

**SENATE JOURNAL
62ND LEGISLATURE
THIRTY-FOURTH LEGISLATIVE DAY**

Helena, Montana
February 11, 2011

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Peterson presiding. Invocation by Chaplain Keith Johnson. Pledge of Allegiance to the Flag. Roll Call. All members present, except Senator Hutton, excused. Quorum present.

REPORTS OF STANDING COMMITTEES

AGRICULTURE, LIVESTOCK AND IRRIGATION (Steinbeisser, Chairman): 2/10/2011
HB 54, be amended as follows:

1. Page 3, line 17.

Strike: "must be temporary in nature"

Insert: "may last no more than 5 years"

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

FISH AND GAME (Brenden, Chairman): 2/10/2011
SB 134, introduced bill, be amended as follows:

1. Page 5, line 1.

Following: "and parks"

Insert: "90 days"

And, as amended, do pass. Report adopted.

SB 144, introduced bill, be amended as follows:

1. Title, line 6.

Following: "RELOCATION;"

Insert: "REQUIRING REPORTS;"

2. Title, line 7.

Following: "DATE"

Insert: "AND A TERMINATION DATE"

3. Page 2.

Following: line 13

Insert: "(6) The department shall report on the relocation of wild buffalo or bison to the environmental quality council, established in 5-16-101, annually, as provided in 5-11-210, or more often upon request of the presiding officer."

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

4. Page 2.

Following: line 19

Insert: "NEW SECTION. Section 4. Termination. [This act] terminates June 30, 2013."

And, as amended, do pass. Report adopted.

SB 184, introduced bill, be amended as follows:

1. Title, line 5.

Following: "BUFFALO;"

Insert: "CLARIFYING THAT WILD BUFFALO MAY BE HUNTED WITH HUNTING ARMS OTHER THAN BOWS AND ARROWS;"

2. Page 3, line 5.

Following: "arrows"

Insert: "and other hunting arms"

And, as amended, do pass. Report adopted.

HIGHWAYS AND TRANSPORTATION (Jones, Chairman):

2/10/2011

SB 111, introduced bill, be amended as follows:

1. Page 2, line 2.

Strike: "person"

Insert: "driver"

And, as amended, do pass. Report adopted.

HB 60, be concurred in. Report adopted.

MOTIONS

Senator Essmann moved the Senate recess and proceed to the House of Representatives to receive an address from the Honorable U.S. Senator Jon Tester. Upon adjournment of the joint session, the Senate will reconvene. Motion carried.

The Senate recessed and proceeded to the House of Representatives.

President Peterson assumed the chair.

Senator Essmann moved that the body resolve itself into a joint session for the purpose of receiving Senator Tester's address. Motion carried.

Senator Essmann moved that the President be authorized to appoint a committee of four to notify the Honorable Senator Jon Tester that the House and Senate were in Joint session and ready to

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

receive his address. Motion carried. President Peterson appointed Senators Steinbeisser, Wanzenreid and Representatives Washburn and Schmidt to escort Senator Tester into the House chamber. The committee was discharged to escort the Honorable Senator Tester into the House chambers. The committee escorted Senator Tester to the rostrum.

Senator Tester delivered the following address to the Joint session:

President Peterson, Speaker Milburn, legislators, honored guests, people of Montana: It's great to be here. It's great to be back in Montana's "Peoples' House" to share a few words with you.

Usually when I recognize folks, I like to have them stand. This time, I'd like to do something a little different. I'm going to ask that if you are a veteran, please remain seated. Everyone else, please rise if you can. Let us stand and honor Montana's veterans.

I also want to acknowledge my friend, Lieutenant Governor John Bohlinger, here today.

John, now I'm going to ask you to stand. Thanks not only for your service as a Marine, but also for your service to the state of Montana. Every day you remind us that it's possible to reach across party lines, find common ground, and work together. You are a statesman. Thank you.

Last week, a reporter asked me an interesting question. He asked who my best friend in Congress is. I thought about it for a bit...

My best friend in Congress is my best friend in life. Sharla Tester. She is my partner in serving Montana, in running our family farm, in raising our children, and in loving our grandchildren.

Sharla can't be here today, but a lot of my family is. My daughter, Christine, and her husband, James, are here.

Melodie and her husband, Glenn. And our grandkids: Kilikina, Brayden and Tucker.

Senator Keane, where are you? I was sorry to hear Senate Bill 6 got tabled in committee. Under Senator Keane's bill, anyone who uses PowerPoint in committee would have had to fork over fifty to a hundred bucks into a special fund-depending on the length.

I'd love to see the fiscal note on that one.

There are very serious challenges ahead: Passing a budget that works for Montana, its small businesses, its working families, its family farms and ranches. A budget that creates jobs. A budget that creates an environment that allows our kids and grandkids to be competitive and successful.

Every decision you make has an impact on your neighbors. My neighbors. Your communities. And all communities across Montana.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

You know what? Montana is blessed with our citizen legislature. It's one of the many things that make Montana the best state in the best nation, in the world.

I was proud and honored to serve here. And I thank you for being part of it, too.

Montana is also blessed with an strong small business spirit. I've seen it firsthand as I travel back to this state every weekend, visiting every county.

I see that spirit in folks like Kim Ormsby, founder of the Natural Baby Company in Bozeman. What started as a great idea - selling cheaper, environmentally friendly baby products online - has turned into a booming brick-and-mortar business. Kim Ormsby is a Montana success story. And she's creating jobs.

In Red Lodge, Keith Lauver is just starting a business called The Healthy Pantry. He takes Montana ag commodities. And, on a stove in a building on Main Street, he turns them into meals that are easy to prepare at home. The Healthy Pantry isn't just making good food. It's putting folks back to work.

And there's the Stillwater Mining Company, where hundreds of Montanans work together - union labor and management - to get platinum and palladium to the market.

Stillwater is "Made in America." It's a gem in our Treasure State that we can all be proud of.

From metals and minerals to coal and oil and natural gas, Montana is rich in natural resources. We've got trees and biomass. Wind and solar and geothermal energy.

Our resources include the animals we raise and eat and the ground where we raise our crops.

Ladies and gentlemen, in Montana, we've got the lumber. We've got the hardware.

What we need from you is a smart - and I emphasize smart - budget plan to create jobs and keep our Montana economy strong.

A plan that strengthens and maintains a business-friendly environment. One that invests in our workers. And our kids. And their education. And allows them to do whatever they dream to do.

A budget plan that maintains the physical infrastructure we need to keep our rural state in fighting shape.

With our national economy on the rebound, we can't afford to go backwards. Montana has handled this recession better than any state. And we need to make sure we continue the trend.

Montanans sent me to the United States Senate to work hard. They sent you to Helena to work hard. To make Montana and America better for our kids and grandkids. Not to sit around complaining. Not to re-hash old problems or create new ones.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

It's our job to do our work with respect for one another, finding the common ground that unites us. And working from that common ground.

We may be Democrats. And we may be Republicans. But we're Americans and Montanans first.

We all have a unique challenge. Because whether home is Billings or Big Sandy, we have this in common: all of us live in rural America.

One of my biggest challenges back in the Senate is getting folks to understand what rural America really means.

To them, rural America is the area between Washington, D.C. and Baltimore. For us, it's a way of life.

We share a heritage rich in agriculture. I'm proud of the fact I'm the only member of the U.S. Senate and the only member of Montana's delegation who still runs a family farm. It's an important perspective to bring to the table.

In rural America, we have a rich outdoor heritage. For the next two years, I have the honor of serving as chairman of the Congressional Sportsman's Caucus. My role: to keep fighting for - and strengthening - our gun rights.

Standing up for access to public lands. And public water.

Of course, getting wolves back off the Endangered Species List. And returning their management to the State of Montana-to the professionals who know how to do it best.

I'm doing everything I can to pass wolf legislation through Congress. Because we need a solution for wolves. And we need it now.

I introduced a bill yesterday that delists wolves. It returns us back to Montana's management plan, which was working just fine.

The bottom line is, we need to start hunting - and managing - wolves now.

That's why last week, I called for a controlled wolf hunt in Montana.

The Interior Department is expediting that request. And I will keep their feet to the fire until they approve that hunt.

It's a good step. But it's exactly the reason we need to delist wolves. Montana has responsibly managed wolves. And we shouldn't have to ask the federal government for a hunt.

Until wolves are delisted - and Montana is back in charge - I'll do everything I can to push the feds to work with us. To let Montana aggressively manage wolves.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

In addition to our outdoor heritage, Montana and rural America have a proud tradition of military service.

Our state is home to 103,000 veterans. More are coming home every day. Many with injuries seen... and unseen.

In December, I had the honor of visiting Lance Corporal Tomy Parker in his hospital room in Bethesda. Tomy is from Ronan.

He lost both legs and part of his hand while serving our country in Afghanistan.

As big as his losses are, the only thing bigger is his incredible positive attitude. And the love of his family.

We needed Lance Corporal Parker. And now, Tomy needs us. Our veterans and servicemen and women have fought and fight for our freedom and liberty every day.

So let me be clear: we've got a lot of challenges ahead when it comes to cutting spending and cutting our debt. But we cannot afford to do it by cutting benefits from America's veterans.

I was struck by what the national commander of the VFW said the other day.

It was a response to a controversial proposal to cut \$4-and-a-half billion in veterans' benefits.

He said, and I quote, "The day this nation can't afford to take care of her veterans is the day this nation should quit creating them."

Montana is blessed with our heritage of military service.

In rural America, we've got to strengthen what we're blessed with. Because rural America fights for this country. Feeds this country. And fuels this country.

Like many of your relatives, my grandparents came to Montana with almost nothing.

They had to rely on their own hard work. They had to work together with their neighbors to survive. And they had to live within their means.

You know what? They made it work.

My grandparents - and my parents - knew the value of a dollar. I know the value of hard work and the value of a dollar. Those are Montana values.

We can be proud of Montana's Constitutional requirement to balance the budget.

That darned good leadership over the past few years has made Montana one of the few states in the nation still operating in the black.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

A decade ago, during the Clinton Administration, this country ran a surplus. It is possible.

But over the past 10 years, some in Congress made some pretty bad choices. And it turned our economy upside down.

Instead of gimmicks that cost us jobs, hurt education, and weaken our infrastructure, we need to take real steps toward cutting our deficit and balancing our budget.

It's not going to happen overnight. It's going to take a credible, long-term strategy.

So, what is real?

Last year, I cut \$6 billion in spending from the unemployment insurance law.

I killed the Animal ID program, which was wasting millions of your tax dollars

I voted-twice-to make sure Congress didn't get a pay raise.

And just last month, I introduced a bill ending automatic pay raises for members of Congress forever.

This week, Tom Coburn - a conservative Republican from Oklahoma - and I teamed up and introduced a bill to make sure hardworking taxpayers don't have to write unemployment checks for millionaires.

That's just common sense. And it shows that one party doesn't have all the good ideas.

You just have to be willing to work together to cut spending and cut our debt.

And as the only Senate Democrat to vote against both bailouts, I will tell you I will always vote against bailouts.

As for that credible, long-term strategy?

I supported creating a bipartisan panel to recommend a path forward... to cut our debt and cut spending.

I read their plan. I don't agree with everything in it. But I support the idea behind these recommendations.

We need to cut the waste, fraud and abuse in our entitlement programs. We need to make sure they work for the 21st Century.

We need to take a look at our tax code, to make sure it works for middle class families. And to make sure nobody side-steps the system.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

That's what it's going to take to really cut our debt and cut spending. Not gimmicks.

It won't be easy. In fact, it will be pretty darned difficult. We're going to have to make some tough choices in the weeks, months and years ahead.

Every expenditure - whether it's a government program or a tax earmark - has a network of people supporting it. For that reason, balancing the books will be a challenge.

But that doesn't mean it can't be done. It has to be done. And it can be done... without costing us jobs.

The key is: no one is excused from sharing in the sacrifice. Not the folks who live in the big cities. Nor the folks with Swiss bank accounts. Nor Wall Street Banks or K Street lobbyists.

Nor insurance giants or multinational corporations that send American jobs overseas - and can now secretly fund our political campaigns.

Everybody has to feel a little pain. But that doesn't mean we take a battle axe to the very things that are creating jobs and building our economy. Or backpedal on our commitment to veterans.

Think turning public education upside down creates jobs and a business friendly environment?

In this competitive world, it would only take us backwards. And it will shift the tax burden onto local property taxpayers.

Does slashing our basic infrastructure, like safe roads and drinking water and electrical transmission lines help businesses create jobs?

Or saying 'tough luck' to our law enforcement officers and firefighters?

Or gutting access to quality, affordable health care?

That kind of governing will land us right back in the ditch. And it will not create jobs.

We create jobs by investing in education and infrastructure and in health and public safety.

That's why I'm proud of my vote for the Recovery Act. A bill that put thousands - let me repeat, thousands - of Montanans to work.

It cut taxes for every Montanan - to the tune of a half-billion dollars. And it jump-started the infrastructure we need to create jobs.

Every region in Montana has a school, a road, a public works system that has been improved and revitalized because of the Recovery Act.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

The Recovery Act is building the North Central Regional Water System, which will provide clean drinking water to tens of thousands of Montanans.

It allowed crews to finish one of our state's fastest-growing business corridors-Shiloh Road in Billings.

It launched a critical revolving loan fund to keep Montana's timber industry on its feet - in a time of really tight capital.

I know Cary Hegreberg and my friends at the Montana Contractors Association have done a great job in taking advantage of the Recovery Act - and putting Montanans to work. I want to thank them.

And most importantly, the Recovery Act pulled our nation away from the ledge of a catastrophic depression. That's what I call, successful stimulus. The only thing failed about it... was a vote against it.

Remember this: it is our patriotic responsibility as Americans to govern and budget carefully.

It is patriotic for a business to go the extra mile needed to create jobs here in America.

Off-shoring jobs may save you a few bucks, but none of us can afford to cut American workers out of the picture.

Invest in jobs here, and you invest in your community. And your country.

The Natural Baby Company is doing it. The Healthy Pantry, and the Stillwater Mine are doing it. A whole bunch of Montana businesses are doing it.

Montanans should demand support for Montana jobs from their political leaders. And we all should demand it from our businesses.

As we have this debate, we also can't let Montana and rural America shoulder more than our share of the sacrifice.

That's all the more reason I need to keep fighting for the priorities of rural America in the US Senate.

I will never give up on Montana. I will never give up on our family farms and ranches. Or our schools and small businesses. Or our veterans.

Our human infrastructure is too valuable to let go by the wayside. Letting our roads fall apart or letting our best teachers go somewhere else will cost us jobs. It will cost us opportunity.

We can't afford to take a back seat to anyone.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

Despite the differences we may have in this room, we are all Montanans. And we're all lucky to call this state home.

I'm bullish on Montana. In fact, I can't think of a single reason not to be.

We've got the people. We've got the resources. And like the generations before us, we've got opportunity for the taking.

Later this month, on February 23rd, I'm hosting my sixth Small Business Opportunity Workshop. This one will be in Missoula. And I invite every Montanan to attend.

You don't have to be a Democrat or a Republican to take part.

The idea is to work together to build Montana, to create jobs and take advantage of every opportunity possible.

Montanans aren't afraid to work hard or make tough decisions.

Working together, we'll build up our state. We'll create jobs. And we'll move forward, not backward.

We can do it while empowering small businesses, family farms and ranches, working families.

We can do it without ignoring the needs of the physical and human infrastructure we need to stay competitive.

We can do it by investing in K-through-12 education, and our university system.

Good luck in the weeks ahead. God Bless.

BILLS AND JOURNALS: 2/11/2011

Correctly printed: **SB 185, SB 210, SB 247, SB 248, HB 21.**

Correctly engrossed: **SB 110, HB 89.**

REPORTS OF STANDING COMMITTEES

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Balyeat, Chairman): 2/11/2011
SB 168, introduced bill, be amended as follows:

1. Title, page 1, line 5.

Following: "COUNCIL"

Strike: ", "

Insert: "AND"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

2. Title, page 1, lines 5 through 6.

Following: "COMMITTEE" on line 5

Strike: ", AND THE BOARD" on line 5 through "TECHNOLOGY" on line 6

Following: "DUTIES" on line 6

Strike: "AND"

Insert: "; EXTENDING"

3. Title, page 1, line 8.

Following: "39-11-202,"

Insert: "AND"

Strike: "AND 90-3-1003,"

Following: "REPEALING"

Strike: "SECTIONS 2-15-1819,"

Insert: "SECTION"

4. Page 1, line 8 through line 9.

Strike: "90-3-1005," on line 8 through "90-4-2006," on line 9

5. Page 7, line 29 through page 10, line 3.

Strike: section 5 in its entirety

Renumber: subsequent sections

6. Page 10, line 17.

Strike: "sections"

Insert: "section"

Strike: "are"

Insert: "is"

7. Page 10, line 19.

Strike: line 19 in its entirety

8. Page 10, line 21.

Strike: line 21 in its entirety

9. Page 10, line 22.

Strike: line 22 in its entirety

10. Page 10, line 24.

Strike: "6"

Insert: "5"

11. Page 10, line 25.

Strike: "6"

Insert: "5"

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

And, as amended, do pass. Report adopted.

SB 242, introduced bill, be amended as follows:

1. Title, page 1, line 5.

Strike: ""CASUAL" through "TO INCLUDE"

Insert: ""EMPLOYEE""

2. Title, page 1, line 6 through line 9.

Strike: "THAT IS" on line 6 through "CERTIFICATES" on line 9

Strike: "SECTIONS" on line 9 through "39-71-417," on line 9

Insert: "SECTION 39-71-118,"

3. Page 1, line 14 through page 8, line 20.

Strike: everything after the enacting clause

Insert: "**Section 1.** Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(e) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Insert: "NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2011."

And, as amended, do pass. Report adopted.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence: 2/10/2011

HB 34, introduced by Schmidt
HB 90, introduced by McNutt
HB 309, introduced by Welborn
HB 384, introduced by Kerns

HB 49, introduced by Hands, requiring adoption by an affirmative roll call vote of two-thirds of all the members of the Legislature, passed the House and was transmitted to the Senate with the following vote:

2/10/2011

Yeas - 85
Nays - 15

FIRST READING AND COMMITMENT OF BILLS

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

SB 307, introduced by Tutvedt, Knox, referred to State Administration.
SB 308, introduced by Larsen, referred to Judiciary.
SB 309, introduced by Kaufmann, referred to Public Health, Welfare and Safety.
SB 310, introduced by Kaufmann, referred to Public Health, Welfare and Safety.
SB 311, introduced by Gallus, referred to State Administration.

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

HB 34, introduced by Schmidt (by request of the Office of Budget and Program Planning), referred to Finance and Claims.
HB 40, introduced by K. Peterson, referred to State Administration.
HB 43, introduced by MacLaren, Sands (by request of the Children, Families, Health, and Human Services Interim Committee), referred to Business, Labor, and Economic Affairs.
HB 49, introduced by Hands (by request of the Office of Budget and Program Planning), referred to Finance and Claims.
HB 90, introduced by McNutt (by request of the Department of Administration), referred to Finance and Claims.
HB 102, introduced by Menahan (by request of the Law and Justice Interim Committee), referred to Judiciary.
HB 181, introduced by Arntzen, referred to Local Government.
HB 231, introduced by Brodehl, Miller, Klock, Greef, Burnett, Lavin, Connell, Jackson, Edmunds, Hale, Gibson, Skees, Taylor, Knox, Randall, O'Neil, Kary, Blasdel, Salomon, Ehli, referred to Local Government.
HB 300, introduced by Flynn, Olson, Klock, Berry, Stahl, Welborn, Balyeat, Ankney, Jackson, Keane, referred to Business, Labor, and Economic Affairs.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

HB 309, introduced by Welborn, Hale, Stahl, B. Bennett, Ripley, Buttrey, Hamlett, F. Smith, Arthun, Olson, Warburton, Randall, Read, Augare, Kerns, Vance, Tutvedt, Debby Barrett, Blasdel, J. Peterson, referred to Agriculture, Livestock and Irrigation.

HB 315, introduced by MacDonald, Brown, McChesney, Branae, McClafferty, McNiven, Moss, referred to Business, Labor, and Economic Affairs.

HB 356, introduced by Hiner, referred to Education and Cultural Resources.

HB 367, introduced by MacLaren, Sonju, referred to Education and Cultural Resources.

HB 384, introduced by Kerns, referred to Judiciary.

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

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

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

SB 29 - Senator Moss moved **SB 29** do pass. Motion carried as follows:

Yeas: Augare, Blewett, Branae, Caferro, Erickson, Facey, Gillan, Hamlett, Hawks, Jackson, Jent, Kaufmann, Keane, Larsen, Lewis, Moss, Mowbray, Shockley, Stewart-Peregoy, Tropila, Van Dyk, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich.

Total 27

Nays: Arthun, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Gallus, Hinkle, Jones, Lake, Moore, Murphy, Olson, Priest, Ripley, Sonju, Steinbeisser, Tutvedt, Vincent, Zinke, Mr. President.

Total 22

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

SB 57 - Senator Vuckovich moved **SB 57** do pass. Motion carried as follows:

Yeas: Augare, Barrett, Blewett, Branae, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, Tropila, Van Dyk, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 41

Nays: Arthun, Balyeat, Brenden, Hinkle, Priest, Sonju, Tutvedt, Vincent.

Total 8

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

SB 215 - Senator Gallus moved **SB 215** do pass. Motion carried as follows:

Yeas: Arthun, Augare, Barrett, Blewett, Branae, Brenden, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Jackson, Jent, Jones, Kaufmann, Keane, Larsen, Lewis, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Tropila, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Zinke, Mr. President.

Total 40

Nays: Balyeat, Brown, Hinkle, Lake, Moore, Stewart-Peregoy, Tutvedt, Windy Boy, Wittich.

Total 9

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

SB 223 - Senator Zinke moved **SB 223** do pass. Motion carried as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 48

Nays: Tutvedt.

Total 1

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

Senator Essmann moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Peterson in the chair. Chairman Wittich moved the Committee of the Whole report be adopted. Report adopted as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones,

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 48

Nays: Sonju.

Total 1

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

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 210 passed as follows:

Yeas: Arthun, Augare, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 47

Nays: Balyeat, Wittich.

Total 2

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

SB 247 passed as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, Tropila, Van Dyk, Vincent, Vuckovich, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 44

Nays: Hinkle, Sonju, Tutvedt, Walker, Wittich.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

Total 5

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

SB 248 passed as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jackson, Jent, Jones, Kaufmann, Keane, Lake, Larsen, Lewis, Moore, Moss, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

MOTIONS

Senator Balyeat moved **SB 291** be moved from the Business, Labor, and Economic Affairs committee to the State Administration committee. Without objection, so ordered.

Senator Wanzenried inquired about the process the Senate would follow when re-referring a bill to the Finance and Claims committee. Minority Leader Williams stated she would like an opportunity to discuss the issue further with Majority leadership. Majority leadership agreed.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Essmann moved that the Senate adjourn until 8:00 a.m., Saturday, February 12, 2011. Motion carried.

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 11, 2011

Senate adjourned at 2:44 a.m.

MARILYN MILLER
Secretary of the Senate

JIM PETERSON
President of the Senate