

**SENATE JOURNAL
59TH LEGISLATURE
EIGHTY-FIRST LEGISLATIVE DAY**

Helena, Montana
April 15, 2005

Senate Chambers
State Capitol

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

Roll Call. All members present. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 45

Nays: Balyeat, Gebhardt, McGee, O'Neil, Shockley.
Total 5

Absent or not voting: None.
Total 0

Excused: None.
Total 0

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL:

4/15/2005

Correctly printed: **SB 526, SJR 33, SJR 42, SR 17, SR 18, HB 28, HB 45, HB 249, HB 438, HB 482, HB 550, HB 592, HB 667, HB 671, HB 678, HB 689, HB 700, HB 703, HB 740, HB 756, HB 761, HB 776, HB 802, HJR 34.**

Correctly engrossed: **HB 535, HB 584, HB 592, HB 713.**

Correctly enrolled: **SB 507.**

Examined by the sponsor and found to be correct: **SR 16.**

Signed by the President at 3:00 p.m., April 15, 2005: **SR 16.**

Signed by the Secretary of the Senate at 4:00 p.m., April 15, 2005: **SR 16.**

Delivered to the Secretary of State at 12:00 p.m., April 15, 2005: **SR 16.**

FINANCE AND CLAIMS (Cooney, Chairman):

4/15/2005

SB 526, do pass. Report adopted.

HB 28, be concurred in. Report adopted.

HB 60, be concurred in. Report adopted.

HB 249, be concurred in. Report adopted.

HB 482, be concurred in. Report adopted.

HB 713, be amended as follows:

1. Title, page 1, line 8.

Following: "AN"

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Insert: "IMMEDIATE"

2. Page 1, line 13.

Strike: "\$250,000"

Insert: "\$100,000"

3. Page 1, line 23.

Following: "effective"

Strike: "July 1, 2005"

Insert: "on passage and approval"

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

HB 740, be concurred in. Report adopted.

HB 761, be concurred in. Report adopted.

STATE ADMINISTRATION (Squires, Chairman):

4/15/2005

SR 17, be adopted. Report adopted.

SR 18, be adopted. Report adopted.

HB 45, be concurred in. Report adopted.

TAXATION (Elliott, Chairman):

4/15/2005

SJR 33, be adopted. Report adopted.

HB 535, be amended as follows:

1. Page 7, line 22.

Strike: "(i)"

2. Page 7, line 26 through line 29.

Strike: "." on line 26 through "taxation" on line 27

Strike: "only" on line 27 through "barrel" on line 29

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

HB 592, be amended as follows:

1. Title, page 1, line 7.

Following: "USING"

Insert: "THE GREATER OF 8 PERCENT OR"

2. Title, page 1, line 8.

Following: "TAXPAYERS;"

Insert: "IMPOSING A HIGHER INTEREST RATE ON CERTAIN TAXPAYERS UNDER CERTAIN CONDITIONS; ESTABLISHING A UNIFORM INTEREST RATE APPLIED TO THE OVERPAYMENT"

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OF TAXES OR FEES; REVISING THE ACCRUAL OF INTEREST ON UNPAID TAXES;"

3. Title, page 1, line 10.
Following: "15-30-142,"
Insert: "15-30-149,"

4. Title, page 1, line 11.
Following: "15-31-510,"
Insert: "15-31-531,"

5. Page 2.
Following: line 7
Insert: "**Section 2.** Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions. (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, ~~accrued at 1% a month or fraction of a month, on the unpaid tax.~~ Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law."

Renumber: subsequent sections

6. Page 2, line 11.
Following: "**exceptions**"
Insert: "-- uniform provision for interest on overpayments"

7. Page 2, line 18.
Strike: "9%"
Insert: "15%"

8. Page 3, line 2.
Strike: "EXCEPT AS PROVIDED IN SUBSECTION (4)(A)(I), INTEREST"

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Insert: "Interest"

9. Page 3, line 4.

Following: "RATES"

Insert: "established under subsection (4)(a)(i)"

10. Page 3, line 9.

Strike: "IF THE TAXPAYER ASSESSES AND PAYS THE INTEREST OWING ON"

Insert: "For individual income"

Following: "DUE."

Insert: "including delinquent taxes and deficiency assessments,"

11. Page 3, lines 13 and 14.

Strike: "EXCEPT" on line 13 through "ON" on line 14

Insert: "For all taxes other than individual income"

12. Page 3, line 16 through line 18.

Strike: subsection (iii) in its entirety

13. Page 4.

Following: line 2

Insert: "(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i)."

14. Page 5.

Following: line 24

Insert: "**Section 6.** Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds -- period of limitations. (1) If the department discovers from the examination of a return or upon a claim ~~duty~~ filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the ~~taxable~~ tax year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

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(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the ~~taxable tax~~ year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(a) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than \$1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable.""

Renumber: subsequent sections

15. Page 16.

Following: line 17

Insert: "Section 16. Section 15-31-531, MCA, is amended to read:

"15-31-531. Credit for overpayment -- interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall must~~ be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as ~~hereinafter~~ provided for in subsection (3), interest ~~shall must~~ be allowed on overpayments at the same rate as is charged on delinquent taxes, as provided in 15-1-216, due from the due date of the return or from the date of overpayment, ~~(whichever date is later)~~, to the date the department approves refunding or crediting of the overpayment.

(3) ~~(a)~~ Interest ~~shall may~~ not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. ~~No interest shall be~~

~~(b)~~ Interest is not allowed:

~~(a)(i)~~ if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

~~(b)(ii)~~ if the amount of interest is less than \$1.

~~(3)(4)~~ A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law ~~shall chapter is not be~~ considered an overpayment with respect to which interest is allowable.""

Renumber: subsequent sections

16. Page 28, line 10.

Strike: "5"

Insert: "7"

17. Page 28, line 15.

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Strike: "2"
Insert: "3"

18. Page 28, line 19.
Strike: "2"
Insert: "3"

19. Page 28, line 21.
Strike: "2"
Insert: "3"

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

HB 700, be concurred in. Report adopted.
HB 703, be concurred in. Report adopted.

REPORTS OF SELECT COMMITTEES

CONFERENCE COMMITTEE
on House Amendments to **Senate Bill 40**
Report No. 1, April 15, 2005

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered House amendments to **Senate Bill 40** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that **Senate Bill 40** (reference copy -- salmon) be amended as follows:

1. Title, line 7.
Following: "~~THE~~"
Insert: "RESOLUTION OF INTENTION TO CREATE THE DISTRICT AND THE"

2. Title, line 9.
Following: "~~7-12-2105,~~"
Insert: "7-12-2105,"

3. Page 2, line 26.
Insert: "**Section 2.** Section 7-12-2105, MCA, is amended to read:

"7-12-2105. Notice of resolution of intention to create district -- hearing -- exception. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage of the resolution of intention as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes.

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(3) (a) The notice must describe the general character of the improvement or improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2)."

Renumber: subsequent sections

For the Senate:

Hawks, Chairman
Gebhardt
McGee

For the House:

Barrett, Chairman
Eaton
Henry
Stahl

FREE CONFERENCE COMMITTEE
on **Senate Bill 107**
Report No. 1, April 15, 2005

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 107** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **Senate Bill 107** (reference copy -- salmon) be amended as follows:

1. Title, page 1, line 9 through line 10.

Strike: "REMOVING" on line 9 through "PLAN;" on line 10

2. Page 1, line 22 through line 25.

Following: "chemicals" on line 22

Strike: "when" on line 22 through "department" on line 25

Insert: "and"

Renumber: subsequent subsections

3. Page 2, line 12.

Strike: "MAY"

Insert: "shall"

4. Page 2, line 27.

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Strike: "through (3)"

Insert: "and (2)"

For the Senate:

Smith, Chairman
Black
Larson

For the House:

Peterson, Chairman
Gutsche
Jopek
Waitschies

CONFERENCE COMMITTEE
on House Amendments to **Senate Bill 175**
Report No. 1, April 14, 2005

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered House amendments to **Senate Bill 175** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that House amendments to **Senate Bill 175** (reference copy -- salmon) be accepted by the Senate.

For the Senate:

Cromley, Chairman
Esp
Moss

For the House:

Noennig, Chairman
Jopek
Maedje
McAlpin

CONFERENCE COMMITTEE
on House Amendments to **Senate Bill 461**
Report No. 1, April 15, 2005

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered House amendments to **Senate Bill 461** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that the amendments to **Senate Bill 461** (reference copy -- salmon) be rejected and the reference copy be amended as follows:

1. Title, line 6 through line 8.

Strike: "REQUIRING" on line 6 through "LIKELY" on line 8

2. Page 2, line 7 through line 9.

Strike: subsection (4) in its entirety

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For the Senate:

Roush, Chairman
Steinbeisser
Tash

For the House:

Rice, Chairman
Clark
Golie
Malcolm

FREE CONFERENCE COMMITTEE
on **House Bill 99**
Report No. 1, April 15, 2005

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 99** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 99** (reference copy -- salmon) be amended as follows:

1. Page 1, line 29.

Following: "~~OF~~"

Strike: "NOT TO EXCEED"

Insert: "of not less than 2 days or more than"

2. Page 1, line 30.

Following: "both"

Insert: ", and in addition, the court may order the person to perform up to 40 hours of community service"

For the House:

Lange, Chairman
Driscoll
Parker
Taylor

For the Senate:

Mangan, Chairman
Laslovich
Shockley

FREE CONFERENCE COMMITTEE
on **House Bill 177**
Report No. 1, April 15, 2005

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 177** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 177** (reference copy -- salmon) be amended as follows:

1. Title, page 1, line 14.

Strike: "PROVIDING THAT QUESTIONABLE VOTES ARE NOT VALID VOTES;"

2. Title, page 1, line 15.

Following: "BALLOTS;"

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Insert: "CLARIFYING PROCEDURES FOR COUNTING VOTES WHENEVER A VOTING SYSTEM ERROR IS SUSPECTED DURING A VOTE COUNT; CLARIFYING COUNT AND RECOUNT PROCEDURES FOR PAPER AND NONPAPER BALLOTS;"

3. Title, page 1, line 18.

Strike: "13-1-101,"

4. Title, page 1, line 20.

Following: "~~13-16-414~~,"

Insert: "13-16-412,"

Following: "13-16-414,"

Insert: "13-17-211,"

5. Page 1, line 24 through page 5, line 18.

Strike: section 1 in its entirety

Insert: "NEW SECTION. Section 1. Handling voting system error during count. (1) During a count of paper or nonpaper ballots in which votes are being automatically tabulated by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly:

(a) votes cast on paper ballots must be counted manually in accordance with 13-15-206(2);

(b) votes cast on a nonpaper ballot must be counted as provided in rules adopted under 13-17-211."

6. Page 8, line 18.

Following: "13-15-206"

Strike: "(4)"

Insert: "(5)"

11, line 17.

Following: "13-15-206"

Strike: "(4)"

Insert: "(5)"

7. Page 15, line 15.

Following: "13-15-206"

Strike: "(4)"

Insert: "(5)"

8. Page 15, line 27.

Following: "count"

Insert: "or recount"

9. Page 15, line 30.

Strike: "(6)"

Insert: "(7)"

10. Page 16, line 1.

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Following: "instructions,"

Insert: "the vote must be considered questionable and"

11. Page 16, line 1 through line 2.

Strike: "VOTE" on line 1 through "COUNTED" on line 2

Insert: "entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4)"

12. Page 16, line 12.

Strike: "Except as provided in subsection (3)(b)"

Insert: "When a voting system is tabulating a vote cast on a nonpaper ballot"

13. Page 16, line 16.

Strike: "DETERMINED BY THE SYSTEM TO BE AN OVERVOTE OR UNDERVOTE"

Insert: "not recognized and counted by the system"

14. Page 16, line 17.

Strike: "(6)"

Insert: "(7)"

15. Page 16, line 20.

Following: "~~(4)~~:"

Insert: "When a voting system is tabulating a vote cast on a paper ballot:

(i) if the voting system recognizes and counts the vote, it is a valid vote;

(ii) if the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an overvote or undervote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4)."

16. Page 16, line 21.

Following: "~~(ii)~~"

Insert: "(c)"

Following: "determines"

Insert: "or counting board"

17. Page 16, line 22.

Strike: "13-16-414"

Insert: "[section 1]"

18. Page 16, line 23.

Strike: "(c)"

Insert: "(d)"

Following: "and"

Insert: "subsection (4) and"

19. Page 17.

Following: line 4

Insert: "(4) (a) (i) Before being counted, each questionable vote on a paper ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly

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determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system."

Renumber: subsequent subsections

20. Page 18.

Following: line 29

Insert: "Section 18. Section 13-16-412, MCA, is amended to read:

"**13-16-412. Procedure for recounting paper ballots.** (†) To conduct a recount of paper ballots:

(a)(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

(b)(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2); and

(c)(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

~~—————(2) To prepare for a recount of ballots cast using a nonpaper-based voting system, the election administrator and election judges shall proceed as provided in rules adopted pursuant to 13-17-211 and the recount board shall conduct the recount as provided in 13-16-414."~~

Renumber: subsequent sections

21. Page 19, line 2.

Strike: "using voting system"

Insert: "on nonpaper ballot"

Strike: "(a)"

22. Page 19, line 3 through line 4.

Strike: "or if" on line 3 through "properly" on line 4

Insert: "cast on a nonpaper ballot"

Following: the first "the"

Insert: "election administrator or"

23. Page 19, line 6.

Strike: "(b)"

Insert: "(2)"

24. Page 19, line 7.

Following: "(3)"

Insert: "(a)"

25. Page 19, line 8.

Strike: "(c)(i)"

Insert: "(3)(a)"

26. Page 19, line 11.

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Strike: "(ii)"
Insert: "(b)"
Following: "(3)"
Insert: "(a)"

27. Page 19, line 12.

Strike: "(iii)"
Insert: "(c)"
Strike: "as provided in subsection (3)"
Insert: "subject to rules adopted for the system under 13-17-211"

28. Page 19, line 13 through line 18.

Strike: subsections (2) and (3) in their entirety

29. Page 19.

Following: line 18

Insert: "**Section 20.** Section 13-17-211, MCA, is amended to read:

"**13-17-211. Uniform procedures for using voting systems.** (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

(c) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast;

(d) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

~~(e) recount procedures under 13-16-412(2);~~

~~———— (f) voting system tests to correct discrepancies under 13-16-414(1)(a);~~

~~———— (g) what contingencies must be made for recounts pursuant to 13-16-414(3)(b);~~

~~(e) how to operate and test the system during counts or recounts;~~

~~(h)(f)~~ the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417; and

~~(i)(g)~~ testing and certification of voting systems pursuant to 13-17-212.""

Renumber: subsequent sections

30. Page 20.

Following: line 23

Insert: "NEW SECTION. **Section 23. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 15, part 2, and the provisions of Title 13, chapter 15, part 2, apply to [section 1]."

For the House:

A. Olson, Chairman
D. Brown
Dickenson
Hamilton

For the Senate:

Squires, Chairman
Ellingson
Essmann

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CONFERENCE COMMITTEE
on Senate Amendments to **House Bill 227**
Report No. 1, April 15, 2005

Mr. Speaker and Mr. President:

We, your Conference Committee met and considered Senate amendments to **House Bill 227** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that Senate amendments to **House Bill 227** (reference copy -- salmon) be accepted by the House.

For the House:

Lake, Chairman
Branæ
Galvin-Halcro
Sales

For the Senate:

Harrington, Chairman
Bales
Elliott

CONFERENCE COMMITTEE
on Senate Amendments to **House Bill 540**
Report No. 1, April 15, 2005

Mr. Speaker and Mr. President:

We, your Conference Committee met and considered Senate amendments to **House Bill 540** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that **House Bill 540** (reference copy -- salmon) be amended as follows:

1. Page 1.

Strike: line 28 through line 29 in their entirety

For the House:

Dickenson, Chairman
Juneau
Sales
Wells

For the Senate:

Gallus, Chairman
Kitzenberg
Tropila

FREE CONFERENCE COMMITTEE
on **House Bill 606**
Report No. 1, April 15, 2005

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 606** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 606** (reference copy -- salmon) be amended as follows:

1. Title, line 8.

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Following: ";"
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 3, line 28.
Strike: "and covered by the operating permit"

4. Page 3, line 29.
Following: "(15)(a)(ii)"
Insert: "and is subject to the provisions of this subsection (8)"

5. Page 5, line 1.
Following: "BOND WITHIN"
Strike: "1 YEAR"
Insert: "6 months"

6. Page 5.
Following: line 22
Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval."

For the House:

Gutsche, Chairman
Jopek
Peterson
Ross

For the Senate:

Wheat, Chairman
Shockley
Toole

CONFERENCE COMMITTEE
on Senate Amendments to **House Bill 625**
Report No. 1, April 15, 2005

Mr. Speaker and Mr. President:

We, your Conference Committee met and considered Senate amendments to **House Bill 625** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that **House Bill 625** (reference copy -- salmon) be amended as follows:

1. Title, line 7.
Strike: "CHANGING"

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Insert: "CLARIFYING"

2. Page 2, line 16.

Strike: "8,500"

Insert: "5,500"

3. Page 2, line 29 through page 3, line 1.

Strike: ", OR" on page 2, line 29 through "ACT" on page 3, line 1

4. Page 3, line 2.

Following: "~~old~~"

Insert: "An election may not be held based upon a designation that is more than 5 years old."

For the House:

Rice, Chairman
John Balyeat
Grinde
McAlpin

For the Senate:

Toole, Chairman
Barkus
Harrington

MESSAGES FROM THE GOVERNOR

April 15, 2005

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

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

Dear Speaker Matthews and President Tester:

I am attaching a proposed amendment to Senate Bill 212, which will help clarify the intent of the bill.

The intent of SB 212 is to ensure that 25% of Federal mineral leasing funds are put into a dedicated account and distributed to local governments and that the remaining 75% is deposited into the general fund. Under current law, all funds are deposited into the general fund and then 25% is transferred out of the general fund at the end of the year for local governments.

In this regard, we have removed language that could be misconstrued as dedicating or distributing part of the 75% of Federal mineral leasing funds, which are deposited into the general fund, to local governments. Only the 25% excepted in subsection (2) is dedicated and distributed to local governments.

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The proposed amendments are attached to this letter.

Sincerely,

Brian Schweitzer
Governor

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

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

April 14, 2005

Dear Speaker Matthews and President Tester:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments to Senate Bill 401 for the following reasons:

The Secretary of State recently noticed that there is an erroneous reference in Section 71-3-125, MCA and has requested that I amend Senate Bill 401, sponsored by Senator Laslovich, to correct the mistaken reference.

In the 2003 Montana Code, Section 71-3-125(4)(a) states that the Secretary of State "shall record the agricultural lien statement on the centralized computer system as set forth in 30-9A-502." This clause should properly refer to Section 30-9A-501, not 502, and my proposed amendment, which is attached to this letter, accomplishes this.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

April 16, 2005

The Honorable Jon Tester
President of the Senate

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State Capitol
Helena, Montana 59620

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

Dear President Tester and Speaker Matthews:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments Senate Bill 260, "**AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN AND MUST BE REVISED TO CONFORM TO AN ORAL PRONOUNCEMENT OF A FINAL DECISION IF REQUESTED BY A PARTY IN WRITING WITHIN 30 DAYS AFTER FILING THE FINAL DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE**" for the following reasons.

Senate Bill 260, sponsored by Senator Perry, establishes a time frame within which a final decision must be issued in a contested case proceeding under the Montana Administrative Procedure Act. It also provides a procedure to follow if a written decision conflicts with an oral pronouncement of the decision, and requires that upon the occurrence of such a conflict, any party may request modification of the written decision, and the oral pronouncement of the decision will prevail. A companion bill, Senate Bill 62, also sponsored by Senator Perry, requires that all final decisions in a contested case proceeding under the Administrative Procedure Act must be in writing. I support that bill.

My proposed amendments to Senate Bill 260 alter the time within which a final decision in a contested case proceeding must be issued. Under my amendments, a written decision must be issued within 90 days after a contested case is deemed submitted for decision to the final decision maker. As the bill stands in its current form, the 90 day period begins to run from the time of the close of the contested case hearing. Because many procedural steps--such as the filing of exceptions and subsequent oral argument--may occur after the close of the hearing, and because scheduling difficulties at times prolong the completion of these steps, it is more realistic to require that the clock for issuance of the written decision begin to run after the case is deemed submitted, rather than at the close of the hearing. Because the time for issuance of the final decision is extended under these proposed amendments, in the spirit of keeping with the sponsor's intent, my amendments compensate by shortening the time within which an extension is authorized, for good cause shown, from 90 to 30 days.

Secondly, my proposed amendments eliminate the requirement in the bill that if an oral pronouncement of the decision conflicts with a written decision, at the request of a party, the agency must modify the decision to conform to the oral pronouncement. I propose this amendment because I do not believe this provision of the bill fosters deliberate judicial decision-making. Rather, I believe that such a requirement would increase the likelihood of faulty agency decisions and unnecessary appeals, thereby increasing the costs of litigation. Additionally, particularly in light of the requirement contained in Senate Bill 62 that all final decisions in contested case hearings be in writing, I believe the requirement in this bill that an oral pronouncement of a decision would trump the written decision undermines the policy that decisions be in writing and that the written decision, and the written decision only, is the decision on which parties to a proceeding can and must rely.

I understand that the sponsor of the bill, Senator Perry, has modeled this requirement that an oral pronouncement of a decision prevails over a written decision on the criminal code. However, I am informed that criminal lawyers, both

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prosecutors and defense lawyers, find the criminal provision unmanageable and contrary to deliberative decision-making.

My proposed amendments also provide an applicability date, clarifying that Senate Bill 260 applies to contested case hearings commenced after the effective date of the act.

Senator Perry has been informed of my proposed amendments. The proposed amendments are attached to this letter.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

MESSAGES FROM THE OTHER HOUSE

Senate bill concurred in and returned to the Senate: 4/15/2005

SB 274, introduced by Barkus

Senate bill concurred in as amended and returned to the Senate for concurrence in House amendments: 4/15/2005

SB 499, introduced by Keenan

HB 46 - The House acceded to the request of the Senate and authorized the Speaker to appoint the following **Free** Conference Committee to meet with a like committee from the Senate to confer on **HB 46**: 4/15/2005

Representative Everett, Chair
Representative Koopman
Representative Parker
Representative Wilson

Conference Committee Report No.1 adopted: 4/15/2005

SB 81, introduced by Stapleton

SB 278, introduced by Black

SB 423, introduced by Laslovich

HB 63, introduced by Villa

MOTIONS

Senator Keenan moved to blast **HB 438** from Senate Finance and Claims to 2nd reading. Motion carried 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, Laslovich,

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Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Wheat, Williams, Mr. President.
Total 48

Nays: Larson, Weinberg.
Total 2

Absent or not voting: None.
Total 0

Excused: None.
Total 0

Senator Keenan moved to blast **HB 550** from Senate Finance and Claims to 2nd reading. Motion carried as follows:

Yeas: Balyeat, Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Keenan, Kitzenberg, Laible, Laslovich, Lewis, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Schmidt, Shockley, Smith, Stapleton, Steinbeisser, Tash, Toole, Tropila, Wheat, Williams, Mr. President.
Total 39

Nays: Bales, Cobb, Elliott, Esp, Hawks, Larson, Lind, Ryan, Squires, Story, Weinberg.
Total 11

Absent or not voting: None.
Total 0

Excused: None.
Total 0

Senator Ellingson moved **HB 584** be taken from 3rd reading and placed back on 2nd reading for the purpose of amendment. Motion carried.

Senator Lind moved to change his vote on **HB 790** from "nay" to "aye". Motion carried.

Senator Balyeat moved to blast **HB 366** from Senate Judiciary to 2nd reading. Motion failed as follows:
Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Curtiss, Elliott, Essmann, Gebhardt, Grimes, Keenan, Laible, Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.
Total 22

Nays: Cocchiarella, Cooney, Cromley, Ellingson, Esp, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 28

Absent or not voting: None.
Total 0

Excused: None.

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Total 0

Majority Leader Ellingson moved a conference committee on **HB 46** be appointed. President Tester appointed Senators Wheat (Ch), Laslovich, and McGee.

Senator Ellingson moved to suspend the rules in order in order to place **SJR 41** on 3rd reading this same legislative day. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, 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, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Cromley, Schmidt.

Total 2

Senator Ryan moved to suspend the rules for late introduction of a resolution regarding honoring of the Montana National Guard. Motion carried as follows:

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

Total 47

Nays: Esp.

Total 1

Absent or not voting: None.

Total 0

Excused: Cromley, Schmidt.

Total 2

Senator Hansen moved to change his vote on **HB 410** from "aye" to "nay". Motion carried.

Senator Elliott moved the rules be suspended, tomorrow, in order to place **SJR 33** on 3rd reading that same day if it were to pass 2nd reading. Motion failed as follows:

Yeas: Balyeat, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lewis, Lind, Mangan, Moss, Pease, Ryan, Smith, Squires, Story, Tash, Toole, Weinberg, Wheat, Williams, Mr. President.

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Total 32

Nays: Bales, Barkus, Black, Curtiss, Esp, Essmann, Grimes, Keenan, Laible, McGee, O'Neil, Perry, Roush, Shockley, Stapleton, Steinbeisser, Tropila.

Total 17

Absent or not voting: None.

Total 0

Excused: Schmidt.

Total 1

Senator Elliott moved **SJR 33** be placed on 2nd reading this legislative day. Motion failed as follows:

Yeas: Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Larson, Laslovich, Lind, Mangan, Moss, Ryan, Smith, Squires, Steinbeisser, Tash, Toole, Weinberg, Wheat, Williams, Mr. President.

Total 24

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

Total 25

Absent or not voting: None.

Total 0

Excused: Schmidt.

Total 1

Senator Toole moved **HB 802** be taken from 3rd reading and placed in Senate Finance and Claims. Motion failed as follows:

Yeas: Cooney, Cromley, Ellingson, Elliott, Gillan, Grimes, Harrington, Hawks, Laslovich, Lind, Moss, Pease, Toole, Weinberg, Wheat, Williams.

Total 16

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Curtiss, Esp, Essmann, Gallus, Gebhardt, Hansen, Keenan, Kitzenberg, Laible, Larson, Lewis, Mangan, McGee, O'Neil, Perry, Roush, Ryan, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Tropila, Mr. President.

Total 33

Absent or not voting: None.

Total 0

Excused: Schmidt.

Total 1

FIRST READING AND COMMITMENT OF BILLS

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

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SJR 43, introduced by Ryan, Joe Balyeat, Brueggeman, Cobb, Cocchiarella, Essmann, Gebhardt, Laible, Larson, Lewis, McGee, O'Neil, Pease, Perry, Peterson, Roush, Shockley, Squires, Steinbeisser, Story, Tester, Tropila, Wheat, referred to State Administration.

**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 Grimes in the chair.

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

HB 667 - Senator Gillan moved **HB 667** be concurred in.

HB 667 - Senator Grimes moved **HB 667**, second reading copy, be amended as follows:

1. Title, line 25.

Following: "PROVIDING"

Strike: "AN"

Insert: "A DELAYED"

2. Page 2, line 6.

Strike: "January"

Insert: "July"

3. Page 7, line 13.

Strike: "and"

4. Page 7, line 16.

Strike: "and"

5. Page 7.

Following: line 20

Insert: "(12) report regularly to the appropriate legislative interim committee regarding the administration of [sections 1 through 9] and the administrative rules prior to proposing the rules."

6. Page 28, line 14.

Strike: "2005"

Insert: "2006"

7. Page 28, line 17.

Strike: "2005"

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Insert: "2006"

Amendment **not** adopted as follows:

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

Total 19

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

Total 30

Absent or not voting: Keenan.

Total 1

Excused: None.

Total 0

HB 667 - Senator Gillan moved **HB 667** be concurred in. Motion carried as follows:

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

Total 37

Nays: Balyeat, Barkus, Esp, Grimes, Keenan, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.

Total 13

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 678 - Senator Laslovich moved **HB 678** be concurred in. Motion carried unanimously.

HB 689 - Senator Essmann moved **HB 689** be concurred in. Motion carried unanimously.

HB 756 - Senator McGee moved **HB 756** be concurred in. Motion carried with Senators Joe Balyeat, O'Neil, and Shockley voting nay.

HB 776 - Senator McGee moved **HB 776** be concurred in. Motion carried with Senators Balyeat, O'Neil, and Shockley voting nay.

HB 584 - Senator Hawks moved **HB 584** be concurred in.

HB 584 - Senator Hawks moved **HB 584**, second reading copy, be amended as follows:

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1. Page 10, lines 26 through 28.

Strike: section 14 in its entirety

Insert: "NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Amendment adopted with Senators Balyeat and O'Neil voting nay.

HB 584 - Senator Esp moved **HB 584**, second reading copy, be amended as follows:

1. Page 2, line 21.

Following: "that"

Insert: ": (i)"

2. Page 2, line 22.

Following: "45-8-201(2)"

Insert: "; or (ii) is produced in whole or in part with money received for tobacco product placement, advertisement, or other tobacco use in the production"

3. Page 4, line 1.

Following: "production"

Insert: ": (i)"

4. Page 4, line 2.

Following: "45-8-201(2)"

Insert: "; or (ii) will not receive any money for tobacco product placement, advertisement, or other tobacco use in the production"

Amendment adopted unanimously.

HB 584 - Senator Hawks moved **HB 584**, as amended, be concurred in. Motion carried as follows:

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

Total 32

Nays: Bales, Balyeat, Barkus, Black, Curtiss, Elliott, Essmann, Gebhardt, Grimes, Keenan, Mangan, McGee, O'Neil, Shockley, Steinbeisser, Story, Tash.

Total 17

Absent or not voting: None.

Total 0

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Excused: Cobb.
Total 1

HB 46 - Governor's Amendments - Senator Wheat moved Governor's amendments to **HB 46** be concurred in. Motion carried unanimously.

HB 266 - Governor's Amendments - Senator Bales moved Governor's amendments to **HB 266** be concurred in. Motion carried unanimously.

HB 517 - Conference Committee Report No. 1 - Senator Tester moved the Conference Committee report to **HB 517** be adopted. Motion carried with Senator McGee voting nay.

SB 41 - House Amendments - Senator Keenan moved House amendments to **SB 41** be concurred in. Motion carried unanimously.

SB 146 - Conference Committee Report No. 1 - Senator McGee moved the Conference Committee report to **SB 146** be adopted. Motion carried unanimously.

SB 443 - Conference Committee Report No. 1 - Senator Roush moved the Conference Committee report to **SB 443** be adopted. Motion carried unanimously.

SB 477 - House Amendments - Senator Elliott moved House amendments to **SB 477** be concurred in. Motion carried unanimously.

SB 486 - House Amendments - Senator Cocchiarella moved House amendments to **SB 486** be concurred in. Motion carried unanimously.

HB 802 - Senator Gebhardt moved **HB 802** be concurred in.

HB 802 - Senator Toole moved **HB 802**, second reading copy, be amended as follows:

1. Title, line 5.

Strike: "AN IMMEDIATE"

Insert: "A DELAYED"

2. Page 2, line 6.

Strike: "on passage and approval"

Insert: "October 1, 2009"

3. Page 2, line 8.

Strike: "June"

Insert: "September"

4. Page 2, line 9.

Strike: "2005"

Insert: "2009"

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Amendment **not** adopted as follows:

Yeas: Ellingson, Grimes, Harrington, Hawks, Laslovich, Lind, Moss, Pease, Schmidt, Toole, Weinberg, Wheat, Williams.

Total 13

Nays: Bales, Barkus, Black, Brueggeman, Cocchiarella, Cromley, Curtiss, Elliott, Esp, Gebhardt, Hansen, Keenan, Kitzenberg, Larson, Mangan, McGee, O'Neil, Perry, Roush, Ryan, Smith, Stapleton, Steinbeisser, Story, Tash, Mr. President.

Total 26

Absent or not voting: Gillan.

Total 1

Excused: Balyeat, Cobb, Cooney, Essmann, Gallus, Laible, Lewis, Shockley, Squires, Tropila.

Total 10

HB 802 - Senator Gebhardt moved **HB 802** be concurred in. Motion carried as follows:

Yeas: Bales, Black, Brueggeman, Curtiss, Elliott, Gebhardt, Grimes, Keenan, Larson, Mangan, McGee, O'Neil, Perry, Roush, Ryan, Smith, Stapleton, Steinbeisser, Story, Tash, Mr. President.

Total 21

Nays: Cobb, Cromley, Ellingson, Esp, Hansen, Harrington, Hawks, Laslovich, Lind, Moss, Pease, Schmidt, Toole, Weinberg, Wheat, Williams.

Total 16

Absent or not voting: Barkus, Cocchiarella, Kitzenberg.

Total 3

Excused: Balyeat, Cooney, Essmann, Gallus, Gillan, Laible, Lewis, Shockley, Squires, Tropila.

Total 10

HB 671 - Senator Brueggeman moved **HB 671** be concurred in. Motion carried with Senator Hansen voting nay.

HJR 34 - Senator Toole moved **HJR 34** be concurred in. Motion carried with Senator McGee voting nay.

SJR 41 - Senator Weinberg moved **SJR 41** be adopted. Motion carried unanimously.

SB 217 - Free Conference Committee Report No. 1 - Senator Larson moved the Free Conference Committee report to **SB 217** be adopted. Motion carried as follows:

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

Total 27

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Grimes, Hansen, Keenan, Laible,

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Lewis, McGee, O'Neil, Perry, Shockley, Stapleton, Steinbeisser, Story, Tash.
Total 22

Absent or not voting: None.
Total 0

Excused: Cobb.
Total 1

HB 115 - Conference Committee Report No. 1 - Senator Essmann moved the Conference Committee report to **HB 115** be adopted. Motion carried unanimously.

HB 146 - Conference Committee Report No. 1 - Senator Cromley moved the Conference Committee report to **HB 146** be adopted. Motion carried unanimously.

HB 361 - Free Conference Committee Report No. 1 - Senator Gebhardt moved the Free Conference Committee report to **HB 361** be adopted. Motion carried with Senators Bales, Hansen, Larson, Smith, and Steinbeisser voting nay.

HB 367 - Conference Committee Report No. 1 - Senator Mangan moved the Conference Committee report to **HB 367** be adopted. Motion carried unanimously.

HB 493 - Free Conference Committee Report No. 1 - Senator Gallus moved the Free Conference Committee report to **HB 493** be adopted. Motion carried unanimously.

SB 68 - House Amendments - Senator Balyeat moved House amendments to **SB 68** be concurred in. Motion carried unanimously.

SB 85 - House Amendments - Senator Squires moved House amendments to **SB 85** be concurred in. Motion carried unanimously.

SB 87 - House Amendments - Senator Elliott moved House amendments to **SB 87** be concurred in. Motion carried unanimously.

SB 296 - House Amendments - Senator Black moved House amendments to **SB 296** be concurred in. Motion carried with Senator McGee voting nay.

SB 407 - Senator Grimes moved consideration of **SB 407** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

SB 432 - Senator Grimes moved consideration of **SB 432** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

SB 489 - Senator McGee assumed the chair.

SB 489 - House Amendments - Senator Lind moved House amendments to **SB 489** be **not** concurred in. Motion carried as follows:

Yeas: Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Gallus, Gillan, Hansen, Harrington, Hawks, Kitzenberg,

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Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 29

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

Total 20

Absent or not voting: None.

Total 0

Excused: Stapleton.

Total 1

SB 407 - House Amendments - Senator Grimes moved House amendments to **SB 407** be concurred in. Motion carried unanimously.

SB 432 - Senator Grimes reassumed the chair.

SB 432 - House Amendments - Senator Brueggeman moved House amendments to **SB 432** be concurred in. Motion carried unanimously.

HB 700 - Senator Ellingson moved consideration of **HB 700** be passed for the day. Motion carried.

HB 703 - Senator Ellingson moved consideration of **HB 703** be passed for the day. Motion carried.

HB 438 - Senator Lewis moved **HB 438** be concurred in. Motion carried unanimously.

HB 535 - Senator Black moved consideration of **HB 535** be placed below HB 592 on the second reading board. Motion carried.

HB 550 - Senator Essmann moved **HB 550** be concurred in. Motion carried with Senators Gebhardt and O'Neil voting nay.

HB 592 - Senator Elliott moved **HB 592** be concurred in. Motion carried as follows:

Yeas: Balyeat, Black, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Larson, Laslovich, Lind, McGee, Moss, O'Neil, Pease, Roush, Ryan, Shockley, Smith, Squires, Toole, Weinberg, Wheat.

Total 29

Nays: Bales, Barkus, Brueggeman, Cobb, Curtiss, Esp, Grimes, Keenan, Kitzenberg, Lewis, Mangan, Perry, Stapleton, Steinbeisser, Story, Tash, Tropila.

Total 17

Absent or not voting: None.

Total 0

Excused: Laible, Schmidt, Williams, Mr. President.

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Total 4

HB 535 - Senator Black moved **HB 535** be concurred in.

HB 535 - Senator Story moved **HB 535**, second reading copy, be amended as follows:

1. Page 7, line 22.

Following: "(i)"

Insert: "(i)"

2. Page 7, line 26.

Following: "z"

Insert: "."

(ii) Stripper well bonus production is subject to taxation"

3. Page 7, line 29.

Following: "~~barrel~~"

Insert: "only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$38 a barrel"

Amendment adopted unanimously.

HB 535 - Senator Black moved **HB 535**, as amended, be concurred in. Motion carried 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, Mangan, McGee, O'Neil, Pease, Perry, Roush, Ryan, Smith, Squires, Steinbeisser, Story, Tash, Tropila, Weinberg, Wheat, Mr. President.

Total 43

Nays: Lind, Moss, Shockley, Toole, Williams.

Total 5

Absent or not voting: None.

Total 0

Excused: Schmidt, Stapleton.

Total 2

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

THIRD READING OF BILLS

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The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 214 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 410 failed as follows:

Yeas: Cocchiarella, Cooney, Ellingson, Elliott, Gallus, Gebhardt, Gillan, Harrington, Keenan, Laslovich, Lind, Moss, Pease, Schmidt, Smith, Squires, Stapleton, Story, Tash, Toole, Wheat, Williams, Mr. President.
Total 23

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cromley, Curtiss, Esp, Essmann, Grimes, Hansen, Hawks, Kitzenberg, Laible, Larson, Lewis, Mangan, McGee, O'Neil, Perry, Roush, Ryan, Shockley, Steinbeisser, Tropila, Weinberg.
Total 27

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 529 concurred in as follows:

Yeas: Bales, Barkus, Black, Brueggeman, 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, Smith, Squires, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 44

Nays: Balyeat, Cobb, Esp, O'Neil, Shockley, Stapleton.
Total 6

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

SJR 36 adopted as follows:

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

Total 44

Nays: Barkus, Black, Esp, Keenan, Shockley, Stapleton.

Total 6

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SJR 39 adopted as follows:

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

Total 37

Nays: Bales, Balyeat, Barkus, Black, Esp, Keenan, Laible, McGee, O'Neil, Shockley, Stapleton, Steinbeisser, Story.

Total 13

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 60 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, O'Neil, Pease, Perry, Roush, Ryan, Shockley, Smith, Squires, Stapleton, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 45

Nays: Bales, Esp, Steinbeisser, Story.

Total 4

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Absent or not voting: None.
Total 0

Excused: Schmidt.
Total 1

SJR 41 adopted as follows:

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

Nays: Esp, Stapleton, Steinbeisser.
Total 3

Absent or not voting: None.
Total 0

Excused: Schmidt.
Total 1

SPECIAL ORDERS OF THE DAY

Senator Hawks introduced the Heritage Christian School Signers who then performed two songs.

SR 15 (Governor's Appointments) - Senator Cooney

Passed as follows:

Yeas: Balyeat, Black, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Harrington, Hawks, Kitzenberg, Larson, Laslovich, Lind, Mangan, Moss, Pease, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 34

Nays: Bales, Barkus, Brueggeman, Cobb, Curtiss, Grimes, Hansen, Keenan, Laible, Lewis, McGee, O'Neil, Perry, Steinbeisser, Story, Tash.
Total 16

Absent or not voting: None.
Total 0

Excused: None.
Total 0

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

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Majority Leader Ellingson moved that the Senate adjourn until 8:00 a.m., Saturday, April 16, 2005. Motion carried.

Senate adjourned at 5:24 p.m.

BILL LOMBARDI
Secretary of Senate

JON TESTER
President of the Senate