

**SENATE JOURNAL  
61ST LEGISLATURE  
EIGHTY-SIXTH LEGISLATIVE DAY**

Helena, Montana  
April 22, 2009

Senate Chambers  
State Capitol

Senate convened at 8:00 a.m. President Story presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senators Hansen and Windy Boy, excused. Quorum present.

**BILLS AND JOURNALS:**

4/21/2009

Correctly printed: **HB 52, HB 108.**

Correctly enrolled: **SB 100, SB 343, SB 425, SB 475, SB 509, SJR 3, SJR 28, SJR 29, SJR 37, SR 37.**

Signed by the Speaker at 2:15 p.m., April 21, 2009: **SB 465.**

Signed by the President at 10:30 a.m., April 21, 2009: **SB 465.**

Signed by the Secretary of the Senate at 9:00 a.m., April 21, 2009: **SB 465.**

Delivered to the Governor for approval at 2:25 p.m., April 21, 2009: **SB 465.**

Signed by the Speaker at 2:15 p.m., April 21, 2009: **SB 55, SB 214.**

Signed by the President at 12:45 p.m., April 21, 2009: **SB 55, SB 214.**

Signed by the Secretary of the Senate at 11:15 a.m., April 21, 2009: **SB 55, SB 214.**

Delivered to the Governor for approval at 3:10 p.m., April 21, 2009: **SB 55, SB 214.**

Delivered to the Governor, amendments not concurred in, at 9:45 a.m., April 22, 2009: **SB 158, SB 396.**

Delivered to the Secretary of State at 2:46 p.m., April 21, 2009: **SR 33, SR 34, SR 35, SR 38.**

Examined by the sponsor and found to be correct: **SB 100, SB 343, SB 425, SB 475, SB 509, SJR 3, SJR 28, SJR 29, SJR 37, SR 37.**

Mr. President: We, your committee on Bills and Journal, having examined the daily journals for the sixty-ninth, seventieth, seventy-first, seventy-second, seventy-third, seventy-fourth, seventy-fifth, and seventy-sixth legislative days, find the same to be correct.

Senator Curtiss, Chair

**REPORTS OF SELECT COMMITTEES**

**FREE CONFERENCE COMMITTEE**

**on House Bill 3**

Report No. 1, April 21, 2009

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **House Bill 3** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 3** (reference copy -- salmon) be amended as follows:

1. Page 1, line 23.

**Strike:** "\$1,697,344"

**Insert:** "\$2,375,784"

2. Page 2, line 8.

**Following:** "(2)"

**Insert:** "For expenditures from the Brucellosis appropriation for public information and education, the department of livestock shall contract with the extension service in the Montana university system for education and communication program services."

For the House:

Hollenbaugh, Vice Chair  
Ankney  
Jones  
Mehlhoff

For the Senate:

Ripley, Chair  
J. Peterson  
Windy Boy

#### MESSAGES FROM THE OTHER HOUSE

**HB 602** - The House dissolved the Conference Committee on House amendments to **HB 602**, and authorized the Speaker to appoint the following Free Conference Committee to confer on House amendments to **HB 602**:

4/21/2009

Representative Cohenour, Vice Chair  
Representative French  
Representative Randall  
Representative Sonju

**Senate amendments to House bill** concurred in:

4/21/2009

**HB 678**, introduced by Pomnichowski

**Governor's amendments to Senate bills not** concurred in:

4/21/2009

**SB 158**, introduced by Barkus  
**SB 396**, introduced by Story

#### MESSAGES FROM THE GOVERNOR

April 21, 2009

The Honorable Robert Story  
President of the Senate  
State Capitol  
Helena, Montana 59620

The Honorable Bob Bergren  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear President Story and Speaker Bergren:

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 465, "**AN ACT REVISING AND CLARIFYING THE LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BED OF NAVIGABLE RIVERS AND STREAMS; PROVIDING FOR A REDUCTION FROM GRAZING LAND BEFORE A REDUCTION FROM CURRENT LAND USE FOR PROPERTY TAX PURPOSES; PROVIDING THAT IN A DISPUTE OVER THE OWNERSHIP OF THE BED OF A RIVER OR STREAM A PRESUMPTION MAY NOT BE MADE BASED UPON THE TAX STATUS OF THE PROPERTY; CLARIFYING THE OWNERSHIP OF STRUCTURES; CLARIFYING THE ABILITY TO CONTROL NOXIOUS WEEDS; AMENDING SECTIONS 61-8-371, 77-1-**

**111, 77-1-126, 77-1-127, 77-1-806, 77-1-809, 77-3-442, 77-6-113, 77-6-115, 77-6-302, 77-6-303, AND 77-6-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE" for the following reasons:**

Senate Bill 465, sponsored by Senator Hamlett, concerns the subject of navigable streambeds in areas including but not limited to taxation, irrigation structures, weed control, and others. Concerning the subject of taxation, in 2008, with new technology available and in consultation with the Revenue and Transportation Interim Committee, the Department of Revenue for the first time excluded from property taxation land underlying rivers or streams that the Department of Natural Resources and Conservation ("DNRC") considered to be owned by the State of Montana based on the type of evidence used by courts in determining navigability of rivers and streams for purposes of title.

An unexpected consequence was that certain property owners believed the Department of Revenue was acting to assert ownership of land never previously adjudicated as having been in state ownership. Among other things, Senate Bill 465 prohibits the Department of Revenue from treating land underlying streams and rivers as in state ownership unless the land has been adjudicated as owned by the state or the state is the owner of record of the property.

As passed, Senate Bill 465 includes a retroactive applicability clause, the effect of which would be to require reassessment of *all* stream beds exempted in 2008, except those stream beds previously adjudicated as navigable. Instead of requiring reassessment of *all* stream beds, my amendment would require retroactive reassessment only if the landowner made that choice. Under my amendment, the Department of Revenue will be required to notify landowners of their right to request a reassessment for 2008, and for those who so request, allow those landowners to pay taxes on the beds of the rivers and streams neither adjudicated or surveyed as navigable.

I have also included an additional minor amendment to the "whereas" provisions of the bill, to recognize that the DNRC has regulatory authority not only over the beds of rivers and streams adjudicated as navigable, but also over those stream beds determined navigable through federal surveys of the meander lines.

I have discussed these amendments with the sponsor of the bill, Senator Hamlett, who has indicated his support.

Sincerely,

BRIAN SCHWEITZER  
Governor

GOVERNOR'S AMENDMENTS  
TO SENATE BILL 465

Amendments to Senate Bill No. 465  
Reference Copy

By Request of the Governor  
For the Senate Committee of the Whole

Prepared by Susan Byorth Fox  
April 21, 2009

1. Title, line 12 through line 13.

**Following:** "DATE" on line 12

**Strike:** remainder of line 12 through "DATE" on line 13

2. Page 1, line 25.

**Following:** "NAVIGABLE"

**Insert:** "and was not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river"

3. Page 3, line 25.

**Following:** line 24

**Insert:** "(3) The department shall notify landowners of their right to request and shall provide upon request a revised assessment for tax year 2008 for the bed of any stream:

(a) not adjudicated to be navigable by a court of competent jurisdiction; or

(b) not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river."

4. Page 12, line 8 through line 9.

**Strike:** section 19 in its entirety

### FIRST READING AND COMMITMENT OF BILLS

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

**HJR 32**, introduced by Ebinger, Blewett, Moss, Sands, referred to Local Government.

**HJR 37**, introduced by Arntzen, referred to Local Government.

**HJR 39**, introduced by P. Noonan, French, McClafferty, Sesso, Jopek, A. Noonan, referred to Public Health, Welfare and Safety.

**HJR 42**, introduced by Reinhart, Arntzen, MacLaren, Ebinger, Vance, Stahl, Berry, Bennett, Hamilton, Driscoll, Becker, Menahan, Hands, Grinde, Smith, Sands, referred to Local Government.

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

**HJR 43**, introduced by Wiseman, Essmann, Williams, P. Beck, Boland, R. Brown, Getz, McChesney, Cohenour, Steenson, referred to Finance and Claims.

Senator Windy Boy present at this time.

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

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

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

**SJR 30 - House Amendments** - Senator Zinke moved House amendments to **SJR 30** not be concurred in. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Essmann, Gallus, Gebhardt, Hamlett, Hawks, Hinkle, Jackson, Jent, Juneau, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Windy Boy, Zinke, Mr. President.

Total 41

Nays: Branae, Cooney, Erickson, Gillan, Kaufmann, Schmidt, Squires, Williams.

Total 8

Absent or not voting: None.

Total 0

Excused: Hansen.

Total 1

**HB 331 - Free Conference Committee Report No. 1** - Senator Gebhardt moved the Free Conference Committee report to **HB 331** be adopted. Motion carried as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Juneau, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.  
Total 42

Nays: Balyeat, R. Brown, Esp, Kaufmann, Shockley, M. Tropila, Tutvedt.  
Total 7

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

**HB 154** - Senator Lewis moved **HB 154** be concurred in. Motion carried as follows:

Yeas: Bales, Barrett, Black, Branae, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hawks, Hinkle, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Zinke.  
Total 41

Nays: Balyeat, Barkus, Brenden, R. Brown, Esp, Jackson, Tutvedt, Mr. President.  
Total 8

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

Senator Peterson moved the committee rise, report progress, and beg leave to sit again. Motion carried. Committee arose. Senate resumed. President Story in the chair. Chairman Brenden 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:

**SB 171, as amended by the Governor**, passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Esp, Essmann, Gebhardt, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.  
Total 45

Nays: R. Brown, Erickson, Gallus, Shockley.  
Total 4

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

**SB 263, Conference Committee Report No. 1**, adopted as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.  
Total 45

Nays: R. Brown, Gallus, Gebhardt, Juneau.  
Total 4

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

**SB 400, as amended by the Governor**, passed as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gillan, Hamlett, Hawks, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, McGee, Moss, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.  
Total 40

Nays: Balyeat, Brenden, R. Brown, Gebhardt, Hinkle, Lewis, Murphy, Steinbeisser, Stewart-Peregoy.  
Total 9

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

**SB 507, Free Conference Committee Report No. 1**, adopted as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gebhardt, Gillan, Hamlett, Hinkle, Jackson, Jent, Juneau, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, Tutvedt, Williams, Windy Boy, Mr. President.  
Total 42

Nays: Gallus, Hawks, Kaufmann, Moss, M. Tropila, Wanzenried, Zinke.  
Total 7

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

**HB 52** concurred in as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Gallus, Gebhardt, Gillan, Hamlett, Hawks, Jent, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Zinke, Mr. President.  
Total 42

Nays: Balyeat, Esp, Essmann, Hinkle, Jackson, Juneau, Windy Boy.  
Total 7

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

**HB 85, as amended by the Governor**, concurred in as follows:

Yeas: Branae, Brenden, Brueggeman, Cooney, Curtiss, Erickson, Gallus, Gebhardt, Gillan, Hamlett, Hawks, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Mr. President.  
Total 35

Nays: Bales, Balyeat, Barkus, Barrett, Black, R. Brown, T. Brown, Esp, Essmann, Hinkle, Jackson, McGee, Tutvedt, Zinke.  
Total 14

Absent or not voting: None.  
Total 0

Excused: Hansen.  
Total 1

**HB 98, as amended by the Governor**, concurred in as follows:

Yeas: Black, Branae, T. Brown, Brueggeman, Cooney, Erickson, Gebhardt, Gillan, Hamlett, Hawks, Jackson, Jent, Juneau, Kaufmann, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Zinke.  
Total 33

Nays: Bales, Balyeat, Barkus, Barrett, Brenden, R. Brown, Curtiss, Esp, Essmann, Gallus, Hinkle, Keane, Laible, McGee, Tutvedt, Mr. President.  
Total 16

Absent or not voting: None.  
Total 0

Excused: Hansen.

Total 1

**HB 108** concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Hansen.

Total 1

**HB 483, as amended by the Governor**, concurred in as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hawks, Jackson, Jent, Juneau, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, Tutvedt, Windy Boy, Zinke, Mr. President.

Total 39

Nays: Balyeat, R. Brown, Esp, Hinkle, Kaufmann, McGee, Squires, M. Tropila, Wanzenried, Williams.

Total 10

Absent or not voting: None.

Total 0

Excused: Hansen.

Total 1

**HB 557, as amended by the Governor**, concurred in as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hawks, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Mr. President.

Total 41

Nays: Balyeat, R. Brown, Curtiss, Hinkle, Jackson, McGee, Tutvedt, Zinke.

Total 8

Absent or not voting: None.

Total 0

Excused: Hansen.

Total 1



## ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Senator Peterson moved the Senate recess until 1:30 p.m. Motion carried.

Senate in recess.

Senate reconvened at 1:30 p.m.

Roll Call. All members present, except Senator Bales, excused. Quorum present.

## REPORTS OF STANDING COMMITTEES

**TAXATION** (Essmann, Chairman):  
**SR 36**, be adopted. Report adopted.

4/22/2009

## REPORTS OF SELECT COMMITTEES

### FREE CONFERENCE COMMITTEE on **House Bill 602** Report No. 1, April 22, 2009

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **House Bill 602** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 602** (reference copy -- salmon) be accepted by the House.

For the House:

Cohenour, Vice Chair  
D. Brown  
French  
Randall

For the Senate:

Shockley, Chairman  
Balyeat  
J. Tropila

## MESSAGES FROM THE GOVERNOR

April 22, 2009

The Honorable Robert Story  
President of the Senate  
State Capitol  
Helena, Montana 59620

The Honorable Bob Bergren  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear President Story and Speaker Bergren:

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 349, "**AN ACT CLARIFYING THAT CERTAIN**

**CONFIDENTIAL OR PROPRIETARY INFORMATION SUBMITTED AS PART OF THE PUBLIC BIDDING OR PUBLIC CONTRACTING PROCESS FOR CERTAIN PUBLIC BUILDING AND PUBLIC HIGHWAY, ROAD, AND SIMILAR TRANSPORTATION PROJECTS IS NOT PUBLIC INFORMATION OPEN TO PUBLIC INSPECTION; AND AMENDING SECTIONS 18-2-503, 18-4-126, AND 60-2-137, MCA" for the following reasons.**

Senate Bill 349, sponsored by Senator Tutvedt, was introduced to address a perceived problem that state agencies will treat protected information, such as trade secret information, submitted to state agencies under Montana's procurement laws as though that information is public information. Senate Bill 349 was written to ensure that protected information is not disseminated by state agencies. The bill amends Montana procurement and construction statutes administered by the Department of Administration and also amends design-build statutes under laws administered by the Department of Transportation.

My objection to Senate Bill 349 is twofold. First, it reverses the "*constitutional presumption* that all documents of every kind in the hands of public officials are amendable to inspection, regardless of legislation. . . ." *Great Falls Tribune v. Montana Public Service Commission*, 2003 MT 359, ¶ 54, quoting *Associated Press, Inc. v. Montana Department of Revenue*, 2000 MT 160, ¶ 85. Second, it conflicts with current procurement statutes under Title 18, chapter 4, MCA.

Regarding the constitutional presumption, the *Great Falls Tribune* decision set forth the proper procedure to be used by state agencies that have in their possession information considered to be confidential. Specifically, the court rejected any conclusory, generalized statements that information is subject to protection ("mere representations" not sufficient), and required parties to make a particularized showing, through the submission of a supporting affidavit, and agencies to make particularized findings related to the claim of confidentiality. As stated by the court: "The claimant's showing must be more than conclusory. It must be specific enough for the [agency], any objecting parties, and reviewing authorities to clearly understand the nature and basis of the . . . claims to the right of confidentiality." The court also held that the governmental agency had the "affirmative duty" to review the claim of the third party and make an "independent determination whether the records are in fact property rights which warrant due process protection. . . ." *Id.* at ¶¶ 55-57. The court also clarified, however, that if the government agency requires the filing or production of trade secrets or other confidential information, "the information's status as a trade secret or confidential proprietary information remains unchanged." *Id.* at ¶ 60.

My concern with Senate Bill 349, as presented to me, is that the amendments to § 18-4-126, MCA, found in section 2 of the bill, authorize a blanket presumption of confidentiality based on the conclusory identification of the information as trade secret information by the person submitting the information, and this standard does not meet the detailed requirements set forth in *Great Falls Tribune*.

Regarding the conflict with other statutes, § 18-4-304, MCA (which is part of Montana's procurement code, and is not amended in Senate Bill 349), provides that "proposal documents may be inspected by the public subject to [three specific limitations]": matters covered by the Uniform Trade Secrets Act, matters involving individual safety as determined by the Department of Administration, and other constitutional protections. My amendments to section 3 of the bill (the new section, which will be renumbered section 1 if you adopt my amendments) track the language and exceptions already contained in current law, in § 18-4-304, MCA, and eliminate the conflict contained in the bill.

Finally, I want you to know that the Department of Administration already has in place procedures comporting with the decision of the court in *Great Falls Tribune* allowing parties submitting confidential, trade secret information in the procurement process to make a particularized showing of confidentiality by affidavit. The Department's "Affidavit for Trade Secret Confidentiality" is located at <http://gsd.mt.gov/docs/Tradesecretaffidavit.doc>. A vendor must attach, through a separate affidavit, a particularized explanation of the validity of the trade secret claim.

My amendments to Senate Bill 349 would require the Department of Transportation to adopt a procedure similar to that used by the Department of Administration.

I ask for your support of these amendments.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR

GOVERNOR'S AMENDMENTS  
TO SENATE BILL 349

Amendments to Senate Bill No. 349  
Reference Copy

Requested by the Governor

For the Senate Committee of the Whole

Prepared by Greg Petesch  
April 22, 2009

1. Title, line 4.

**Strike:** "CLARIFYING THAT CERTAIN"

**Insert:** "REQUIRING THE DEPARTMENT OF ADMINISTRATION AND DEPARTMENT OF  
TRANSPORTATION TO PROVIDE INFORMATION TO CONTRACTORS AND PROSPECTIVE  
CONTRACTORS AS TO PROCEDURES THE CONTRACTORS MAY USE TO PROTECT FROM  
PUBLIC DISCLOSURE"

**Strike:** "OR PROPRIETARY"

2. Title, lines 7 and 8.

**Strike:** "IS NOT PUBLIC INFORMATION OPEN TO PUBLIC INSPECTION" on line 7

**Following:** "AMENDING" on line 7

**Strike:** remainder of line 7 through "AND" on line 8

**Insert:** "SECTION"

3. Page 1, line 12 through page 2, line 29.

**Strike:** sections 1 and 2 in their entirety

**Renumber:** subsequent sections

4. Page 3, line 2.

**Strike:** "OR GOVERNMENTAL BODY"

5. Page 3, lines 4 and 5.

**Following:** "DEPARTMENT" on line 4

**Strike:** remainder of line 4 through "BODY" on line 5

**Following:** "SECRETS"

**Insert:** ", "

**Strike:** "OR PROPRIETARY INFORMATION"

**Insert:** "matters involving individual safety as determined by the department, and other constitutionally protected  
information"

6. Page 3.

**Following:** line 17

**Insert:** "(b) The department shall provide to each prospective design-build contractor information similar to that  
provided by the department of administration to contractors and prospective contractors under [section 1],

including a model affidavit."

**Renumber:** subsequent subsection

7. Page 3, lines 28 and 29.

**Strike:** subsection (6) in its entirety

8. Page 4, line 1.

**Strike:** "3"

**Insert:** "1"

9. Page 4, line 3.

**Strike:** "3"

**Insert:** "1"

#### MESSAGES FROM THE OTHER HOUSE

Governor's amendments to **Senate bills** concurred in and returned to the Senate: 4/22/2009

**SB 117**, introduced by Wanzenried

**SB 164**, introduced by Debby Barrett

**SB 268**, introduced by R. Brown

**SB 399**, introduced by Laslovich

**Senate joint resolution** concurred in and returned to the Senate: 4/22/2009

**SJR 35**, introduced by Schmidt

**Senate amendments to House bills** concurred in: 4/22/2009

**HB 10**, introduced by Wiseman

**HB 130**, introduced by Stoker

**HB 131**, introduced by Stoker

**HB 132**, introduced by Stoker

**HB 662**, introduced by Arntzen

**HB 669**, introduced by Vincent

**Governor's amendments to House bill** concurred in and transmitted to the Senate for concurrence in the Governor's amendments:

4/22/2009

**HB 536**, introduced by Malek

Conference Committee Report No.1 adopted: 4/22/2009

**SB 263**, introduced by Shockley

Free Conference Committee Report No.1 adopted: 4/22/2009

**SB 507**, introduced by Story

**HB 602** - The House dissolved the Conference Committee on House amendments to **HB 602**, and authorized the Speaker to appoint the following **Free Conference Committee** to confer on **HB 602**:

4/22/2009

Representative Cohenour, Vice Chair

Representative D. Brown  
Representative French  
Representative Randall

**SB 119** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following Conference Committee to meet with a like committee from the Senate to confer on House amendments to **SB 119**:  
4/22/2009

Representative McAlpin, Vice Chair  
Representative Furey  
Representative Howard  
Representative Morgan

**SB 322** - The House acceded to the request of the Senate and authorized the Speaker to appoint the following Conference Committee to meet with a like committee from the Senate to confer on **SB 322**:  
4/22/2009

Representative Jopek, Vice Chair  
Representative Butcher  
Representative Roundstone  
Representative Taylor

**SB 360** - 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 **SB 360**:  
4/22/2009

Representative Menahan, Vice Chair  
Representative Klock  
Representative Milburn  
Representative A. Noonan

#### MOTIONS

Senator Peterson moved that a Free Conference Committee be appointed for the Governor's amendments to **SB 360**. Motion carried. President Story appointed Senators Keane (Chair), Black, and Gebhardt.

Senator Peterson moved that a Free Conference Committee be appointed for **SJR 30**. Motion carried. President Story appointed Senators Zinke (Chair), Perry, and Laslovich.

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

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

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

**SB 465 - Governor's Amendments** - Senator Hamlett moved Governor's amendments to **SB 465** be concurred in. Motion carried as follows:

Yeas: Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.  
Total 47

Nays: Balyeat, R. Brown.  
Total 2

Absent or not voting: None.  
Total 0

Excused: Bales.  
Total 1

**HB 536 - Governor's Amendments** - Senator Laslovich moved Governor's amendments to **HB 536** be concurred in. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.  
Total 49

Nays: Juneau.  
Total 1

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

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

#### ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Peterson moved that the Senate adjourn until 8:00 a.m., Thursday, April 23, 2009. Motion carried.

Senate adjourned at 2:20 p.m.

MARILYN MILLER  
Secretary of the Senate

ROBERT STORY  
President of the Senate