

**SENATE JOURNAL
58TH LEGISLATURE
FIFTY-SEVENTH LEGISLATIVE DAY**

Helena, Montana
March 18, 2003

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Keenan presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

The presiding officer has authenticated the daily journal for the fifty-sixth legislative day.

REPORTS OF STANDING COMMITTEES

BILL REPORT

Correctly engrossed: **HB 127, HB 303, HJR 4.**

Correctly enrolled: **SB 5, SB 16, SB 19, SB 20, SB 31, SB 45, SB 55, SB 64, SB 68, SB 71, SB 88, SB 94, SB 125, SB 144, SB 151, SJR 21.**

Examined by the sponsor and found to be correct: **SB 5, SB 16, SB 19, SB 20, SB 31, SB 45, SB 55, SB 64, SB 68, SB 71, SB 88, SB 94, SB 125, SB 144, SB 151, SJR 21.**

EDUCATION AND CULTURAL RESOURCES (Glaser, Chairman): 3/17/2003
HJR 5, be concurred in. Report adopted.
HJR 8, be concurred in. Report adopted.

FISH AND GAME (Sprague, Chairman): 3/14/2003
HB 123, be amended as follows:

1. Title, line 7.
Following: "AGE"
Insert: "AND ELIMINATING THE LICENSE FEE"

2. Page 2, line 5.
Following: "application"
Strike: "and" through "\$3"

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

HB 262, be concurred in. Report adopted.

NATURAL RESOURCES (Tash, Chairman): 3/18/2003
HB 373, be concurred in. Report adopted.
HB 437, be amended as follows:

1. Title, line 9.
Strike: "COMPLIANCE WITH"
Insert: "ADEQUATE REMEDIES AS REQUIRED BY"

2. Title, line 10.
Following: "LAWS OR"

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Insert: "OPENCUT MINING RECLAMATION LAWS, A CHALLENGE TO A LICENSE OR PERMIT ISSUED PURSUANT TO THE METAL MINE RECLAMATION LAWS,"

3. Title, lines 11 through 13.

Following: "ACT" on line 11

Insert: ", OR AN AMENDMENT ISSUED PURSUANT TO THE OPENCUT MINING RECLAMATION LAWS"

Following: "MUST" on line 11

Strike: remainder of line 11 through "ISSUED" on line 13

Insert: "PROVIDE FOR COSTS AND ATTORNEY FEES IF THE CHALLENGE WAS FOR AN IMPROPER PURPOSE"

4. Title, line 15.

Strike: "MONTANA ADMINISTRATIVE PROCEDURE ACT."

5. Title, line 16 through line 18.

Strike: "NATURAL" on line 16 through "METAL MINE RECLAMATION LAWS" on line 18

Insert: "THE ISSUANCE OF AN AMENDMENT UNDER THE OPENCUT MINING RECLAMATION LAWS, THE ISSUANCE OF A LICENSE OR PERMIT UNDER THE METAL MINE RECLAMATION LAWS, A PETITION FOR REVIEW CHALLENGING A LICENSING OR PERMITTING DECISION UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AN ARBITRATION ACTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975, ANY ACTION UNDER THE HAZARDOUS WASTE FACILITIES LAWS OR THE MONTANA ENVIRONMENTAL POLICY ACT, ENTRY AND INSPECTION UNDER THE COAL AND URANIUM MINE RECLAMATION LAWS,"

6. Title, line 19.

Strike: "PERMITTED"

7. Title, line 20.

Following: the first "ACTIVITY"

Strike: "OR ACTIVITY AUTHORIZED IN THE CERTIFICATE"

Insert: "SUBJECT TO THE PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR INSPECTION"

8. Title, line 23.

Strike: "ON ANY SITE"

Insert: "AT ANY FACILITY"

9. Title, line 24.

Following: "2-4-702."

Insert: "2-4-704,"

10. Title, line 25.

Strike: "75-2-211,"

11. Title, line 29.

Following: "~~AND~~"

Strike: ", AN APPLICABILITY DATE, AND A TERMINATION DATE"

Insert: "AND A RETROACTIVE APPLICABILITY DATE"

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12. Page 4, line 10.

Insert: "NEW SECTION. Section 2. Determination of constitutionality. In any action filed in district court invoking the court's original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Title 75 or Title 82 or activities taken pursuant to a license or permit issued under Title 75 or Title 82, the plaintiff shall first establish the unconstitutionality of the underlying statute."

Insert: "**Section 3.** Section 2-4-704, MCA, is amended to read:

"2-4-704. Standards of review. (1) The review ~~shall~~ must be conducted by the court without a jury and ~~shall~~ must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, ~~proof thereof of the irregularities~~ may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion;

or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute."

Renumber: subsequent sections

13. Page 4, line 25.

Strike: "IT"

Insert: "The Montana Environmental Policy Act is procedural, and it"

14. Page 4, lines 26 through 28.

Following: "PROVIDE" on line 26

Insert: "for the"

Following: "ADEQUATE" on line 26

Strike: remainder of line 26 through "RESOURCES" on line 28

Insert: "review of state actions in order to ensure that environmental attributes are fully considered"

15. Page 6, line 9.

Following: "rights"

Strike: "1"

Strike: "AND THE COURTS,"

16. Page 6, line 25.

Following: "balanced"

Strike: "1"

Strike: "AND THE COURTS,"

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17. Page 7, line 10.

Strike: "~~-- injunction for permit challenge~~"

18. Page 7, line 22.

Strike: "an action for A PRELIMINARY injunction against"

19. Page 7, line 23

Following: " ."

Insert: "All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

20. Page 7, line 28 through page 13, line 18.

Strike: section 7 in its entirety

Re-number: subsequent sections

21. Page 20, line 16.

Strike: "on"

Insert: "at"

Strike: "site"

Insert: "facility"

22. Page 20, line 17 through line 18.

Strike: "meets" on line 17 through "constitution" on line 18

Insert: "is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources"

23. Page 25, lines 4 and 5.

Strike: subsection (7) in its entirety

Insert: "(7) All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

24. Page 25, line 18.

Following: "include"

Strike: "an action for A PRELIMINARY injunction against"

25. Page 25, line 20.

Following: " ."

Insert: "All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

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26. Page 25, line 26.

Strike: "-- injunction"

27. Page 26, line 4.

Following: "include"

Strike: "an action for A PRELIMINARY injunction against"

28. Page 26, line 6.

Following: " ; "

Insert: "All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

29. Page 34, line 24.

Strike: "-- injunction"

30. Page 35, line 3 through line 4.

Following: "include" on line 3

Strike: remainder of line 3 through "against" on line 4

31. Page 35, line 5.

Following: " ; "

Insert: "All judicial challenges of licenses or permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

32. Page 35, line 27.

Strike: "-- injunction"

33. Page 36, line 6.

Strike: "an action for a preliminary injunction against"

34. Page 36, line 7.

Following: " ; "

Insert: "All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

35. Page 36, line 10.

Strike: "-- injunction"

36. Page 37, line 4.

Strike: "an action for a preliminary injunction against"

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37. Page 37, line 5.

Following: " _"

Insert: "All judicial challenges of amendments for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

38. Page 38, line 1.

Following: "instruction."

Insert: "(1)"

Strike: "36"

Insert: "37"

39. Page 38, line 3.

Strike: "36"

Insert: "37"

40. Page 38, line 4.

Insert: "(2) [Section 2] is intended to be codified as an integral part of Title 82 and Title 75, and the provisions of Title 82 and Title 75 apply to [section 2]."

41. Page 38, line 12 through line 15.

Strike: sections 40 and 41 in their entirety

42. Page 38, line 16.

Insert: "NEW SECTION. Section 41. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit, petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act]."

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

HB 443, be concurred in. Report adopted.

HB 683, be concurred in. Report adopted.

STATE ADMINISTRATION (Cobb, Chairman):

3/18/2003

HJR 24, be adopted. Report adopted.

HJR 28, be adopted. Report adopted.

TAXATION (DePratu, Chairman):

3/17/2003

SB 407, introduced bill, be amended as follows:

1. Title, line 11.

Following: "DEDUCTION;"

Insert: "INCREASING THE CIGARETTE TAX FROM 18 CENTS TO 70 CENTS ON A PACK OF CIGARETTES AND DEPOSITING THE AMOUNT FROM THE INCREASE IN THE STATE GENERAL FUND; ADJUSTING THE CIGARETTE INSIGNIA DISCOUNTS; INCREASING THE TAX ON TOBACCO

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PRODUCTS FROM 12.5 PERCENT TO 25 PERCENT; PROVIDING FOR A TAX ON EACH OUNCE OF MOIST SNUFF; ADJUSTING THE WHOLESALER'S DISCOUNT FOR TOBACCO PRODUCTS;"

2. Title, page 1, line 12.

Strike: "AND"

Following: "15-30-142,"

Insert: "16-11-111, 16-11-114, 16-11-119, 16-11-201, 16-11-202, AND 16-11-206,"

3. Title, page 1, line 13.

Following: "PROVIDING"

Strike: "DELAYED"

Strike: "AN"

Strike: "DATE"

Insert: "DATES"

4. Page 1, line 20.

Strike: "41"

Insert: "40"

5. Page 2, line 30 through page 3, line 5.

Strike: subsections (8) and (9) in their entirety

Renumber: subsequent subsections

6. Page 4, line 8.

Strike: "19"

Insert: "18"

7. Page 4, line 11 through line 25.

Strike: subsection (15) in its entirety

8. Page 5, line 22.

Strike: "(21)(a)(iii) through (21)(a)(vii)"

Insert: "(18)(a)(iii) through (18)(a)(vii)"

9. Page 7, line 12.

Strike: "4%"

Insert: "the following percentages"

10. Page 7, lines 13 and 14.

Strike: subsections (a) and (b) in their entirety

Renumber: subsequent subsections

11. Page 7, line 15.

Following: "(c)"

Insert: "4% on"

12. Page 7, line 16.

Following: "(d)"

Insert: "5% on"

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13. Page 7, line 17.

Following: "(e)"

Insert: "9% on"

14. Page 7, line 18.

Following: "(f)"

Insert: "4% on"

15. Page 7, line 19.

Following: "(g)"

Insert: "4% on"

16. Page 7, line 20.

Following: "(h)"

Insert: "4% on"

17. Page 7, line 21.

Following: "(i)"

Insert: "4% on"

18. Page 7, line 22.

Following: "(j)"

Insert: "4% on"

19. Page 7, line 27.

Strike: "4%"

Insert: "the following percentages"

20. Page 7, lines 28 and 29.

Strike: subsections (i) and (ii) in their entirety

ReNUMBER: subsequent subsections

21. Page 7, line 30.

Following: "(iii)"

Insert: "4% on"

22. Page 8, line 1.

Following: "(iv)"

Insert: "5% on"

23. Page 8, line 2.

Following: "(v)"

Insert: "9% on"

24. Page 8, line 3.

Following: "(vi)"

Insert: "4% on"

25. Page 8, line 4.

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Following: "(vii)"
Insert: "4% on"

26. Page 8, line 5.
Following: "(viii)"
Insert: "4% on"

27. Page 8, line 6.
Following: "(ix)"
Insert: "4% on"

28. Page 8, line 7.
Following: "(x)"
Insert: "4% on"

29. Page 8, line 21.
Strike: "41"
Insert: "40"

30. Page 9, line 14.
Strike: "41"
Insert: "40"

31. Page 9, line 26.
Strike: "41"
Insert: "40"

32. Page 9, line 29.
Strike: "41"
Insert: "40"
Strike: "19"
Insert: "18"

33. Page 10, line 6.
Strike: "41"
Insert: "40"

34. Page 10, line 8.
Strike: "41"
Insert: "40"

35. Page 10, line 10.
Strike: "41"
Insert: "40"

36. Page 11, line 4.
Strike: "19"
Insert: "18"

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37. Page 11, line 24 through line 28.

Strike: section 12 in its entirety

Renumber: subsequent sections

38. Page 13, line 9.

Strike: "41"

Insert: "40"

39. Page 13, line 11.

Strike: "41"

Insert: "40"

40. Page 13, line 17.

Strike: "41"

Insert: "40"

41. Page 13, line 24.

Strike: "41"

Insert: "40"

42. Page 13, line 27 through line 28.

Strike: subsection (b) in its entirety

Renumber: subsequent subsections

43. Page 14, line 2.

Strike: "41"

Insert: "40"

44. Page 14, line 12.

Strike: "41"

Insert: "40"

45. Page 14, line 17.

Strike: "41"

Insert: "40"

Strike: "29"

Insert: "28"

46. Page 14, line 18.

Strike: "41"

Insert: "40"

47. Page 14, line 26.

Strike: "41"

Insert: "40"

48. Page 15, line 18.

Strike: "41"

Insert: "40"

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49. Page 15, line 19.

Strike: "29"

Insert: "28"

50. Page 15, line 20.

Strike: "41"

Insert: "40"

51. Page 15, line 22.

Strike: "19"

Insert: "18"

52. Page 15, line 28.

Strike: "41"

Insert: "40"

53. Page 16, line 12.

Strike: "41"

Insert: "40"

54. Page 16, line 15.

Strike: "41"

Insert: "40"

55. Page 16, line 28.

Strike: "41"

Insert: "40"

56. Page 16, line 29.

Strike: "41"

Insert: "40"

57. Page 17, line 1.

Strike: "41"

Insert: "40"

58. Page 17, line 19.

Strike: "26"

Insert: "25"

59. Page 18, line 4.

Strike: "26"

Insert: "25"

60. Page 18, line 26.

Strike: "41"

Insert: "40"

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61. Page 18, line 30.

Strike: "26"

Insert: "25"

62. Page 19, line 19.

Strike: "41"

Insert: "40"

63. Page 19, line 20.

Strike: "41"

Insert: "40"

64. Page 20, line 5.

Strike: "41"

Insert: "40"

65. Page 20, line 14.

Strike: "41"

Insert: "40"

66. Page 20, line 27.

Strike: "41"

Insert: "40"

67. Page 20, line 29.

Strike: "41"

Insert: "40"

68. Page 21, line 1.

Strike: "41"

Insert: "40"

69. Page 21, line 4.

Strike: "41"

Insert: "40"

70. Page 21, line 5.

Strike: "41"

Insert: "40"

71. Page 21, line 11.

Strike: "41"

Insert: "40"

72. Page 21, line 17.

Strike: "41"

Insert: "40"

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73. Page 22, line 7.

Strike: "41"

Insert: "40"

74. Page 22, line 13.

Strike: "41"

Insert: "40"

75. Page 22, line 14.

Strike: "41"

Insert: "40"

76. Page 22, line 19.

Strike: "41"

Insert: "40"

77. Page 22, line 29.

Strike: "41"

Insert: "40"

78. Page 23, line 2.

Strike: "41"

Insert: "40"

79. Page 23, line 9.

Strike: "41"

Insert: "40"

80. Page 23, line 12.

Following: "gains"

Insert: "for tax years 2004 and 2005 and 2% of the taxpayer's net capital gains for tax years beginning after 2005"

81. Page 23, line 18.

Strike: "\$2,150"

Insert: "\$2,300"

82. Page 23, line 20.

Strike: "\$1,300"

Insert: "\$1,400"

83. Page 25, line 5.

Strike: "2006"

Insert: "2004"

84. Page 29, line 6.

Strike: line 6 in its entirety

85. Page 29, line 7.

Strike: "(i)"

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Insert: "(a)"
Strike: "\$2,800"
Insert: "\$2,300"
Renumber: subsequent subsections

86. Page 29, line 8.
Strike: "\$1,400"
Insert: "\$1,800"

87. Page 29, line 9.
Strike: "\$2,400"
Insert: "\$2,100"

88. Page 29, line 10.
Strike: "\$2,600"
Insert: "\$2,200"

89. Page 29, line 11.
Strike: "\$3,200"
Insert: "\$2,400"

90. Page 29, line 12.
Strike: "\$3,000"
Insert: "\$3,100"

91. Page 29, line 13.
Strike: "\$15,600"
Insert: "\$13,900"

92. Page 29, line 13
Strike: "1"
Insert: "." (New amendment per clerical dated 3-19-2003)

93. Page 29, line 14 through line 26.
Strike: subsection (b) in its entirety

94. Page 29, line 27.
Strike: "For tax years beginning after December 31, 2005, by"
Insert: "By"

95. Page 29, line 28.
Strike: "(b)"

96. Page 29, line 30.
Strike: "(b)"

97. Page 30, line 6.
Strike: "\$1,950"
Insert: "\$1,840"

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98. Page 30, line 8.

Strike: "\$1,950"

Insert: "\$1,840"

99. Page 30, line 12.

Strike: "\$1,950"

Insert: "\$1,840"

100. Page 30, line 15.

Strike: "\$1,950"

Insert: "\$1,840"

101. Page 30, line 20.

Strike: "\$1,950"

Insert: "\$1,840"

102. Page 30, line 22.

Strike: "\$1,950"

Insert: "\$1,840"

103. Page 31, line 3.

Strike: "\$1,950"

Insert: "\$1,840"

104. Page 34, line 29.

Strike: "\$1,620"

Insert: "\$1,530"

105. Page 34, line 30.

Strike: "\$3,650"

Insert: "\$3,460"

106. Page 35, line 21.

Strike: "\$3,650"

Insert: "\$3,460"

107. Page 35, line 23.

Strike: "\$7,300"

Insert: "\$6,920"

108. Page 35, line 25.

Strike: "\$1,950"

Insert: "\$1,840"

109. Page 36, line 24.

Insert: "**Section 49.** Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~18~~ 70 cents on each package containing

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20 cigarettes, ~~and, when~~ Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.
(2) The tax imposed in subsection (1) does not apply to quota cigarettes.
(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a ~~credit or~~ refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Insert: "Section 50. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

- (1) ~~6%~~ 1.5% for the first 2,580 cartons or portion ~~thereof~~ of 2,580 cartons purchased in any calendar month;
- (2) ~~4%~~ 1% for the next 2,580 cartons or portion ~~thereof~~ of 2,580 cartons purchased in any calendar month; and
- (3) ~~3%~~ 0.75% for purchases in excess of 5,160 cartons in any calendar month."

Insert: "Section 51. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 15-1-501, be allocated deposited as follows:

(1) ~~The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited 3.2%~~ in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(2) ~~The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited 92.3% in the state general fund; and~~

(3) ~~The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited 4.5% in the long-range building program account provided for in 17-7-205."~~

Insert: "Section 52. Section 16-11-201, MCA, is amended to read:

"16-11-201. Definitions. As used in this part, the following definitions apply, unless the context requires otherwise:

(1) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.

(2) "Retailer" means any person other than a wholesaler who is engaged in the business of selling tobacco

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products to the ultimate consumer.

~~(2)~~(3) "Sale" or "sell" means any transfer of tobacco products for a consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

~~(3)~~(4) "Tobacco product" means a substance other than cigarettes that is intended for human consumption and that contains tobacco.

~~(4)~~(5) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or other reduction.

~~(5)~~(6) "Wholesaler" means any person who purchases tobacco products directly from the manufacturer or from any other person who purchases from the manufacturer and who acquires the products for sale to retail dealers."

Insert: "Section 53. Section 16-11-202, MCA, is amended to read:

"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of tax.

(1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. ~~Any~~ A person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of ~~12 1/2%~~ 25% of the wholesale price, to the wholesaler, of all tobacco products, other than moist snuff to the wholesaler. The tax on moist snuff is 56 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax."

Insert: "Section 54. Section 16-11-206, MCA, is amended to read:

"16-11-206. Wholesaler's discount -- disposition of taxes. The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a ~~5%~~ 2.5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

Insert: "NEW SECTION. Section 55. Transition. (1) On or before June 30, 2003, each cigarette wholesale dealer, retail dealer, and vending machine operator shall file a report with the department of revenue in the form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on April 30, 2003.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesale dealer, retail dealer, and vending machine operator shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the dealer or operator at 12:01 a.m. on April 30, 2003."

Insert: "NEW SECTION. Section 56. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Renumber: subsequent sections

110. Page 36, line 26.

Strike: "41"

Insert: "40"

111. Page 36, line 27.

Strike: "41"

Insert: "40"

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112. Page 36, line 28.

Strike: "42"

Insert: "41"

113. Page 36, line 29.

Strike: "42"

Insert: "41"

114. Page 37, line 9.

Strike: "January 1, 2005"

Insert: "on passage and approval"

115. Page 37, line 10.

Strike: "43, 44, 46, 48, and 49"

Insert: "42 through 48"

116. Page 37, lines 12 and 13.

Following: "Applicability."

Insert: "(1)"

Following: "of" on line 12

Insert: "the following"

Strike: "after December 31, 2004" on lines 12 and 13

Insert: ":

(a) cigarette and tobacco products sold on or after May 1, 2003;

(b) accommodation and campground charges under [section 3(1)(b) and (3)(a)(ii)] made on or after June 1, 2003;

(c) base rental charges for rental vehicles under [section 3(1)(c) and (3)(a)(iii)] made on or after July 1, 2003;

and

(d) all other goods and services in [section 3(1) and (3)(a)] sold after March 31, 2004.

(2) [Sections 41 and 43 through 46] apply to tax years beginning after December 31, 2003"

And, as amended, do pass. Report adopted.

HB 616, be concurred in. Report adopted.

MESSAGES FROM THE OTHER HOUSE

Senate bills concurred in and returned to the Senate:

3/17/2003

SB 70, introduced by McNutt

SB 102, introduced by McNutt

SB 108, introduced by McNutt

SB 122, introduced by Tash

SB 128, introduced by Mahlum

SB 190, introduced by Bohlinger

SB 202, introduced by Johnson

SB 221, introduced by Kitzenberg

SB 238, introduced by Mangan

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House joint resolution passed and transmitted to the Senate for concurrence: 3/17/2003

HJR 2, introduced by Devlin

Senate bills concurred in as amended and returned to the Senate for concurrence in House amendments:

3/17/2003

SB 109, introduced by McNutt

SB 141, introduced by Wheat

MOTIONS

HB 170 - Senator Esp moved he be allowed to change his vote on **HB 170**, third reading the 56th legislative day, from yea to nay. Motion carried.

HB 56 - Senator Thomas moved the President be authorized to appoint a **Conference Committee** to meet with a like committee from the House to confer on Senate Amendments to **HB 56**. Motion carried.

The President appointed the following members:

Senator Esp, chairman
Senator Stonington
Senator Cromley.

HB 299 - Senator Tester moved he be allowed to change his vote on **HB 299**, third reading the 56th legislative day, from nay to yea. Motion carried.

Senator Tester moved to suspend joint rule 40-50 for the late drafting and introduction of a joint resolution supporting the troops in Iraq. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

The following Senates bills were introduced, read first time, and referred to committee:

SB 479, introduced by Elliott, referred to Taxation.

SB 480, introduced by Black, referred to Taxation.

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

HJR 2, introduced by Devlin (by request of the Revenue and Transportation Interim Committee), referred to Taxation.

**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 Black in the chair.

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

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HB 583 - Senator Bohlinger moved **HB 583** be concurred in. After discussion, Senator Bohlinger made a substitute motion that **HB 583**, second reading copy, be amended as follows:

1. Page 3, line 2.

Strike: "but not limited to"

2. Page 3, line 8.

Strike: "tax levy,"

Amendment **adopted** unanimously.

HB 583 - Senator Bohlinger moved **HB 583**, as amended, be concurred in. Motion carried with Senators McGee and Story voting nay.

HB 246 - Senator Perry moved **HB 246** be concurred in. Motion carried as follows:

Yeas: Anderson, Barkus, Black, Bohlinger, Cobb, Cocchiarella, Cooney, DePratu, Ellingson, Elliott, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Mangan, McCarthy, McNutt, Nelson, Pease, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stonington, Story, Taylor, Tester, Toole, Tropila, Wheat.

Total 34

Nays: Bales, Butcher, Cromley, Curtiss, Esp, Gebhardt, Glaser, Laible, Mahlum, McGee, O'Neil, Stapleton, Tash, Thomas, Zook, Mr. President.

Total 16

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 252 - Senator Cobb moved **HB 252** be concurred in. Motion carried unanimously.

HB 368 - Senator Anderson moved **HB 368** be concurred in. Motion carried unanimously.

HB 436 - Senator Perry moved **HB 436** be concurred in. Motion carried with Senator Hansen voting nay.

HB 621 - Senator Barkus moved **HB 621** be concurred in. Motion carried unanimously.

HJR 25 - Senator Roush moved **HJR 25** be concurred in. Motion carried unanimously.

Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Black 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:

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SB 26, as amended by the House, 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 36, as amended by the House, 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 460 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.

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Total 0

HB 172 concurred in 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 211, as amended by the Senate, concurred in as follows:

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

Total 49

Nays: Johnson.

Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 224 failed as follows:

Yeas: Anderson, Bohlinger, Cobb, Curtiss, DePratu, Esp, Gebhardt, Grimes, Kitzenberg, Laible, Mahlum, McGee, O'Neil, Perry, Ryan, Shea, Sprague, Squires, Story, Taylor, Thomas, Tropila.

Total 22

Nays: Bales, Barkus, Black, Butcher, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Glaser, Hansen, Harrington, Johnson, Mangan, McCarthy, McNutt, Nelson, Pease, Roush, Schmidt, Stapleton, Stonington, Tash, Tester, Toole, Wheat, Zook, Mr. President.

Total 28

Absent or not voting: None.

Total 0

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Excused: None.
Total 0

HB 339 concurred in 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 350, as amended by the Senate, concurred in 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 391 concurred in 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

HB 402 concurred in 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 429 concurred in as follows:

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

Total 46

Nays: Cocchiarella, Mangan, Ryan, Mr. President.

Total 4

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 478, as amended by the Senate, concurred in 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, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 50

Nays: None.

Total 0

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Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 635 concurred in 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, Stonington, Story, Tash, Taylor, Tester, Toole, Tropila, Wheat, Zook, Mr. President.
Total 48

Nays: Stapleton, Thomas.
Total 2

Absent or not voting: None.
Total 0

Excused: None.
Total 0

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Wednesday, March 19, 2003. Motion carried.

Senate adjourned at 2:05 p.m.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate