

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

SENATE JOURNAL
59TH LEGISLATURE
THIRTY-FOURTH LEGISLATIVE DAY

Helena, Montana
February 11, 2005

Senate Chambers
State Capitol

Senate convened at 12:30 p.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag. Roll Call. All members present, except Senator Pease, excused. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 46

Nays: Balyeat, O'Neil, Shockley.
Total 3

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL: 2/11/2005
Correctly printed: **SB 73, SB 91, SB 103, SB 279, SB 295, SB 355, SB 365, SB 368, SB 369, SB 434, SB 435, SB 436, SB 437, SB 438, SB 439, SB 440, SB 441, SB 442, SB 443, SB 444, SB 445, SB 446, SB 447, SB 448, SB 449, SB 450, SB 451, SB 452, SB 453, SB 454, SB 455, SB 456, SJR 11, HB 38.**
Correctly engrossed: **SB 101, SB 173, SB 185, SB 191, SB 207, SB 255, SB 278, SB 290, SB 318.**

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Cocchiarella, Chairman): 2/11/2005
SB 368, do pass. Report adopted.
SB 369, do pass. Report adopted.

ENERGY AND TELECOMMUNICATIONS (Toole, Chairman): 2/11/2005
SB 365, do pass. Report adopted.

HIGHWAYS AND TRANSPORTATION (Pease, Chairman): 2/11/2005
SB 295, do pass. Report adopted.
SB 318, introduced bill, be amended as follows:

1. Title, line 5.
Following: "QUADRICYCLES;"
Insert: "ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS' PARKRANGERS AND GAME WARDENS TO ENFORCE NOISE EMISSION AND SPARK ARRESTOR LIMITATIONS ON QUADRICYCLES;"

2. Title, line 17.
Following: "SECTIONS"
Insert: "23-1-122,"

3. Page 1, line 21.
Insert: "**Section 1.** Section 23-1-122, MCA, is amended to read:

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

"23-1-122. Enforcement powers of park rangers and game wardens. (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department or the fish, wildlife, and parks commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department and the fish, wildlife, and parks commission; ~~and~~

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c); and

(iv) laws related to noise emissions and spark arrestors on quadricycles under 61-9-418."

Renumber: subsequent sections

4. Page 2, line 28.

Strike: "or"

Insert: "and"

5. Page 2, line 29.

Strike: "10"

Insert: "11"

6. Page 3, line 29.

Strike: "61-3-133"

Insert: "61-1-133"

7. Page 4, line 30.

Strike: "10"

Insert: "11"

8. Page 5.

Following: line 5

Insert: "(4) Revenue from the fees required under subsection (2) must be deposited in the state special revenue fund to the credit of the department of fish, wildlife, and parks to be used to administer issuance of nonresident temporary registrations pursuant to subsection (2) and to develop and administer a comprehensive off-highway vehicle program."

9. Page 5, line 13.

Strike: "6"

Insert: "7"

10. Page 10, line 7 through line 8.

Strike: "transferred" on line 7 through "fund" on line 8

Insert: "deposited in the state special revenue fund to the credit of the department of fish, wildlife, and parks to be used to administer the issuance of temporary nonresident driving permits and to develop and administer a comprehensive off-highway vehicle program"

11. Page 11, line 6.

Strike: "6"

Insert: "7"

12. Page 11, line 9.

Strike: "10"

Insert: "11"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

13. Page 11, line 11.

Strike: "6"

Insert: "7"

14. Page 11, line 13.

Strike: "6"

Insert: "7"

15. Page 11, line 14.

Strike: "10"

Insert: "11"

16. Page 11, line 15.

Strike: "10"

Insert: "11"

17. Page 11, line 16.

Strike: "12"

Insert: "13"

18. Page 11, line 17.

Strike: "12"

Insert: "13"

And, as amended, do pass. Report adopted.

JUDICIARY (Wheat, Chairman):

2/11/2005

SB 207, introduced bill, be amended as follows:

1. Title, line 5.

Following: "OFFENDERS"

Insert: "DESIGNATED AS LEVEL 3 OFFENDERS"

2. Title, line 7.

Following: "OF"

Insert: "LEVEL 3"

3. Page 2, line 3.

Strike: "(1)"

Following: "part 5,"

Insert: "who is designated as a level 3 offender under 46-23-509,"

4. Page 2, line 4.

Following: "condition of"

Strike: "sentence, including"

Following: "parole,"

Insert: "conditional release,"

5. Page 2, line 7 through line 11.

Strike: subsection (2) in its entirety

6. Page 2, line 14.

Following: "offenders"

Insert: "designated as level 3 offenders under 46-23-509"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

7. Page 4, line 8.

Following: line 7

Insert: "COORDINATION SECTION. Section 6. Coordination instruction. If House Bill No. 288 is passed and approved and if it amends 46-23-1031, then [section 3 of this act], amending 46-23-1031, is void and 46-23-1031 must be amended as follows:

"46-23-1031. Supervisory fees -- account established. (1) (a) Except as provided in subsection ~~(1)(b)~~ (1)(c), a probationer, parolee, or person committed to the department who is supervised by the department:

(i) under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision department a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision; or

(ii) under continuous satellite-based monitoring shall pay to the department a supervisory fee of no more than \$4,000 a year as established by rules adopted by the department under [section 2].

(b) A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

~~(b)(c)~~ The court, department, or board may reduce or waive a fee required by subsection (1)(a) or (1)(b) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

~~(b) Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district court clerks~~
The department shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator."

Renumber: subsequent sections

8. Page 4, line 11.

Following: line 10

Insert: "NEW SECTION. Section 8. Contingent voidness. If House Bill No. 2 does not contain a line item appropriation to implement the provisions of [sections 1 and 2], then [this act] is void."

Renumber: subsequent section

And, as amended, do pass. Report adopted.

SB 355, do pass. Report adopted.

LOCAL GOVERNMENT (Mangan, Chairman):

2/11/2005

SJR 11, be adopted. Report adopted.

SB 173, introduced bill, be amended as follows:

1. Title, page 1, line 8.

Strike: "VARIANCE PERMITS FOR NONCONFORMING USES"

Insert: "VARIANCES"

2. Title, page 1, line 10 through line 11.

Following: "APPLICATIONS;"

Insert: "AND"

Strike: "PERMITS" on line 10 through "DATE" on line 11

Insert: "VARIANCES"

3. Page 1, line 17.

Following: "flooding;"

Insert: "and"

4. Page 1, line 18 through line 24.

Strike: ";" on line 18 through "structure" on line 24

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

5. Page 1, line 26.

Following: line 25

Insert: "(a) waters flowing within Montana's perennial rivers and streams belong to all the people of the state of Montana, as provided in Article IX, section 3, of the Montana constitution;

(b) Montana's natural rivers and streams and the lands and property immediately adjacent to them are to be protected and preserved in their natural or existing state, as provided in 75-7-102 of The Natural Streambed and Land Preservation Act of 1975;

(c) fish and wildlife that rely on Montana's rivers and streams for habitat likewise belong to all the people of the state of Montana;

(d) impacts of development on Montana's rivers and streams, including increased downstream erosion and diminished water quality, are often manifested across local government jurisdictional boundaries;

(e) the state has a duty and legitimate interest in protecting the integrity of its rivers and streams on behalf of all its citizens, not merely those who live in the local jurisdiction where a particular reach of a river or stream may be located;"

Renumber: subsequent subsections

6. Page 1, line 26.

Strike: "maintaining"

Insert: "maintenance of"

7. Page 1, line 28.

Following: "development"

Strike: "and in many cases"

Insert: ";

8. Page 1, line 29.

Following: line 28

Insert: "(h)"

Following: "Montana"

Insert: " in many cases"

Renumber: subsequent subsection

9. Page 2, line 3 through line 16.

Strike: subsections (3) and (4) in their entirety

10. Page 2, line 27.

Strike: "surface"

Insert: "perennial flowing class I"

Following: "lakes"

Strike: "and streams, that:"

Insert: ", as defined in 23-2-301."

11. Page 2, line 28 through page 3, line 6.

Strike: line 28 through line 6 in their entirety

12. Page 3, line 7.

Strike: "has the" through "77-5-302"

Insert: "means perennial flowing class II waters as defined by 23-2-301"

13. Page 3, line 9.

Strike: "activities and"

14. Page 3, line 12.

Strike: "(1)"

15. Page 3, line 14.

Strike: "(a)"

Insert: "(1)"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

16. Page 3, line 16.

Strike: "(b)"

Insert: "(2)"

17. Page 3, line 17 through line 19.

Following: "greater" on line 17

Strike: "." on line 17 through "(1)" on line 19

Insert: "; or

(3) an area established through a locally adopted zoning district pursuant to [section 9]"

18. Page 3, line 21.

Strike: "and activities"

19. Page 3, line 22.

Following: "(2)"

Insert: "or (3)"

Strike: "and activities"

20. Page 3, line 25.

Strike: ", barn, shed,"

21. Page 3, line 28 through line 30.

Following: "structure" on line 28

Strike: ";" on line 28 through "river" on line 30

22. Page 4, line 1.

Strike: "or activities"

23. Page 4, line 2 through line 6.

Following: "a"

Strike: "nonconforming" on line 2 through "[sections 7 and 8]." on line 6

Insert: "lawful use of land or buildings that existed on or before [the effective date of this act] even if the use does not conform to the provisions of [sections 1 through 9];

(b) any use conducted on property subject to a hydroelectric project license issued by the federal energy regulatory commission or otherwise located within the licensed project boundary as determined by the federal energy regulatory commission;

(c) agricultural uses; and

(d) structures and equipment used to collect and transport water from a stream or river for agricultural or industrial uses, including diversion and intake structures, pipes, pumps and pumphouses, and related equipment.

(3) The provisions of [sections 1 through 9] do not apply to incorporated cities and towns or zoning districts that have residential densities of at least 1 unit per acre and are served by municipal sewer and water systems."

Renumber: subsequent subsection

24. Page 4, line 16.

Strike: "or activity"

25. Page 4, line 17.

Strike: "or activity prohibited under [section 4]"

Insert: "as provided in [section 4(1)]"

26. Page 4, line 19.

Strike: "prohibited use or activity"

Insert: "use"

27. Page 4, line 23.

Strike: "A"

Insert: "The proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceeding to ensure that a "

Strike: "or activity"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

28. Page 4, line 24.

Strike: "nonconforming use permit"

Insert: "variance"

29. Page 4, line 25.

Following: "it."

Insert: "The governing body may appoint enforcing officers to supervise and enforce the provisions of this part."

30. Page 4, line 27.

Strike: "Variance for nonconforming uses"

Insert: "Variances"

31. Page 4, line 28.

Strike: "permits for nonconforming uses"

Insert: "a variance for a use"

32. Page 4, line 29.

Following: "measured by"

Insert: "one or more of"

33. Page 4, line 30.

Strike: "permit"

Insert: "variance"

34. Page 5, line 1 through line 2.

Following: "met" on line 1

Strike: ", " on line 1 through "use" on line 2

35. Page 5, line 3.

Strike: "Permits for nonconforming uses"

Strike: "Variances"

36. Page 5, line 4.

Following: "subdivision."

Strike: remainder of line 4

37. Page 5, line 5.

Strike: "permit"

Insert: "variance"

38. Page 5, line 8.

Strike: "permit for nonconforming use"

Insert: "variance"

39. Page 5, line 9.

Strike: "permit for a nonconforming use"

Insert: "variance"

40. Page 5, line 11 through line 12.

Strike: subsection (a) in its entirety

Renumber: subsequent subsections

41. Page 5, line 13.

Following: "the"

Strike: "geometry" through "such that"

42. Page 5, line 14.

Strike: "completely eliminate"

Insert: "unreasonably restrict"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

43. Page 5, line 21.

Strike: "permit for a nonconforming use"

Insert: "variance"

44. Page 5, line 23.

Strike: "nonconforming use"

Insert: "use allowed by the variance"

Following: "small as"

Insert: "reasonably "

45. Page 5, line 25.

Strike: "permitted nonconforming use"

Insert: "use allowed by the variance"

46. Page 5, line 26.

Strike: "permitted nonconforming use"

Insert: "use allowed by the variance"

47. Page 5, line 27.

Strike: "permitted nonconforming use"

Insert: "use allowed by the variance"

Following: "not be"

Strike: "detrimental or"

48. Page 5, line 29.

Strike: "of a permit for a nonconforming use"

Insert: "for a variance"

Strike: "presenting sufficient"

Insert: "establishing a preponderance of"

49. Page 5, line 30.

Strike: "permit"

Insert: "variance"

50. Page 6, line 1 through line 3.

Strike: subsection (4) in its entirety

51. Page 6, line 8 through line 14.

Following: "area;" on line 8

Insert: "and"

Strike: line 9 through line 14 in their entirety

Insert: "(b) the political subdivision has adopted a zoning district that includes standards for setting new buildings at least 50 yards from the ordinary high-water mark on rivers and 15 yards from the ordinary high-water mark on streams."

52. Page 6, line 16.

Strike: "activities"

Insert: "uses"

53. Page 7, line 5.

Strike: section 14 in its entirety

And, as amended, be adopted. Report adopted.

SB 185, introduced bill, be amended as follows:

1. Title, line 8.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Following: "AN"

Insert: "IMMEDIATE"

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

2. Page 1, line 12 through page 4, line 20.

Strike: everything after the enacting clause

Insert: "NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Capital improvements" means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.

(2) "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.

(3) "Development" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

(4) "Governmental entity" means a county, city, town, or consolidated government.

(5) (a) "Impact fee" means any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge;

(iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or

(iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) "Proportionate share" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in [section 2].

(7) "Public facilities" means:

(a) a water supply production, treatment, storage, or distribution facility;

(b) a wastewater collection, treatment, or disposal facility;

(c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;

(d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;

(e) a police, emergency medical rescue, or fire protection facility; and

(f) other facilities for which documentation is prepared as provided in [section 2] that have been approved as part of an impact fee ordinance or resolution by:

(i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or

(ii) a unanimous vote of the board of county commissioners of a county government."

Insert: "NEW SECTION. **Section 2. Calculation of impact fees -- documentation required -- ordinance or resolution -- requirements for impact fees.** (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve documentation that:

(a) describes existing conditions of the facility;

(b) establishes level of service standards;

(c) forecasts future additional needs for service for a defined period of time;

(d) identifies capital improvements necessary to meet future needs for service;

(e) identifies those capital improvements needed for continued operation and maintenance of the facility;

(f) makes a determination whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

(g) makes a determination whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

(h) establishes the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

(i) establishes the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) establishes the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) has a component of the budget of the governmental entity that:

(i) schedules construction of public facility capital improvements to serve projected growth;

(ii) projects costs of the capital improvements;

(iii) allocates collected impact fees for construction of the capital improvements; and

(iv) covers at least a 5-year period and is reviewed and updated at least every 2 years.

(2) The data sources and methodology supporting adoption and calculation of an impact fee must be available to the public upon request.

(3) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements, or reasonable estimates of the cost, to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(4) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (1).

(5) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility."

Insert: "NEW SECTION. Section 3. Collection and expenditure of impact fees -- refunds or credits -- mechanism for appeal required. (1) The collection and expenditure of impact fees must comply with [sections 1 through 4]. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with [section 2], any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in [sections 1 through 4] must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to [section 2] in a manner that demonstrates the need for the excess capacity. [Sections 1 through 4] do not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to [section 2];

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure, unless there is an increase in units that increase service demand as described in [section 2 (1)(j)]. If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) [Sections 1 through 4] do not prevent a governmental entity from granting refunds or credits:

(i) that it considers appropriate and that are consistent with the provisions of [section 2] and this chapter; or

(ii) in accordance with a voluntary agreement, consistent with the provisions of [section 2] and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made."

Insert: "NEW SECTION. Section 4. Impact fee advisory committee. (1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community and one certified public accountant. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity."

Insert: "NEW SECTION. Section 5. Transition. A general powers local government that is imposing impact fees shall bring the imposition of those fees into compliance with [this act] by October 1, 2006."

Insert: "NEW SECTION. Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 4]."

Insert: "NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Insert: "NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval."

Insert: "NEW SECTION. Section 9. Applicability. (1) [This act] applies only to an impact fee ordinance or resolution enacted or amended by a self-governing local government on or after the effective date of this act].

(2) Except when an impact fee ordinance or resolution is amended as provided in subsection (1), nothing in [this act] may be construed to affect an ordinance or resolution enacted prior to [the effective date of [this act]]."

And, as amended, be adopted. Report adopted.

SB 255, introduced bill, be amended as follows:

1. Page 8, line 4.

Following: "vibrations,"

Insert: "light,"

2. Page 12, line 11.

Following: "new structures"

Insert: "or trees"

3. Page 12, line 12.

Following: "structures"

Insert: "or replacing existing trees"

4. Page 12, line 13 through line 16.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Strike: subsection (2) in its entirety
Renumber: subsequent subsections

5. Page 12, line 22.
Strike: "its"
Insert: "the owner's"

6. Page 12, line 30.
Following: "body"
Insert: "that designated the airport affected area"

And, as amended, be adopted. Report adopted.

SB 279, be adopted. Report adopted.
SB 290, introduced bill, be amended as follows:

1. Page 5, line 30 through page 6, line 2.
Following: "shows" on page 5, line 30
Strike: "the" on page 5, line 30 through "(1)(h)" on page 6, line 2
Insert: "(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
(A) flood plains;
(B) surface water features;
(C) springs;
(D) irrigation ditches;
(E) existing, previously approved, and proposed water wells and wastewater treatment systems; and
(F) mixing zones identified as provided in subsection (1)(g); and
(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities"

2. Page 6, line 19.
Strike: "multiple user and public"
Following: "systems,"
Insert: "unless cisterns are proposed,"

3. Page 6, line 24 through line 26.
Strike: subsection (f) in its entirety
Renumber: subsequent subsections

4. Page 7, line 5.
Strike: "(1)(h)"
Insert: "(1)(g)"

5. Page 7, line 22.
Following: "comment"
Insert: "submitted at a hearing or hearings"

And, as amended, be adopted. Report adopted.

PUBLIC HEALTH, WELFARE AND SAFETY (Cromley, Chairman):
SB 101, introduced bill, be amended as follows:

2/11/2005

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

1. Title, page 1, lines 6 through 8.

Strike: the second "PROVIDING" on page 1, line 6 through "PROGRAMS;" on line 8

2. Title, line 9.

Following: "SERVICES TO"

Insert: "APPOINT A WORKING GROUP TO"

3. Title, page 1, line 12.

Strike: "20-5-323, 20-9-311," on page 1, line 12

Following: "50-5-101"

Strike: ", "

4. Page 1, line 16 through page 5, line 1.

Strike: sections 1 and 2 in their entirety

Renumber: subsequent sections

5. Page 12, line 20.

Strike: "5"

Insert: "3"

6. Page 12, line 22.

Strike: "Licensure and registration"

Insert: "Registration"

7. Page 13, line 10.

Strike: "Department"

Insert: "Working group -- "

8. Page 13, line 11.

Following: "legislature."

Insert: "(1) The director of the department shall appoint a working group and shall appoint as members of the group five representatives from registered residential therapeutic schools or programs, two representatives from the department, one representative from the department of labor and industry, and one child advocate.

(2) The working group shall study various methods of licensure for residential therapeutic schools or programs and report progress at each meeting of the children, families, health, and human services interim committee.

(3)"

Strike: "department"

Insert: "working group"

9. Page 13, line 14 through line 16.

Following: "5-11-210."

Strike: remainder of line 14 through "advocates." on line 16

10. Page 13, line 20.

Strike: "5"

Insert: "3"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

11. Page 13, line 21.

Strike: "5"

Insert: "3"

And, as amended, do pass. Report adopted.

STATE ADMINISTRATION (Squires, Chairman):
SB 191, introduced bill, be amended as follows:

2/11/2005

1. Title, page 1, line 7.

Strike: "FINANCIAL INDUSTRY"

Insert: "INSURANCE AND SECURITIES"

2. Page 1, line 17.

Page 1, line 29.

Page 2, line 7.

Page 2, line 16.

Page 3, line 5.

Page 3, line 15.

Page 3, lines 24 and 25.

Page 4, line 2.

Strike: "financial industry"

Insert: "insurance and securities"

3. Page 4, line 10.

Page 4, line 11.

Strike: "financial industry"

Insert: "insurance and securities"

And, as amended, do pass. Report adopted.

TAXATION (Elliott, Chairman):
HB 38, be concurred in. Report adopted.

2/11/2005

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

2/11/2005

HB 25, introduced by Roberts
HB 105, introduced by Parker
HB 156, introduced by Henry
HB 203, introduced by Roberts
HB 230, introduced by Jacobson
HB 295, introduced by Galvin-Halcro
HB 307, introduced by Parker
HB 312, introduced by Golie
HB 324, introduced by Driscoll
HB 367, introduced by Parker
HB 396, introduced by Becker
HB 425, introduced by Parker

MOTIONS

Senator Brueggeman moved **SB 432** be taken from Senate Business, Labor, and Economic Affairs and placed in Senate Taxation. Motion carried.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Senator Steinbeisser moved his vote on **SB 217** be changed from an "aye" to a "nay". Motion carried.

Senator Gebhardt moved his vote on **SB 217** be changed from an "aye" to a "nay". Motion carried, except Larson.

Majority Leader Ellingson moved the Senate recess for the purpose of receiving the State of Education address from the Honorable Superintendent of Public Instruction Linda McCulloch and further moved that the Senate reconvene upon adjournment of the joint session. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

- SB 434**, introduced by Lewis, referred to Business, Labor, and Economic Affairs.
- SB 435**, introduced by Wheat, Kitzenberg, referred to Judiciary.
- SB 436**, introduced by O'Neil, referred to Judiciary.
- SB 437**, introduced by Elliott, Story, referred to Taxation.
- SB 438**, introduced by Elliott, referred to Taxation.
- SB 439**, introduced by Gebhardt, referred to Business, Labor, and Economic Affairs.
- SB 440**, introduced by Harrington, referred to Public Health, Welfare and Safety.
- SB 441**, introduced by Harrington, referred to Highways and Transportation.
- SB 442**, introduced by Cooney, referred to Finance and Claims.
- SB 443**, introduced by Roush, referred to Business, Labor, and Economic Affairs.
- SB 444**, introduced by Smith, referred to Business, Labor, and Economic Affairs.
- SB 445**, introduced by McGee, referred to Education and Cultural Resources.
- SB 446**, introduced by Schmidt, referred to Public Health, Welfare and Safety.
- SB 447**, introduced by Ellingson, referred to Judiciary.
- SB 448**, introduced by Black, referred to State Administration.
- SB 449**, introduced by Roush, McNutt, referred to Natural Resources.
- SB 450**, introduced by Kitzenberg, referred to Taxation.
- SB 451**, introduced by Wheat, referred to Business, Labor, and Economic Affairs.

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 5 passed as follows:

Yeas: Bales, Balyeat, Black, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gebhardt, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Mangan, McGee, O'Neil, Roush, Ryan, Schmidt, Shockley, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Wheat, Williams, Mr. President.

Total 39

Nays: Barkus, Brueggeman, Cobb, Gallus, Gillan, Lind, Moss, Perry, Smith, Weinberg.

Total 10

Absent or not voting: None.

Total 0

Excused: Pease.

Total 1

SB 21 passed as follows:

Yeas: Bales, Balyeat, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton,

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Steinbeisser, Story, Tash, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 45

Nays: Barkus, Gallus, Laible, Toole.
Total 4

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SB 108 passed as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 47

Nays: Balyeat, Esp.
Total 2

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SB 154 passed as follows:

Yeas: Barkus, Black, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lind, Mangan, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 38

Nays: Bales, Balyeat, Brueggeman, Curtiss, Grimes, Keenan, Lewis, McGee, Steinbeisser, Story, Tash.
Total 11

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SB 233 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 46

Nays: Esp, Laible, McGee.
Total 3

Absent or not voting: None.
Total 0

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Excused: Pease.
Total 1

SB 259 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SB 274 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SB 286 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SB 299 passed as follows:

Yeas: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Total 32

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, McGee, O'Neil, Steinbeisser, Story, Tash.

Total 17

Absent or not voting: None.

Total 0

Excused: Pease.

Total 1

SB 316 passed as follows:

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

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Pease.

Total 1

SB 329 passed as follows:

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

Total 48

Nays: O'Neil.

Total 1

Absent or not voting: None.

Total 0

Excused: Pease.

Total 1

SB 340 passed as follows:

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

Total 46

Nays: Balyeat, O'Neil, Stapleton.

Total 3

Absent or not voting: None.

Total 0

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Excused: Pease.
Total 1

SB 352 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SJR 13 adopted as follows:

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

Nays: Esp.
Total 1

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SPECIAL ORDERS OF THE DAY

The Senate is escorted into the House Chambers and Speaker Matthews relinquishes the Chair to President Tester.

Senate Majority Leader Ellingson moved that the body resolve itself into a joint session for the purpose of receiving the State of Education address from the Honorable Linda McCulloch, Superintendent of Public Instruction. Motion carried.

Fr. Jerry Lowney gave the Invocation. Pledge of Allegiance.

Senate Majority Leader Ellingson moved that a Committee of Four be appointed to notify the Honorable Linda McCulloch, Superintendent of Public Instruction, that the body is in joint session and ready to receive her address. Motion carried.

President Tester appointed Senator Ryan, Senator Story, Representative Raser and Representative Arntzen to the Committee of Four and discharged them to notify the Honorable Linda McCulloch.

Senate Sergeant-at-Arms Dick admitted the Committee of Four and the Honorable Linda McCulloch into the Chambers.

President Tester introduced the Honorable Linda McCulloch, Superintendent of Public Instruction, who then made the following remarks:

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

"Good afternoon. I'm so very pleased to be here with you today.

Thank you President Tester, Speaker Matthews, Senator Keenan, Representative Wanzenried and Representative Brown for bringing us together to focus on Montana's children and their future.

I'd also like to recognize Governor Schweitzer and my other colleagues and friends in the Executive and Judicial branches of Montana Government, as well as the Public Service Commissioners.

And a very special thank you to my husband, Bill, for being here with me and supporting my dedication to Montana's kids for another four years.

I begin my State of Education Address with sincere words of thanks for the thousands of dedicated teachers, administrators, school staff and trustees. You work tirelessly, helping Montana's children learn and prepare for successful lives. Simply put, you change lives.

One of those educators is Bud Williams, my Deputy Superintendent. Every day, Bud brings 30 years of experience, expertise and caring to the kids of Montana.

Would all educators, school staff or trustees in the audience, both on the floor and in the gallery, please stand so we may recognize you?

From all of us here, and from all Montanans. Thank you!

I'd like to specifically thank the kids who are watching this address live using video streaming technology. One of those schools is Lockwood School in Billings. Please join me in greeting Mrs. Johnson and her students.

Defining Quality Education

This 59th Legislative Session will be forever remembered as the session that 150 citizens defined an education system that will affect every single Montanan, their children and their grandchildren. It is an historic opportunity. An opportunity that constantly returns us to an event 33 years ago.

It was a defining moment in 1972 when the delegates to the Montana Constitutional Convention put aside partisanship, regional differences and personal agendas and focused on Montana's future. Today, when each of us takes the oath of office, we swear to uphold the document they created. Their task was daunting, but their achievement is resounding.

In the area of education, they agreed upon 15 powerful words:

"The legislature shall provide a basic system of free quality public elementary and secondary schools."

It is up to you to make the most of the opportunity before you -- to make that constitutional statement a reality and have an impact on future generations.

This session is about "moving education forward in Montana." Lawsuits have been filed, hearings have been held, and the courts have ruled. That is past. Now the solution is back where it belongs - in your hands. Your task, like that of the delegates to the constitutional convention, is to focus on the future - on the quality of the schools your children, and their children, will attend.

Let me talk about what these 15 words in our Constitution means to me:

Our country was built on the very dream of "wanting better for our children than we have ourselves." I am living my father's dream. I was the first in my father's family to graduate from High School. My father left school in the eighth grade to go to work and help feed his younger brothers and sisters. He wanted more for his children, and he knew education was the key to making that possible. My parents sacrificed much for us. Their goal was simple: they wanted us to have a better life than they had.

My story is not unique. Parents all across Montana know the meaning of a quality education. It is in the dreams they have for their children.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Now it is your chance to define a quality education that makes parents' dreams a reality for their children. It must be a definition that encompasses both the aspirations of those dreams, and the tangible reality that makes those dreams achievable.

- * A quality education must include standards set forth by the Board of Public Education.
- * It must provide assessments to make sure our children are succeeding.
- * It must address the needs of Montana's low-income children, at-risk youth, and special needs students -- both challenged and gifted.
- * It must reflect the needs of our American Indian students.
- * It must allow us to recruit and retain high-quality teachers.
- * It must allow us to provide kids with textbooks, library materials, and the technology they need to compete in a changing world.
- * It must provide safe school buildings and buses.
- * And finally, it must be a quality education that will continue to adapt as times change.

Educating Montana's children is a complex process in today's world. The definition you will come up with will undoubtedly be complex as well. But, the ideas are simple. It is about our future, our economy and our KIDS!

Indian Education for All

You also have an opportunity and an obligation to make up for 30 years of neglect to recognize another promise made in our Constitution -- to recognize the distinct and unique cultural heritage of Montana's American Indians.

While American Indians make up about 6 percent of our total state population, American Indian students make up about 11 percent of our students in public schools. It is the only growing student population.

There is an alarming gap in the achievement levels of Indian and non-Indian students in Montana. Did you know that almost half of Montana's American Indian students do not graduate from high school? These factors affect the lives of students, their parents, their communities, and the economy of Montana. All students in Montana must achieve at the very highest level to which they are capable. Anything less is absolutely unacceptable!

Last fall, I hosted an Indian Education Summit that brought together 200 educators and leaders to help me find answers to reducing the achievement gap and to fully implement Indian Education for All Montanans.

All Montana students, and frankly, all of us, deserve the opportunity to understand the rich American Indian culture and history specific to Montana.

Thank you, Governor Schweitzer, for making available in your state budget the opportunity for my office to begin our significant work on Indian Education for All.

We want to do it right and respectfully, which is why the Montana Advisory Council on American Indian Education will be so vital to this effort.

As a teacher I wanted to do the right thing when teaching about Montana's Native people. But I was not always sure how to go about it. It is absolutely critical that all Montana teachers get the assistance they need to fully implement Indian Education for All. I am excited about bringing together educators and other experts to develop resources and hands-on materials to use in our classrooms.

I am thrilled to have this chance to finally make MCA 20-1-501 more than a paper promise!

Develop Funding System

What stands before us is an historic task to develop a funding system. We must venture into uncharted waters and understandably, there will be some trepidation. It is quite a task. Working together we will develop a funding system that works for all our students.

After more than a decade of inadequate funding, this process will not be completed overnight. It may not even be solved in one Legislative Session.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

You must take the time you need to research solutions, design a funding system that provides a quality education, and takes into account taxpayers. These are important issues. Montana's future literally depends on them. My staff and I will work with you as long and as hard as it takes to make sure we get a system that is right for Montana's kids and for Montana's future.

Until a new funding system is developed and implemented, I offer you as a "Bridge to the Future" my three bills for funding options that our schools desperately need now.

1. House Bill 125, carried by Rep. Holly Raser, will be in committee later this afternoon. HB 125 increases the basic and per-student entitlement by \$350 per elementary student and \$200 per high school student. Also included in the calculation is the inflation adjustment as adopted by the 2003 Legislature. Thank you, Rep. Raser!

2. House Bill 111, carried by Rep. Gary Branae, creates a new funding mechanism that responds to Montana's decline in school enrollment. HB 111 recognizes that with the decrease of a few students in a school, the school still needs to provide third grade, fourth grade, and so on, and needs to offer music, PE, Library, and still needs to turn on the heat and lights, but now has significantly less funding. HB 111 provides school districts a \$1,000 per-educator entitlement based on the number of professional staff. The local school trustees decide how the funds best serve their students. Thank you, Rep. Branae!

3. House Bill 47 provides full-time funding for kindergarten students. This bill does not require schools to offer full-time kindergarten, nor does it require parents to enroll their child in full-time kindergarten. Children who are enrolled in full-time kindergarten programs demonstrate:

- * Greater progress in literacy, math and general learning skills,
- * Significant gains in social and emotional development,
- * Fewer student grade retentions and special education placements, which saves the state money,
- * Higher scores on achievement tests,
- * And, reduced behavioral problems. HB 47, carried by Rep. Kathleen Galvin-Halcro, gives some of our most vulnerable kids a helping hand. This bill is all about kids and local control and parental choice. My thanks to you, Rep. Galvin-Halcro!

Recruiting and retaining high quality teachers in Montana is one of our most significant challenges. Central to this challenge is our beginning teacher's salaries that rank 50th in the nation - dead last -- and too many of our teachers lack health benefits. Unless we can find ways to help schools attract and keep high quality teachers, we will continue to see good teachers leave our state. Without question, quality teachers are at the core of a quality education.

Reading

A top priority of my administration is reading.

As a longtime teacher and school librarian, I've seen how the demand for high levels of literacy has never been greater than it is today. The doors to school success, higher education and a good job will never open for many students, if we do not put a real focus on reading in our schools. We must ensure that our students' skills keep pace with society's demands of living in an information age that changes rapidly and is showing no signs of slowing down.

We know that if a student isn't reading at the 3rd grade level by the end of third grade, it is very difficult and very expensive to catch up. If they can't read they can't do social studies or science or read math problems. Lack of reading skills, is also a common reason for dropping out of school.

I began tackling this challenge four years ago by building reading partnerships and aggressively going after funding to support reading efforts in our classrooms.

Every summer teachers gather together for my READ Montana! Summit, affectionately known around the state as the "Summit on a Shoestring." We learn new techniques for teaching reading and explore how we want Montana's students to become successful readers.

So far, our office has competed for and received \$33 million in federal reading funds to target children in

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

kindergarten through third grade. We've been able to put some concentrated programs in several schools across the state.

We've kicked off two efforts that partner reading and wellness.

Our partnership with the Department of Public Health and Human Services, called the "The Reading Well ñ Be Well, Read Well," provides a free book to all newly immunized kindergarteners. We like to think that it takes the "sting out of immunizations."

And "Food for the Mind", a partnership with MSU Team Nutrition and the Montana Reading Council, gives K-3 classrooms a book bag, filled with fun books on nutrition and physical activity, for students to take home and enjoy with their parents.

These efforts are beginning to make a difference in our schools. For example, Longfellow Elementary school in Great Falls, a recipient of our reading grants has seen a 16 point increase in fourth grade reading scores in the last three years. This is very significant progress. We will continue to build upon these successes.

Generations

Montanans have always placed a high value on education.

Perhaps folks who value education the most are those who weren't in a position to take it for granted. You helped make the value of an education possible for many Montanans. Senate Bill 81, from last session, carried by Senator Cooney, enables me to award an Honorary High School diploma to World War II, Korean War and Vietnam War veterans who did not receive a High School diploma because of military service.

One day these individuals were carrying textbooks, and the next day they were carrying weapons to protect our nation and preserve our freedom. After the war, many never returned to school, but began families and careers. They became role models and leaders in their communities.

Following the session in 2003, I hosted a graduation ceremony in the Capitol Rotunda for the first 16 veterans, some of whom had waited 60 years to receive their high school diploma.

There was not a dry eye in the audience as veterans walked proudly to the stage to receive their diploma. Mr. Knoll's personal thank you note told me of the 3,511 miles he and his wife journeyed from Southwest Missouri back to his home state of Montana to attend this graduation. Others traveled shorter distances, like the van carrying four veterans from the Columbia Falls Veterans Home and Mr. Little Dog from Browning whose proud granddaughter joined him to share his education moment. The stories go on and on and on.

Each and every one of the almost 300 honorary high school diplomas I have awarded to a veteran is associated with a personal and touching family story -- a story that embodies the importance of public education and our dreams. Thank you for making possible the education dreams of these veterans and their families.

We have a veteran with us today, who like my father, is committed to their children and grandchildren's dreams. And, like my father, did not graduate from High School and served in WWII. I'd like to introduce you to Adam Schweitzer, our Governor's father.

The Governor and I, two members of Montana's Executive Branch were blessed to have parents who valued education. As fathers you play a very important role in our lives. You not only have inspired us by your commitment to our country, but your commitment to education left a legacy of learning.

Mr. Schweitzer, it is a great honor and a pleasure to be able to award you a long awaited honorary high school diploma that acknowledges a lifetime of learning and achievement that has enriched the State of Montana and our country.

Congratulations to both you and my Dad, two very deserving veterans and fathers.

Montanans' commitment to education is timeless, even though the educational needs of our country have changed

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

since WW II.

Fifty years ago our economy was dependent on 60% of our workforce being unskilled labor, 20% skilled labor and 20% professional workers. Fast forward to 2005 where 20% of our workforce is still professional. But our demand for unskilled labor has dropped to 15% and skilled labor increased three fold. Now 65% of our economy depends on skilled labor.

The focus in our schools has also changed. Think about it, kindergarten teachers are preparing their five year old students for career options that do not even exist today. That's how important education is to our economy!

Students

Let me take a moment and tell you about the importance of a quality education for one student I taught in elementary school. He was born several years after the state had ratified those 15 important words in the state Constitution. He had good teachers (especially his school librarian) and he worked hard.

It doesn't seem like very long ago that I saw his class off when they graduated from 8th grade, but I know he went on and received a great high school education in Missoula. This student went on to serve his country in Iraq. Then he returned to Montana, and went to school at the University of Montana and then last year he did the strangest thing.

He ran for the State Legislature.

Now he has a desk right here in the third row of this chamber, representing the people of House District 91. Permit me to recognize my student, Representative Kevin Furey.

I am extremely proud to be one of Representative Furey's teachers, to know that the lessons I taught him will not only have an impact on his life, but on those he represents.

We are proud of our Montana students and their test scores. Montana kids continue to score near the top in the nation in reading, science, and math.

That's great. But that's not good enough. Because now our kids are competing internationally. They're competing with students from South Korea and South Vietnam as much as they're competing with students from South Dakota and South Carolina. Kids from other states and countries that invest in education are catching up to us or passing us. Working together we need to make sure this trend doesn't continue. Your work this session is vital to these efforts.

Closing

Our kids are our future. They will become tomorrow's business, spiritual, community and school leaders. They will also become Montana's Legislators, Senators, Governors, Supreme Court Justices and State Superintendents.

It is our kids that will hold us to those 15 words in our State Constitution:

"The legislature shall provide a basic system of free quality public elementary and secondary schools."

I have great faith in the commitment of the Montana Legislature to roll up your sleeves to move education forward in Montana. Together we will do what's right for Montana's kids.

Thanks to the students and educators all across Montana who tuned in to watch the Legislature today.

On behalf of Montana's 146,519 school children and all who work on behalf of public education in our state, I thank you for your time today and your interest in Montana's public schools.

My door is always open and I look forward to your visit."

President Tester thanked the Honorable Linda McCulloch and she was escorted out of the Chambers by the

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Committee of Four.

Joint session adjourned 1:40 p.m.
Senate reconvened 1:47 p.m.

Roll Call. All members present, except Pease and Schmidt, excused. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Perry, Roush, Ryan, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 46

Nays: Balyeat, Shockley.
Total 2

Absent or not voting: None.
Total 0

Excused: Pease, Schmidt.
Total 2

MOTIONS

Senator Cooney moved that action on **SB 5**, **SB 108**, and **SB 233** be reconsidered and that they be taken from 3rd reading and placed on 2nd reading the 35th Legislative Day. Motion carried.

Senator Laible moved **SB 10** be blasted out of Senate Education and Cultural Resources and placed on 2nd reading. Motion failed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.
Total 22

Nays: Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 27

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

Senator Grimes moved **SB 330** be blasted out of Senate Judiciary and placed on 2nd reading. Motion failed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Curtiss, Esp, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash, Tropila.
Total 23

Nays: Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Roush, Ryan, Schmidt, Smith, Squires, Toole, Weinberg, Wheat, Williams, Mr. President.
Total 26

Absent or not voting: None.
Total 0

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Excused: Pease.
Total 1

Senator Cocchiarella moved **SB 456** be taken from Senate Business, Labor, and Economic Affairs and placed in Senate Local Government. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SB 452, introduced by Perry, referred to Judiciary.
SB 453, introduced by Perry, referred to Judiciary.
SB 454, introduced by Gebhardt, referred to Business, Labor, and Economic Affairs.
SB 455, introduced by Toole, referred to Energy and Telecommunications.
SB 456, introduced by Laible, referred to Business, Labor, and Economic Affairs.

**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 Perry in the chair.

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

SB 278 - Senator Black moved **SB 278** do pass.

SB 278 - Senator Joe Balyeat moved **SB 278**, second reading copy, be amended as follows:

1. Title, page 1, line 4.

Following: "FOR"

Insert: "CERTAIN"

2. Title, page 1, line 6.

Following: "ACCOUNTANTS"

Insert: "UNLESS EXEMPT"

3. Title, page 1, line 7.

Following: "ACCOUNTING BY"

Insert: "CERTAIN"

Following: "REGISTRATION"

Strike: "; AND"

Insert: ", NOTIFICATION, OR A PERMIT;"

4. Title, page 1, line 9.

Following: "BY"

Insert: "CERTAIN"

Following: "ACCOUNTANTS"

Insert: "; AND AMENDING SECTION 37-50-314, MCA"

5. Page 1, line 13.

Following: "accountant"

Insert: "-- exemption"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

6. Page 1, line 14.

Following: the first "person"

Insert: "not otherwise licensed or exempt under this part"

7. Page 1.

Following: line 30

Insert: "(4) A nonresident certified public accountant who is licensed in good standing by a jurisdiction recognized by the board as having licensing standards substantially equivalent to the standards authorizing the practice of public accounting in this state may:

(a) practice without being licensed in this state or obtaining a special permit from this state if the certified public accountant notifies the board and provides the certified public accountant's name, current address, license number, and jurisdiction in which the person is licensed; or

(b) prepare federal or state income tax returns for a Montana resident if the certified public accountant does not physically come to Montana to prepare the tax returns."

Renumber: subsequent subsection

8. Page 2, line 5.

Following: "that"

Insert: "is not exempt under [section 1(4)] and that"

9. Page 2, line 9.

Following: "or"

Insert: "subsection (1) of"

10. Page 2, line 11.

Following: "unless"

Insert: "exempt under [section 1(4)] or"

11. Page 2.

Following: line 12

Insert: "Section 3. Section 37-50-314, MCA, is amended to read:

"**37-50-314. Permit required -- display.** (1) ~~Except as provided in subsection (3),~~ a person may not engage in the practice of public accounting in this state without a current permit issued by the department. A permit to engage in the practice of public accounting in this state must be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) The current permit to engage in the practice of public accounting must be prominently displayed for public inspection.

(3) A certified public accountant who is preparing federal or state income tax returns for a Montana resident and who does not physically come to Montana to prepare the tax returns does not need a permit under this section and is not required to notify the board as provided in [section 2]."

Renumber: subsequent section

Amendment adopted as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Cromley, Curtiss, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hawks, Keenan, Laible, Lewis, Lind, Mangan, McGee, O'Neil, Perry, Ryan, Shockley, Stapleton, Steinbeisser, Story, Tash, Weinberg, Wheat, Mr. President.
Total 32

Nays: Cooney, Ellingson, Elliott, Hansen, Harrington, Kitzenberg, Larson, Laslovich, Moss, Roush, Schmidt, Smith, Squires, Toole, Tropila, Williams.
Total 16

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Absent or not voting: None.
Total 0

Excused: Cobb, Pease.
Total 2

SB 278 - Senator Perry moved **SB 278**, as amended, do pass. Motion carried unanimously.

SB 73 - Senator Mangan moved **SB 73** do pass. Motion carried with Senator Gallus voting nay.

SB 91 - Senator Smith moved **SB 91** do pass. Motion carried as follows:

Yeas: Balyeat, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, O'Neil, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 46

Nays: Bales, Barkus, McGee.
Total 3

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

SB 103 - Senator Cromley moved **SB 103** do pass. Motion carried as follows:

Yeas: Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Essmann, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lewis, Lind, Moss, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Toole, Tropila, Weinberg, Wheat, Williams.
Total 34

Nays: Bales, Balyeat, Barkus, Curtiss, Esp, Gebhardt, Keenan, Laible, Mangan, McGee, O'Neil, Shockley, Story, Tash, Mr. President.
Total 15

Absent or not voting: None.
Total 0

Excused: Pease.
Total 1

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

UNFINISHED BUSINESS

Minority Leader Keenan discussed Senate Rule 20-20.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 8:00 a.m., Saturday, February 12, 2005. Motion carried.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2005

Senate adjourned at 3:13 p.m.

BILL LOMBARDI
Secretary of Senate

JON TESTER
President of the Senate