

**HOUSE JOURNAL
62ND LEGISLATURE
ADDENDUM**

Helena, Montana
2011

House Chambers
State Capitol

BILLS (O'Hara, Chairman):

4/28/2011

Correctly enrolled: **HB 198, HB 375, HB 533, HB 611, HB 612, HJ 33.**

Examined by the sponsor and found to be correct: **HB 198, HB 375, HB 533, HB 611, HB 612, HJ 33.**

Signed by the Speaker at 10:30 a.m., April 29, 2011: **HB 198, HB 375, HB 533, HB 611, HB 612, HJ 33.**

Signed by the Chief Clerk of the House at 10:00 a.m., April 29, 2011: **HB 375, HB 533, HB 611, HB 612, HJ 33.**

BILLS (O'Hara, Chairman):

5/4/2011

Delivered to the Governor for approval at 2:45 p.m., May 4, 2011: **HB 198, HB 375, HB 533, HB 611, HB 612.**

BILLS (O'Hara, Chairman):

5/2/2011

Correctly enrolled: **HB 2, HB 271, HB 304, HB 310, HB 316.**

Delivered to the Secretary of State at 11:31 a.m., May 2, 2011: **HJR 33.**

Delivered to the Governor for approval at 9:40 a.m., May 2, 2011: **HB 4, HB 5, HB 6, HB 7, HB 8, HB 9, HB 10, HB 122, HB 132, HB 159, HB 165, HB 209, HB 258, HB 317, HB 351, HB 363, HB 372, HB 377, HB 405, HB 414, HB 444, HB 460, HB 477, HB 492, HB 495, HB 526, HB 560, HB 561, HB 562, HB 565, HB 577, HB 585, HB 613, HB 616, HB 619, HB 621, HB 633, HB 641, HB 642.**

Signed by the Speaker at 2:30 p.m., May 2, 2011: **HB 2, HB 271, HB 310, HB 316, HB 604.**

Delivered to the Governor for approval at 3:20 p.m., May 2, 2011: **HB 2, HB 271, HB 310, HB 316, HB 604.**

BILLS (O'Hara, Chairman):

5/3/2011

Delivered to the Governor for approval at 1:45 p.m., May 3, 2011: **HB 100, HB 333, HB 494, HB 551.**

MESSAGES FROM THE GOVERNOR

April 28, 2011

The Honorable Mike Milburn
Speaker of the House
State Capitol

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Helena, Montana 59620

The Honorable Jim Peterson
President of the Senate
State Capitol
Helena, Montana 59620

Dear Speaker Milburn and President Peterson:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto House Bill 59, "**AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" TO INCLUDE HYDROELECTRIC PROJECT EXPANSIONS; GRANTING THE PUBLIC SERVICE COMMISSION RULEMAKING AUTHORITY OVER HYDROELECTRIC PROJECT EXPANSIONS; AMENDING SECTIONS 69-3-2003 AND 69-3-2006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE**" for the following reasons.

House Bill 59 would amend the Renewable Power Production and Rural Economic Development Act of 2005. This landmark legislation provided incentives for jobcreating, clean energy projects.

HB 59 seeks to amend the Renewable Power Act so as to give incentives to projects that expand or upgrade hydroelectric dams. This is a reasonable goal. However, this bill also looks backwards, and would provide incentives to projects that are already underway. As written, HB 59 would provide an incentive to one project in Montana that has been under construction for a year and half, is moving along rapidly, and was clearly an economically viable project that did not require an incentive. Please realize that if we give incentives to this project, these incentives will be unavailable to new projects that create new jobs.

I do not believe that we should be giving out incentives that do not add jobs to our economy. I made this point in my proposed amendments to HB 59, but they were rejected.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

April 28, 2011

The Honorable Mike Milburn Speaker of the House
State Capitol
Helena, MT 59620

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The Honorable Jim Peterson
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker Milburn and President Peterson:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 358 (HB 358), **"AN ACT INCREASING THE AMOUNT THAT AN EMPLOYEE OR ACCOUNT HOLDER MAY EXCLUDE FROM MONTANA ADJUSTED GROSS INCOME FOR CONTRIBUTIONS DEPOSITED INTO A MEDICAL SAVINGS ACCOUNT; AMENDING SECTION 15-61202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."**

I have issued this veto of HB 358 because I believe the bill is a ruse for meaningful health care reform -reform to benefit the majority of Montanans. Further, HB 358 has an estimated fiscal impact to the state of approximately \$180,000. At a time when the state is guarding its balance sheets carefully, I do not believe the legislation is prudent.

I respectfully ask for your support in sustaining my veto.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

April 29, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena MT

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 306 (HB 306), **"AN ACT ELIMINATING THE REQUIREMENT FOR A NOTARY PUBLIC TO KEEP AND MAINTAIN AN OFFICIAL NOTARY JOURNAL; AMENDING SECTIONS 1-5-416 AND 1-5-419, MCA; AND PROVIDING AN EFFECTIVE DATE."**

House Bill 306 eliminates the requirement that a notary public keep and maintain a journal. This would be bad for consumers and would increase civil litigation, as it would vastly increase the potential for fraud, identity theft and the bilking of elderly people.

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A notarization is required by law when we sign documents to buy or sell property, to grant another person authority over our financial affairs, or to make medical decisions or end-of-life decisions. Notarization is also frequently used voluntarily in other large transactions. It has long been recognized that these large or important transactions are less susceptible to fraud and forgery when an official, unbiased witness (a notary public) is present when a document is signed, and can vouch for the fact that the signature is authentic and that the signatory was present.

An important feature of a notarization is the accompanying entry made by the notary in his or her own journal. This journal entry serves as a trustworthy, contemporaneous account of exactly what took place at the time that the document was notarized. Journal entries serve as proof in courts of law that a contract was signed in front of the notary, and that the document was signed without coercion and with mental competence. And in certain areas of commerce, these journal entries also offer strong protection for consumers.

If HB 306 were signed into law, notaries would likely become the only public officials in government, at any level, who are not required to keep a record of their public acts. I see no reason that this should be the case.

April 28, 2011

May 5, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 152, **"AN ACT REVISING PROOF OF RESIDENCY REQUIREMENTS FOR VOTER REGISTRATION AND PROOF OF IDENTITY REQUIREMENTS FOR VOTING; AND AMENDING SECTIONS 13-2-110, 13-13-114, 13-13-201, AND 13-13-602, MCA."**

House Bill 152 would require Montana voters to produce a government-issued photo ID when they appear at a polling location to cast their vote. This requirement would create an unacceptable and unnecessary burden on many elderly voters, low-income voters, disabled voters and students. Many of these citizens do not have drivers' licenses and live on low or fixed incomes. If these citizens are required to obtain a photo ID, it will cost them each \$8, every four years. The elderly and the disabled, many of whom are seriously impaired in their mobility, would now be required to make a trip to the Department of Justice's Motor Vehicles Division to obtain a photo ID, or else become automatically ineligible to vote.

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The state has for many decades recognized several forms of valid identification even though these items do not contain photographs. For example, the Registration Confirmation Card, mailed to every citizen who registers to vote, has long been recognized under the law as a valid form of identification. A significant number of voters-perhaps as many as several thousand per election-routinely come to the polls with no form of identification but these registration cards. If HB 152 were to become law, many of these same persons would be turned away for lack of a photo ID

Finally, I would note that over the course of two extensive hearings, the proponents of HB 152 cited "voter fraud" as the impetus for this legislation, but could not produce a single example of any such fraud. Thus HB 152, like other election bills that I have vetoed this session, seeks to interfere with fundamental rights of Montana citizens by imposing new and unnecessary regulations. Categorically, such a bill must not be allowed to become law.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

May 5,2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 316 (HB 316), **"AN ACT GENERALLY REVISING THE ALLOCATION OF INCOME AND REVENUE."**

Despite the fact the State of Montana now has over \$330 million cash in the bank, HB 316 needlessly steals or transfers revenue from valuable job creating economic development tools, community impact funds, and longstanding programs away from their intended sources. The bill is unnecessary given Montana's strong revenue collections and I see no reason why we should hinder our economic recovery when the money to fund core essential services is in the bank.

For fiscal year 2011, revenues have grown 8.79%. Furthermore, as the Legislature drains funds from job-creating investments in the misguided belief that the money isn't there, for the revenues contained in House Joint Resolution 2 to be accurate, revenues

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would need to decrease for the remaining 57 days of fiscal year 2011 by 7.22%.

Further, despite the commitments made by legislative leadership, HB 316 holds our schools hostage, a tactic I find unacceptable. Therefore, I am directing my Office of Budget and Program Planning to prepare legislation for the 2013 Legislature which funds the second year of the coming biennium at the full 2.43% level approved in House Bill 2. This will ensure that classrooms remain whole in this biennium despite the actions the 62nd Legislature took to hold K-12 education captive.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

May 5, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby deliver to you House Bill No. 604 (HB 604), **"AN ACT PROVIDING FOR FUND TRANSFERS AND AN APPROPRIATION; AUTHORIZING FUND TRANSFERS FROM THE TELECOMMUNICATIONS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT ACCOUNT, THE OLDER MONTANANS TRUST FUND, AND THE FIRE SUPPRESSION ACCOUNT TO THE GENERAL FUND; AUTHORIZING FUND TRANSFERS FROM THE MOTOR VEHICLE AND RECYCLING ACCOUNT, THE ORPHAN SHARE ACCOUNT, THE COAL BED METHANE PROTECTION ACCOUNT, AND THE OIL AND GAS CONSERVATION ACCOUNT TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO SCHOOL DISTRICTS; AUTHORIZING A FUND TRANSFER FROM THE OLDER MONTANANS TRUST FUND TO THE HEALTH AND MEDICAID INITIATIVES ACCOUNT; AUTHORIZING A FUND TRANSFER TO THE OLD FUND WORKERS' COMPENSATION ACCOUNT FROM THE GENERAL FUND AND THE OLD FUND LIABILITY ACCOUNT; REVISING THE TRANSFER TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT FOR FISCAL YEARS 2012 AND 2013; IMPOSING A PREMIUM FEE ON CERTAIN WORKERS' COMPENSATION POLICIES; CREATING A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-35-108, 39-71-2352, 52-3-115, 53-19-310, 75-10-532, 7510-743, 76-13-150, 76-15-904, AND 82-11-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND TERMINATION DATES,"** which I have signed into law with one significant change.

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Late on the last day of the regular session of the 62nd Legislature, a conference committee comprised of six legislators substantially re-worked HB 604. To the surprise and objection of many, among the amendments approved by the conference committee to HB 604 on the final legislative day was an amendment that assessed -through June 30, 2023 --a 2.75% tax on all workers' compensation premiums paid by businesses and employers throughout Montana that obtain their workers' compensation insurance from the state compensation insurance fund, otherwise known as the "State Fund." This new tax on employers is intended to pay claims that are anticipated to be made against the "old fund," for injuries resulting from accidents that occurred before July 1, 1990. Absent this tax increase, these claims will be paid under current law out of the general fund. With great division and dissent, the Montana House and Senate approved the

conference committee report to HB 604 at 8:31 p.m. and 8:41 p.m., respectively, just prior to adjourning sine die.

Most outrageous, however, is that the tax to be charged employers until the year 2023 -anticipated to raise approximately \$7,314,660 over the next biennium, alone --was supported by a majority of conservative legislators who identified as primary goals both job-creation and the lowering of workers' compensation costs for Montana employers. The mechanisms in HB 604 to pay old fund workers' compensation liabilities do nothing to create jobs or lower workers' compensation premiums for Montana employers. In fact, they do the exact opposite.

We should not forget how this state debt was created in the first place. In 2003, in order to balance the state budget, the Legislature chose to take \$52,568,000 from the "old fund" to subsidize general fund spending (HB363, 2003 regular session). It should further be noted that the cost to the state of this transfer is \$60,770,534 (Montana State Fund 2011 Budget Analysis: Old Fund and New Fund, Legislative Fiscal Division, Nov. 4, 2010)

I oppose this tax on Montana businesses of roughly \$7,314,660 over the next biennium to pay for the anticipated "old fund" liabilities. The version of HB 604 passed by the majority party of the Legislature does not assist Montana employers and does not help create Montana jobs. I, therefore, have exercised my item veto authority under Article VI, § 5 of the Montana Constitution and have stricken from the bill all provisions of HB 604 related to payment of "old fund" workers' compensation liabilities (liabilities for claims arising from accidents that occurred before July 1, 1990). Most importantly, this item veto removes from HB 604 the 2.75% tax increase that otherwise would be assessed on workers' compensation premiums paid by employers insured by the State Fund.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

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May 6,2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 167 (HB 167), **"AN ACT CREATING CRIMINAL OFFENSES INVOLVING DEATH TO AN UNBORN CHILD AND PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 45-5-102 AND 45-5103, MCA."**

I have issued this veto because I believe its primary purpose and focus is to serve a political agenda, not to protect pregnant women from violence or punish the acts of offenders. Penalty enhancements for violent crimes against pregnant women, as proposed in the introduced version of HB 457 (tabled in the Senate Judiciary Committee), would have served the same penological purpose as HB 167 without entangling the issue in the abortion debate.

Similarly, if the supporters of HB 167 had wanted to strengthen criminal laws involving crimes of violence, other legislation considered this past session would have provided prosecutors with enhanced tools. For example, HB 203, which would have allowed prosecutors to introduce evidence of previous sexual assault crimes by the person charged, and SB 58, which strengthened Montana law concerning the retention of DNA evidence obtained in the investigation of certain offenses, were considered by the Legislature but tabled in committees.

Finally, I also am concerned that prosecution of crimes under HB 167 could invade the privacy of a pregnant woman, who has already been traumatized by the violence against her, by exposing her medical records and other private information in a criminal court proceeding, including to the perpetrator of the crime.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

May 6,2011

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The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 186 (HB 186), **"AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE UP TO \$500,000 PER YEAR IN MATCHING FUNDS FOR WORKPLACE SAFETY PROGRAMS IN CONJUNCTION WITH A NOT-FOR-PROFIT CORPORATION; INCREASING CERTAIN ASSESSMENTS PAID INTO THE ADMINISTRATION FUND; AMENDING SECTION 39-71-201, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."**

House Bill 186 increases the assessment on employers under workers' compensation plans No. 1, 2 and 3. My administration worked very hard this session to reduce workers' compensation rates for employers in this state that resulted in my signing House Bill 334. Increasing the assessment on employers to add additional funding for workplace safety and early return to work reverses the direction of trying to lower the costs to employers. Workplace safety and early return to work are very important programs. Insurers should be shouldering the costs of these programs to better serve their insured.

More important, the assessment is really a tax. I have stated over and over again that I will not raise taxes during my administration. Therefore I must veto this bill.

Sincerely,

BRIAN SCHWEITZER
Governor

May 6, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 283 (HB 283), **"AN ACT ALLOWING SEX TO BE CONSIDERED WHEN ISSUING OR PROVIDING CERTAIN INSURANCE COVERAGE;**

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DECLARING USE OF ACTUARIAL TABLES TO BE A NONDISCRIMINATORY APPROACH TO SETTING PREMIUMS; PROVIDING AN EXCEPTION FOR PREMIUM RATES ASSOCIATED WITH DISABILITY INSURANCE; AMENDING SECTION 49-2-309, MCA; AND PROVIDING AN APPLICABILITY DATE."

I have been advised that HB 283 is likely unconstitutional, as in violation of the equality provisions of the Montana Constitution found in Article II, § 4, which, unlike the federal Constitution, expressly prohibits discrimination on the basis of sex (as well as other categories, such as race and religion). Unique among the states, Montana's Constitution applies not only to state actions but to actions taken by the private sector. At a minimum, as expressed by constitutional convention delegate Wade Dahood, the prohibition applies to matters of a quasipublic nature, such as employment, housing, public accommodations, finance and credit, and the subject of this bill -insurance, acquisition of which is a legal and practical necessity for most Montanans. Proceedings of the Montana Constitutional Convention, Vol. V, p. 1643.

To illustrate the constitutional principle on a practical level, actuarial differences in risk factors exist not only between the sexes but between individuals of different races and religions. Yet, as a society, we understand that it would be socially repugnant to allow different insurance rates or benefits on grounds of an individual's race or religion. Using a constitutional framework, there is no difference between the prohibition on setting insurance rates and benefits based on race or religion and the same prohibition as applied to gender. These classifications are equally and expressly prohibited.

I have vetoed HB 283 for the above reasons, consistent with the provisions of Article II, § 4-of the Montana Constitution.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 6,2011

The Honorable Linda McCulloch Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 366 (HB 366), **"AN ACT REVISING COUNTY INTERIM ZONING REQUIREMENTS AND PROCEDURES; REQUIRING A COUNTY TO**

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INITIATE A STUDY OR INVESTIGATION TO VERIFY THE EXISTENCE OF AN EMERGENCY; LIMITING A RESOLUTION FOR AN INTERIM ZONING DISTRICT OR INTERIM REGULATION TO 182 DAYS FROM THE DATE IT BECOMES EFFECTIVE; ELIMINATING THE SPECIFICATION OF EXIGENT CIRCUMSTANCES; REQUIRING CERTAIN PROCEDURES FOR THE EXTENSION OF A RESOLUTION FOR AN INTERIM ZONING DISTRICT OR INTERIM REGULATION; AND AMENDING SECTION 76-2-206, MCA."

In my opinion, HB 366, revising the procedures related to a county's use of interim zoning, is a solution in search of a problem. I have vetoed the bill because I believe it unnecessarily ties the hands of locally-elected public officials as they deal with complex and often contentious local planning and zoning issues.

Under current law --specifically § 76-2-206, MCA --county commissioners may establish interim zoning districts or interim regulations as emergency measures to promote the public health, safety, morals, and general welfare. This statute provides reasonable limits on commissioners' authority, including a one year limit on the duration of interim zoning, subject to a one year extension, and other conditions that demonstrate the commissioners' ongoing review of land use regulations. Interim zoning is an important tool counties can employ to protect private property rights when they are faced with unexpected land use proposals and pending final zoning decisions.

House Bill 366 not only limits the duration of interim zoning, it requires counties to undertake studies and investigations to verify that emergencies exist and the facts and circumstances constituting the emergency. Additionally, HB 366 requires unanimous or super-majority votes by county commissioners to extend interim zoning beyond a 182day time limit. I believe these measures unnecessarily seize discretion from locallyelected county commissioners to properly serve the best interests of their communities.

Interim zoning is a valid and reasonable use of an already limited local authority that allows a county the extra time necessary to carefully consider development that may run contrary to the long-term goals of the community. I believe this responsibility rightly belongs in the hands of locally-elected officials, and that county commissioners are fully capable of exercising this authority with appropriate discretion.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 6,2011

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The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 375 (HB 375), **"AN ACT REVISING TRANSFERS FROM THE STATE GENERAL FUND; REDUCING TRANSFERS TO CERTAIN ACCOUNTS, ENTITIES, AND RECIPIENTS; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."**

After being roundly criticized by the majority party for proposing in my executive budget fund transfers that reflect the ongoing priorities of the State of Montana, the irony of HB 375 is simply too rich to ignore. What remains in the seventh iteration of HB 375, delivered to me for signature, are fund transfers to the general fund, of approximately \$150,000 annually, from three services: search and rescue, recreational safety in state parks, and the junk vehicle fund. Notably, HB 604, another transfer bill that has already been signed into law (with an item veto), already transfers \$2.5 million from the junk vehicle fund in fiscal year 2012. Notably, too, the fund transfers in HB 375 terminate June 30, 2015, so the reductions in funding to these programs will last for the next two biennia.

I can say with absolute confidence that the fund transfers to the general fund in this seventh iteration of HB 375 are unnecessary to ensure a balanced budget for the next two biennia.

It is for these reasons, I have chosen to veto the bill.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

May 6, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

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Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, for the following reasons, I hereby veto House Bill No. 408 (HB 408), **"AN ACT CHANGING THE STATUTE OF LIMITATIONS FOR MEDICAL MALPRACTICE CLAIMS FROM 3 YEARS TO 2 YEARS; AMENDING SECTION 27-2205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."**

Under the guise that reducing the statute of limitations for medical malpractice claims in Montana from three years to two will attract more health care providers to this state and reduce providers' insurance premiums, the Legislature passed HB 408. I issue this veto because the healthcare industry already has dozens of statutory liability protections, and I do not believe there is a reason for the statute of limitations on medical malpractice cases to be any different than the statute of limitations on tort actions generally, which is three years. See Mont. Code Ann. § 27-2-204.

It is significant that medical injuries are often complex and dynamic, may take years to stabilize, and may require the retention of outside medical experts to evaluate highly specialized and complex medical treatment, records, and conditions. I note, as well, that the Montana Medical Legal Panel's March 12, 2010 report shows that in 2008 and 2009, the number of medical malpractice claims in Montana as a percentage of Montana health care providers was lower than at any time since 1981.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 9, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana. I hereby veto House Bill No. 612 (HB 612). **"AN ACT GENERALLY REVISING STATE HEALTH CARE LAWS TO IMPLEMENT PROVISIONS OF THE GENERAL APPROPRIATIONS ACT; REVISING HEALTH CARE TAX CREDITS; REVISING DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR PRESCRIPTION DRUG BENEFITS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-22-2006, 33-22-2007, 53-6-1002, 53-6-1004, 53-6-1005, 53-6-1006, 53-6-1010, AND**

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53-6-1012, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

House Bill 612 directly hurts small businesses and their employees. The bill would prohibit an employer from claiming an Insure Montana tax credit if the employer is eligible for a federal small employer health insurance tax credit. Ironically, despite the majority party's scorn for the federal health care reform act, the federal tax credit is contained within that federal act. This provision of the federal health care reform act serves similar goals to the tax credits available under Montana's Insure Montana law --to encourage small businesses to insure their employees.

Thus, despite the fact the State of Montana now has over \$330 million cash in the bank, HB 612 needlessly would eliminate tax credits to assist small businesses. Indeed, 800 businesses in Montana currently claim the state tax credit, antiCipated to total \$4.4 million in fiscal year 2010, because they provide their employees with health insurance benefits. These employee health care benefits help Montana small businesses attract and retain top quality employees.

House Bill 612 would hurt small businesses and hurt their employees. With \$330 million in the bank and my primary goal to assist economic recovery in Montana, HB 612 would accomplish just the opposite. For these reasons, I have vetoed the bill.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 9,2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 633 (HB 633), **"AN ACT REVISING LAWS RELATING TO THE HEALTHY MONTANA KIDS PLAN; REVISING THE ALLOCATION OF TOBACCO SETTLEMENT PROCEEDS; REVISING THE DEFINITION OF "BASE BUDGET" TO INCLUDE CERTAIN APPROPRIATIONS FOR THE HEALTHY MONTANA KIDS PLAN; REVISING PRESUMPTIVE ELIGIBILITY CRITERIA FOR THE HEALTHY MONTANA KIDS PLAN; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-6-606,**

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17-7-102, AND 53-4-1105, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

House Bill 633 directly conflicts with funding for both the tobacco use prevention program and the Healthy Montana Kids program, as passed by the Legislature in House Bill 2. My veto of HB 633 preserves two voter-passed initiatives, 1-146 and 1-155. House Bill 633 was never a good idea and now is unnecessary.

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

Jerry quit here, HB 100 needed

May 10, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 271 (HB 271), **"AN ACT REVISING THE LAW RELATED TO THE OFFENSE OF CARRYING A CONCEALED WEAPON; PROVIDING THAT THE LAW DOES NOT APPLY TO A PERSON WHO IS ELIGIBLE TO POSSESS A HANDGUN UNDER STATE OR FEDERAL LAW; AND AMENDING SECTION 45-8-317, MCA."**

House Bill 271 would allow anyone "eligible to possess a handgun under state or federal law" to carry a concealed weapon, without a permit. This allows the individual to make his or her own eligibility determination and deprives law enforcement of the opportunity to consider whether the person is a threat to the community.

Obviously, this bill would greatly imperil the work and safety of Montana's lawmen, including sheriffs and highway patrolmen. Under current law, Montana's sheriffs are responsible for issuing concealed weapon permits. This is as it should be. Sheriffs are dedicated, locally-elected, boots-on-the-ground officials who have the best sense of their community when it comes to law enforcement and public safety. In this regard, I would note that HB 271 is opposed by the Montana Sheriffs and Peace Officers Association, and also the Montana Department of Justice, the Montana County

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Attorneys Association, the Montana Association of Chiefs of Police, and the Montana Police Protective Association.

HB 271 would entirely remove the Sheriff's authority and discretion to issue or deny concealed weapons permits. It would also, paradoxically, dismantle many reasonable Montana laws and regulations which ensure that permit-holders are not unduly burdened. For example, HB 271 would void our state's reciprocity agreements with more than 30 states that recognize concealed weapon permits; and it would void our laws that allow Montana permit-holders to forgo the background check required for a firearm purchase.

Finally, I would like the sponsors of this bill to consider the absurdity of the standard set forth in HB 271. If this standard were applied to the issuance of other permits and licenses in our society, then nobody could be prosecuted for failure to produce a driver's license, a commercial driver's license, a pilot's license, a building permit, a hunting license, or any other type of permit. These documents would not be necessary. People would simply have to produce evidence that they were "eligible" to possess them.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 10, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 414 (HB 414), **"AN ACT PROVIDING FOR THE IMPLEMENTATION OF MONTANA'S FEDERAL MANDATES ACT; REVISING THE LEGISLATIVE DECLARATION; SPECIFYING CRITERIA FOR NOTICES OF ADMINISTRATIVE RULEMAKING IMPLEMENTING FEDERAL MANDATES; REQUIRING INTERIM COMMITTEES TO REVIEW AGENCIES' COMPLIANCE WITH THE FEDERAL MANDATES ACT; PROVIDING FOR INCLUSION IN THE STATE BUDGETING PROCESS OF CERTAIN INFORMATION AND RECOMMENDATIONS CONCERNING FEDERAL MANDATES; AMENDING SECTIONS 2-1-402, 2-1-405, 2-1-407, 2-1-408, 2-4-302, 5-5-215, AND 17-7-111,**

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MCA; AND PROVIDING AN EFFECTIVE DATE."

Regretfully, HB 414 is not just a "feel good" bill, or a "solution in search of a problem," it takes a frivolous, ineffectual law and makes it more so. The bill amends the Federal Mandates Act, codified as Title 2, chapter 1, part 4, MCA, enacted in 1995 to "ensure the primacy of the state of Montana's legal and political authority to implement ... federal statutes." Having inquired with the Budget Office, which conducts a Federal Mandates Act survey of all agencies prior to preparing the state budget, I have been told that since its passage 16 years ago, and implemented by two Governors before me, the Federal Mandates Act has served no useful function.

The 2011 Legislature may best be remembered for its efforts to "nullify" numerous federal laws and set records for the greatest number of unconstitutional bills in a legislative session -as identified by its own legal staff. The 1995 Federal Mandates Act, itself, is consistent in spirit with many of those bills, so it is not surprising that the 2011 Legislature sent me a bill to try to strengthen the Act.

However, the sum and substance of HB 414 is to require the production of yet more reports by more agencies to implement the 1995 law. The "take away" lesson from the 2011 Legislature should be that government works best when its directors roll up their sleeves and get to work, not when they pass frivolous laws that would require the production of more reports to gather more dust.

House Bill 414 should never have reached my desk. However, since it did, I have chosen to veto it.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 10, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 444 (HB 444), **"AN ACT**

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CREATING THE MONTANA PUBLIC FINANCE WEBSITE; REQUIRING THE ESTABLISHMENT OF A WEBSITE FROM WHICH THE GENERAL PUBLIC CAN SEARCH, RETRIEVE, AND DOWNLOAD INFORMATION ABOUT THE STATE FINANCES, INCLUDING STATE ENTITY BUDGETS, REVENUE, APPROPRIATIONS, AND EXPENDITURES BY EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCH AGENCIES; AND PROVIDING FOR DEPARTMENT OF ADMINISTRATION DUTIES AND RULEMAKING AUTHORITY."

House 8ill444 would establish a website with a searchable database, listing all state expenditures for the public to examine. Development of this website would cost almost \$400,000, but provide no return on the taxpayer investment. Montanans already have ample access to information about the state budget. The Legislative Fiscal Division publishes volumes of reports about the budget passed by the Legislature and endless other fiscal matters. If legislators desired to publish more information about Montana's fiscal affairs, they already have the authority to upload that information on their own website. Additionally, Legislative Audit Division reports, showing detailed budget information, already can be obtained by the public in both digital and hard copy formats for free. As well, the state's Consolidated Annual Financial Report (CAFR) is available from the Legislative Auditor.

There is a more practical obstacle to my veto. As part of our overall budget settlement, my office reached an agreement with the Speaker of the House and the President of the Senate that this bill would not receive funding. This means that the nearly \$400,000 cost of implementing HB 444 is not addressed in House Bill 2 and would represent an unfunded mandate imposed upon the Department of Administration. The Department cannot absorb the costs necessary to implement HB 444 from within its existing budget.

Sincerely,

BRIAN SCHWEITZ
GOVERNOR

Cc: Legislative Services Division

May 10, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 577 (HB 577), **"AN ACT ELIIVIINATING TIPS**

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AND GRATUITIES FROM THE DEFINITION OF "WAGES" UNDER WORKERS' COMPENSATION LAW IN ORDER TO REDUCE EMPLOYER CONTRIBUTIONS TO THE WORKERS' COMPENSATION PROGRAM; AND AMENDING SECTIONS 33-22-2006 AND 39-71-123, MCA."

This bill is unfair to service industry employees and treats them differently than other employees who are compensated with a steady, reliable paycheck. House Bill 577 decreases the benefits paid to those in the service industry by excluding tips and gratuities documented by the employer from the definition of "wages."

Earlier this session, I signed HB 334 into law. That bill contained comprehensive, bipartisan workers' compensation reform. The reforms will cause major changes in our state workers' compensation system that will lower insurance rates in both the short and the long term. While I did not agree with everything in the bill, I agreed to compromise because major reform was clearly necessary for Montana. One of the provisions in HB 334 that I did not fully support eliminated permanent partial benefits for many Montana workers with minor injuries. In light of that major change to our workers' compensation system, I cannot support HB 577 because it would lower benefits for even more injured workers. The bill would place most tipped employees in the position of being considered minimum wage workers for purposes of determining their eligibility for permanent partial benefits. Tips have long been considered wages for workers' compensation benefit calculations in Montana. House Bill 577 could upset the quid pro quo of the workers' compensation system for those workers by significantly cutting the wages used to calculate benefits. For these reasons, I am vetoing the bill.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

May 10, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 616, **"AN ACT CREATING AN AGRICULTURAL LAND ADVISORY COMMITTEE TO ADVISE THE DEPARTMENT OF REVENUE ON IMPROVING THE VALUATION OF**

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AGRICULTURAL LAND; DIRECTING THE AGRICULTURAL LAND ADVISORY COMMITTEE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE; REQUIRING THAT THE AGRICULTURAL LAND ADVISORY COMMITTEE ASSIST THE DEPARTMENT OF REVENUE IN THE VALUATION OF AGRICULTURAL LAND; AMENDING SECTION 15-7-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

House Bill 616 would summarily fire the twelve current members of the Agricultural Land Valuation Advisory Committee and replace them with new personnel of the majority party's choosing, despite the fact that the Committee has discharged its responsibilities with timeliness, efficiency, and productivity.

Particularly, this bill is a deliberate affront to the presiding Committee chair, Dr. Gerald Nielson, from Montana State University. Mr. Nielson is a world-renowned soil scientist whose leadership has been exemplary. His expertise, moreover, is precisely what is needed on this committee, given that the productivity valuation of agricultural land is based on soil science. It is clear from the Senate floor debate on this bill, however, that the majority leaders in the Legislature have a preferred candidate in mind to replace Mr. Nielson-even though that preferred candidate does not possess comparable credentials as a professional soil scientist.

Furthermore, by summarily firing not only Mr. Nielson but the entire Committee membership, HB 616 disparages the good work of the sitting Committee members, who are dedicated, hard-working people representing multiple sectors of agriculture from the far corners of the state. And by reducing the number of appointees from twelve to seven, the bill would also have the effect of reducing representation for certain sectors of agriculture. I am concerned that the majority leadership could replace these working folks with several Helena lobbyists who share the ideology of the majority leaders.

Finally, the bill blurs the distinction between executive branch advisory functions and legislative oversight. Not only would the Committee be tasked with advising the Department of Revenue on agricultural land valuation, it would be tasked with investigating the Department's work and reporting its findings directly to the Revenue and Transportation Interim Committee. In this respect, I believe HB 616 raises serious separation of powers issues that I find untenable.

I have vetoed HB 616 for all these stated reasons.

Sincerely,

BRIAN SCHWEITZER
Governor

May 11, 2011

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The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 406, **"AN ACT AUTHORIZING A PROPERTY TAXPAYER THAT OBJECTS TO THE ASSESSED VALUATION OF CERTAIN TYPES OF PROPERTY TO HAVE THE ASSESSED VALUATION SUBJECT TO MEDIATION; REQUIRING PAYMENT OF A FEE AND PROVIDING PROCEDURES FOR MEDIATION; ALLOWING AN OBJECTING TAXPAYER TO APPEAL THE ASSESSED VALUATION OF THE PROPERTY DIRECTLY TO DISTRICT COURT IF MEDIATION IS UNSUCCESSFUL; PROVIDING THAT THE UNIFORM DISPUTE REVIEW PROCEDURE DOES NOT APPLY TO THE ASSESSMENT OF CENTRALLY ASSESSED PROPERTY OR INDUSTRIAL PROPERTY THAT IS ASSESSED ANNUALLY BY THE DEPARTMENT OF REVENUE; AND AMENDING SECTIONS 15-1-211, 15-1-402, 15-2-302, 15-8-601, 1515-102,15-23-102,15-23-104, AND 15-24-3112, MCA."**

Senate Bill 406 would give large, industrial corporations and other centrally-assessed taxpayers the right to force the Department of Revenue into a mediation session over the valuation of their property. If the corporation were unhappy with the mediation decisions, SB 406 would give the company the right to bypass all hearings at the County and State Tax Appeal Board and file a claim directly in any district court where the company has property.

This sweetheart deal of a bill, in essence, would give a select group of large corporate tax-payers unprecedented control on when, where and how their tax appeals will be handled. It would them a shot at tax breaks at the expense of homeowners, farmers, ranchers and other small businesses who can't afford to hire expensive lawyers to help them wiggle out of paying their taxes.

SB406 also has a cost. By replacing the State Tax Appeals Board's expertise in making valuations with the testimony of hired-gun experts in district courts, the bill would increase litigation costs to the public. At the hearings on this bill, the proponents were candid about these effects being intended to drive the Department of Revenue to the negotiating table and settle claims. But the taxpayer cost of settling these cases would generally two to four times higher than taking these cases through the normal appeals process. The Department has estimated that under the bill, corporations that perennially appeal their taxes as an inherent corporate strategy would win double to quadruple settlement bonuses-with the cost shifted unfairly to smaller taxpayers.

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Sincerely,

BRIAN SCHWEITZER
Governor

May 12, 2011

The Honorable Linda McCulloch Secretary of State State Capitol Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby deliver to you House Bill NO.5 (HB 5), **"AN ACT GENERALLY REVISING LAWS RELATING TO CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2013; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE LONG-RANGE BUILDING PROGRAM ACCOUNT TO THE STATE GENERAL FUND; REVISING REQUIREMENTS FOR CIGARETTE TAX REVENUE; AMENDING SECTION 17-7-205, MCA; AMENDING SECTION 2, CHAPTER 3, SPECIAL LAWS OF MAY 2007, SECTION 2, CHAPTER 478, LAWS OF 2009, AND SECTION 6, CHAPTER 478, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE,"** which I have signed into law with one item "struck-out," or vetoed.

The budget I submitted to the Legislature included reductions to information technology (IT) projects authorized by previous legislatures. My budget also transferred the resulting savings, totaling \$10.7 million, to the general fund. These proposals were contained in House Bill 10, Reducing Information Technology Appropriations.

The Legislature, however, took \$5.975 million of the \$10.7 million in savings I had proposed in my budget in order to fund its own IT project in HB 5. My item veto strikes this \$5.975 million appropriation to the Legislature from HB 5, along with the accompanying narrative.

The executive branch has numerous IT needs that will be unfunded next biennium in order that we prioritize spending money on the state's core services. For the same reasons I chose not to fund these previously authorized IT projects within the executive branch, I believe now is not the time to fund a nonessential IT project within the legislative branch.

I believe this is especially true where, for the first time in Montana's history, the Legislature refused to fund the pay plan negotiated between the administration and state workers. This failure by the Legislature, coming on the heels of the pay freeze for state workers in the current biennium, makes my decision to veto the IT appropriation to the Legislature easy. Shame on the Republican majority.

Sincerely,

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BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 12, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 97 (SB 97), **"AN ACT REPEALING THE PARENTAL NOTICE OF ABORTION ACT AND ENACTING THE PARENTAL NOTICE OF ABORTION ACT OF 2011; PROVIDING THAT THE PROVISIONS OF THE ACT APPLY TO MINORS UNDER 16 YEARS OF AGE; REVISING THE JUDICIAL BYPASS PROVISIONS UNDER THE ACT; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

I have vetoed SB 97 because I have been counseled that it is likely unconstitutional, as in violation of the express privacy clause contained in Article II, § 10, the equal protection clause found in Article II, § 4, and the "Rights of Persons Not Adults" clause, contained in Article II, § 15 of the Montana Constitution.

Senate Bill 97 repeals then reenacts in substantially the same form Montana's current Parental Notice of Abortion Act, which was held to be unconstitutional by Montana's First Judicial District Court in *Wicklund v. State*, 1999 Mont. Dist. LEXIS 1116, a decision that was never appealed. In that case, the court held that Montana's express constitutional privacy clause granted minors, including pregnant minors, a fundamental right of individual privacy, which right encompasses a minor's right to decide whether to terminate her pregnancy, and that the right was infringed by the Act.

The District Court considered evidence on teen pregnancies to determine whether a "compelling state interest" existed to justify the privacy infringements contained in the Parental Notice of Abortion Act and rejected every reason advanced by the state to support the infringements. Notably, the legislative purpose and findings contained in the 1995 law to justify the legislation, found to be unconstitutional in *Wicklund*, were reenacted virtually verbatim in SB 97.

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I recognize that the most obvious difference between SB 97 and the current parental notice act ruled unconstitutional is that SB 97 lowers the age under which the law's provisions would apply from 18 to 16. However, counsel advises that the District Court in Wicklund considered evidence concerning decisions made by adolescents under 15, and this difference between SB 97 and the current law is not likely to affect the Court's analysis or cure the constitutional deficiencies of the legislation.

Given the strength of the 1995 Wicklund decision rejecting as unconstitutional an almost identical parental notice law, and a subsequent decision of the Montana Supreme Court solidifying Montana's strong privacy provisions not only generally, but specifically in the abortion context (*Armstrong v. State*, 1999 MT 261), I have chosen to veto SB 97.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 12, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 106 (SB 106), **"AN ACT REQUIRING THE MONTANA ATTORNEY GENERAL TO FILE A MOTION TO JOIN THE FLORIDA LAWSUIT CHALLENGING THE CONSTITUTIONALITY OF PUBLIC LAW 111-148, THE PATIENT PROTECTION AND AFFORDABLE CARE ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

SB 106 requires the Montana Attorney General, on behalf of the State of Montana, to file a motion to join a lawsuit now on appeal in the 11 th Circuit Court of Appeals, challenging the constitutionality of the federal Patient Protection and Affordable Care Act. I oppose the bill for two reasons.

First, the Montana Constitution establishes the Montana Attorney General as the "legal officer of the state." MONT. CONST. Art. VI, § 4(4). The Montana Constitution also expressly establishes three distinct branches of government and prohibits one branch from exercising the powers of another. MONT. CONST. Art. III, § 1. I have been advised that the bill in its current

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form likely runs afoul of these provisions of the Montana Constitution. I understand that the Legislature, too, received an opinion from its own, former, chief legal counsel questioning the constitutionality of SB 106.

Second, any effort by the State of Montana to join the federal lawsuit will not be without cost to the state treasury. The lawsuit is proceeding on its own, without Montana's involvement, and Montana's participation would have no bearing on the outcome. It is evident that despite costing taxpayers money, SB 106 is intended to serve a symbolic purpose, only.

I offered an amendatory veto to SB 106 to address both problems, but the Legislature rejected my proposal. I, therefore, have decided to veto the bill.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 12, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 526 (HB 526), **"AN ACT AUTHORIZING AN INTERSTATE HEALTH CARE COMPACT; AND DIRECTING THE GOVERNOR TO JOIN THE COMPACT."**

Under HB 526, Montana would join an interstate compact with other states to suspend the operation of all federal health care laws (except the military, veterans, and Indian Health Services) that are inconsistent with the state's health care laws, including laws as far ranging as Medicaid, Medicare, the federal Children's Health Insurance Program, and laws governing Federally Qualified Health Centers, the Food and Drug Administration, and the Centers for Disease Control as related to disease outbreak. Instead, under HB 526, Montana would receive federal funding for health care according to a formula applicable to member states to the compact, based on federal spending on health care in the state in baseline fiscal year 2010 as adjusted annually for population and inflation.

Under the compact, Montana seniors, people with disabilities, and children are among the

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populations that the state would serve in potential disregard of the above-listed federal laws, including, as stated, Medicare and Medicaid. Benefits Montanans receive under those federal laws would be in danger of elimination at the whim of the Montana Legislature, which could change Montana's health care laws biennially, leaving no federal protections in place.

Tucked into HB 526 is the caveat that the bill is not effective until Congress consents to the right of states to enter the compact and suspend the operation of any conflicting federal law. We will put a person on Neptune before Congress gives this consent. HB 526 is a frivolous measure that does nothing at best, and at worst puts seniors, Montanans with disabilities, and children at risk.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 13, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 225 (SB 225), **"AN ACT REVISING QUALIFYING SMALL POWER PRODUCTION FACILITY LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION TO SET RATES USING AVOIDED COST; REQUIRING THE COMMISSION TO CONSIDER ELECTRICITY SUPPLY RESOURCE PROCUREMENT PLANS AND INTEGRATED LEAST-COST RESOURCE PLANS WHEN CONSIDERING QUALIFYING SMALL POWER PRODUCTION FACILITY APPLICATIONS; ESTABLISHING INTERCONNECTION REQUIREMENTS; AMENDING SECTIONS 69-3-601, 69-3-602, AND 69-3-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."**

Senate Bill 225 amends Montana statutes implementing the federal Public Utility Regulatory Policies Act (PURPA) and related rules. The bill would both add to and subtract from the criteria that guide the Public Service Commission (PSC) in setting rates for small power production facilities. A prominent amendment to current law found in SB 225 is the direction given to the PSC to base power rates on a consideration of whether a small power production facility has attributes that "meet the needs of a utility as outlined in the utility's plan." Given that the utility's

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plan is a creation of the utility itself, this rate-setting criterion is totally circular and is in the exclusive self-interest of the utility. This self-serving criterion, which is not found in PURPA, appears contrary to the purpose of the federal law, making it an invitation to litigation.

Additionally, the intent of PURPA is to encourage substantial investments in new power facilities. As with any generation facility, the cost of these new power facilities can only be recovered over the long term. Therefore, it would be a critical mistake to strike the existing statutory language encouraging long-term contracts, which unfortunately is one of the things that SB 225 does.

I also ask legislators to recall that the key portion of SB 225, dealing with avoided cost, is duplicated by the content of HB 92, which was introduced at the request of the Energy and Telecommunications Interim Committee following a request from the Public Service Commission itself, and which I have already signed into law.

Although I sought to cure these identified problems with SB 225 through an amendatory veto, the sponsor of the bill asked the Senate to pass consideration of my proposed amendments and, as a result, those improvements to the bill were never considered by the Legislature.

Given the problems that remain in the bill, I have chosen to veto it to avoid preemption issues, potential litigation, and confusion.

Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 13, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 307 (SB 307), **"AN ACT REVISING THE PRIVATIZATION PLAN REVIEW PROCESS; REQUIRING LEGISLATIVE INTERIM COMMITTEES TO SOLICIT PUBLIC INPUT ON TERMINATING OR PRIVATIZING PROGRAMS; REQUIRING THE LEGISLATIVE AUDITOR TO REVIEW THE RECOMMENDATIONS AND REPORT TO THE LEGISLATURE ON THE ADVANTAGES OR**

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DISADVANTAGES OF TERMINATING OR PRIVATIZING A PROGRAM AND TO PROVIDE THE GOVERNOR WITH A COPY OF THE REPORT; AMENDING SECTIONS 2-8-102, 2-8-105, 2-8-301, AND 2-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

I have vetoed SB 307 because I oppose the major policy shift reflected in the bill to "bust" Montana's state employee unions. The distress caused to workers, residents, and other constituents in the 2011 session when the Legislature proposed privatizing the Montana Veterans Home in Columbia Falls would be repeated with regularity and on a permanent basis should SB 307 take effect. Senate Bill 307 would turn Montana's privatization law on its head.

Where current law requires executive branch agencies to explain and justify any considerations they may have to privatize a program by preparing a detailed privatization plan, including among other things a cost-benefit and qualitative analysis that would be subject to public review and scrutiny (see Title 2, chapter 8, part 3, MCA), SB 307 would institutionalize as the responsibility of every interim legislative committee the task of considering and recommending the privatization of programs as part of the committee's routine functions with no requirement that the detailed factors requiring analysis by executive branch agencies even be considered by the interim committees.

Additionally, I object to the amendment to the definition of the term "privatize" in SB 307. While current law defines "privatizing" as contracting with the private sector for the performance of work currently conducted by public sector employees, under SB 307, privatizing would be defined as the transfer of the "control or management" of state government to the private sector. Montana's constitution provides that the control and management of government lies with its elected officials who are accountable to the people of Montana, not with the private sector. This amendment to the definition of the term "privatize" is extremely troublesome.

Further, I oppose the provision in SB 307 that strikes from current law the right of the public, bargaining agents or employee representatives, elected officials, legislators, and agency directors to submit to the legislative audit committee a request to review programs currently being conducted under contract that may be administered more cost-effectively by the agency. This amendment, like the others, is contrary to sound public policy.

Finally, it is significant that this "pro-privatization" bill comes on the heels of a 2-year pay freeze in the current biennium, agreed to by some of Montana's most dedicated workers, its state employees, and following the Republican majority's rejection this session, for the first time in Montana history, of a pay plan negotiated between the administration and state workers for a meager 1 % and then 3% delayed pay increase (the increases would have gone into effect in January 2012 and January 2013, respectively). Indeed, it is the state workers' agreement to a pay freeze in 2009 that is in part responsible for the fact that Montana is the envy of the states, with a budget surplus exceeding \$300 million. This "pro-privatization" bill is an insult on top of injury to state workers. Shame on the Republican majority.

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Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 13, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 356 (SB 356), **"AN ACT CLARIFYING THE DEFINITION OF "GOOD CAUSE SHOWN" FOR A HEARING ON A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE; AND AMENDING SECTION 85-2233, MCA."**

Senate Bill 356 amends the statute defining who has standing to object to a water right claim in the Montana Water Court and who is entitled to a hearing. The bill, as written, would grant standing only to a person with an ownership interest in an existing water right, permit, certificate, or state reservation. I believe the standing threshold in the bill, based on ownership status, alone, is insufficient and likely would not survive a constitutional challenge. For example, others with property or constitutional interests at stake that did not constitute "ownership" interests, such as those with leasehold interests or interests under Article IX, section 3(3) of the Montana Constitution. Denying a person the right to object to a water right claim when the person has a substantial interest in the matter raises serious constitutional due process issues that the bill does not address.

I proposed a simple amendment that would have defined those with standing to object as persons not only with an "ownership interest" but with a "leasehold, economic, or other substantial interest." Under my amendment, in order to have standing, an individual would have been required to demonstrate a real interest in the water right, and not simply a general interest as a member of the public. The difference is subtle but important. It would have comported with well-established standing law in Montana and eliminated the constitutional issues raised by SB 356 in its current form.

Since this sensible amendment was rejected, I am left with no choice but to veto the bill.

Sincerely,

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BRIAN SCHWEITZER
Governor

cc: Legislative Services Division

May 13, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 358 (SB 358), **"AN ACT GENERALLY REVISING TAX INCREMENT FINANCING DISTRICT LAWS; PROVIDING FOR CREATION OF TARGETED ECONOMIC DEVELOPMENT DISTRICTS; ALLOWING COUNTIES TO CREATE TARGETED ECONOMIC DEVELOPMENT DISTRICTS AND TO USE TAX INCREMENT FINANCING; ADDING COMPONENTS THAT MUST BE INCLUDED IN AN URBAN RENEWAL PLAN; REMOVING PROVISIONS FOR CREATION OF AND BONDING IN TECHNOLOGY DISTRICTS, AEROSPACE TRANSPORTATION AND TECHNOLOGY DISTRICTS, AND INDUSTRIAL DISTRICTS; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4286, 7-15-4288, 7-15-4290, 7-15-4292, 7-15-4293, 7-15-4294, 7-15-4301, 7-15-4302, 7-15-4304, AND 7-15-4324, MCA; REPEALING SECTIONS 7-15-4295, 7-15-4296, 7-15-4297, 7-15-4298, 7-15-4299, AND 17-5-820, MCA; AND PROVIDING AN EFFECTIVE DATE."**

Tax increment financing is a helpful economic and community development tool but, as a matter of constitutional requirements and sound public policy, only works if appropriate sideboards are in place consistent with the purposes for which tax increment financing exists -to expand the Montana and local economies and reverse the economic and property value decline in targeted areas. Absent appropriate sideboards, these purposes are lost and tax increment financing stands to swallow up revenues to state and local government, with the potential to create problems of a constitutional magnitude. While SB 358 sought to make the formation of economic development-related tax increment districts more uniform, because the bill as passed lacks the appropriate sideboards to satisfy the constitutional and policy tests, I have chosen to veto it.

The most important problem with SB 358 is one that would endanger the State's constitutional obligation to equalize the funding of schools. As passed, SB 358 allows new property values arising from centrally assessed property --multi-county pipelines, transmission lines, railroads, and the like --to be included in targeted economic development districts, even though the economic decisions that create the investment in such property are not a product of local

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economic development efforts, but rather a result of national and international economic factors. Hence, it is not appropriate for a local government to capture their value --to the tune of tens of millions of dollars a year taken away from state school funding --in an effort to prop up the financing of a targeted economic development district.

Let me give a real world example. If the local governments along the Keystone XL pipeline were to take unfair advantage of S8 358 and capture the taxable value of the pipeline for local tax increment districts, \$20 million a year in property tax revenue for state school funding would be lost. Given the 30-year average life of tax increment districts, the state, over that time, would lose \$600 million in state school funding.

Lest you think that is an unlikely scenario, one county already has sought to misuse tax increment financing laws to divert major state school equalization property revenues to local uses by creating a tax increment district comprising 512 square miles along an interstate pipeline route -or one third of that county's land area. That particular case is the subject of an ongoing lawsuit. S8 358 as presented to me provides a green light for these same questionable practices to spread elsewhere with serious fiscal consequences for school funding across the state.

In addition to endangering adequate funding of schools in Montana as required by Montana's constitutional equalization standards, S8 358 is flawed in that it:

- does not require economic development planning for the new targeted economic districts sufficient to ensure a well-defined relationship between the growth being planned and the infrastructure to be financed to support that growth;

-

allows property that has no relationship to the purposes of a targeted economic development district to be included in a district on an unlimited basis; and

-

fails to ensure proper collaboration and accountability among governmental units regarding tax revenues that are diverted to use by tax increment districts.

I submitted an amendatory veto to correct these combined problems, but in spite of the fact that my amendments were in the hands of the Legislature for 10 days prior to adjournment sine die, they were never voted on by either chamber.

Montana has a tax increment law that works well without the passage of S8 358, and my veto of S8 358 will not hamper the effective functioning of tax increment financing as an economic development tool. While local infrastructure to support economic development is important, it cannot come at a grave, overly-broad cost to the state that risks compromising school equalization required by the Montana Constitution, which we have spent so many years litigating, improving, and protecting from another challenge. As passed, S8 358 abandons that responsibility and, because of that, I have chosen to veto it.

Sincerely,

BRIAN SCHWEITZER

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Governor

cc: Legislative Services Division

May 13, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 494 (HB 494), **"AN ACT REVISING PROVISIONS GOVERNING EXEMPTION FROM SUBDIVISION REVIEW FOR THE SALE, RENT, LEASE, OR OTHER CONVEYANCES OF BUILDINGS, STRUCTURES, OR OTHER IMPROVEMENTS; AMENDING SECTION 76-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

I have vetoed HB 494, because the loophole it creates in Montana's Subdivision and Platting Act essentially would swallow the Act. The bill would broaden the Act's exemptions to allow the placement of an unlimited number of residential or commercial structures upon a tract or multiple tracts of record for the purpose of sale, rent, or lease. For example, a developer conceivably could build a shopping mall for lease or rent and be exempt from subdivision review under HB 494. A landowner on a river bank could similarly build an unlimited number of cabins or other structures for lease, unreviewable by the county. Such development would be allowed without any review or mitigation for negative impacts upon public health and safety, local services, or the other review criteria identified in the Subdivision and Platting Act.

Also important to my decision is that the Legislature passed House Joint Resolution No. 39, which will require an interim study of the competing issues acknowledged and debated on this bill, including the preparation of legislation to submit any "fix" to the 63rd Legislature. In fact, today, the Legislative Council voted to direct the Education and Local Government Interim Committee to conduct the study required by the resolution.

Finally, I proposed simple amendments to cure the bill's problems, which the sponsor supported. However, they were rejected without explanation.

While I recognize the importance of the rights and concerns of all the parties involved in the disputes surrounding this issue and agree that the current law should be improved to address problems under it, I believe the better approach to allowing HB 494 go into effect is to give the Legislature time to develop a more balanced response to the individual problems without undermining the current Act in its entirety.

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Sincerely,

BRIAN SCHWEITZER
Governor

cc: Legislative Services Division