

**SENATE JOURNAL
59TH LEGISLATURE
SIXTY-EIGHTH LEGISLATIVE DAY**

Helena, Montana
March 31, 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 Senators Cocchiarella and Squires, excused. Quorum present.

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

Total 43

Nays: Balyeat, Gebhardt, Grimes, O'Neil, Shockley.

Total 5

Absent or not voting: None.

Total 0

Excused: Brueggeman, Squires.

Total 2

Mr. President: We, your committee on Bills and Journal, having examined the daily journals for the thirteenth and fourteenth legislative days, find the same to be correct.

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL:

3/31/2005

Correctly printed: **SB 61, SJR 34, SR 15, SR 16, HB 40, HB 68, HB 104, HB 109, HB 159, HB 169, HB 213, HB 280, HB 295, HB 324, HB 346, HB 450, HB 470, HB 587, HB 591.**

Correctly engrossed: **SB 510, SB 517, SB 520, SB 521, HB 105, HB 146, HB 331, HB 348, HB 361, HB 418, HB 681, HB 721.**

Examined by the sponsor and found to be correct: **SB 152.**

Signed by the Speaker at 3:20 p.m., March 31, 2005: **SB 152.**

Signed by the President at 1:20 p.m., March 31, 2005: **SB 152.**

Signed by the Secretary of the Senate at 1:15 p.m., March 31, 2005: **SB 152.**

Delivered to the Governor for approval at 3:30 p.m., March 31, 2005: **SB 152.**

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Cocchiarella, Chairman):
HB 418, be amended as follows:

3/31/2005

1. Page 3, lines 9 through 13.

Strike: "HAVING " on line 9 through "JUDGMENT" on line 13

Insert: "having the authority on a regular, recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection with the foregoing, the exercise of the authority is not of a

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merely routine or clerical nature but requires the use of independent judgment"

2. Page 3, lines 14 through 16.

Strike: subsection (b) in its entirety

Insert: "(b) The authority described in subsection (11)(a) is the only criteria that may be used to determine if an employee is a supervisory employee. The use of any other criteria, including any secondary test developed or applied by the national labor relations board or the Montana board of personnel appeals, may not be used to determine if an employee is a supervisory employee under this section."

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

JUDICIARY (Wheat, Chairman):

3/31/2005

HB 146, be amended as follows:

1. Title, line 5.

Following: "~~MCA~~;"

Insert: "REPEALING SECTION 17-8-231, MCA;"

2. Page 2, line 4.

Following: "3."

Strike: "Causes of action"

Insert: "False claims -- procedures -- penalties"

3. Page 2, line 25.

Following: "(2)"

Strike: "A"

Insert: "In a civil action brought under [section 5 or 6], a"

4. Page 3, line 10.

Following: "complaint"

Insert: "or civil action"

5. Page 3, line 19.

Following: "complaint"

Insert: "or civil action"

6. Page 3, line 21.

Following: "complaint"

Insert: "or civil action"

7. Page 3, line 28.

Following: "actions."

Strike: "An"

Insert: "A complaint or civil"

Following: "under"

Strike: "3"

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Insert: "5 or 6"

8. Page 4, line 3.

Following: "and"

Strike: "complaint"

Insert: "civil action"

9. Page 4, line 4.

Following: "violation of"

Insert: "[section 3]"

Following: "a"

Strike: "complaint under [section 3]"

Insert: "civil action"

10. Page 4, line 6.

Following: "citizen"

Insert: "-- civil action"

11. Page 4, line 8.

Following: "file"

Insert: "a complaint"

Following: "attorney"

Strike: "a brief, including"

Insert: "that includes"

12. Page 4, line 10.

Following: "and"

Strike: "brief"

Insert: "complaint"

13. Page 4, line 11.

Following: line 10

Strike: "complaint under [sections 3 and 5]"

Insert: "civil action"

14. Page 4, line 12.

Following: "filing"

Strike: "a complaint"

Insert: "an action"

15. Page 4, line 13.

Following: the first "a"

Strike: "complaint"

Insert: "civil action"

16. Page 4, line 15.

Following: "a"

Strike: "complaint"

Insert: "civil action"

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17. Page 4, line 16.

Following: "a"

Strike: "complaint"

Insert: "civil action"

18. Page 4, line 22.

Following: "files a"

Strike: "complaint"

Insert: "civil action"

Following: "may file a"

Strike: "complaint"

Insert: "civil action"

19. Page 4, line 25.

Following: "citizen's"

Strike: "complaint"

Insert: "civil action"

20. Page 4, line 26.

Page 4, line 27.

Following: "citizen's"

Strike: "complaint"

Insert: "civil action"

21. Page 5, line 7.

Following: "under"

Strike: "3"

Insert: "5 or 6"

22. Page 5, line 10.

Following: "under"

Strike: "3"

Insert: "5 or 6"

23. Page 5, line 14.

Following: "entity"

Insert: "or private citizen"

24. Page 5, line 30.

Following: line 29

Insert: "(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state."

25. Page 6, line 2.

Following: "a"

Strike: "complaint"

Insert: "civil action"

26. Page 6, line 12.

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Following: "a"
Strike: "complaint"
Insert: "civil action"

27. Page 6, line 13.
Following: "purposes"
Insert: "and that the court finds was clearly frivolous or brought solely for harassment purposes"

28. Page 6, line 20.
Following: "pursuant to [section"
Strike: "3"
Insert: "5 or 6"

29. Page 7, line 4.
Following: line 3
Insert: "NEW SECTION. Section 13. Repealer. Section 17-8-231, MCA, is repealed."
Renumber: subsequent section

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

HB 324, be concurred in. Report adopted.

LOCAL GOVERNMENT (Mangan, Chairman):
HB 105, be amended as follows:

3/31/2005

1. Title, line 6.
Strike: "AND"

2. Title, line 7.
Following: "AGENCY"
Insert: "; PROVIDING THAT THE DEPUTY SHERIFF AND EMPLOYER RETIREMENT CONTRIBUTIONS
MUST BE BASED ON TOTAL COMPENSATION; AND REPEALING SECTION 19-7-810, MCA"

3. Page 1, line 25.
Strike: "LIGHT" through "SHERIFF."

4. Page 1, line 26.
Strike: "WITH THE DEPUTY SHERIFF'S CONSENT, THE"
Insert: "The"

5. Page 1.
Following: line 27
Insert: "NEW SECTION. Section 3. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and the workers' compensation program under the provisions of [section 1], the member's compensation reported by the employer is

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the same as if the member was in active service, and the member and employer contributions required by this chapter must be calculated and paid on that total compensation."

Insert: "NEW SECTION. Section 4. Repealer. Section 19-7-810, MCA, is repealed."

Renumber: subsequent section

6. Page 1, line 29.

Following: "instruction."

Insert: "(1)"

7. Page 2.

Following: line 1

Insert: "(2) [Section 3] is intended to be codified as an integral part of Title 19, chapter 7, part 4, and the provisions of Title 19, chapter 7, part 4, apply to [section 3]."

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

HB 450, be concurred in. Report adopted.

HB 591, be concurred in. Report adopted.

NATURAL RESOURCES (Roush, Chairman):

3/31/2005

HB 470, be concurred in. Report adopted.

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

3/31/2005

HB 169, be concurred in. Report adopted.

STATE ADMINISTRATION (Squires, Chairman):

3/31/2005

HB 104, be concurred in. Report adopted.

HB 109, be concurred in. Report adopted.

HB 213, be concurred in. Report adopted.

HB 346, be concurred in. Report adopted.

HB 587, be concurred in. Report adopted.

TAXATION (Elliott, Chairman):

3/31/2005

SB 510, introduced bill, be amended as follows:

1. Title, line 14.

Strike: the first "AND"

Following: "15-7-307,"

Insert: "AND 15-7-308,"

2. Page 2, line 2.

Strike: "3"

Insert: "4"

Following: "]"

Insert: "or for personal or intangible property"

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3. Page 2, line 7.

Following: "land;"

Insert: "and"

4. Page 2, line 8.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

5. Page 3, line 10.

Following: "imposed"

Insert: ", including any value of nontaxable property"

6. Page 3, line 11.

Following: "appraiser"

Insert: ". The value may be established by an appraisal conducted for the purposes of the sale, or if none is available, it may be done by an appraiser"

7. Page 5, line 2.

Following: "tax"

Insert: "if not paid within 10 days of the payment date set by the court"

8. Page 5, line 5 through line 9.

Strike: subsection (4) in its entirety

Renumber: subsequent subsections

9. Page 5, line 15.

Insert: "(6)(a) It is unlawful for a county treasurer or employee of the county treasurer or any other public official or public employee to divulge or otherwise make known taxpayer information that is disclosed under [sections 1 through 7] or information that concerns the affairs of the person and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This subsection (6) does not prohibit the county treasurer from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular person. "

10. Page 6, line 4.

Following: "account."

Insert: "To protect the privacy of taxpayers, the running balance of the account and deposits to the account may not be disclosed. The yearend balance of the account must be disclosed."

11. Page 8, line 1.

Insert: "**Section 12.** Section 15-7-308, MCA, is amended to read:

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"15-7-308. Disclosure of information restricted -- water right transfer certificate exception. (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder, the county treasurer, and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information contained in the water right transfer certificate prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3)."

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

SB 517, introduced bill, be amended as follows:

1. Title, line 23 through line 24.

Strike: "17-3-213" on line 23 through "20-9-308," on line 24

Strike: "20-9-347, 20-9-361," on line 24

2. Page 15, line 1.

Strike: "\$5,000"

Insert: "\$500,000"

3. Page 28, line 9.

Following: "a"

Insert: "refundable"

4. Page 64, line 3.

Strike: "one-half"

Insert: "one-third"

5. Page 64, line 4.

Strike: "all"

Insert: "one-half of the"

Following: "fund"

Insert: "and the balance in an account in the state special revenue fund to be used by the legislature to review individual income tax provisions for simplification and tax relief"

6. Page 67, line 22 through page 79, line 19.

Strike: section 73 through section 81 in their entirety

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Renumber: subsequent sections

7. Page 79, line 20.

Strike: "Sales" through "revenue"

Insert: "Revenue"

8. Page 79, line 21.

Following: "(1)"

Insert: "(a)"

9. Page 79, line 24 through line 26.

Strike: "There" on line 24 through "for" on line 26

Insert: "For"

Strike: "." on line 26

Insert: ", "

10. Page 79, line 27.

Strike: "The" through "funds"

Insert: "the revenue under this section"

11. Page 80, line 7.

Following: line 6

Insert: "(b) If other revenue prescribed by this section produces more revenue than is required to repay a state advance, if any, for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the state advance was received."

12. Page 80, line 20.

Following: "17-3-213;"

Insert: "and"

13. Page 80, line 21 through line 22.

Strike: subsections (f) and (g) in their entirety

Insert: "(f) any money appropriated by the legislature that is designated as county elementary equalization aid."

14. Page 80, line 25.

Strike: "Sales" through "revenue"

Insert: "Revenue"

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15. Page 80, line 26.

Following: "(1)"

Insert: "(a)"

16. Page 80, line 29 through page 81, line 1.

Strike: "There" on page 80, line 29 through "for" on page 81, line 1

Insert: "For"

Strike: "." on page 81, line 1

Insert: ", "

17. Page 81, line 2.

Strike: "The" through "funds"

Insert: "the revenue collected under this section"

18. Page 81, line 12.

Following: line 11

Insert: "(b) If revenue prescribed by this section produces more revenue than is required to repay a state advance, if any, for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the state advance was made."

19. Page 81, line 19.

Following: "17-3-213;"

Insert: "and"

20. Page 81, line 20 through line 21.

Strike: subsections (c) and (d) in their entirety

Insert: "(c) any money appropriated by the legislature that is designated as county high school equalization aid."

21. Page 81, line 23 through page 82 line 19.

Strike: section 84 through section 85 in their entirety

Renumber: subsequent sections

22. Page 86, line 1.

Insert: "NEW SECTION. Section 83. Reimbursement -- tax increment -- personal property. (1) The reduction in the tax increment for each urban renewal area, industrial district, or aerospace transportation and technology district that would be attributable to the elimination of the statewide equalization and university system levies under 15-10-107, 20-9-331, 20-9-333, 20-9-360, and 20-25-423 as those sections read on December 31, 2004, must be transferred from the state general fund to the special fund referred to in 7-15-4286 in equal installments each November 30 and May 31.

(2) The department shall determine the amount of property tax lost by each local government as a result of

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the amendments to 15-6-138 by [this act] for the purposes of providing local government reimbursement of the lost revenue.

(a) For the increase of the base exemption amount in 15-6-138, effective January 1, 2006, the department shall for calendar year 2006 and calendar year 2007 estimate for each local government the difference between property tax collections under 15-6-138 as amended by [this act] and the property tax revenue that would have been collected if 15-6-138 had not been amended by [this act]. The total amount of loss determined by the department must be added to each local government's base entitlement share amount under 15-1-121. The 2006 amount must be added to the base entitlement share amount for the fiscal year ending June 30, 2007, and the difference between the 2006 amount and the 2007 amount must be added to the base entitlement amount for the fiscal year ending June 30, 2008.

(b) If the salary and growth targets in 15-6-138(5) are met, the department shall determine the incremental reductions in property tax revenue to each local government for the first calendar year of each reduction and apply that amount to the next fiscal year base entitlement share amount and the difference between the first and second calendar year reductions must be added to the next fiscal year's base entitlement share amount.

(c) For the purposes of this subsection (2), "local government" has the meaning provided for in 15-1-121."

Renumber: subsequent sections

23. Page 85, line 29.

Following: "Repealer."

Insert: "(1)"

24. Page 85.

Following: line 30

Insert: "(2) If Senate Bill No. __ [LC2301] is not approved by the qualified electors at the general election held in November 2006, then [sections 18 through 48 and 55 through 62 of this act] are repealed."

25. Page 86, line 2 through line 3.

Strike: section 94 in its entirety

Renumber: subsequent sections

26. Page 86, line 10.

Following: "72"

Insert: "and 83"

27. Page 86, line 11.

Following: "72"

Insert: "and 83"

28. Page 86, line 15.

Following: "7"

Insert: ", "

Strike: "and"

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Following: "42"

Insert: ", and 82(2)"

And, as amended, do pass. Report adopted.

SB 520, introduced bill, be amended as follows:

1. Title, line 11.

Following: "DATE"

Insert: ", "

Strike: "AND"

2. Title, line 12.

Following: "DATE"

Insert: ", AND A CONTINGENT TERMINATION DATE"

3. Page 5, line 12.

Insert: "NEW SECTION. Section 10. Contingent termination. [Section 3] terminates on January 1 of the first year following the immediately preceding 2 tax years in which the voluntary checkoff raises less than \$10,000 in each of those 2 tax years."

And, as amended, do pass. Report adopted.

SB 521, introduced bill, be amended as follows:

1. Title, line 5.

Strike: "PROFIT"

Insert: "INCOME"

Following: "15-31-101"

Insert: ", "

Strike: "AND"

Following: "15-31-121,"

Insert: "AND 15-31-322,"

2. Page 1, line 12.

Strike: "profit"

Insert: "income"

3. Page 1, line 14.

Strike: "profit"

Insert: "income"

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4. Page 1.

Following: line 14

Insert: "(2) The alternative minimum fee provided for in subsection (1) applies to a corporation with at least \$20 million in annual total sales or \$4 million in annual total payroll regardless of whether the corporation has made a water's-edge election."

Renumber: subsequent subsections

5. Page 1, line 15.

Strike: ""book profit""

Insert: ""book income""

Following: "amount of"

Strike: "profit"

Insert: "income"

6. Page 1, line 20.

Strike: "profit"

Insert: "income"

7. Page 1, line 21 through line 22.

Following: "year."

Strike: remainder of line 21 through "profit." on line 22

Insert: "For the purposes of this section, "annual" means the period as reported on securities and exchange commission form 10-K or amended 10-K."

8. Page 2, line 24.

Strike: "For"

Insert: "Except as provided in [section 1], for"

9. Page 3, line 3.

Insert: "**Section 4.** Section 15-31-322, MCA, is amended to read:

"15-31-322. Water's-edge election -- inclusion of tax havens. (1) Notwithstanding any other provisions of law, except for [section 1], a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(a) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign sales corporations, as described in 26 U.S.C. 921 through 927;

(c) export trade corporations, as described in 26 U.S.C. 970 and 971;

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(d) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under 26 U.S.C. 897;

(e) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; or

(f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Turks and Caicos Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Maldives, Marshall Islands, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.

(2) The department shall report biennially to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection (1)(f)."

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

MESSAGES FROM THE GOVERNOR

March 31, 2005

The Honorable Jon Tester
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Gary Matthews
Speaker of the House
State Capitol
Helena, Montana 59620

Dear President Tester and Speaker Matthews:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments Senate Bill 61, "**AN ACT PROVIDING FOR APPOINTMENT OF TWO LEGISLATIVE LIAISONS TO THE STATE COMPENSATION INSURANCE FUND BOARD OF DIRECTORS; AUTHORIZING LIAISONS TO ATTEND BOARD MEETINGS AND RECEIVE INFORMATION AND ASSISTANCE FROM STATE COMPENSATION INSURANCE FUND STAFF; PROVIDING COMPENSATION AND LENGTH OF SERVICE; AMENDING SECTION 2-15-1019, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE**" for the following reasons.

Senate Bill 61 inserts members of the legislatures' economic affairs interim committee into the board meetings of the directors of the state compensation insurance fund. While the bill appears to be largely gratuitous since now anyone can attend the board meetings, receive agendas and request material from staff, my amendatory veto focuses only on two areas. First, subsection (10)(c) that places additional burdens on state fund staff for information and services and second that the funding for compensation is not budgeted. My proposed amendments eliminate subsection (10)(c) and adds a provision requiring that the funding for the bill be paid for out of the economic affairs interim committee affairs

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budget.

My staff has discussed my proposed amendments with the sponsor of the bill, Senator Cocchiarella, and she approves of the amendments. The amendments are attached to this letters.

Sincerely,

BRIAN SCHWEITZER
Governor

GOVERNOR'S AMENDMENTS
TO SENATE BILL 61

March 31, 2005

The Honorable Jon Tester
President of the Senate
State Capitol
Helena, Montana 59620

Dear Senator Tester:

Please be informed that I have signed **Senate Bill 16** sponsored by Senator Tropila, **Senate Bill 24** sponsored by Senator Cromley, **Senate Bill 51** sponsored by Senator Hansen, **Senate Bill 57** sponsored by Senator Laible, **Senate Bill 64** sponsored by Senator Brueggeman, **Senate Bill 84** sponsored by Senator Squires, **Senate Bill 98** sponsored by Senator Tropila, **Senate Bill 117** sponsored by Senator Cocchiarella, **Senate Bill 166** sponsored by Senator Black et al., **Senate Bill 170** sponsored by Senator Mangan, **Senate Bill 171** sponsored by Senator Gallus et al., **Senate Bill 187** sponsored by Senator Shockley, **Senate Bill 188** sponsored by Senator Cocchiarella, **Senate Bill 189** sponsored by Senator Cocchiarella, **Senate Bill 235** sponsored by Senator Mangan et al., **Senate Bill 243** sponsored by Senator Cocchiarella, and **Senate Bill 356** sponsored by Senator Essmann on March 31, 2005.

Sincerely,

BRIAN SCHWEITZER
Governor

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

3/31/2005

HB 374, introduced by Harris
HB 535, introduced by L. Jones
HB 584, introduced by Harris
HB 614, introduced by Harris
HB 689, introduced by Arntzen

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HB 698, introduced by Lange
HB 713, introduced by Franklin
HB 716, introduced by MacLaren
HB 720, introduced by Sinrud
HB 761, introduced by Noonan
HB 769, introduced by Golie

MOTIONS

Senator Mangan moved **SB 72** be blasted from Senate Finance and Claims to 2nd Reading. Motion failed as follows:

Yeas: Cocchiarella, Cromley, Curtiss, Elliott, Gallus, Gebhardt, Gillan, Grimes, Kitzenberg, Laible, Lewis, Mangan, McGee, Pease, Perry, Toole, Tropila.

Total 17

Nays: Bales, Balyeat, Barkus, Black, Cobb, Cooney, Ellingson, Esp, Essmann, Hansen, Harrington, Hawks, Keenan, Larson, Laslovich, Lind, Moss, O'Neil, Roush, Ryan, Schmidt, Shockley, Smith, Stapleton, Steinbeisser, Story, Tash, Weinberg, Wheat, Williams, Mr. President.

Total 31

Absent or not voting: None.

Total 0

Excused: Brueggeman, Squires.

Total 2

Senator Ellingson moved previous action on **HB 453** be reconsidered. Motion carried as follows:

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

Total 26

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

Total 22

Absent or not voting: None.

Total 0

Excused: Brueggeman, Squires.

Total 2

Senator Keenan moved previous action on **HB 63** be reconsidered. Motion failed as follows:

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

Total 21

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

Total 27

Absent or not voting: None.

Total 0

Excused: Brueggeman, Squires.

Total 2

Senator Ryan moved **HB 438** be taken from Senate Education and Cultural Resources and placed in Senate Finance and Claims. Motion carried.

Senator Cooney moved **HB 327** be taken from third reading and referred to Senate Finance and Claims. Motion carried.

Senator Ellingson moved action on **HB 458** be reconsidered due to a rule violation and further moved that **HB 458** be placed on 3rd reading the 69th Legislative Day. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SJR 34, introduced by Schmidt, Campbell, Cobb, Cromley, Franklin, Henry, Hiner, Lambert, Moss, Roberts, Tash, Williams, referred to Public Health, Welfare and Safety.

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

SR 15, introduced by Cooney, referred to State Administration.

SR 16, introduced by Cooney, referred to State Administration.

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

HB 374, introduced by Harris, Hamilton, Becker, Dickenson, Wiseman, Jacobson, Villa, Cohenour, Campbell, referred to Judiciary.

HB 535, introduced by L. Jones, referred to Taxation.

HB 614, introduced by Harris, Villa, Cohenour, Dickenson, Callahan, Maedje, Jacobson, Parker, , Henry, Musgrove, Campbell, Lindeen, Wanzenried, Grinde, Clark, Noonan, Eaton, Bergren, Raser, Wilson, Gutsche, Jopek, Dowell, McAlpin, Branae, Small-Eastman, Hendrick, Galvin-Halcro, referred to Local Government.

HB 689, introduced by Arntzen, Facey, Noonan, Bergren, Hendrick, Maedje, McAlpin, Witt, Waitschies, Lambert, referred to Taxation.

HB 713, introduced by Franklin, referred to Finance and Claims.

HB 716, introduced by MacLaren, Himmelberger, Clark, Lange, R. Brown, Rice, Arntzen, Witt, Lindeen, Bergren, referred to Taxation.

HB 720, introduced by Sinrud, referred to Local Government.

HB 761, introduced by Noonan, Gallus, Matthews, Tester, Wanzenried, referred to Finance and Claims.

HB 769, introduced by Golie, Hansen, Schmidt, Smith, Tester, Witt, referred to Highways and Transportation.

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**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 Story in the chair.

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

HB 681 - Senator Ryan moved **HB 681** be concurred in.

HB 681 - Senator Ryan moved **HB 681**, second reading copy, be amended as follows:

1. Page 16.

Following: line 3

Insert: "COORDINATION SECTION. Section 14. Coordination instruction. If House Bill No. 574 and [this act] are both passed and approved, then [sections 2 and 3] of [this act] must read as follows:

NEW SECTION. Section 2. District annexation. (1) As used in this section, the following definitions apply:

(a) "Annexing district" means the district to which another district is being attached through an annexation procedure.

(b) "District to be annexed" means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of [section 1] is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located shall first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the

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ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in the annexed territory and in the annexing district. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition."

"NEW SECTION. Section 3. District consolidation. (1) Any two or more contiguous elementary school districts may consolidate to organize an elementary district. Any two or more contiguous high school districts may be consolidated to organize a high school district. Any two or more contiguous K-12 school districts may be consolidated to organize a K-12 school district. The consolidation must be conducted as provided in this section.

(2) (a) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a consolidation proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a consolidation proposition involving their district.

(b) The resolution or petition must state whether the consolidation is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the consolidation. The resolution or petition from each district must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the consolidation proposition may not be considered further.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each district included in the consolidation proposition to call a consolidation election to be held no later than December 31 preceding the school year in which the consolidation is to become effective. If the districts involved in the consolidation proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be consolidated are to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation

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with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(6) If the districts to be consolidated are not to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the consolidation proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, the appropriate county superintendent shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the consolidation of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for consolidation with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the consolidated district;

(ii) specify the number of the consolidated district; and

(iii) establish an interim board of trustees for the consolidated district as provided in [section 4]. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the consolidation proposition is located and to the trustees of each district incorporated in the consolidation order.

(8) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the consolidation proposition."

Amendment adopted unanimously.

HB 681 - Senator Ryan moved **HB 681**, as amended, be concurred in. Motion carried unanimously.

HB 721 - Senator Laslovich moved **HB 721** be concurred in.

HB 721 - Senator Mangan moved **HB 721**, second reading copy, be amended as follows:

1. Title, line 12.

Following: line 11

Strike: "DISTRICT"

2. Page 1, line 21.

Following: "state"

Strike: "district"

3. Page 2, line 3.

Following: "state"

Strike: "district"

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4. Page 2, line 23.

Following: "by a"

Strike: "district"

5. Page 3, line 6.

Following: "a"

Strike: "department of corrections"

6. Page 3, line 19.

Following: "district"

Insert: "or court of limited jurisdiction"

Amendment adopted unanimously.

HB 721 - Senator Laslovich moved **HB 721**, as amended, be concurred in. Motion carried unanimously.

HB 40 - Senator Cromley moved **HB 40** be concurred in. Motion carried unanimously.

HB 68 - Senator Stapleton moved **HB 68** be concurred in. Motion carried unanimously.

HB 159 - Senator Tropila moved **HB 159** be concurred in. Motion carried unanimously.

HB 280 - Senator Mangan moved **HB 280** be concurred in. Motion carried as follows:

Yeas: Bales, Black, Cocchiarella, Cooney, Elliott, Esp, Gebhardt, Gillan, Grimes, Harrington, Hawks, Keenan, Kitzenberg, Laible, Laslovich, Lewis, Lind, Mangan, McGee, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Mr. President.

Total 35

Nays: Balyeat, Barkus, Cromley, Curtiss, Ellingson, Essmann, Gallus, Hansen, Larson, O'Neil, Shockley, Williams.

Total 12

Absent or not voting: Cobb.

Total 1

Excused: Brueggeman, Squires.

Total 2

HB 295 - Senator Lewis moved **HB 295** be concurred in. Motion carried with Senators McGee, O'Neil, and Stapleton voting nay.

HB 327 - Senator Weinberg moved **HB 327** be concurred in. Motion carried unanimously.

HB 331 - Senator Wheat moved **HB 331** be concurred in.

HB 331 - Senator Tester moved **HB 331**, second reading copy, be amended as follows:

1. Page 2, line 8.

Strike: "PREMIUMS ON PROFESSIONAL MALPRACTICE INSURANCE AND"

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2. Page 3, line 29.

Strike: "AND"

Insert: "or"

3. Page 3, line 30 through page 4, line 1.

Strike: "INSURERS WRITING" on page 3, line 30 through "INSURANCE AND" on page 4, line 1

Amendment adopted as follows:

Yeas: Balyeat, Barkus, Black, Cocchiarella, Curtiss, Ellingson, Elliott, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Keenan, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Steinbeisser, Toole, Tropila, Weinberg, Williams, Mr. President.

Total 34

Nays: Bales, Cobb, Cooney, Cromley, Esp, Grimes, Mangan, O'Neil, Shockley, Stapleton, Story, Tash, Wheat.

Total 13

Absent or not voting: Kitzenberg.

Total 1

Excused: Brueggeman, Squires.

Total 2

HB 331 - Senator Wheat moved **HB 331**, as amended, be concurred in. Motion carried as follows:

Yeas: Black, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Smith, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 39

Nays: Bales, Balyeat, Barkus, Essmann, Gebhardt, McGee, O'Neil, Perry, Shockley.

Total 9

Absent or not voting: None.

Total 0

Excused: Brueggeman, Squires.

Total 2

HB 348 - Senator Grimes moved **HB 348** be concurred in.

HB 348 - Senator Cocchiarella moved **HB 348**, second reading copy, be amended as follows:

1. Page 2, lines 4 through 6.

Strike: subsection (b) in its entirety

Insert: "(b) "Licensee" means a person who is licensed under Title 16, chapter 4, and who sells kegs to a consumer."

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Amendment adopted unanimously.

HB 348 - Senator Grimes moved **HB 348**, as amended, be concurred in. Motion carried unanimously.

HB 361 - Senator Gebhardt moved **HB 361** be concurred in.

HB 361 - Senator Gebhardt moved **HB 361**, second reading copy, be amended as follows:

1. Title, line 6.

Strike: "ELIMINATING"

Insert: "REVISING"

2. Title, line 7.

Following: "~~82-4-405~~;"

Insert: "82-4-405,"

3. Title, line 9.

Following: "DATE"

Insert: "AND A TERMINATION DATE"

4. Page 4, line 10.

Insert: "**Section 4.** Section 82-4-405, MCA, is amended to read:

"82-4-405. Inapplicability to government. The Except as provided in 82-4-432, the provisions of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns."

Renumber: subsequent sections

5. Page 9.

Following: line 15

Insert: "(b) a fee of \$100 for an application by a government agency referred to in 82-4-405 to mine bentonite, clay, scoria, sand, or gravel after January 1, 2006;"

Renumber: subsequent subsections

6. Page 19, line 5.

Strike: "82-4-422(2)(b)(iii)"

Insert: "82-4-422(1)(f)"

7. Page 19.

Following: line 6

Insert: "NEW SECTION. **Section 22. Termination.** [This act] terminates June 30, 2010."

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Amendment adopted unanimously.

HB 361 - Senator Gebhardt moved **HB 361**, as amended, be concurred in. Motion carried with Senators Balyeat, Esp, O'Neil, and Smith voting nay.

Senator Ellingson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Story 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:

HB 63 concurred in as follows:

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

Total 28

Nays: 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

Paired: Squires, Aye; Brueggeman, No.

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 453 concurred in as follows:

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

Total 27

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

Total 23

Paired: Squires, Aye; Brueggeman, No.

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

UNFINISHED BUSINESS

Minority Leader Keenan inquired about finishing the session early.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 12:30 p.m., Friday, April 1, 2005. Motion carried.

Senate adjourned at 3:05 p.m.

BILL LOMBARDI
Secretary of Senate

JON TESTER
President of the Senate