

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

Helena, Montana  
April 1, 2005

Senate Chambers  
State Capitol

Senate convened at 12:30 a.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

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

Total 43

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

Total 4

Absent or not voting: None.

Total 0

Excused: Cromley, Gillan, Keenan.

Total 3

**REPORTS OF STANDING COMMITTEES**

**BILLS AND JOURNAL:**

4/1/2005

Correctly printed: **SJR 35, HB 153, HB 170, HB 172, HB 199, HB 204, HB 316, HB 326, HB 436, HB 451, HB 483, HB 492, HB 514, HB 606, HB 666, HB 695, HB 772, HJR 15.**

Correctly engrossed: **SB 19, SB 450, SB 523, HB 474, HB 517, HB 536, HB 645.**

Correctly enrolled: **SB 21, SB 77, SB 126, SB 206, SB 286, SB 375, SB 401, SB 451, SB 479.**

**BUSINESS, LABOR, AND ECONOMIC AFFAIRS** (Cocchiarella, Chairman):

4/1/2005

**HB 772**, be concurred in. Report adopted.

**HIGHWAYS AND TRANSPORTATION** (Pease, Chairman):

4/1/2005

**HB 170**, be concurred in. Report adopted.

**HB 451**, be concurred in. Report adopted.

**HB 645**, be amended as follows:

1. Page 5, line 30.

**Insert:** "COORDINATION SECTION. Section 3. Coordination instruction. If both House Bill No. 671 and [this act] are passed and approved, then 49-4-301 must be amended as follows:

**"49-4-301. Eligibility for special parking permit.** (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and ~~who, as determined by~~ for whom a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, submits a certification to the department, by electronic or other means

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prescribed by the department, that the person meets one of the following criteria:

- (a) cannot walk 200 feet without stopping to rest;
- (b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;
- (c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) uses portable oxygen;
- (e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- (f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or
- (g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under ~~61-3-332(11)~~ 61-3-332(9). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a ~~new~~ later paper or electronic certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, by application to the department, by electronic or other means prescribed by the department, be issued a special license plate under 61-3-332(9) and is not required to reapply for the special license plate when the vehicle is reregistered.

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit.""

**Insert:** "COORDINATION SECTION. Section 4. Coordination instruction. If both House Bill No. 671 and [this act] are passed and approved, then the code commissioner shall change all of the references to vehicle in subsection (11)(c) of 61-3-332 in [this act] to references to motor vehicles."

**Renumber:** subsequent sections

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

**JUDICIARY** (Wheat, Chairman):

4/1/2005

**HB 204**, be concurred in. Report adopted.

**HB 326**, be concurred in. Report adopted.

**HB 474**, be amended as follows:

1. Page 1, line 18.

**Following:** "(2)"

**Insert:** "(a)"

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2. Page 1, line 19.

**Strike:** "(a)"

**Insert:** "(i)"

**Renumber:** subsequent subsections

3. Page 1, line 22.

**Following:** line 21

**Insert:** "(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit."

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

**HB 536**, be amended as follows:

1. Title, line 5.

**Strike:** "~~EXTENDING~~"

**Insert:** "REMOVING"

2. Title, line 7.

**Following:** "TECHNOLOGY;"

**Insert:** "REQUIRING THE SUPREME COURT ADMINISTRATOR TO REPORT TO THE LEGISLATURE ON THE STATUS OF JUDICIAL BRANCH INFORMATION TECHNOLOGY AND TO COORDINATE WITH THE STATE STRATEGIC INFORMATION TECHNOLOGY PLAN;"

**Strike:** "SECTION"

**Insert:** "SECTIONS"

**Following:** "3-1-317"

**Insert:** "AND 3-1-702"

3. Title, line 7 through line 8.

**Following:** "MCA" on line 7

**Strike:** remainder of line 7 through "LAWS OF 2003" on line 8

4. Title, line 9.

**Following:** "~~2003~~"

**Insert:** ", AND SECTION 5, CHAPTER 498, LAWS OF 2003"

5. Page 1, line 30 through page 2, line 1.

**Strike:** section 2 in its entirety

**Insert:** "**Section 2.** Section 3-1-702, MCA, is amended to read:

"**3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate

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information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

- ~~(3)~~(4) recommend to the supreme court improvements in the judiciary;
- ~~(4)~~(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;
- ~~(5)~~(6) administer state funding for district courts, as provided in chapter 5, part 9;
- ~~(6)~~(7) administer the judicial branch personnel plan; and
- ~~(7)~~(8) perform other duties that the supreme court may assign."

6. Page 2, line 4.

**Strike:** "IS"

**Insert:** "and section 5, Chapter 498, Laws of 2003, are"

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

**HB 695**, be concurred in. Report adopted.

**LOCAL GOVERNMENT** (Mangan, Chairman):

4/1/2005

**HB 436**, be concurred in. Report adopted.

**HB 666**, be concurred in. Report adopted.

**TAXATION** (Elliott, Chairman):

4/1/2005 4/1/2005

**SB 19**, introduced bill, be amended as follows:

1. Title, line 4.

**Strike:** "A CLASS FOURTEEN TAX CATEGORY"

**Insert:** "PROPERTY TAX INCENTIVES"

**Strike:** "OR"

**Insert:** "AND"

2. Title, line 5 through line 7.

**Strike:** "DEFINING" on line 5 through "CATEGORY;" on line 7

**Insert:** "ALLOWING STATE AND LOCAL GOVERNMENT TAX ABATEMENTS;"

**Following:** "SECTIONS"

**Insert:** "15-2-302,"

3. Title, page 8.

**Strike:** "15-24-1402, AND 20-9-407"

**Insert:** "15-24-1401, 20-1-208, AND 90-6-205"

**Strike:** "SECTION 15-24-1401,"

**Insert:** "SECTIONS 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2404, 15-24-2405, AND 20-9-407,"

4. Page 1, line 12, through page 6, line 3.

**Strike:** everything after the enacting clause

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**Insert:** "NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 6] is to permit local governments and the state of Montana to work cooperatively to generate good-paying jobs and economic growth by encouraging, through tax incentives, the creation and expansion of business enterprises that produce goods or services within the state and then export those goods or services to customers located outside of Montana for use outside of the state."

**Insert:** "NEW SECTION. Section 2. Definitions. For purposes of [sections 1 through 6], the following definitions apply:

(1) "Business enterprise" means a business that derives more than 50% of its annual gross revenue from sales outside of Montana or one that produces value-added products or commodities.

(2) "Expanding business enterprise" means a business enterprise that expands its existing operations on or after January 1, 2006, by employing a minimum of 10 additional qualifying employees.

(3) "Expanding business enterprise property" means buildings, machinery, and fixtures, owned by an expanding business enterprise and acquired on or after the date of expansion, that is:

(a) necessary for the employment of qualifying employees; and

(b) utilized by the business enterprise throughout the qualifying period.

(4) "New business enterprise" means a business enterprise commencing initial operations within the state on or after January 1, 2006, and employing at least 10 qualifying employees.

(5) "New business enterprise property" means buildings, machinery, and fixtures owned by a new business enterprise that are:

(a) necessary for the employment of qualifying employees; and

(b) utilized by the business enterprise throughout the qualifying period.

(6) "Qualifying employee" means a permanent, full-time employee who is:

(a) paid the lesser of either the county average annual wage or the Montana average annual wage as determined by the department of labor and industry through its quarterly census of employment and wages program;

(b) necessary for the new or expanded business enterprise to produce value-added products or commodities;

and

(c) employed during the entire applicable qualifying period.

(7) "Qualifying period" means:

(a) for the purposes of [sections 1 through 5]:

(i) the first 3 years of a new business enterprise's operation; or

(ii) the first 3 years of an expanding business enterprise's expanded operations; or

(b) for the purposes of [section 6], the time period during which the new or expanding business enterprise may qualify for the local tax abatement.

(8) (a) "Value-added products or commodities" means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce.

(b) The term does not include services, transportation, or sales, unless they are incidental to the production of the product or commodity.

(c) Examples of value-added products or commodities include but are not limited to processed foods, lumber products, matte, software, manufactured homes, processed dairy products, slaughter-ready and butchered livestock, refined petroleum products, and ethanol. Examples of products or commodities that are not valued-added include but are not limited to unprocessed grain, logs, Christmas trees, milled ore, residential or commercial construction affixed to real estate, raw milk, feeder cattle, crude oil, and natural gas."

**Insert:** "NEW SECTION. Section 3. New and expanding business enterprise property tax abatement. (1) A new or expanding business enterprise may qualify for an abatement of the business enterprise's property tax liability pursuant to [section 4].

(2) If the abatement is granted, the qualifying new or expanding business enterprise property must be taxed at 33% of its taxable value for the qualifying period.

(3) The abatement applies to all mills levied against the qualifying property.

(4) Upon the termination of the qualifying period, the abatement ceases and the property for which the

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abatement had been granted must be taxed according to its classification.

(5) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 6]."

**Insert: "NEW SECTION. Section 4. Application -- approval.** (1) In order for a taxpayer to receive the abatement described in [section 3], the taxpayer shall submit an application for abatement to the department. The taxpayer shall submit a copy of the application to the governing body of the county or city or town in which the property for which the abatement is requested is located. The application must be on a form prescribed by the department and must include a requirement that the applicant:

(a) disclose any potential environmental impacts caused by the project; and

(b) be in compliance with all federal and state environmental and health standards and permit requirements.

(2) The application must be accompanied by payroll, sales, and other records necessary to allow the department and the local governing body to determine the applicant's ability to qualify for the abatement.

(3) Following due notice and opportunity for hearing, the governing body shall approve or deny the application. The governing body shall immediately notify the department and all taxing jurisdictions affected by the abatement of its decision.

(4) The governing body may prescribe additional criteria upon which it will approve or deny an application for abatement under this section.

(5) If the governing body denies the application, the application is considered to be denied in its entirety and the abatement will not be granted. The department is not required to further process the application.

(6) If the governing body approves the application, the department shall, upon receipt of the notice described in subsection (3) and a fee paid by the applicant in an amount determined by the department, process the application and grant or deny the abatement. The department shall notify the applicant and the governing body of its decision.

(7)(a) For purposes of determining whether a new business enterprise will qualify for the abatement in its initial year of operation, the department may consider, among other things, the business enterprise's projected or contracted sales for that year and whether the abatement is necessary for the investment to occur.

(b) If the department determines that the business enterprise did not actually derive more than 50% of its annual gross revenue from sales of goods or services produced within the state to customers located outside of Montana for use outside of the state during the first full year of the business enterprise's operation, the business enterprise must be considered to be in default."

**Insert: "NEW SECTION. Section 5. Reporting -- default -- remedy.** (1) A taxpayer who has been granted an abatement under [section 3] shall submit quarterly reports to the department on a form prescribed by the department. The reports must include payroll, sales, and other records necessary to allow the department to determine the applicant's continuing qualification for the abatement.

(2) The department shall review the quarterly reports and make an annual determination regarding the taxpayer's continued qualification for the abatement.

(3) If, after having been granted the abatement under [section 3], the department determines that a taxpayer has failed to meet the annual qualification requirements for any year, the taxpayer must be considered to be in default.

(4) If a taxpayer is considered to be in default, the taxpayer shall forfeit the abatement. Upon default, the property must be taxed at 100% of its taxable value beginning January 1 of the year in which the taxpayer defaulted and any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional taxes resulting from the default.

(5) A taxpayer that has forfeited any portion of its abatement due to default may not reapply for an abatement under [section 4]."

**Insert: "NEW SECTION. Section 6. New or expanding business enterprise local tax abatement.** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent a new business enterprise or expansion of an existing business enterprise, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must

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be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application must be accompanied by a fee established by the department. The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. If the local governing body of the affected taxing jurisdiction has approved the application and the department has determined that the investment would not occur without the abatement, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

(6) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 3]."

**Insert: "Section 7.** Section 15-2-302, MCA, is amended to read:

**"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- ~~(b)~~ classification of property as new industrial property;
- ~~(c)~~ any other tax, other than the property tax, imposed under this title; or
- ~~(d)~~ any other matter in which the appeal is provided by law.

(2) (a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party.

(3) The department shall file with the board an answer within 30 days following filing of a complaint, or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department's response to each ground for and type of relief demanded in the complaint.

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(4) (a) Except as provided in subsection (4)(b), the board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

**Insert: "Section 8.** Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property -- description -- taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

~~(c) new industrial property as defined in this section;~~

~~(d)~~(c) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

~~(e)~~(d) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

~~(f)~~(e) machinery and equipment used in electrolytic reduction facilities;

~~(g)~~(f) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) ~~"New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.~~

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- ~~\_\_\_\_\_ (b) New industrial property does not include:~~
- ~~\_\_\_\_\_ (i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~
- ~~\_\_\_\_\_ (ii) a plant that will create adverse impact on existing state, county, or municipal services; or~~
- ~~\_\_\_\_\_ (iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.~~
- ~~\_\_\_\_\_ (4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.~~
- ~~\_\_\_\_\_ (b) New industry includes only those industries that:~~
- ~~\_\_\_\_\_ (i) manufacture, mill, mine, produce, process, or fabricate materials;~~
- ~~\_\_\_\_\_ (ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;~~
- ~~\_\_\_\_\_ (iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;~~
- ~~\_\_\_\_\_ (iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or~~
- ~~\_\_\_\_\_ (v) earn 50% or more of their annual gross income from out-of-state sales.~~
- ~~(5)(3) Class five property is taxed at 3% of its market value."~~

**Insert: "Section 9.** Section 15-24-1401, MCA, is amended to read:

**"15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, and before [the effective date of this act] at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales; or

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 15-6-225.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, and before [the effective date of this act] at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial or expanding business enterprise property under ~~15-6-135~~ [section 3].

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section."

**Insert: "Section 10.** Section 20-1-208, MCA, is amended to read:

**"20-1-208. Educational impact statements.** When a county superintendent of schools finds that a person

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~~intends to construct or locate a major industrial facility, as defined in 20-9-407, or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:~~

- ~~(1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;~~
- ~~(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;~~
- ~~(3) the number of school-age children anticipated to be living with the persons enumerated in the preceding categories; and~~
- ~~(4) the time periods covered by each preceding estimate."~~

**Insert:** "Section 11. Section 90-6-205, MCA, is amended to read:

**"90-6-205. Coal board -- general powers.** The board may:

- (1) retain professional consultants and advisors;
- (2) adopt rules governing its proceedings;
- (3) consider applications for grants from available funds; and
- (4) award grants, subject to 90-6-207, from available funds:
  - (a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and
  - (b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and
- ~~(5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board shall award the grant in accordance with 90-6-206."~~

**Insert:** "NEW SECTION. Section 12. Repealer. Sections 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2404, 15-24-2405, and 20-9-407, MCA, are repealed."

**Insert:** "NEW SECTION. Section 13. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 6]."

And, as amended, do pass. Report adopted.

**SB 450**, introduced bill, be amended as follows:

1. Title, line 6.

**Following:** line 5

**Insert:** "STATEWIDE"

**Following:** "TAXES"

**Insert:** "OR FEES"

**Strike:** "CHANGED TO REDUCE ANY"

**Insert:** "IMPOSED ON CERTAIN CLASSES OF PROPERTY IF"

**Following:** "RELIEF"

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**Insert:** "IS"

2. Page 1, line 15 through line 16.

**Strike:** "property" on line 15 through "relief" on line 16

**Insert:** "no statewide tax or fee on property may be levied on class three, class four, or class ten property as those classes were defined on January 1, 2007"

3. Page 1, line 21.

**Strike:** "providing that any"

**Insert:** "limiting property taxes levied by the state if"

**Following:** "relief"

**Insert:** "is"

4. Page 1, line 22.

**Strike:** "may not be reduced"

5. Page 1, line 23.

**Strike:** "providing that any"

**Insert:** "limiting property taxes levied by the state if"

**Following:** "relief"

**Insert:** "is"

6. Page 1, line 24.

**Strike:** "may not be reduced"

And, as amended, do pass. Report adopted.

**SB 523**, introduced bill, be amended as follows:

1. Title, page 6.

**Following:** "EXCEPTIONS,"

**Insert:** "TOGETHER WITH OTHER TAX REVISIONS,"

2. Page 1, line 12.

**Strike:** "93(2)"

**Insert:** "82(2)"

3. Page 1, line 13.

**Strike:** "93(2)"

**Insert:** "82(2)"

4. Page 1, line 14.

**Following:** "exceptions"

**Insert:** "and other tax revisions"

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5. Page 1, line 20.

**Following:** "use tax"

**Insert:** "and other tax revisions"

6. Page 1, line 22.

**Following:** "use tax"

**Insert:** "and other tax revisions"

And, as amended, do pass. Report adopted.

**TAXATION** (Elliott, Chairman):

4/1/2005

**SB 19**, introduced bill, be amended as follows:

1. Title, line 4.

**Strike:** "A CLASS FOURTEEN TAX CATEGORY"

**Insert:** "PROPERTY TAX INCENTIVES"

**Strike:** "OR"

**Insert:** "AND"

2. Title, line 5 through line 7.

**Strike:** "DEFINING" on line 5 through "CATEGORY;" on line 7

**Insert:** "ALLOWING STATE AND LOCAL GOVERNMENT TAX ABATEMENTS;"

**Following:** "SECTIONS"

**Insert:** "15-2-302,"

3. Title, page 8.

**Strike:** "15-24-1402, AND 20-9-407"

**Insert:** "15-24-1401, 20-1-208, AND 90-6-205"

**Strike:** "SECTION 15-24-1401,"

**Insert:** "SECTIONS 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2404, 15-24-2405, AND 20-9-407,"

4. Page 1, line 12, through page 6, line 3.

**Strike:** everything after the enacting clause

**Insert:** "NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 6] is to permit local governments and the state of Montana to work cooperatively to generate good-paying jobs and economic growth by encouraging, through tax incentives, the creation and expansion of business enterprises that produce goods or services within the state and then export those goods or services to customers located outside of Montana for use outside of the state."

**Insert:** "NEW SECTION. Section 2. Definitions. For purposes of [sections 1 through 6], the following definitions apply:

(1) "Business enterprise" means a business that derives more than 50% of its annual gross revenue from sales outside of Montana or one that produces value-added products or commodities.

(2) "Expanding business enterprise" means a business enterprise that expands its existing operations on or

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after January 1, 2006, by employing a minimum of 10 additional qualifying employees.

(3) "Expanding business enterprise property" means buildings, machinery, and fixtures, owned by an expanding business enterprise and acquired on or after the date of expansion, that are:

- (a) necessary for the employment of qualifying employees; and
- (b) utilized by the business enterprise throughout the qualifying period.

(4) "New business enterprise" means a business enterprise commencing initial operations within the state on or after January 1, 2006, and employing at least 10 qualifying employees.

(5) "New business enterprise property" means buildings, machinery, and fixtures owned by a new business enterprise that are:

- (a) necessary for the employment of qualifying employees; and
  - (b) utilized by the business enterprise throughout the qualifying period.
- (6) "Qualifying employee" means a permanent, full-time employee who is:

(a) paid the lesser of either the county average annual wage or the Montana average annual wage as determined by the department of labor and industry through its quarterly census of employment and wages program;

(b) necessary for the new or expanded business enterprise to produce value-added products or commodities;

and

(c) employed during the entire applicable qualifying period.

(7) "Qualifying period" means:

(a) for the purposes of [sections 1 through 5]:

- (i) the first 3 years of a new business enterprise's operation; or
- (ii) the first 3 years of an expanding business enterprise's expanded operations; or

(b) for the purposes of [section 6], the time period during which the new or expanding business enterprise may qualify for the local tax abatement.

(8) (a) "Value-added products or commodities" means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce.

(b) The term does not include services, transportation, or sales, unless they are incidental to the production of the product or commodity.

(c) Examples of value-added products or commodities include but are not limited to processed foods, lumber products, matte, software, manufactured homes, processed dairy products, slaughter-ready and butchered livestock, refined petroleum products, and ethanol. Examples of products or commodities that are not valued-added include but are not limited to unprocessed grain, logs, Christmas trees, milled ore, residential or commercial construction affixed to real estate, raw milk, feeder cattle, crude oil, and natural gas."

**Insert: "NEW SECTION. Section 3. New and expanding business enterprise property tax abatement.** (1) A new or expanding business enterprise may qualify for an abatement of the business enterprise's property tax liability pursuant to [section 4].

(2) If the abatement is granted, the qualifying new or expanding business enterprise property must be taxed at 33% of its taxable value for the qualifying period.

(3) The abatement applies to all mills levied against the qualifying property.

(4) Upon the termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be taxed according to its classification.

(5) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 6]."

**Insert: "NEW SECTION. Section 4. Application -- approval.** (1) In order for a taxpayer to receive the abatement described in [section 3], the taxpayer shall submit an application for abatement to the department. The taxpayer shall submit a copy of the application to the governing body of the county or city or town in which the property for which the abatement is requested is located. The application must be on a form prescribed by the department and must include a requirement that the applicant:

- (a) disclose any potential environmental impacts caused by the project; and

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- (b) be in compliance with all federal and state environmental and health standards and permit requirements.
- (2) The application must be accompanied by payroll, sales, and other records necessary to allow the department and the local governing body to determine the applicant's ability to qualify for the abatement.
- (3) Following due notice and opportunity for hearing, the governing body shall approve or deny the application. The governing body shall immediately notify the department and all taxing jurisdictions affected by the abatement of its decision.
- (4) The governing body may prescribe additional criteria upon which it will approve or deny an application for abatement under this section.
- (5) If the governing body denies the application, the application is considered to be denied in its entirety and the abatement will not be granted. The department is not required to further process the application.
- (6) If the governing body approves the application, the department shall, upon receipt of the notice described in subsection (3) and a fee paid by the applicant in an amount determined by the department, process the application and grant or deny the abatement. The department shall notify the applicant and the governing body of its decision.

(7)(a) For purposes of determining whether a new business enterprise will qualify for the abatement in its initial year of operation, the department may consider, among other things, the business enterprise's projected or contracted sales for that year and whether the abatement is necessary for the investment to occur.

(b) If the department determines that the business enterprise did not actually derive more than 50% of its annual gross revenue from sales of goods or services produced within the state to customers located outside of Montana for use outside of the state during the first full year of the business enterprise's operation, the business enterprise must be considered to be in default."

**Insert: "NEW SECTION. Section 5. Reporting -- default -- remedy.** (1) A taxpayer who has been granted an abatement under [section 3] shall submit quarterly reports to the department on a form prescribed by the department. The reports must include payroll, sales, and other records necessary to allow the department to determine the applicant's continuing qualification for the abatement.

(2) The department shall review the quarterly reports and make an annual determination regarding the taxpayer's continued qualification for the abatement.

(3) If, after having been granted the abatement under [section 3], the department determines that a taxpayer has failed to meet the annual qualification requirements for any year, the taxpayer must be considered to be in default.

(4) If a taxpayer is considered to be in default, the taxpayer shall forfeit the abatement. Upon default, the property must be taxed at 100% of its taxable value beginning January 1 of the year in which the taxpayer defaulted and any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional taxes resulting from the default.

(5) A taxpayer that has forfeited any portion of its abatement due to default may not reapply for an abatement under [section 4]."

**Insert: "NEW SECTION. Section 6. New or expanding business enterprise local tax abatement.** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent a new business enterprise or expansion of an existing business enterprise, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or

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modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application must be accompanied by a fee established by the department. The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. If the local governing body of the affected taxing jurisdiction has approved the application and the department has determined that the investment would not occur without the abatement, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

(6) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 3]."

**Insert: "Section 7.** Section 15-2-302, MCA, is amended to read:

**"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

(a) property centrally assessed under chapter 23;

~~(b) classification of property as new industrial property;~~

~~(e)~~(b) any other tax, other than the property tax, imposed under this title; or

~~(d)~~(c) any other matter in which the appeal is provided by law.

(2) (a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party.

(3) The department shall file with the board an answer within 30 days following filing of a complaint, or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) (a) Except as provided in subsection (4)(b), the board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed

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or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

**Insert: "Section 8.** Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property -- description -- taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

~~(c) new industrial property as defined in this section;~~

~~(d)(c)~~ any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

~~(e)(d)~~ all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

~~(f)(e)~~ machinery and equipment used in electrolytic reduction facilities;

~~(g)(f)~~ all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

~~(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.~~

~~———— (b) New industrial property does not include:~~

~~———— (i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

~~———— (ii) a plant that will create adverse impact on existing state, county, or municipal services; or~~

~~———— (iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.~~

~~———— (4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.~~

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- ~~(b) New industry includes only those industries that:~~
- ~~(i) manufacture, mill, mine, produce, process, or fabricate materials;~~
- ~~(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;~~
- ~~(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;~~
- ~~(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or~~
- ~~(v) earn 50% or more of their annual gross income from out-of-state sales.~~
- ~~(5)(3) Class five property is taxed at 3% of its market value."~~

**Insert: "Section 9.** Section 15-24-1401, MCA, is amended to read:

**"15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, and before [the effective date of this act] at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales; or

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 15-6-225.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, and before [the effective date of this act] at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial or expanding business enterprise property under ~~15-6-135~~ [section 3].

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section."

**Insert: "Section 10.** Section 20-1-208, MCA, is amended to read:

**"20-1-208. Educational impact statements.** When a county superintendent of schools finds that a person ~~intends to construct or locate a major industrial facility, as defined in 20-9-407,~~ or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the ~~major industrial facility or~~ strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the ~~major industrial facility or~~ strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school-age children anticipated to be living with the persons enumerated in the preceding

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categories; and

(4) the time periods covered by each preceding estimate.""

**Insert:** "**Section 11.** Section 90-6-205, MCA, is amended to read:

**"90-6-205. Coal board -- general powers.** The board may:

- (1) retain professional consultants and advisors;
- (2) adopt rules governing its proceedings;
- (3) consider applications for grants from available funds; and
- (4) award grants, subject to 90-6-207, from available funds:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and

(b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; **and**

~~\_\_\_\_\_ (5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board shall award the grant in accordance with 90-6-206. ""~~

**Insert:** "**NEW SECTION. Section 12. Repealer.** Sections 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2404, 15-24-2405, and 20-9-407, MCA, are repealed."

**Insert:** "**NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 6]."

And, as amended, do pass. Report adopted.

4/1/2005

**SB 450**, introduced bill, be amended as follows:

1. Title, line 6.

**Following:** line 5

**Insert:** "STATEWIDE"

**Following:** "TAXES"

**Insert:** "OR FEES"

**Strike:** "CHANGED TO REDUCE ANY"

**Insert:** "IMPOSED ON CERTAIN CLASSES OF PROPERTY IF"

**Following:** "RELIEF"

**Insert:** "IS"

2. Page 1, line 15 through line 16.

**Strike:** "property" on line 15 through "relief" on line 16

**Insert:** ", no statewide tax or fee on property may be levied on class three, class four, or class ten property as those classes were defined on January 1, 2007"

3. Page 1, line 21.

**Strike:** "providing that any"

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**Insert:** "limiting property taxes levied by the state if"

**Following:** "relief"

**Insert:** "is"

4. Page 1, line 22.

**Strike:** "may not be reduced"

5. Page 1, line 23.

**Strike:** "providing that any"

**Insert:** "limiting property taxes levied by the state if"

**Following:** "relief"

**Insert:** "is"

6. Page 1, line 24.

**Strike:** "may not be reduced"

And, as amended, do pass. Report adopted.

**SB 523**, introduced bill, be amended as follows:

1. Title, page 6.

**Following:** "EXCEPTIONS,"

**Insert:** "TOGETHER WITH OTHER TAX REVISIONS,"

2. Page 1, line 12.

**Strike:** "93(2)"

**Insert:** "82(2)"

3. Page 1, line 13.

**Strike:** "93(2)"

**Insert:** "82(2)"

4. Page 1, line 14.

**Following:** "exceptions"

**Insert:** "and other tax revisions"

5. Page 1, line 20.

**Following:** "use tax"

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6. Page 1, line 22.

**Following:** "use tax"

**Insert:** "and other tax revisions"

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And, as amended, do pass. Report adopted.

**MESSAGES FROM THE GOVERNOR**

April 1, 2005

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

Dear Senator Tester:

Board of Banking 2-15-1025

The board is composed of six members. The members of the board must be appointed with consideration given banks of small, medium, and large size and to geographical distribution. Two of the six members must be active officers in state banks of Montana; one must be an active officer of a national bank doing business in Montana; and three must be members of the public, none of whom is an officer, director, or shareholder of any state or national bank. Terms are for three years, and members may not serve more than two consecutive terms. Holdover members include one public member, a state bank officer from a large-size bank, and a national bank officer from a medium-size bank. One public member has resigned, creating an immediate vacancy on the board.

**Evelyn Casterline, 2891 MT Hwy 13, Vida MT 59274**

Work phone: 406-525-3792; Home phone: 406-525-3795

Appointment date: 3/31/2005; Term ends: July 1, 2007 [Filling vacancy]

Qualification: public member

Casterline grew up in Cow Creek, a community in Northeastern Montana, and graduated from Wolf Point High School. For many years, she and her husband Keith operated a family farm outside Vida, which is now run by her daughter and son-in-law. In addition to farming, Casterline worked for the McCone County Disaster and Emergency Services office for nine years. She's active in the Vida Community Church, is a member of the Vida Farmerettes, and the Montana Farmers Union. Casterline has been appointed to fill a vacancy on the Board.

Board of Hail Insurance 2-15-3003

The board consists of five members including the state auditor, the director of agriculture, who is secretary of the board, and three other members. The terms of office are for three years. The two holdover members are public members.

**Gary Gollehon, 903 Hells Gulch Road, Brady MT 59416, Chair**

Home phone: 406-627-2419

Appointment date: 4/18/2005; Term ends: April 18, 2008

Qualification: public member

Gollehon is a fourth-generation farmer in Chouteau County. After attending Montana State University, he began farming in 1965. He has served on the Knees School Board, Golden Western Lutheran church council, Choteau County farm service agency committee, and the Conrad equity elevator board. He currently serves on the Knees volunteer fire department, Tiber County water board, Chouteau County planning board, Brady Dollars for Scholars board and is a cooperative weather observer for the U.S. Weather Bureau. Gollehon is a member of the Golden West Lutheran Church, Montana Farmers Union, Montana Cattleman's Association, the Campaign to Reclaim Rural America and

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R-Calf.

**Nancy K. Peterson, Capitol Station, Helena MT 59620, Secretary**

Work phone: 406-444-5540; Home phone: 406-442-1697

Appointment date: 3/9/2005; Term ends: January 1, 2009

Qualification: Director, Department of Agriculture

Peterson has 30 years experience as a farm owner/operator on 2,600 acres north of Havre. Peterson's farm operation included all areas of FSA farm programs, NRCS, crop/farm insurance, oil and gas leasing, farm loan applications, farm credit and all aspects of hands-on labor of operating a family farm. Peterson independently operated a private grain laboratory in Havre for two years and worked as a relief agent for Amtrak in Havre, Shelby and Wolf Point. She has been involved with Montana Grain Growers Association, Montana Farmers Union and Montana Certified Seed Association. Peterson served seven years as a chair of the Farm Service Agency State Committee as an appointee of the U.S. Secretary of Agriculture.

**John Morrison, Capitol Station, Helena MT 59620**

Work phone: 406-444-2040; Home phone: 406-442-4793

Appointment date: 3/9/2005; Term ends: January 1, 2009 [Reappointed]

Qualification: State Auditor

Morrison was elected Montana State Auditor, the Commissioner of Insurance and Securities in November 2000 and re-elected in 2004. Prior to his election, John practiced law in Montana for 13 years and previously worked as a legislative aide and legal counsel in the U.S. Senate. John received a bachelor's degree in philosophy and politics from Whitman College in Walla Walla, Washington, and a law degree from the University of Denver. He serves as chairman of the National Association of Insurance Commissioners Health Insurance and Managed Care Committee.

**Library Commission** 22-1-101

The governor appoints five members of the Library Commission who serve staggered terms of 3 years. One of three holdover positions is vacant due to resignation.

**Ron Moody, 109 Bach Ave, Lewistown MT 59457**

Home phone: 406-538-2698

Appointment date: 3/17/2005; Term ends: March 22, 2006 [Filling vacancy]

Qualification: resident of Montana

Moody is an experienced news reporter, feature writer, and news photographer, including writing for Western Business (Billings Gazette, 1994-1996), and as a freelance writer for outdoor sports magazines. Moody has also worked as a copy editor and staff writer for the Memphis Press-Scimitar and was managing editor of both The Bolivar Commercial and The DeSoto Tribune. He's also worked for FedEx, Guardsmark, Inc. and Dean Witter Securities. Moody is an avid sportsman, and received awards from the Montana Wildlife Federation in 2003, 1997 and 1995. Moody received a degree in journalism and political science from the University of Mississippi. Moody was appointed to fill a vacancy on the Commission.

**Board of Livestock** 2-15-3102

The board consists of seven members who serve six-year terms. Each member must be a resident of the state and an active livestock producer. A member must be appointed upon the recommendation of the related industry and must have the following qualifications: four are cattle producers; one is a dairy producer representing the dairy and poultry industry; one is a swine producer; and one is a sheep producer. Three cattle producers are holdover members.

**William R. Hedstrom, 400 Lost Creek Drive, Kalispell MT 59901, Chair**

Home phone: 406-756-7262

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Appointment date: 3/17/2005; Term ends: March 1, 2011

Qualification: dairy producer

In 1978, Hedstrom started a dairy operation with only two cows - today he has 150 head. In the early 1990s, Hedstrom was a Flathead County Commissioner, a trustee for the Flathead Electric Co-op and a supervisor for the Flathead Conservation District. He was a volunteer fireman with the West Valley Volunteer Fire Department for 20 years, and then served on the department's advisory board. He's been an advisory board member for the Flathead High School FFA for nearly 20 years. Hedstrom has a bachelor's degree in zoology from Montana State University-Bozeman.

**Linda Nielsen, HC 87 Box 175, Nashua MT 59248**

Work phone: 406-228-9306; Home phone: 406-785-2401

Appointment date: 3/17/2005; Term ends: March 1, 2011

Qualification: cattle producer

Nielsen is in partnership with her husband and sons in a farm/ranch operation raising cattle, small grains, and hay. Nielsen also owns and operates the Glasgow Stockyards and is an enrolled member of the Fort Peck Tribe (Assiniboine). She's served on boards ranging from economic and workforce development, to ethanol, health care, and employer support for the National Guard. Nielsen has been an officer or board member of Women Involved in Farm Economics, the Montana Association of Livestock Auction Markets, and the Valley County Extension Service and was appointed to the Small Business Administration regulatory enforcement fairness board. Nielsen will serve as a cattle producer representative on the board.

**Janice French, HCR 81 Box 86, Hobson MT 59452**

Home phone: 406-423-5304

Appointment date: 3/17/2005; Term ends: March 1, 2011

Qualification: swine producer

French was one of the first women to receive a degree in animal science from Montana State University-Bozeman in 1972. She's active in the Pork Producers and Pork Women councils, and has been a 4-H leader for 34 years. French is a member of R-Calf, the Grain Growers, and the Montana Bird Association. French will serve as a swine producer representative on the board.

Milk Control Board 2-15-3105

The board is designated as a quasi-judicial board and consists of five members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the 2 years immediately preceding appointment, and a member may not hold a public office, either elective or appointive, during a term on the board. Not more than three members may be of the same political party. Holdover members are identified as an Independent and a Democrat, one of whom is an attorney.

**Gary Parker, 50 Parker Rd, Fort Shaw MT 59443, Chair**

Home phone: 406-264-5299

Appointment date: 3/16/2005; Term ends: January 1, 2009

Qualification: resident of Montana; Political Party: Democrat

The Parker Family operated a dairy until 1990, when they sold their dairy herd. The family farm raises replacement heifers and feed on 400 irrigated acres. Parker has served on many local boards, including the local Cenex board, Cascade County planning board, volunteer fire department, county rural fire council, county weed control board and the Sun River Valley School Board.

**Jim Prinkki, RR1 Box 2020, Roberts MT 59070**

Home phone: 406-446-2619

Appointment date: 3/17/2005; Term ends: January 1, 2009

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Qualification: resident of Montana; Political Party: Democrat

Prinkki is a third-generation farmer, and has been the sole manager of the family operation since 1989. Prinkki operated a dairy until 1994, when a fire destroyed the milk barn and equipment. The farm converted to raising and selling hay following the closure of the dairy. Prinkki is an Air Force veteran, has been on the Red Lodge school board, served as president of the Rock Creek Water Users and president of the Consolidated Ditch. When he's not farming, he coaches middle school and freshmen girls' basketball in Red Lodge.

**Larry Van Dyke, 4285 Dyk Rd, Manhattan MT 59741**

Home phone: 406-282-7243

Appointment date: 3/17/2005; Term ends: January 1, 2009

Qualification: resident of Montana; Political Party: Republican

Van Dyke manages a 500-acre family farm in Gallatin County. The family converted their 80-head dairy farm operation to a grain, hay, and potato farm. He's been in leadership capacities for both the Kughen and Perks Canal Boards, has been president and secretary of the Manhattan Potato Growers and council member for the Manhattan Christian Reformed Church. He's currently a member of the Montana Potato Growers.

Montana Arts Council 22-2-102

The council consists of 15 members who serve 5-year terms. Where possible, members are to come from the various geographical areas of the state and have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest. Two holdover members are from Yellowstone County; and one each is from Lewis and Clark, Hill, Cascade, Flathead, Lake, Gallatin and Glacier. One vacancy has occurred as a result of resignation.

**Tim Holmes, 446 N Hoback, Helena MT 59601**

Work phone: 406-442-4233

Appointment date: 3/31/2005; Term ends: February 1, 2010

Qualification: interest in the arts

Holmes, a world-renowned sculptor, has had one-person exhibits from Montana museums to The Hermitage in St. Petersburg, Russia, where he was first American artist to exhibit solo. He is the recipient of numerous awards and honors, including the U.N. International Millennium Peace Prize, and the Outstanding Alum Award from Rocky Mountain College, where he earned a BA in Fine Arts. His works are in the private collections of national and international leaders including former President Jimmy Carter and Archbishop Desmond Tutu. He is also well-known as a speaker and teacher, and performs with the Montana Logging and Ballet Company.

**Rob Quist, PO Box 1711, Kalispell MT 59901**

Work phone: 406-257-8605

Appointment date: 3/31/2005; Term ends: February 1, 2010

Qualification: interest in the arts

Quist is a nationally known singer, songwriter and performer. He attended the University of Montana, where he studied music and physical therapy, and was named to the School of Fine Arts Hall of Honors. Quist has toured extensively throughout the United States, Canada, and Japan, headlining in every major concert hall in America. He's released eight CD's and his original music has been charted on Billboard's Top 100, the National Independent Label Charts and has hit the charts in Europe. His music has been recorded by Michael Martin Murphey, Loretta Lynn, Mission Mountain Wood Band and The Montana Band. He is a member of local and national musicians' unions, including the American Society of Composers, Authors and Publishers and the American Federation of Television and Radio Artists.

**Kevin Red Star, 103 S Main, Roberts MT 59070**

Work phone: 406-445-2211

Appointment date: 3/31/2005; Term ends: February 1, 2010

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Qualification: interest in the arts

Red Star is generally acknowledged as the premier Northern Plains fine artist and is well-known nationally and internationally. Born in Lodge Grass, on the Crow Reservation, his formal art education began in 1962 at the Institute of American Indian Art, where he later served as an artist-in-residence. He won a scholarship to the San Francisco Art Institute where he gained numerous awards and continued his studies at Montana State University-Bozeman and Eastern Montana College, Billings. His work is in the permanent collections of many national and international museums, including the Smithsonian Institution. Red Star is a board member of the Institute of American Indian Art and the Harvard Project (Ford Foundation grants to Native American projects). He has an honorary doctorate degree in fine art from Rocky Mountain College in Billings and is artist in residence at the Russian Academy of Art in Moscow, Roanoke College in Salem, Virginia and Mount San Antonio College/Gallery in Walnut, California.

**Kathleen M. Schlepp, 914 S Custer, Miles City MT 59301**

Work phone: 406-232-8339; Home phone: 406-234-2272

Appointment date: 3/31/2005; Term ends: February 1, 2008 [Filling vacancy]

Qualification: interest in the arts

Schlepp is a board member of the Custer County Art and Heritage Center, which earned a previous Montana Governor's Historic Preservation Award. The Custer County Art and Heritage Center was established in 1977 and is housed in the old Miles City Water Treatment Plant, a National Register of Historic Places landmark. Schlepp works as a dietitian for the Department of Veterans' Affairs, and received an undergrad and graduate degree in nutrition from Montana State University-Bozeman. She serves on the membership committee for the community concert organization, and has volunteered her time as a hospice volunteer, with Meals on Wheels, the local aging council and the nutrition coalition, as well as the Rotary.

**Youpa Stein, 2925 N Reserve St, Missoula MT 59808**

Work phone: 406-549-5329

Appointment date: 3/31/2005; Term ends: February 1, 2010

Qualification: interest in the arts

Stein combines extensive work in the Montana arts community with integrating art into health care settings. The founder and director of Living Arts, which supports whole-person healing through arts and nature-based experiences, she has a bachelor degree in fine arts from the University of Montana in Acting/Directing and a master's degree in psychology/drama therapy from the California Institute of Integral Studies. She has toured with the Montana Repertory Company and has served in various leadership positions with small independent theater companies.

**Wilbur Wood, PO Box 12, Roundup MT 59072**

Home phone: 406-323-2542

Appointment date: 3/31/2005; Term ends: February 1, 2010

Qualification: interest in the arts

Woods is a writer, editor, teacher, and resource consultant, with various awards for excellence in these areas. He is also recognized for his work in renewable energy and sustainable agriculture. He is a co-founder and longtime board member for Alternative Energy Resources Organization (AERO) and co-founder and officer for the Musselshell Valley Community Foundation's Roundup Arts and Cultural Committee. He has a particular interest in promoting arts at the community and grassroots level. His degrees include a BA from the University of Montana and an MA from San Francisco State University in English/Creative Writing.

**Board of Pardons and Parole 2-15-2302**

The board is designated as a quasi-judicial board and consists of three members and four auxiliary members who serve staggered 4-year terms. Each member must have knowledge of American Indian culture and problems gained through training. Members of the board, including the auxiliary members, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work,

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sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements. Holdover members are: two members and two auxiliary members, one of whom is an attorney.

**Vance Curtiss, 4229 Lewis Ave, Great Falls MT 59405, Chair**

Home phone: 406-727-2055

Appointment date: 3/30/2005; Term ends: January 1, 2009

Qualification: education or experience in criminology

Curtiss has an extensive background in law enforcement, including investigative and justice areas. He currently conducts pre-employment Personal Security Investigations and background investigations under U.S. Treasury credentials. He has also worked for the Defense Investigative Service, the International Investigative Service, and as a contractor conducting background investigations for the FBI. He was a senior federal law enforcement officer and juvenile officer for the BIA on the Flathead Reservation and served as both a youth and adult parole and probation officer. He attended the University of Montana and Montana Law Enforcement Academy, and received law enforcement training from the Drug Enforcement Agency and juvenile probation agencies.

**Teresa McCann O'Connor, 208 N Broadway Ste 412, Billings MT 59101, Auxiliary Member**

Work phone: 406-252-7127

Appointment date: 3/30/2005; Term ends: January 1, 2009

Qualification: education or experience in law

O'Connor is an attorney with her husband in the law firm of O'Connor and O'Connor, PC. Raised on a cattle ranch between Culbertson and Bainville, she has served as a deputy county attorney for Yellowstone County, and was staff counsel for the American Library Association in Washington, DC. In the short space of six years, she earned her bachelor's, master's, and JD degrees from The Catholic University in Washington, D.C. She's admitted to the bar in Montana and United States District Court.

**Melbert (Mok) Eaglefeathers, 1729 Adams St, Butte MT 59701, Auxiliary Member**

Work phone: 406-782-0461; Home phone: 406-782-6557

Appointment date: 3/30/2005; Term ends: January 1, 2009

Qualification: education or experience in education, guidance and counseling

Eaglefeathers has been employed with the North American Indian Alliance in Butte since 1996 and is currently serving as the acting director. He has worked with high-risk Native American youth developing cultural education and prevention programs along with summer youth camps. He has collaborated with Montana's Tribal Nations and the Department of Corrections to sponsor traditional cultural programs for Native American inmates. Eaglefeathers encourages inmates to strive for personal growth through traditional culture, education, and to deal with their addictions. From 1993-1996, he was employed with the Lame Deer schools as the Alternative Education Instructor/Aide. He also worked in the Northern Cheyenne Tribal School in Busby as the Public Relations Officer. Eaglefeathers has devoted his career to working with Native American youth and high-risk youth throughout Montana.

State Tax Appeals Board 15-2-1015

The board consists of three members for six-year staggered terms.

**Sue Bartlett, 416 N Beattie St, Helena MT 59601**

Home phone: 406-442-6721

Appointment date: 1/19/2005; Term ends: January 1, 2011

Qualification: resident of Montana

Bartlett is a former State Senator, Lewis and Clark County Clerk and Recorder, Hearings Officer with the Board of Personnel Appeals and a public member of the Commission on Practice of the Montana Supreme Court. She has extensive experience in conducting hearings, analyzing and applying laws, administrative rules and technical

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information. Her BA degree from Washington University in St. Louis is in history and she has completed some master's level work in management and public administration.

Sincerely,

BRIAN SCHWEITZER  
Governor

**MESSAGES FROM THE OTHER HOUSE**

**House bill** passed and transmitted to the Senate for concurrence: 4/1/2005

**HB 569**, introduced by McNutt

**Senate bill** concurred in and returned to the Senate: 4/1/2005

**SB 375**, introduced by Wheat

**Senate bill** concurred in as amended and returned to the Senate for concurrence in House amendments: 4/1/2005

**SB 39**, introduced by Mangan

**FIRST READING AND COMMITMENT OF BILLS**

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

**SJR 35**, introduced by Cocchiarella, Joe Balyeat, Grimes, Lewis, Roush, Smith, Squires, Steinbeisser, Tash, Tropila, referred to Business, Labor, and Economic Affairs.

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

**HB 569**, introduced by McNutt, Ripley, Black, Branae, Gillan, referred to Taxation.

**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 Brueggeman in the chair.

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

**SB 39 - House Amendments** - Senator Mangan moved House amendments to **SB 39** be concurred in. Motion carried unanimously.

**HB 438** - Senator Cocchiarella moved **HB 438** be concurred in. Motion carried with Senators Joe Balyeat and Steinbeisser voting nay.

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**HB 517** - Senator Tester moved **HB 517** be concurred in.

**HB 517** - Senator Tester moved **HB 517**, second reading copy, be amended as follows:

1. Page 9, line 19.

**Following:** "PURSUANT TO"

**Insert:** "16-1-401 and"

2. Page 9, line 21.

**Following:** "IN"

**Insert:** "16-1-401 or"

Amendment adopted unanimously.

**HB 517** - Senator Tester moved consideration of **HB 517** be placed below **HB 153** on the second reading board. Motion carried.

**HB 606** - Senator Wheat moved **HB 606** be concurred in. Motion carried with Senators Bales, Joe Balyeat, Curtiss, Gebhardt, McGee, and O'Neil voting nay.

**HJR 15** - Senator Pease moved **HJR 15** be concurred in. Motion carried unanimously.

**HB 153** - Senator Toole moved **HB 153** be concurred in. Motion carried as follows:

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

Total 32

Nays: Bales, Balyeat, Barkus, Brueggeman, Curtiss, Essmann, Gebhardt, Grimes, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Steinbeisser.

Total 15

Absent or not voting: Elliott, Keenan.

Total 2

Excused: Cromley.

Total 1

**HB 517** - Senator Cocchiarella moved the amendment (amendment #3 section #7) be divided. Thereupon, amendment #3 section #7 was adopted unanimously.

**HB 517** - Senator Cocchiarella moved **HB 517**, second reading copy, be further amended as follows:

1. Title, page 1, line 5.

**Strike:** "MUST"

**Insert:** "MAY"

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2. Page 1, line 15.

**Strike:** "shall"

**Insert:** "may"

3. Page 1.

**Following:** line 14

**Insert:** "NEW SECTION. Section 1. Definition. For the purpose of [sections 2 and 3], "produces" means the distillation of liquor on the premises of the distillery licensee."

**Renumber:** subsequent sections

4. Page 1, line 19.

**Strike:** "2"

**Insert:** "3"

5. Page 1, line 23.

**Strike:** "2"

**Insert:** "3"

6. Page 1, line 29.

**Strike:** "1"

**Insert:** "2"

~~7. Page 2, line 12.~~

~~**Following:** "CHARGED"~~

~~**Insert:** "and the container provided does not exceed 2 ounces"~~

8. Page 2, line 15.

**Strike:** "1"

**Insert:** "2"

9. Page 2, lines 16 through 17.

**Strike:** "may" on line 16

**Insert:** "shall"

**Strike:** "BUT MAY NOT" on line 16 through "HOLDERS" on line 17

**Insert:** "and the department shall include the distillery's liquor as a listed product"

10. Page 3, line 29.

**Strike:** "1"

**Insert:** "2"

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11. Page 5, line 27.

**Strike:** "1"

**Insert:** "2"

12. Page 9, line 13.

**Strike:** "A"

**Insert:** "Except as provided in subsection (9), a"

13. Page 9, line 14.

**Strike:** "1"

**Insert:** "2"

14. Page 9, line 15.

**Following:** "REPORTING THE"

**Insert:** "total"

15. Page 9, line 16.

**Strike:** "MANUFACTURED" through "DELIVERED BY"

**Insert:** "samples provided with or without charge at"

16. Page 9, line 19.

**Strike:** "TAX"

**Insert:** "taxes"

**Following:** "PURSUANT TO"

**Insert:** "16-1-401 and"

**Following:** "SECTION"

**Strike:** "1] IS"

**Insert:** "2] are"

17. Page 9, line 20.

**Following:** "MONTH."

**Insert:** "The department shall adopt rules and provide forms for the proper allocation of taxes."

18. Page 9, line 21.

**Strike:** "TAX"

**Insert:** "taxes"

**Following:** "PROVIDED FOR IN"

**Insert:** "16-1-401 and"

19. Page 9, line 22.

**Strike:** "TAX"

**Insert:** "taxes"

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20. Page 9, line 23.

**Strike:** "TAX"

**Insert:** "taxes"

21. Page 10, line 4.

**Following:** "(8)"

**Strike:** "A"

**Insert:** "Except as provided in subsection (9), a"

22. Page 10.

**Following:** line 7

**Insert:** "(9) A distillery for which the tax is less than \$10 a month from the sale of samples is not required to file a return or pay the tax for that month under this section."

23. Page 10, line 9.

**Strike:** "and 2"

**Insert:** "through 3"

24. Page 10, line 11.

**Strike:** "and 2"

**Insert:** "through 3"

25. Page 10, line 12.

**Strike:** "6"

**Insert:** "7"

26. Page 10, line 13.

**Strike:** "6"

**Insert:** "7"

Amendment adopted unanimously.

**HB 517** - Senator Cocchiarella moved **HB 517**, second reading copy, be further amended as follows:

7. Page 2, line 12.

**Following:** "CHARGED"

**Insert:** "and the container provided does not exceed 2 ounces"

Amendment **not** adopted as follows:

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Yeas: Brueggeman, Cocchiarella, Curtiss, Gallus, Gebhardt, Grimes, Keenan, Laslovich, Lewis, Mangan, McGee, Roush, Ryan, Smith, Tropila.

Total 15

Nays: Bales, Balyeat, Barkus, Black, Cobb, Cooney, Ellingson, Elliott, Esp, Essmann, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Lind, Moss, O'Neil, Pease, Perry, Schmidt, Shockley, Squires, Steinbeisser, Story, Tash, Toole, Weinberg, Wheat, Williams, Mr. President.

Total 33

Absent or not voting: Stapleton.

Total 1

Excused: Cromley.

Total 1

**HB 517** - Senator Tester moved **HB 517**, as amended, be concurred in. Motion carried as follows:

Yeas: Balyeat, Barkus, Black, Brueggeman, Cobb, Cooney, Cromley, Ellingson, Elliott, Essmann, Hansen, Harrington, Hawks, Kitzenberg, Laible, Larson, Laslovich, Lind, Mangan, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Steinbeisser, Story, Tash, Toole, Weinberg, Wheat, Williams, Mr. President.

Total 36

Nays: Bales, Cocchiarella, Curtiss, Esp, Gallus, Gebhardt, Gillan, Grimes, Keenan, Lewis, McGee, Shockley, Stapleton, Tropila.

Total 14

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 172** - Senator Tash moved **HB 172** be concurred in. Motion carried as follows:

Yeas: Barkus, Black, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Essmann, Gallus, Gillan, Hansen, Harrington, Hawks, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Squires, Steinbeisser, Tash, Toole, Tropila, Weinberg, Wheat, Williams.

Total 33

Nays: Bales, Balyeat, Brueggeman, Cobb, Curtiss, Esp, Gebhardt, Grimes, Keenan, Kitzenberg, McGee, O'Neil, Shockley, Smith, Stapleton, Story, Mr. President.

Total 17

Absent or not voting: None.

Total 0

Excused: None.

Total 0

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**HB 199** - Senator McGee moved **HB 199** be concurred in. Motion carried with Senators Larson and O'Neil voting nay.

**HB 316** - Senator Lewis moved **HB 316** be concurred in. Motion carried unanimously.

**HB 359** - Senator Shockley moved **HB 359** be concurred in.

**HB 359** - Senator O'Neil moved **HB 359**, second reading copy, be amended as follows:

1. Page 3.

**Following:** line 13

**Insert:** "(vi) Once a sign is posted as provided in this section, the public is presumed to have been notified of the pesticide application."

**Renumber:** subsequent subsection

Amendment **not** adopted as follows:

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

Total 21

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

Total 26

Absent or not voting: Cobb, Elliott, Williams.

Total 3

Excused: None.

Total 0

**HB 359** - Senator Shockley moved **HB 359** be concurred in. Motion **failed** as follows:

Yeas: Cocchiarella, Cromley, Ellingson, Elliott, Harrington, Hawks, Larson, Laslovich, Lind, Mangan, Moss, Perry, Schmidt, Shockley, Toole, Wheat, Williams, Mr. President.

Total 18

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cooney, Curtiss, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Keenan, Kitzenberg, Laible, Lewis, McGee, O'Neil, Pease, Roush, Ryan, Smith, Stapleton, Steinbeisser, Story, Tash, Tropila, Weinberg.

Total 31

Absent or not voting: Squires.

Total 1

Excused: None.

Total 0

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**HB 359** - Senator Story moved **HB 359** be **indefinitely postponed**. Motion carried as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Curtiss, Esp, Essmann, Gebhardt, Gillan, Grimes, Hansen, Keenan, Kitzenberg, Laible, Laslovich, Lewis, Mangan, McGee, O'Neil, Pease, Roush, Ryan, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Mr. President.

Total 34

Nays: Balyeat, Ellingson, Elliott, Gallus, Harrington, Hawks, Larson, Moss, Perry, Schmidt, Shockley, Williams.

Total 12

Absent or not voting: Cromley, Lind, Smith, Squires.

Total 4

Excused: None.

Total 0

**HB 414** - Senator O'Neil moved **HB 414** be concurred in. Motion carried with Senator Larson voting nay.

**HB 492** - Senator McGee moved **HB 492** be concurred in. Motion carried unanimously.

**HB 514** - Senator Lind moved **HB 514** be concurred in. Motion carried with Senators Curtiss, Gebhardt, O'Neil, and Steinbeisser voting nay.

**HB 577** - Senator Moss moved **HB 577** be concurred in. Motion carried unanimously.

Senator Ellingson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Brueggeman 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 40** concurred in 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, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

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Excused: None.  
Total 0

**HB 68** concurred in 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, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 50

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**HB 159** concurred in 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, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.  
Total 50

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**HB 280** concurred in as follows:

Yeas: Bales, Balyeat, Black, Brueggeman, Cobb, Cocchiarella, Cromley, Curtiss, Elliott, Esp, Gallus, Gebhardt, Gillan, Grimes, Harrington, Hawks, Keenan, Kitzenberg, Laible, Laslovich, Lewis, Lind, Mangan, McGee, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams.  
Total 41

Nays: Barkus, Cooney, Ellingson, Essmann, Hansen, Larson, O'Neil, Shockley, Mr. President.  
Total 9

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

**HB 295** concurred in as follows:

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

Total 42

Nays: Bales, Black, Essmann, McGee, O'Neil, Shockley, Stapleton, Steinbeisser.

Total 8

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 331** concurred in as follows:

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

Total 38

Nays: Bales, Balyeat, Barkus, Brueggeman, Curtiss, Esp, Gebhardt, Grimes, McGee, O'Neil, Perry, Shockley.

Total 12

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 348** concurred in as follows:

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

Total 48

Nays: Cobb, Gebhardt.

Total 2

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Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 361** concurred in as follows:

Yeas: 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, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 47

Nays: Bales, Esp, O'Neil.

Total 3

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 453** concurred in as follows:

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

Total 29

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

Total 21

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 681** concurred in 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, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 50

Nays: None.

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Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 721** concurred in 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, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 8:00 a.m., Saturday, April 2, 2005. Motion carried.

Senate adjourned at 3:03 p.m.

**BILL LOMBARDI**  
Secretary of Senate

**JON TESTER**  
President of the Senate