

SENATE JOURNAL
SIXTEENTH LEGISLATIVE DAY - JANUARY 21, 2005

SENATE JOURNAL
59TH LEGISLATURE
SIXTEENTH LEGISLATIVE DAY

Helena, Montana
January 21, 2005

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 48

Nays: Balyeat, Gebhardt.
Total 2

Absent or not voting: None.
Total 0

Excused: None.
Total 0

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL: 1/21/2005
Correctly printed: **SB 29, SB 38, SB 39, SB 44, SB 76, SB 105, SB 118, SB 123, SB 164, SB 165, SB 189, SB 272, SB 273, SB 274, SB 275, SB 276, SB 277, SB 278, SB 279, SB 280, SB 281, SJR 10, SJR 11.**
Correctly engrossed: **SB 42, SB 46, SB 86, SB 94, SB 97, SB 108, SB 115, SB 178, SB 183, SB 186, SB 188, SB 194, SB 226.**

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Cocchiarella, Chairman): 1/21/2005
SB 108, introduced bill, be amended as follows:

1. Title, page 1, line 16.
Following: "SECTIONS"
Strike: "15-30-201,"

2. Page 1, line 22.
Following: "contractor"
Insert: "and that an employer has an obligation to determine whether an individual is treated as an independent contractor or as an employee"

3. Page 1, line 24.
Following: "an employer"
Insert: "to coerce a worker to work as an independent contractor by offering"

4. Page 1, line 26 through line 27.
Following: "decision" on line 26
Strike: "identified" through "entity" on line 27

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Insert: "affirmed the twin determinants of independent contractor status as being "A" issues of control and "B" whether the individual is in an independent business, commonly known as the "A-B" test, and emphasized the necessity of both factors being present, with performing work for other persons being an indication of an independent business"

5. Page 1.

Following: line 27

Insert: "WHEREAS, the concurring opinion in the Wild decision further suggested that the Department of Labor and Industry strengthen the certification process to provide a conclusive determination of independent contractor status; and"

6. Page 1, line 29.

Following: "community"

Insert: ", with employers and independent contractors coming together to propose a consensus solution after participating in a study required by Senate Bill 270, passed by the 58th Legislature"

7. Page 2, line 9.

Following: "regularly"

Insert: "and customarily"

8. Page 2, line 11.

Following: "certificate"

Insert: "unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3"

9. Page 2, line 22.

Following: "(4)"

Insert: "(a)"

10. Page 2, line 24.

Strike: "(a)"

Insert: "(i)"

11. Page 2, line 26.

Strike: "(b)"

Insert: "(ii)"

12. Page 2.

Following: line 27

Insert: "(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control."

13. Page 3, line 7.

Following: "(7)(a)"

Strike: "A conclusive" on line 7 through "certificate" on line 8.

Insert: "When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor"

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14. Page 3, line 9.

Following: "(b)"

Strike: "If both" through "that the"

Insert: "A"

15. Page 3, line 11.

Following: "Montana"

Strike: ", precluding the person"

Insert: "and is precluded"

16. Page 3, line 12.

Following: "elected"

Strike: "coverage" through "39-71-401(3)"

Insert: "to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3"

17. Page 3.

Following: line 12

Insert: "(c) For the purposes of the Workers' Compensation Act and the Occupational Disease Act of Montana, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee."

18. Page 4, line 12.

Following: "first"

Insert: ": (i)"

19. Page 4, line 13.

Following: "certificate"

Insert: "unless the individual is not required to obtain an independent contractor exemption certificate pursuant to [section 1(1)(a)]"

Following: ";

Insert: "or"

20. Page 4.

Following: line 13

Insert: "(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;"

21. Page 5, line 3 through page 7, line 13.

Strike: Section 4 in its entirety.

Renumber: subsequent sections

22. Page 17, line 19.

Following: "certificate"

Strike: "may waive"

Insert: "waives"

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23. Page 17, line 20.

Following: "72"

Insert: ", unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3"

24. Page 22, line 12.

Following: "regularly"

Insert: "and customarily"

25. Page 24, line 12.

Following: "is an"

Strike: "exemption"

Insert: "exception"

And, as amended, do pass. Report adopted.

SB 183, introduced bill, be amended as follows:

1. Page 6, line 9 through line 10.

Following: "salesperson." on line 9

Strike: "Additional" on line 9 through "activities." on line 10

2. Page 6.

Following: line 10

Insert: "(9) When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies with subsection (8) must be construed as a sufficient disclosure of the contractual relationship."

Renumber: subsequent subsections

3. Page 6, line 20.

Following: "transaction"

Strike: "or to" through "owners"

And, as amended, do pass. Report adopted.

SB 188, introduced bill, be amended as follows:

1. Page 7, line 1.

Following: "of the"

Strike: "state of Montana"

Insert: "department, of a plan 1, 2, or 3 insurer,"

And, as amended, do pass. Report adopted.

FISH AND GAME (Tropila, Chairman):

1/21/2005

SB 178, introduced bill, be amended as follows:

1. Title, line 4 through line 11.

Strike: "RECOGNIZING" on line 4 through "ANIMALS;" on line 11

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2. Title, line 13 through line 14.

Strike: "SECTIONS" on line 13 through "87-3-125, AND" on line 14

Insert: "SECTION"

3. Page 1, line 16 through page 1, line 19.

Strike: "WHEREAS" on line 16 through "animals." on line 19

4. Page 1, line 23 through page 4, line 19.

Strike: section 1 through section 3 in their entirety

Renumber: subsequent sections

5. Page 4, line 22 through line 23.

Strike: "for" on line 22 through "required" on line 23

Insert: "-- authority to issue permits and adopt rules"

6. Page 4, line 27 through page 5, line 2.

Strike: "(c)" on page 4, line 27 through "property." on page 5, line 2

Renumber: subsequent subsections

7. Page 5, line 19.

Insert: "(4) An aircraft or helicopter may be used for the purpose of herding, driving, or hazing wild animals damaging private property or crops on the property in question pursuant to a permit issued by the department. The commission shall adopt rules for the issuance of the permit. The permit may be conditioned to address individual circumstances of each application for a permit. The department may not issue permits during any legal hunting season for the species for which a permit was requested. The permitting program must comply with requirements of federal law for such activity."

And, as amended, do pass. Report adopted.

HIGHWAYS AND TRANSPORTATION (Pease, Chairman):

1/21/2005

SB 38, do pass. Report adopted.

SB 123, do pass. Report adopted.

SB 194, introduced bill, be amended as follows:

1. Title, lines 6 and 7.

Following: "AGE;" on line 6

Strike: remainder of line 6 through "QUADRICYCLE;" on line 7

Strike: "SECTIONS"

Insert: "SECTION"

2. Title, line 8.

Strike: "AND 61-9-417"

3. Page 2, line 2.

Following: "or"

Insert: "licensed under"

4. Page 2, line 8 through line 17.

Strike: section 2 in its entirety

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And, as amended, do pass. Report adopted.

SB 226, introduced bill, be amended as follows:

1. Title, line 6.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 2.

Following: line 8

Insert: "NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval."

And, as amended, do pass. Report adopted.

NATURAL RESOURCES (Roush, Chairman):

1/21/2005

SB 44, do pass. Report adopted.

PUBLIC HEALTH, WELFARE AND SAFETY (Cromley, Chairman):

1/21/2005

SB 29, do pass. Report adopted.

SB 42, introduced bill, be amended as follows:

1. Page 1, line 27.

Following: ";"

Strike: "and"

2. Page 1, line 29.

Following: "initiative"

Insert: "; and

(g) take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006"

And, as amended, do pass. Report adopted.

SB 46, introduced bill, be amended as follows:

1. Title, page 1, line 8 through line 10.

Following: "AGENCY;" on line 8

Strike: remainder of line 8 through "MEDICAID;" on line 10

2. Title, page 1, line 10.

Following: "50-16-530,"

Insert: "AND"

Strike: "AND 53-6-101,"

3. Page 1, line 24 through line 25.

Following: "individuals" on line 24

Strike: "who" on line 24 through "medicaid" on line 25

Insert: "with issues related to eligibility for and access to public mental health services"

4. Page 2, line 3 through line 4.

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Following: "confidential." on line 3

Strike: "Written" on line 3 through "information." on line 4

Insert: "Access to confidential medicaid information must be governed by a written agreement developed by the ombudsman and the department of public health and human services."

5. Page 2, line 16 through line 18.

Following: "(9)" on line 16

Strike: remainder of line 16 through "payments." on line 18

6. Page 4, line 5 through page 6, line 27.

Strike: section 4 in its entirety

Renumber: subsequent section

And, as amended, do pass. Report adopted.

SB 86, introduced bill, be amended as follows:

1. Page 3, line 17.

Following: line 16

Insert: "(14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law."

Renumber: subsequent subsections

2. Page 5, lines 11 and 12.

Following: "experience in" on line 11

Strike: remainder of line 11 through "possess" on line 12

Insert: "providing services to children and families and who possesses"

3. Page 6, line 23.

Strike: "(32)"

Insert: "(33)"

And, as amended, do pass. Report adopted.

SB 94, introduced bill, be amended as follows:

1. Page 2, line 22.

Strike: "may"

Insert: "must"

Strike: ", the agency,"

2. Page 4, line 26.

Following: "personally"

Insert: "or by certified mail"

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And, as amended, do pass. Report adopted.

SB 105, do pass. Report adopted.

TAXATION (Elliott, Chairman):
SB 115, introduced bill, be amended as follows:

1/21/2005

1. Title, line 11.

Strike: "AND"

Insert: ", "

Following: "DATES"

Insert: ", AND A TERMINATION DATE"

2. Page 2, lines 9 and 10.

Strike: "the generation" on line 9 through "from" on line 10

Insert: "construction of"

3. Page 18.

Following: line 1

Insert: "NEW SECTION. **Section 15. Termination.** [This act] terminates January 1, 2012."

And, as amended, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

1/21/2005

HB 17, introduced by Buzzas

HB 32, introduced by Cohenour

HB 86, introduced by Kaufmann

HB 88, introduced by Caferro

HB 147, introduced by Clark

HB 159, introduced by McKenney

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

1/21/2005

HJR 1, introduced by Franklin

MOTIONS

Senator Cooney moved to refer SB 126 from 3rd reading back to the Finance and Claims committee for further consideration. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SB 272, introduced by Toole, referred to Taxation.

SB 273, introduced by Stapleton, referred to Public Health, Welfare and Safety.

SB 274, introduced by Barkus, referred to Business, Labor, and Economic Affairs.

SB 275, introduced by Schmidt, Becker, Cobb, Cooney, Gebhardt, Roberts, referred to Public Health, Welfare and Safety.

SB 276, introduced by Bales, referred to Taxation.

SB 277, introduced by Steinbeisser, Bales, Black, Kitzenberg, McNutt, Smith, referred to Agriculture, Livestock and Irrigation.

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SB 278, introduced by Black, Brueggeman, Cocchiarella, Essmann, referred to Business, Labor, and Economic Affairs.

SB 279, introduced by Moss, referred to Local Government.

SB 280, introduced by Squires, referred to Business, Labor, and Economic Affairs.

SB 281, introduced by Williams, Wanzenried, referred to Public Health, Welfare and Safety.

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

SJR 10, introduced by Curtiss, D. Brown, Heinert, Hendrick, Laible, Maedje, Tash, referred to Natural Resources.

SJR 11, introduced by Laible, referred to Local Government.

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

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

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

SB 39 - Senator Mangan moved **SB 39** do pass. Motion carried unanimously.

SB 76 - Senator Laslovich moved **SB 76** do pass. Motion carried with Senator Shockley voting nay.

SB 97 - Senator Wheat moved **SB 97**, second reading copy, be amended as follows:

1. Page 2, line 8.

Following: "(4)(a)"

Insert: "may restrict residential, commercial, and industrial uses but"

2. Page 2, line 9.

Strike: "OTHER THAN RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL."

Amendment adopted unanimously.

SB 97 - Senator Barkus moved **SB 97**, as amended, do pass. Motion carried with Senators Joe Balyeat, Cooney, Esp, O'Neil, and Story voting nay.

SB 118 - Senator Wheat moved **SB 118** do pass. Motion carried with Senator Grimes voting nay.

SB 126 - Senator Brueggeman moved **SB 126** do pass. Motion carried unanimously.

SB 164 - Senator Gillan moved **SB 164** do pass. Motion carried unanimously.

SB 165 - Senator Mangan moved **SB 165** do pass. Motion carried unanimously.

SB 186 - Senator Joe Balyeat moved **SB 186**, second reading copy, be amended as follows:

1. Page 1, line 12.

Following: "which"

Strike: "a"

Insert: "any"

2. Page 1, line 13.

Following: "monetary"

Insert: "prize"

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Following: "or"
Insert: "any"

Amendment adopted unanimously.

SB 186 - Senator Joe Balyeat moved **SB 186**, as amended, do pass. Motion carried with Senators Cobb, Grimes, and Kitzenberg voting nay.

SB 189 - Senator Cocchiarella moved **SB 189** do pass. Motion carried unanimously.

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

SPECIAL ORDERS OF THE DAY

The U-M Western Dancers from the Polynesian Club performed for the Senate. President Tester thanked them for their performance.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 7:30 a.m., Saturday, January 22, 2005. Motion carried.

Senate adjourned at 2:57 p.m.

BILL LOMBARDI
Secretary of Senate

JON TESTER
President of the Senate