

**SENATE JOURNAL
60TH LEGISLATURE
FIFTY-SIXTH LEGISLATIVE DAY**

Helena, Montana
March 16, 2007

Senate Chambers
State Capitol

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

Roll Call. Senator J. Tropila excused. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Gallus, Gillan, Hansen, Harrington, Hawks, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Moss, Murphy, Pease, Perry, Peterson, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, M. Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 41

Nays: Balyeat, Brown, Essmann, Gebhardt, Jackson, McGee, O'Neil, Shockley.

Total 8

Absent or not voting: None.

Total 0

Excused: J. Tropila.

Total 1

REPORTS OF STANDING COMMITTEES

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Cocchiarella, Chairman): 3/16/2007

HB 58, be concurred in. Report adopted.

HB 378, be concurred in. Report adopted.

JUDICIARY (Laslovich, Chairman): 3/16/2007

HB 91, be concurred in. Report adopted.

HB 521, be concurred in. Report adopted.

LOCAL GOVERNMENT (Gillan, Chairman): 3/16/2007

HB 400, be concurred in. Report adopted.

HB 662, be concurred in. Report adopted.

TAXATION (Elliott, Chairman): 3/16/2007

SB 138, introduced bill, be amended as follows:

1. Title, line 9.

Strike: "APPLYING SPECIAL RULES TO CAPTIVE INSURANCE COMPANIES;"

2. Title, line 13.

Strike: "AMENDING SECTION 33-2-705, MCA;"

3. Page 2, line 2.

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Strike: "80% of the amount of the qualified dividends"

Insert: "the total amount of qualified dividends allowed as a deduction for federal income tax purposes"

4. Page 3, line 18 through line 26.

Strike: subsection (11) in its entirety

Renumber: subsequent subsections

5. Page 4, line 22 through page 5, line 27.

Strike: section 3 in its entirety

Renumber: subsequent sections

6. Page 6, line 19 through line 21.

Strike: subsection (v) in its entirety

7. Page 6, line 25.

Strike: "5"

Insert: "4"

8. Page 9, line 3.

Strike: "4(2)"

Insert: "3(2)"

9. Page 10, line 27 through line 28.

Strike: "or, if" on line 27 through "0.40" on line 28

10. Page 12, line 3.

Insert: "(7) The provisions of this section do not apply to an insurer involved in a proceeding under the Insurers Supervision, Rehabilitation, and Liquidation Act, Title 33, chapter 2, part 13, or any similar proceeding brought by any other state insurance commissioner."

"NEW SECTION. Section 6. Legitimate business purpose. (1) If a taxpayer's ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is greater than or equal to 60%, as determined under [section 2], then the provisions of [sections 1 through 7] do not apply.

(2) If a taxpayer's ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is less than 60%, as determined under [section 2], and upon an adequate showing by a taxpayer that a transaction referred to in [sections 2 through 5] was entered into with a legitimate business purpose, the department may grant relief from the application of [sections 1 through 7]."

Renumber: subsequent sections

11. Page 12, line 4 through line 24.

Strike: "To implement" on line 4 through "7], the" on line 5

Insert: "The"

Following: "necessary"

Insert: "to implement and administer the provisions of [sections 1 through 6]."

Strike: ", including" on line 5 through "state." on line 24

12. Page 12, line 26 through page 14, line 6.

Strike: section 8 in its entirety

Renumber: subsequent sections

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And, as amended, do pass. Report adopted.

SB 470, do pass. Report adopted.

FIRST READING AND COMMITMENT OF BILLS

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

SB 556, introduced by Elliott, Hamilton, Shockley, referred to Taxation.

SB 557, introduced by Black, Elliott, referred to Taxation.

SB 558, introduced by Lind, referred to Natural Resources and Energy.

SB 559, introduced by Kaufmann, referred to Taxation.

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

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

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

HB 83 - Senator Williams moved consideration of **HB 83** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

HB 176 - Senator Brueggeman moved **HB 176** be concurred in. Motion carried unanimously.

HB 190 - Senator J. Tropila moved **HB 190** be concurred in. Motion carried with Senator McGee voting nay.

HB 361 - Senator Shockley moved consideration of **HB 361** be placed at the bottom of the second reading board for the purpose of amendment. Motion carried.

HB 132 - Senator Laible moved **HB 132** be concurred in. Motion carried unanimously.

HB 140 - Senator Lewis moved **HB 140** be concurred in. Motion carried as follows:

Yeas: Black, Cobb, Cocchiarella, Elliott, Essmann, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Moss, Murphy, O'Neil, Pease, Ryan, Schmidt, Shockley, Smith, Squires, J.Tropila, M.Tropila, Wanzenried, Williams.

Total 31

Nays: Bales, Balyeat, Barkus, Brown, Brueggeman, Curtiss, Esp, Gallus, Jackson, Lind, McGee, Perry, Peterson, Stapleton, Steinbeisser, Story, Tash, Weinberg, Mr. President.

Total 19

Absent or not voting: None.

Total 0

Excused: None.

Total 0

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Senator Williams moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Cooney in the chair. Chairman Schmidt 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 90 concurred in as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 48

Nays: Balyeat, Brown.
Total 2

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 193 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 332 concurred in as follows:

Yeas: Bales, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams,

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Mr. President.
Total 49

Nays: Balyeat.
Total 1

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 531 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 49

Nays: Esp.
Total 1

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 144 concurred in as follows:

Yeas: Bales, Balyeat, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 48

Nays: Barkus, Esp.
Total 2

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 449 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann,

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Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 49

Nays: O'Neil.

Total 1

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 70 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 81 concurred in as follows:

Yeas: Bales, Balyeat, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 45

Nays: Barkus, Esp, McGee, Steinbeisser, Story.

Total 5

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 87 concurred in as follows:

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Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senate recessed at 1:55 p.m. to meet in joint session with the House for the purpose of receiving Congressman Denny Rehberg's address.

Distinguished members of the Legislature, honored guests, my fellow Montanans...

Thank you for allowing me to be here today. It's good to be back at the State Capitol. It's truly a privilege to stand before you once again as Montana's Congressman and discuss what we can do together for Montana.

I'm going to talk today about the future, but before I get into the substance of my remarks I want to show you the future. In the audience today is young man by the name of Toby Marx. Toby is the son of Glenn and Terri Marx. Some of you may remember Glenn's name because of his service to Montana working for Congressman Ron Marlenee and Governors Stan Stephens and Marc Racicot. Toby is a 2006 graduate of Whitehall High School where he was Valedictorian and an accomplished athlete. Last year I appointed Toby to West Point where he just finished his first semester, is an Engineering major, and is on the Dean's List. When he graduates Toby will be commissioned as a 2nd Lieutenant and will have a five year obligation in the U.S. Army. Young men like Toby make me feel pretty good about Montana's future and America's future and I want to thank him for his service.

I would also like to take a minute and pay tribute to all of the brave young men and women serving to protect America, at home, and abroad. Their deeds and service will remain forever engraved in the archives of a grateful nation and in the hearts of their family and friends.

When I last spoke to you two years ago, circumstances were very different in the U.S. House. While the changes certainly bring new challenges, the priority remains the same: making sure Montana has a seat at the table in Washington DC.

As many of you know, I visit each of Montana's 56 counties every congressional term – which means I get a lot of frequent driver miles. It also means I spend a lot of time talking to Montanans and filling up at gas stations – and those conversations and fill-ups ensure that energy issues, and their solutions, are never far from my mind.

Those of us in elective office should never tire of talking about energy problems, and finding energy solutions, because it's not a matter of time – we are already facing energy shortages across the country.

It's not a matter of money, as federal and state governments continue to combine to spend billions through LIHEAP and other such programs to try and make sure folks don't have to choose between paying their energy

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bill and putting food on the table.

And it certainly shouldn't be a matter of politics. The need for a National energy policy and the time for Montana to be part of the comprehensive national energy policy is NOW. It's time for all of us to quit blaming each other for what's not being done and start the task of creating a long-term plan that will prevent price shocks, prevent energy shortages, and establish a level of energy consistency and price stability Montanans have the right to expect.

The status quo is unacceptable. When it comes to energy; we need to do more. MUCH MORE. If Americans nationwide and Democrats and Republicans especially in Washington D.C. are willing to work together and put aside regional and partisan differences, we can accomplish a lot in a short period. And frankly, we don't have a choice.

Let's talk about the principles of an effective, comprehensive energy policy that would address our needs today, AND tomorrow.

One – America will be stronger if it develops 21st Century technology and market-oriented solutions to environmental conservation, and energy consumption.

Protecting the environment and producing energy are not mutually exclusive.

Two – The lengthy process of environmental planning must be made more efficient and cost effective. We don't need more bureaucracy and burdensome regulations. We need the kind of common sense environmental regulations that are balanced and reasonable.

Three – America should focus its energy policy in four areas: basic research for a new energy system, incentives for conservation, more renewable resources, and environmentally sound development of fossil fuels.

You, like me, read the headlines every day. Venezuela this – Saudi Arabia that – OPEC this – Iran that. A threat to America's energy security is a threat to national security. Our "dependence" on OPEC and foreign oil entangles us in the Middle East and makes us dependent on countries that are hostile to America and American interests. The greater America's dependence on foreign energy, the greater the threat to American national security.

What does that have to do with the 60th Montana Legislative Session?

With full confidence I can say that what you are going to discuss over the final days of this session has vastly more to do with our long-term national security than anything Congress will do about the Middle East in the next few months. And what you need is a sense of the strategic importance of energy independence, and why it is urgent at a national security level.

If you were to take all of Latin America and look at the amount we have spent there since 1979 in terms of national defense, military activities, etc. and then you were to take all of sub-Saharan Africa and look at the amount we have spent there since 1979 – and then you were to look at the Persian Gulf and add up the cumulative investment of trying to add stability to the region – that's the underlying cost of the current energy economy in America. So it's important to think about what the current energy economy costs us and what would a dramatically different future energy economy cost us.

Think of the exciting possibilities....more wind projects, solar projects, coal to liquids, biomass, biofuels (cellulosic ethanol), and things we haven't even thought of yet.

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These are just some of the major building blocks of creating a national security environment where our balance of payments is dramatically better because the energy money is staying here at home, and the ability of any foreign government, whether it's a dictator in Venezuela or a dictator in Iran, to, in any way, threaten the U.S. and the world economy in energy terms is substantially reduced. So I want to start by saying, in my mind, there are decisions you –in Helena– and us – in Washington are going to have to make soon because these decisions will bring together national security, the environment, the future economic health of the U.S., the quality of life in rural America and incomes for our farmers and ranchers.

Today, I want to address one of those building blocks – Clean Coal.

Last June, I asked the Department of Energy to assign an expert to my office to figure out why Montana has the largest recoverable coal reserves in America, and only ranks 6th in production...

Why Wyoming has 10 times the production we do....

Why 7 states competed to be the site for FutureGen, the world's first coal-fueled zero emissions electricity and hydrogen power plant. Through the use of advanced coal gasification technologies and carbon sequestration, FutureGen offers the opportunity to use our plentiful American coal resources to meet our growing energy needs, while protecting the health of our people and our environment – and Montana didn't even submit a proposal.

The person lent to my office turned out to be an exceptionally qualified gentleman by the name of Bob Wright, an engineer and PhD with over 40 years of experience in energy technologies and electrical power generation, both fossil fuels and nuclear. In prior assignments, he was responsible for providing support to decision makers for programs and policy addressing global climate change, hydrogen production and geologic carbon sequestration.

In his final report to me, Bob did not mince words. – Prior initiatives to provide incentives for the production and use of coal in Montana have failed. The establishment of state incentives, both financial and non-financial, is absolutely critical because incentives by the federal government are applicable in all states – for Montana to move beyond rhetoric and actually do something – it must compete with other states for the one or two commercial plants that we know will be built somewhere in America in the next 10 years.

What other states offer incentives for coal gasification? – Illinois, Indiana, Minnesota, Ohio, Pennsylvania, Texas, and Wyoming.

So I asked Bob to study these states – and come up with ideas for me in Congress, and you in Montana. Big ideas....

I sometimes jokingly say – creativity is great – but plagiarism is a whole lot faster. Let's take their ideas.... And do it bigger and better.

In these 7 states...grants are used to conduct studies, perform research and provide educational opportunities in specific disciplines.

Why not award merit-based competitive grants for specific studies and research projects addressing the production and use of coal within Montana. Limit these awards to a maximum of \$2.5 million with a performance period not to exceed (3) years.

Or -- award grants to schools of secondary education up to \$25,000 per school per year, for either a curriculum or program in energy that must include a balance among conservation, renewable energy, coal, natural gas, petroleum and, yes, even nuclear energy.

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How about establishing, at the university level, programs that lead to a bachelor's degree in the production and use of coal and clean coal technologies?

Another approach to financial incentives for some states is to offer tax credits. These credits are available for all new coal technology and coal-to-liquids facilities and would be offered per ton of coal used. They would expire after a specific number of total tons have been consumed or after a set number of years have passed.

The highest level of commitment to coal would be for Montana to establish a coal and economic development office. Several states have done so. For example, in the state of Ohio, the Ohio Development Office co-funds development and implementation of technologies that can use their state's high-sulfur coal in an economical, environmentally-sound manner. Illinois and Wyoming have done the same.

These are just some of the many, many recommendations Dr. Wright spent 8 months researching for me. I have brought along with me today a copy of his report for each of you.

What, you might ask, am I doing to help?

As you know, I am a member of the House Appropriations Committee.

Last month, the Congress passed, and the President signed, a \$1.2 billion appropriation for the Department of Energy's Energy Efficiency and Renewable Energy Programs. These programs fund weatherization, efficiency deployment, industrial technologies, equipment standards and analysis, and distributed energy – which all play a key role in the research, development, and deployment of new energy efficiency technologies.

I'm a cosponsor of 25 x 25 which means that by the year 2025, America's agricultural, forestry, and working lands will provide 25% of the total energy consumed in the U.S. from renewable sources. Nearly 400 agricultural, environmental and industry group have endorsed the legislation.

Along with Nick Rahall, Democrat Chairman of the Natural Resources Committee, I have introduced the Coal-to-Liquid Fuel Promotion Act of 2007. This legislation addresses DOE loan guarantees for the first 10 large-scale plants, and expands federal tax incentives for investment and production (including the infrastructure needed to sequester carbon) capped at \$200 million a plant.

And next week, I am introducing legislation to streamline the permitting process for new coal to liquids facilities. My bill is intended to create a cooperative approach between Federal, State, and Tribal government in order to develop and approve permits in a timely manner, and create deadlines for permit approval.

The President laid down the challenge in last year's State of the Union Address: Make America more energy independent....

He said, "To change how we power our homes and offices, we will invest more in zero-emission coal-fired plants, revolutionary solar winds and technologies, and clean, safe nuclear energy."

Let's make this our Montana mission; our vision for the future:

To modernize our infrastructure so that we can deliver energy more efficiently and inexpensively, and open the door to new sources of fuel...

Pursue hydrogen and other alternative sources that offer breakthrough advances in energy production....

And explore all new possibilities right here at home so that we, Montana, can become the energy laboratory of the

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future.

For in the end, it will be the 300 million Americans who will benefit the most. If we can put a man on the moon and return him safely, we can address and solve the energy challenges facing America today. It is a challenge worthy of our best minds and most determined efforts. And it's a challenge I'm confident we will meet... and beat.

Thank you all for your kind attention. Good day, and God bless you all.

Senate reconvened 2:30 p.m.

Roll Call: Quorum present.

Yeas: Bales, Barkus, Brueggeman, Cocchiarella, Curtiss, Esp, Essmann, Gallus, Gillan, Hansen, Hawks, Jent, Juneau, Kitzenberg, Laible, Larson, Laslovich, Lewis, Moss, O'Neil, Pease, Perry, Peterson, Ryan, Schmidt, Squires, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 35

Nays: Balyeat, Brown, Gebhardt, Jackson, McGee, Shockley, Stapleton.
Total 7

Absent or not voting: None.
Total 0

Excused: Black, Cobb, Elliott, Harrington, Kaufmann, Lind, Murphy, Smith.
Total 8

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Williams moved that the Senate adjourn until 8:00 a.m., Saturday, March 17, 2007. Motion carried.

Senate adjourned at 2:33 p.m.

JOHN MUDD
Secretary of the Senate

MIKE COONEY
President of the Senate