mangan moved **SB 98** do pass. Motion carried unanimously.

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

**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 105** passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Tash.

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Total 1

**SB 114** passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Tash.

Total 1

**SB 133** passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Tash.

Total 1

**SB 144** passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0



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Excused: Tash.  
Total 1

**SB 150** passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: Tash.  
Total 1

**MOTIONS**

**SB 30** - Senator Zook moved that **SB 30** be taken from third reading and rereferred to the committee on Finance and Claims. Motion carried as follows:

Yeas: Barkus, Black, Butcher, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, Nelson, Pease, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stonington, Story, Tester, Toole, Tropila, Wheat, Zook, Mr. President.  
Total 37

Nays: Anderson, Bales, Bohlinger, Cobb, Curtiss, DePratu, McGee, O'Neil, Perry, Stapleton, Taylor, Thomas.  
Total 12

Absent or not voting: None.  
Total 0

Excused: Tash.  
Total 1

**ANNOUNCEMENTS**

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved the Senate stand in recess until the hour of 6:00 p.m. this legislative day. Motion carried.

**Senate recessed at 2:33 p.m.**

**Senate reconvened at 6:10 p.m.** President Keenan presiding.

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**MOTIONS**

Majority Leader Thomas moved that the Senate recess and proceed to the House of Representatives for the Governor's State of the State address. He further moved that upon adjournment of the joint session, the Senate will adjourn until 1:00 p.m., Wednesday, January 22, 2003. Motion carried.

**SPECIAL ORDERS OF THE DAY**

Sergeant-at-arms Clark escorted the Senate into the House Chamber.

Speaker Mood introduced President Keenan and yielded the chair to him.

Senate Majority Leader Thomas moved that the President appoint an escort committee of four to notify the Governor that the Senate and House of Representatives are in joint session and ready to receive her State of the State address. Motion carried.

The President appointed Senator Sprague, Senator Nelson, Representative Andersen and Representative Clark and discharged them to escort the Governor to the House chamber.

The colors were posted by Captain Flaherty and members of the Montana National Guard. President Keenan led the joint session in the Pledge of Allegiance.

Sergeant-at-arms Clark escorted the members of the National Guard from the chamber.

Invocation was given by Joe Morstein of Dillon, brother of Governor Martz.

Sergeant-at-arms Clark admitted the escort committee and Governor Martz into the House chamber. President Keenan introduced Governor Martz to the joint session, and the Governor gave the following speech:

Thank you very much. President Keenan, Speaker Mood, Lt. Governor Ohs, Tribal Chairmen, Distinguished members of the House and Senate, fellow elected officials, honored guests, my fellow Montanans:

What an honor and privilege it is to address you tonight to discuss our administration's continued commitment to strong families, faith in each other, freedom for all, and a prosperous future.

We are in a dynamic and changing time.

While our nation experiences the continued challenges of an economic recession... Montana is moving forward.

Granted, we have our differences and problems to solve. It's that diversity that makes us strong. But first and foremost, we have much to be thankful for.

I am so thankful for family. Montana's first family - Harry, Justin, Stacey, my mom and dad in Billings, and my brother Joe, who has joined me here this evening. I'm thankful for friends, neighbors and our fellow Montanans.

We are so blessed in this Montana with a strong work ethic and resilience demonstrated by our dedicated public servants.

We are blessed with great teachers, whose hard work ensures that our children receive an outstanding education, and our public and private schools of higher education are recognized for their cutting edge research and programs.

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We are blessed with quality medical care for our citizens.

We are blessed with outstanding military personnel, police, EMT's, fire fighters and others who work every single day to keep us safe and protect our freedom at home and abroad. To all these men and women, we extend a very special thanks.

We are blessed with great athletes like our Cats and our Griz, who are among the best in the country and... our Fighting Saints are Number One!

Finally, and most importantly, we have a great faith in each other.

Are we blessed? You bet we are. Because we're Montanans... first, most and always.

We are gathered in this chamber as representatives of the people.

And while we come with different ideas and different views, I have faith that we will find the common ground and build a better future for our Montana families.

That is what the people expect of us. We owe it to them – and ourselves.

Our job is to find solutions – not place blame.

We are faced with a daunting task. But I have faith that we will prevail... because, no matter our differences, we are all Montanans.

Despite the budget clouds we face together, there are brighter days in the forecast.

**State of the Economy**

For example, Montana's unemployment rate stood at only 4.4% in November – well below the national average of six percent and the lowest for a November in 30 years. And wages rose over 4% - nearly double the rate of inflation.

Job growth in Montana is well ahead of the national economy. In fact, 9,000 new jobs were created in the state since November of 2001. And, according to **economy.com**, we now rank 4<sup>th</sup> nationally in projected job growth.

Even when faced with our budget difficulties, Montana's economy as a whole reflects our character to persevere. We will move our economy forward. We're making progress... and why?

Because we have a workforce that is prepared for the jobs of the future.

Because we have the foresight and the commitment of individuals in this room who know that we need to create an environment for business to grow – and for individuals to prosper.

Because we have a can-do attitude. Montanans can beat the odds... and turn that attitude into action.

And we must do more.

Because, when it comes to our economy, "good enough" is never enough. Our unemployment rate may well be only 4.4%, but for those who are unemployed it is still 100%.

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And many Montanans are still underemployed. These are highly skilled workers, available and ready for good jobs. But we need the jobs here that match those skills.

**Because Montanans are what make Montana great.**

So, on their behalf, just as Lewis and Clark began their journey 200 years ago, together, let us take this legislative journey – confident that our state will be better for the efforts we undertake today.

And if the past is any indication... the ingenuity, strength, and fortitude of Montanans will ensure that our future is bright.

**Economic Development**

When I talked about the state of our state two years ago, I told you that government can no longer be a barrier to business, and since then, we have put the full force of my office behind ensuring that businesses are not hindered, but instead assisted by their government.

With your support, we reorganized the Department of Commerce to be more business friendly, and with your support, we created the Governor's Office of Economic Opportunity.

With the framework for change in place, we are creating the government environment necessary for businesses to stay and grow here... because government doesn't create jobs, people do.

We've teamed up with State Auditor John Morrison to encourage more venture capital investment in our state.

We redesigned our business website, **bizmt.com**, to provide critical information to the business community... and through **discoveringmontana.com** you can register your business through Secretary of State Bob Brown's office, and file your taxes with the Department of Revenue.

Why is this important? Because, in this era of dramatic change and e-commerce, information must be readily available.

This technology eliminates the barriers of time and distance and draws us even further into the world economy. And our global opportunities are expanded through the work of our state trade representatives in Japan and Taiwan.

Companies like Smith Equipment of Belgrade and MSE Technologies of Butte have grown their businesses with the expertise of these professionals.

And, along with Senator Jon Tester and others, companies like Timeless Seeds of Conrad are marketing organic Ag products to our Pacific Rim neighbors as well, and have established Montana as the premier source for those goods.

We have a wonderful relationship with our neighbors in Taiwan, and we are honored to have with us this evening Jack Chiang, who is the director general of the Taipei Economic and Cultural Affairs Office in Seattle. Please welcome Mr. Chiang.

Another element of economic progress is tourism. Out-of-state travelers add nearly ½ million dollars per day to our state's economy. That's powerful economic activity.

I want to thank those Montanans involved with tourism and recreation who had the foresight to plan ahead and identify efforts to improve Montana's economy.

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Our economic development efforts are sharply focused, and we have outlined major initiatives for our state in the coming years.

These initiatives are built on hard work – not quick fixes. They are crafted with an eye toward what Montana should look like in two decades... not just two years.

With your support, we will move Montana's economy forward.

First, we'll focus our economic improvement resources on those industries that bring a competitive advantage to our great state.

We'll provide our citizens with the training needed to be even more productive workers, earning higher wages.

We'll focus on strengthening relationships between private industry, the university system and government to meet the needs of our business community.

And, we must create a competitive tax and regulatory structure to ensure Montana businesses remain here and grow, because as businesses prosper... Montana prospers.

In order to accomplish these goals, I ask you to pass four bills.

The first, requested by Senator Royal Johnson and presented by Representative Monica Lindeen, will enhance the ability of businesses to fund work-force training.

Senate Bill 115, sponsored by Senator Dale Mahlum, will extend the statutory appropriation for key economic development programs.

Senate Bill 131, sponsored by Senator Greg Barkus, provides better access to the dollars needed for businesses to expand by allowing the Board of Investments to better support local economic development organization and local revolving loan programs.

House Bill 76, sponsored by Representative Joe McKenney, helps state and local governments create a truly regional approach to job growth.

Montana is a state in transition. But transition does not mean we leave behind the industries that brought us here.

Transition means transformation. We are transforming our traditional industries to a new economic model, a model that is built on the creativity of our people and the responsible use of the resources God gave us.

And, we are attracting new partners. Partners who seek a location with a quality workforce, good schools, safe communities, affordable energy, efficient government and quality medical care.

One of those businesses is Anheuser Busch. They have made a commitment to provide top quality barley for their products – and thanks to the concerted efforts of state and local governments, they are now sourcing that barley in Sidney.

And there are others. Companies like Montana Flour and Grains in Choteau, John R. Daily in Missoula, and Western Sugar in Billings are providing quality jobs as well.

As we support existing businesses, we also welcome new ones. Companies such as the Montana Shepherd's Market in Hamilton, Montana Legend Brand Meats in Roscoe, and Montana Natural Lamb in Reedpoint are joining with us

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to develop innovative value-added ventures all across Montana.

These businesses not only process the fruits of our land, but the products of our peoples' hard work as well.

And, tonight, after more than a year of work by a new business to Montana, in coordination with the Montana Department of Agriculture, the Governor's Office of Economic Opportunity, the Departments of Commerce, Natural Resources; Environmental Quality; Transportation, Fish, Wildlife and Parks and local economic development groups, the City of Great Falls, Cascade County and our office, I'm excited to announce that Froedtert Malt, a Division of International Malting Company, LLC has made the decision to locate a malt facility in Great Falls, Montana! This is a \$75 million project with a 16-million bushel capacity. The facility will have an annual impact of \$64 million to the state's Ag economy, bringing good-paying jobs to Great Falls, Montana.

Please join me in welcoming David Brunette, the company's director of manufacturing operations, and in thanking International Malting Company for choosing Great Falls as their business home. The commitment of the community and state and local governments to this project truly show that hard work and cooperation pay off for the citizens of our great state.

### **Natural Resources**

And, as we work to strengthen our economy, we will continue to support our traditional industries - those that support our logging and mining families, our farmers and ranchers.

We will not forget the industries that built this state, and we are working closely with President Bush to bring common sense back to forest management. We must manage our forests to reduce the risk of catastrophic fires. We will achieve that goal by giving the right tools to the forest managers and private businesses. In the process, we will bring back good logging jobs to communities like Hamilton and Stevensville, Seeley Lake and Frenchtown.

As chair of the Western Governors Association, I am bringing a Healthy Forest Summit to Montana in June. Western governors will come together to focus on a path we should take to improve the health of our forests and the health of our communities.

We must also be a part of our Nation's energy solutions, and we are actively seeking ways to utilize our resources in an environmentally responsible manner.

I support the responsible development of coal bed natural gas, and I am confident that all stakeholders will work together to ensure that it's done right.

In the last year we have seen plans to develop power plants in Great Falls, Butte and Roundup that will create jobs and provide additional energy to Montana and our country. We also received the patent to the Otter Creek Tracts - that are a source of quality coal. I have established an internal working group to address the issues and opportunities surrounding coal development on those tracts, while maximizing revenues for our school children from their responsible development.

Two years ago, plans were in motion to ban all snowmobiles from Yellowstone National Park. Since then, we have worked with the Bush Administration to allow cleaner, quieter snowmobiles back in the Park so we can all experience the beauty of this national treasure in its winter splendor while protecting its incredible resources.

### **Tax Reform**

As we continue to make room for both traditional businesses and the companies of a new economy, we must recognize that our current tax structure overly burdens both.

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Two years ago, I said we would work to make Montana's taxstructure conducive to job growth and economic success. Tonight I am asking for your passage of our tax reform proposal that restructures our tax policy and lets our visitors pay their share.

As you know, Montana has one of the highest capital gains tax rates and the highest stated income tax rate in the nation. Our plan reduces capital gains rates, encouraging more investment in Montana.

Our plan reduces personal income taxes by an average of 10 percent for all classes of Montana taxpayers, so hardworking families can keep more of what they earn.

New Mexico's new governor - Democrat Bill Richardson - is calling for cuts to their 8.2% income tax rate, saying it's too high. If their 8.2 is too high, what does that say about our 11 percent?

We will offset those tax reductions with a limited tax on certain items that will be paid in part by Montanans, but to a large degree by nonresidents, who enjoy the treasures of our great state.

Our plan also includes a voter-approved local-option tax to help communities relieve the property tax burden on local residents and to provide opportunities for local economic development.

As we address this plan we will work with you to help mitigate the effects of property tax reappraisal for our Montana families.

I stand firm in my resolve. I want permanent tax reform that creates an environment for higher-paying jobs that will be a welcome relief for Montanans. We rank 46<sup>th</sup> in per capita income, and if we don't reform our tax structure we will still be there - or lower - a decade from now. That is simply not acceptable.

Our plan welcomes and keeps businesses here rather than shutting the doors to growth. It provides opportunities for investment rather than taking money from our small employers, investors, ranchers and farmers and entrepreneurs, because when they succeed, Montana succeeds.

### **Higher Education**

But even with tax reform, economic development does not happen without a quality workforce. Montana's University system is a critical part of creating a high quality workforce.

I would like to welcome Carrol Krause as the interim commissioner of Higher Education, and thank former state representative Lila Taylor for agreeing to serve on the Board of Regents. Lila's strong background in our state's largest industry - agriculture - will be a welcome addition to the Board.

I have faith that with their guidance, and that of the other regents, we will strengthen our future workforce and our future leaders.

And, we will continue to transfer technology from the university system to businesses that create the jobs.

Our quality educational system is improving our workforce and technology is compressing the miles, enabling Montana companies to do business globally.

### **K-12 Public Education**

At the same time, we must do everything possible to maintain a quality K-12 education system for our children.

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Education is and always will be a top priority for me and our administration. I have faith that we can work together to preserve and strengthen Montana's excellent education system.

Lt. Governor Karl Ohs has been our administration's leader on education issues. Karl, thank you for your work on behalf of our state's children.

Two years ago, I asked the legislature to focus on the 3-R's – recruiting, retaining and rewarding our outstanding teachers. There is no greater profession than the education of our children, and no greater gift an individual can give than to positively impact the life of a child. Let's all applaud our state's teachers for the job they do.

We must encourage the best and brightest teachers to stay here. We have partnered with School Superintendent Linda McCulloch to bring forward legislation to help repay student loans for new teachers who choose to make Montana home.

Representative Alan Olson's House Bill 107 does just that, serving as a vehicle to help new teachers like Jody Magerius, who was born and raised in Conrad, to stay home rather than seeking a position in another state.

Please join me in welcoming Jody, and seeing that she stays here in Montana.

I thank the House of Representatives for acting quickly on this legislation, and I urge the Senate to do likewise.

We can also retain our talented teachers by addressing the rising costs of healthcare.

On behalf of educators in Montana, I urge you to send me HB 302, sponsored by Representative Dave Lewis and developed in partnership with the education community. This legislation creates a statewide teachers' insurance pool to keep costs down for our schools.

When it comes to our schools, dollars alone don't always make the difference.

Funding is important, and so is funding reform. I ask you to pass legislation sponsored by Representative Roy Brown to help ensure that schools faced with declining enrollments don't sacrifice a quality education to meet their fixed costs.

I am also asking you to pass legislation confirming your support for a school renewal commission. My office will sponsor this commission jointly with the Board of Public Education. This group will be charged with offering substantive solutions to the next legislature on every way schools operate, building on prior studies to get the job done for Montana students.

Please join me in thanking the Board's chair, Dr. Kirk Miller, and all board members for their dedication to students, parents and educators all across Montana.

Our children are the future of this state, and I want to thank the legislative leadership for placing such a high priority on K-12 education that you have restored funding to my budget levels... because we will accept nothing less.

We also need the help of our students in teaching one another. That is why I'm pleased that, with the partnership of student leaders, we will hold a Youth Tobacco Prevention Summit in Helena this spring. Working together, we will ensure a tobacco-free graduating high school class by 2015.

**Substance Abuse**

But, as we all know, substance abuse spreads far beyond our children, and affects the lives of all too many Montana



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families.

Every day, we read and hear of tragic stories involving the use of methamphetamines and other drugs. I support Senator Mike Cooney's legislation to toughen our meth laws and protect our children.

In partnership with Attorney General Mike McGrath, we formed the Alcohol, Tobacco and Other Drug Control Policy Task Force under the leadership and guidance of Senator Duane Grimes.

Their creative and unique ideas have set the stage for a proactive approach to reducing substance abuse in Montana.

We can all agree that the safety and health of our Montana families is too important for partisanship. That is why I'm asking you to pass House Bill 195, sponsored by Representative Cindy Younkin, which strengthens DUI repeat offender penalties. I also urge your support for Senate Bill 13, the .08 legislation and Senate Bill 39, which places open container laws on the books, both of which are sponsored by Senator Dale Mahlum. These bills toughen Montana's drunk driving laws, with the goal of ensuring that our roads are safer for Montana families and visitors. We simply must stop the unnecessary loss of lives on our roadways.

### **Healthcare**

We can all agree that Montana families deserve an unsurpassed quality of life. We must prioritize health and human service needs, funding what impacts peoples' lives the most. We must maximize the use of federal funding and address rising healthcare costs.

As we work to address health care needs, I ask for your consideration of legislation to implement a senior discount prescription plan in Montana.

We must also address the wise use of our Medicaid dollars. That is why I am creating a Medicaid Reform Commission, to be headed by Dr. Peter Blouke to address growing needs and escalating health-care costs.

We simply must not falter in our efforts to make health care more affordable for Montana families, and to provide for those most in need.

Our efforts must also extend to those with mental illnesses. Our budget addresses the need for more community-based programs for the mentally ill by limiting the population at the Montana State Hospital in Warm Springs, and creating three regional programs.

In addition to these healthcare issues, our hospitals and clinics are faced with other tough challenges, not the least of which is the shortage of qualified healthcare workers.

I established a task force to address those shortages, and in response to their recommendations, I have committed \$120,000 of federal money to partner with Superintendent McCulloch to provide a healthcare career specialist in her office. OPI will also provide \$30,000 of federal money over the next three years, and we are asking private industry to support this effort as well.

### **Corrections**

We have worked hard to find ways to make government operate more efficiently on limited dollars, while protecting the safety of our citizens.

In order to address budget challenges in the Department of Corrections, for example, we initiated a supervised release program for those who have been committed to the Department of Corrections by the court system. We set in place

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a system of checks and balances before implementing this program – and it's working. To date, our return rate is only 7% - much lower than the normal rate of 36%.

**Milltown Dam**

As we care for our people, we must also care for our land. The ways to address our environmental challenges need not be difficult.

The health of our families and communities, the health of our environment and our wildlife – these must come first.

That is why tonight, I am announcing that I am placing the full support of my office behind removal of the Milltown Dam at Bonner. It's simply the right thing to do.

At the same time, I will continue to press Arco, Northwestern and the Environmental Protection Agency, to ensure that the needs of the local community are met.

**Native Americans**

In this great state, there are few who have more of the historical background about how fragile our landscape is than our first Montanans.

In the past two years, I have traveled to, and met with, all tribes located within our state's borders to ensure that their voices are heard and that we work together.

I involved tribal representatives as we addressed our healthcare budget challenges.

And tonight we are announcing a new award. The Governor's Award For Excellence in Cultural Education, to be presented annually to the school that best captures the spirit and intent of the Indian Education For All Act of 1999.

Our students must learn as much as possible about the cultural background of their friends and neighbors, and every student needs to know how proud we are of our diversity.

**Budget**

I have faith that everything I have outlined tonight is achievable, based on our combined will and fortitude, and taking into consideration our current budget challenges.

I will do everything in my power to work with each of you and I am confident that you will do the same, because we all have the same vision for our state – one that includes family, faith, freedom and a prosperous future for all Montanans.

President George W. Bush once said, "A budget's impact is counted in dollars, but measured in lives."

Excellent schools, quality healthcare, higher-paying jobs, a clean environment, and the rich diversity of our people are the values we must fight to protect in this tough budget cycle.

When times are tough, we must care first for those most in need. That is why we have proposed a \$93 million one-time transfer from the coal trust fund.

We cannot cut so deep that we cut programs like CHIP, which provides healthcare coverage for over 9,000 Montana children, and we must maintain funding for foster care programs, including tribal contracts.

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When times are tough, we must first care for those most in need. That is why I have asked that funding for the Breast and Cervical Cancer Treatment Program, the Montana Chemical Dependency Center, Medicaid Pharmacy Benefits for the Medically Needy, and Services for Children with Developmental Disabilities... be held intact, and that we fund provider rates to the best of our ability.

My education budget is also consistent with a balanced view of all services provided and needs in the state.

Again... all of these education and human services programs are made possible by a one-time transfer of \$93 million from the coal trust fund.

And, just so it's clear, in conversations with the two national bond rating agencies, Standard & Poor's and Moody's, we've been informed that our coal trust proposal will **not** affect our bond rating.

Montanans support this proposal, and I ask that each of you look deep inside and ask – is this not the right time to make the philosophical leap to help our fellow Montanans in need through these difficult times?

After hours of study and discussion throughout the state, we are confident that this proposal will serve Montanans well.

The budget I'm presenting includes a combination of increased revenue projections, fund transfers and reductions in spending with **no tax increase on hardworking Montana families**, many of whom cannot even afford insurance, let alone pay higher taxes.

But, let me add that nothing is off the table. Just as I am asking all of you to address the coal trust fund transfer, I will look closely at every idea that you bring forward. I am confident that at the end of the day we will come to a solution that is best for the people we serve.

### **Conclusion**

Much has been entrusted to us, and much is expected. Let us reach across the aisle and do what is best for all Montanans. Let's cooperate.

Everyone has a role to play... because everyone is a member of our Montana family. We all stand to gain... or we all stand to lose.

Let us not be afraid to lead from our hearts.

In early December, I was in Butte and met a 5-year-old boy by the name of Dyllan Lane. As he was walking away with his mother I heard him say, 'Mom – I just met the Gardener.'

I laughed... and then I thought – you know, he's right. I am a gardener – truly, we are all gardeners. It is our job to nurture and grow our economy. It is our job to prepare the soil and plant the seeds for future generations, and it is our job to care for all Montanans.

From all corners of this great state our growth depends on our ability to work together. What we sow today is the future we will harvest tomorrow. We **are** growing together – from Sidney to Eureka, from Hamilton to Wolf Point, and we are doing so with heart and resolve.

But what is the heart of Montana? Is it our way of life? Is it our love of family, freedom, or our faith in one another? Is it our dreams of a prosperous future for our children? It is all of these. But the real heart of Montana is its people.

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The agenda I have set before you tonight is worthy of the people of our great state and worthy of our best combined efforts.

Together we will forge our own future – our own destiny. We must forge it with the hope that just as today we recognize the valiant journey of Lewis and Clark, 200 years from now we will be remembered for our dedication to this journey as well.

Thank you, good evening, and may God Bless the great state of Montana.

President Keenan thanked the Governor and called on Joe Morstein to give the benediction.

Governor Martz and dignitaries were escorted from the House chamber by the escort committee.

Senate Majority Leader Thomas moved that the joint session be adjourned. Motion carried.

**Joint session adjourned at 7:17 p.m.**

ROSANA SKELTON  
Secretary of the Senate

BOB KEENAN  
President of the Senate