

**SENATE JOURNAL  
62<sup>ND</sup> LEGISLATURE  
SIXTY-FIRST LEGISLATIVE DAY**

Helena, Montana  
March 18, 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.

**SPECIAL ORDERS OF THE DAY**

Robert C. Perry, a Vietnam era veteran and singer songwriter, performed patriotic music to thank America's heros.

**BILLS AND JOURNALS:** 3/18/2011

Correctly printed: **HB 25, HB 49, HB 110, HB 141, HB 181, HB 481, HB 559, HB 568.**  
Correctly engrossed: **SB 187, SB 317, HB 259, HB 293, HB 352, HB 446, HB 484, HB 497.**  
Correctly enrolled: **SB 34, SB 67, SB 106, SB 32, SB 38.**

**REPORTS OF STANDING COMMITTEES**

**AGRICULTURE, LIVESTOCK AND IRRIGATION** (Steinbeisser, Chairman): 3/17/2011  
**HB 469**, be amended as follows:

1. Page 6, line 26.

**Following:** line 25

**Insert:** "NEW SECTION. Section 6. Name change -- directions to code commissioner. Wherever a reference to the "livestock loss reduction and mitigation board" appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change it to a reference to the "livestock loss board"."

**Renumber:** subsequent section

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

**HB 541**, be amended as follows:

1. Title, page 1, line 6.

**Following:** "ACT;"

**Insert:** "AUTHORIZING DOMESTIC LIVESTOCK TRAILING ACROSS LANDS DESIGNATED AS WILDLIFE MANAGEMENT AREAS;"

2. Page 4, line 20.

**Following:** "(3)"

**Insert:** "(a)"

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3. Page 4, line 24.

**Insert:** "(b) The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:

- (i) require a fee for domestic livestock trailing or related activities; or
- (ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

(4) For the purposes of this section, the following definitions apply:

(a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.

(b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours." And, as amended, be concurred in. Report adopted.

**BUSINESS, LABOR, AND ECONOMIC AFFAIRS** (Balyeat, Chairman):

3/18/2011

**SB 389**, do pass. Report adopted.

**HB 80**, be concurred in. Report adopted.

**HB 125**, be amended as follows:

1. Title, page 1, line 9.

**Following:** "INSURERS;"

**Insert:** "REVISING THE DEFINITION OF "INSURER" RELATING TO CAPTIVE RISK RETENTION GROUPS;"

2. Title, page 1, line 16.

**Following:** "33-2-601,"

**Insert:** "33-2-1501,"

3. Page 5.

**Following:** line 20

**Insert:** "**Section 8.** Section 33-2-1501, MCA, is amended to read:

**"33-2-1501. Definitions.** As used in parts 15 through 17 of this chapter, the following definitions apply:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(2) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(3) "Captive insurer" means:

(a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or

(b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.

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(4) "Control" or "controlled" has the meaning defined in 33-2-1101.

(5) "Controlled insurer" means an authorized insurer that is controlled, directly or indirectly, by a producer.

(6) "Controlling person" means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.

(7) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(8) (a) "Insurer" means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.

(b) The With regard to part 15 only, the following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(c) With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are insurers.

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory

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authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.""

**Renumber:** subsequent sections

4. Page 25, line 13 through line 18.

**Strike:** subsection (8) in its entirety

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

**HB 258**, be amended as follows:

1. Page 4, line 12.

**Strike:** "recreational"

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**Insert:** "hunting, horseback riding, fishing, or working cattle"

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

**HB 428**, be concurred in. Report adopted.

**HB 432**, be concurred in. Report adopted.

**HB 531**, be concurred in. Report adopted.

**ENERGY AND TELECOMMUNICATIONS** (Olson, Chairman): 3/17/2011

**HB 479**, be concurred in. Report adopted.

**FISH AND GAME** (Brenden, Chairman): 3/17/2011

**HB 449**, be concurred in. Report adopted.

**HIGHWAYS AND TRANSPORTATION** (Jones, Chairman): 3/17/2011

**SB 319**, introduced bill, be amended as follows:

1. Page 2, line 22.

**Strike:** "18"

**Insert:** "6"

**Following:** "age"

**Insert:** "and weighs less than 60 pounds"

And, as amended, do pass. Report adopted.

**HB 216**, be amended as follows:

1. Title, page 1, line 4.

**Strike:** "ALLOWING"

**Insert:** "REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES FOR HARDSHIP  
LICENSES THAT ALLOW"

2. Title, page 1, line 6.

**Following:** "GUARDIAN;"

**Insert:** "REVISING THE DEPARTMENT'S RULEMAKING AUTHORITY;"

**Strike:** "61-5-106,"

**Insert:** "61-5-125,"

3. Page 1, line 10 through page 3, line 9.

**Strike:** everything after the enacting clause

**Insert:** "**Section 1.** Section 61-5-125, MCA, is amended to read:

**"61-5-125. Authority of department -- rulemaking authority.** (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

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(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department shall adopt rules governing the issuance of a hardship license to an underage applicant, including but not limited to an applicant who is 14 years of age or older who holds a valid instruction permit or a traffic education learner license under 61-5-106. The rules must consider whether a hardship license is needed because the applicant's licensed parent or guardian is not available to accompany the permitholder due to employment or circumstances related to the operation of a farm or ranch and the permitholder is required to drive more than 7 miles from the permitholder's residence to the permitholder's school bus stop.

~~(3)~~(4) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

~~(b) issuance of a hardship license to an underage applicant;~~

~~(e)~~(b) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

~~(d)~~(c) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

~~(e)~~(d) restrictions to be imposed upon a probationary license;

~~(f)~~(e) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty;

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~~(g)~~(f) issuance of a replacement driver's license; and  
~~(h)~~(g) a determination of the driver's license expiration date, minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law."

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

**HB 229**, be concurred in. Report adopted.

**HB 277**, be amended as follows:

1. Title, page 1, line 5.

**Following:** "CART";

**Insert:** "REQUIRING REGISTRATION OF CERTAIN GOLF CARTS;"

2. Title, page 1, line 6.

**Following:** "SECTIONS"

**Insert:** "10-3-1307, 23-1-105,"

**Following:** "61-1-101"

**Insert:** ", 61-3-312, 61-3-321, 61-3-332, 61-6-158,"

3. Page 1, line 10.

**Strike:** "Unlawful"

**Insert:** "Operation of golf carts -- unlawful"

**Strike:** "of golf cart"

4. Page 1, line 23.

**Following:** line 22

**Insert:** "(4) Except as provided in 61-3-321, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title."

5. Page 1, line 23.

**Following:** line 22

**Insert:** "**Section 2.** Section 10-3-1307, MCA, is amended to read:

**"10-3-1307. Responsibilities of department of transportation -- assessment and collection of fees -- issuance of permits -- inspection of motor carriers.** (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of \$2,500 must be assessed for each cask designed for transport by truck; and  
(b) a fee of \$4,500 must be assessed for the first cask designed for transport by rail and a fee of \$3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation

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shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and 61-3-321~~(13)~~(14) and 61-10-127 do not apply."

**Insert: "Section 3.** Section 23-1-105, MCA, is amended to read:

**"23-1-105. Fees and charges.** (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321~~(18)(a)~~(19)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still



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chargeable and may be collected by the department.'"

**Renumber:** subsequent sections

6. Page 8, line 27.

**Strike:** "and"

7. Page 8, line 28.

**Following:** "chapter 9"

**Insert:** "; (iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to [section 1]"

8. Page 8, line 30.

**Strike:** "a golf cart,"

9. Page 14, line 28.

**Following:** line 27

**Insert:** "**Section 5.** Section 61-3-312, MCA, is amended to read:

**"61-3-312. Renewal of registration -- exceptions -- grace period.** (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration.

(2) Except as provided in subsection (4), a person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required under 61-3-303 and 61-3-321~~(12)~~(13) to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) Beginning July 1, 2011, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(6) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period and if, beginning July 1, 2011, the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157.

(7) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

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(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

**Insert: "Section 6.** Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles and vessels -- certain vehicles exempt from registration fees -- disposition of fees.** (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through ~~(19)~~ (20):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

- (a) if the vehicle is 4 or less years old, \$217;
- (b) if the vehicle is 5 through 10 years old, \$87; and
- (c) if the vehicle is 11 or more years old, \$28.

(3) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

- (a) if the declared weight is less than 6,000 pounds, \$61.25; or
- (b) if the declared weight is 6,000 pounds or more, \$148.25.

(4) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

- (a) 2,850 pounds and over, \$10; and
- (b) under 2,850 pounds, \$5.

(5) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

- (i) less than 2 years old, \$282.50;
- (ii) 2 years old and less than 5 years old, \$224.25;
- (iii) 5 years old and less than 8 years old, \$132.50; and
- (iv) 8 years old and older, \$97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

- (i) a one-time registration fee of \$237.50;
- (ii) unless a new set of license plates is being issued, an insurance verification fee of \$5, which must be deposited in the account established under 61-6-158; and
- (iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

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(b) An additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, \$72; and

(b) 16 feet in length or longer, \$152.

(10) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(11) (a) Except as provided in subsections (11)(b) and ~~(14)~~ (15), the one-time registration fee for a snowmobile is \$60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of \$40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of \$20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) The one-time registration fee for golf carts authorized to operate on certain public streets and highways pursuant to [section 1] is \$25. Upon receipt of the fee, the department shall issue the owner a decal, which must be displayed visibly on the golf cart.

~~(12)~~(13) (a) Except as provided in subsection ~~(12)(b)~~ (13)(b), a fee of \$10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The \$10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of \$15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection ~~(12)~~ (13) must be deposited in the account established under 61-6-158, except that \$2 of the fee imposed in subsection ~~(12)(a)~~ (13)(a) must be deposited in the state general fund.

~~(13)~~(14) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

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~~(14)~~(15) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

~~(15)~~(16) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

~~(16)~~(17) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

~~(17)~~(18) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

~~(18)~~(19) (a) Unless a person exercises the option in subsection ~~(18)~~(b) ~~(19)~~(b), an additional fee of \$4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$4 fee, the department of fish, wildlife, and parks shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection ~~(18)~~(a) ~~(19)~~(a). If a written election is made, the fee may not be collected.

~~(19)~~(20) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

~~(20)~~(21) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

**Insert: "Section 7.** Section 61-3-332, MCA, is amended to read:

**"61-3-332. Standard license plates.** (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The

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registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under 61-3-332, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until January 1, 2015, and upon payment of the fee required in ~~61-3-321(12)(b)~~ 61-3-321(13)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark

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unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under

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49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

**Insert: "Section 8.** Section 61-6-158, MCA, is amended to read:

**"61-6-158. Vehicle insurance verification and license plate operating account. (1)**

There is a vehicle insurance verification and license plate operating account in the state special revenue fund type as provided in 17-2-102.

(2) Fees imposed under 61-3-321(7)(b)(ii) and ~~(12)~~ (13), 61-3-333, 61-3-465(1)(b)(i), 61-3-480(2)(c)(i), or 61-3-562(1)(a)(ii) or established and collected under 61-6-105 must be deposited in the account.

(3) The money in the vehicle insurance verification and license plate operating account must be used by the department to pay costs incurred in or associated with the operation, maintenance, and enhancement of the system established under 61-6-157 and the contract required in 61-3-338 for the manufacture and distribution of license plates by Montana correctional enterprises."

**Renumber:** subsequent sections

10. Page 16, line 3.

**Insert:** "COORDINATION SECTION. Section 11. Coordination instruction. If both House Bill No. 213 and [this act] are passed and approved, then the section of [this act] amending 61-1-101 is void and the definition of "motor vehicle" in 61-1-101 must be amended as follows:

"(40)(a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; ~~and~~

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; ~~and~~

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to [section 1 of this act] or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person."

**Renumber:** subsequent sections

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

**HB 298**, be concurred in. Report adopted.

**HB 319**, be concurred in. Report adopted.

**HB 517**, be concurred in. Report adopted.

**HB 584**, be amended as follows:

1. Page 3, line 5.

**Following:** ~~plates.~~

**Insert:** "New license plates issued under 61-3-303 or this section must be a standard license plate design first issued within the last 35 years or current collegiate or generic speciality license plate designs. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.  
(ii)"

2. Page 3, line 9 through line 10.

**Strike:** "The" on line 9 through "designs." on line 10

3. Page 3, line 14.

**Strike:** "(ii)"

**Insert:** "(iii)"

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

**JUDICIARY** (Murphy, Chairman):

3/18/2011

**SB 187**, introduced bill, be amended as follows:

1. Title, line 8.

**Following:** "SECTIONS"

**Insert:** "2-15-1028, 46-8-101,"

**Following:** "47-1-202,"

**Strike:** "AND"

**Insert:** "47-1-205,"

**Following:** "47-1-215,"

**Insert:** "AND 47-1-216,"

2. Title, line 9.

**Following:** "AN"

**Insert:** "IMMEDIATE"

3. Page 1, line 13 through page 7, line 21.

**Strike:** everything after the enacting clause



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**Insert: "Section 1.** Section 2-15-1028, MCA, is amended to read:

**"2-15-1028. Public defender commission.** (1) There is a public defender commission.

(2) The commission consists of ~~14~~ seven members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the chief justice of the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana,

as follows:

~~— (i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;~~

~~— (ii) one attorney of whom must be experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and~~

~~(iii) one attorney who represents criminal defense lawyers;~~

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house; ~~;~~

~~(d) one person who is a member of an organization that advocates on behalf of indigent persons;~~

~~— (e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;~~

~~— (f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and~~

~~— (g) one person who is employed by an organization that provides addictive behavior counseling.~~

~~(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.~~

(3) At least one member must have specific knowledge of Indian culture.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(a) the commission shall hire staff for the commission and the chief public defender shall hire their own separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(b) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(b) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender

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established in 47-1-201, a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members. ""

**Insert: "Section 2.** Section 46-8-101, MCA, is amended to read:

**"46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) If Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned.""

**Insert: "Section 3.** Section 46-8-113, MCA, is amended to read:

**"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court.**

(1) As part of or as a condition under a sentence imposed under the provisions of this title, the court shall require a convicted defendant to pay the costs of counsel assigned to represent the defendant as follows, except as provided in subsections (2) and (3):

(a) in every misdemeanor case, ~~\$150~~ attorney fees at the rate of \$75 an hour; and

(b) in every felony case, ~~\$500~~ attorney fees at the rate of \$75 an hour.

(2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201, for providing the defendant with counsel in the criminal proceeding. If the criminal proceeding includes a jury trial or a justice's court trial, counsel assigned by the office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred and, except as provided in subsection (3), the court shall require the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement. The defendant is also responsible for the cost of counsel and expenses incurred in preparing for or completing an appeal.

(3) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of

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costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(5) Costs of counsel imposed under this section must be included in the court's judgment.

(6) (a) In addition to other methods of payment, the court may order forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the office of the state public defender after sale. If the proceeds of sale exceed the amount of payment ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated payment obligation. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard.

(7) For a felony offense:

(a) during any period that the offender is incarcerated, the department of corrections shall take a percentage, as set by department rule, of any money in any account of the defendant administered by the department and use the money to satisfy any existing payment obligation to the office of the state public defender;

(b) at the beginning of any period during which the offender is not incarcerated, the offender shall sign a statement allowing any employer of the offender to garnish up to 25% of the offender's compensation and give the garnished amounts to the department of corrections to be used by the department to satisfy any existing payment obligation; and

(c) during any period that the defendant is on probation or parole, the probation and parole officer shall set a monthly payment amount to be paid.

(8) The department of corrections shall give the department of revenue a copy of the order to make payments to the office of the state public defender. If full payment has not been made, the department of revenue shall intercept any state tax refunds and any federal tax refunds, as provided by law, due the offender and transfer the money to the department of corrections for a felony offense and to the sentencing court for a misdemeanor offense for disbursement to the office of the state public defender. The department of revenue may charge the department of corrections a fee to recover its costs of intercepting a tax refund. The fee may not exceed the amount charged a state agency for debt collection services under Title 17, chapter 4.

(9) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to fully compensate the office of state public defender for the costs of counsel. The duty to pay the costs of counsel under the sentence remains with the offender or the offender's estate until full payment is made, whether or not the offender is under state supervision. If the offender is under state supervision, payment of costs of counsel is a condition of any probation or parole.

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(10)(a) The offender shall pay the cost of supervising the payment of costs of counsel by paying an amount equal to 10% of the costs of counsel, but not less than \$5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of costs of counsel to the department of corrections until the offender has fully paid the costs of counsel and the cost of supervising the payment of costs of counsel. The department shall pay the costs of counsel to the office of state public defender. The department may contract with a government agency or private entity for the collection of the payments for costs of counsel and the cost of collecting the payments for costs of counsel during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (10)(b).

(c) In a misdemeanor case, payment of costs of counsel and of the cost of supervising the payment of costs of counsel must be made to the court until the offender has fully paid the costs of counsel and the cost of supervising the payment of costs of counsel. The court shall disburse the money to the entity employing the person ordered to supervise costs of counsel, which shall disburse the costs of counsel to the office of state public defender.

(11) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay the costs of counsel, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against costs of counsel due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

**Insert: "Section 4.** Section 47-1-102, MCA, is amended to read:

**"47-1-102. Purpose.** The purposes of this chapter are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respectful of regional and community needs and interests; and

(5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner; and

(6) ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay."

**Insert: "Section 5.** Section 47-1-105, MCA, is amended to read:

**"47-1-105. Commission -- duties -- report -- rules.** The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a

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manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender and the administrative director;

(4) review and approve any proposal to create permanent staff positions;

~~(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission or the chief public defender;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(g) the total number of persons represented by the office, identified by region, court, and case type;

(h) the annual caseload and workload of each public defender, identified by region, court, and case type, except for the offices of chief public defender and deputy public defender;

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- (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;
- (j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and
- (k) detailed expenditure data by court and case type."

**Insert: "Section 6.** Section 47-1-111, MCA, is amended to read:

**"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant who is eligible for a public defender ~~only~~ because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section.

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Commission procedures and rules:

- (a) must ensure that the eligibility determination process is fair and consistent statewide;
- (b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;
- (c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;
- (d) must avoid unnecessary duplication of processes; and
- (e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."

**Insert: "Section 7.** Section 47-1-202, MCA, is amended to read:

**"47-1-202. Chief public defender -- duties.** (1) In addition to the duties provided in 47-1-201, the chief public defender shall:

- ~~(1) act as secretary to the commission and provide administrative staff support to the commission;~~
- (2)(a) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;
- ~~(3)(b)~~ (3)(b) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;
- ~~(4) establish processes and procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;~~
- ~~(5)(c)~~ (5)(c) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;
- ~~(6)(d)~~ (6)(d) establish administrative management procedures for regional offices;
- ~~(7)(e)~~ (7)(e) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;
- ~~(8)(f)~~ (8)(f) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;
- ~~(9)(g)~~ (9)(g) establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;
- ~~(10)(h)~~ (10)(h) establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;
- ~~(11) maintain a minimum client caseload, as determined by the commission;~~
- ~~(12)(i)~~ (12)(i) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and
- ~~(13)(j)~~ (13)(j) perform all other duties assigned by the commission pursuant to this chapter.

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(2) The chief public defender may not maintain a client caseload."

**Insert: "Section 8.** Section 47-1-205, MCA, is amended to read:

**"47-1-205. Office of appellate defender -- chief appellate defender.** (1) There is within the office an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(7)~~(1)(e) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

(e) contract for services as provided in 47-1-216 and as authorized by the chief public defender according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(g) implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender."

**Insert: "Section 9.** Section 47-1-215, MCA, is amended to read:

**"47-1-215. Regional offices -- deputy public defenders -- office space.** (1) ~~Beginning July 1, 2006, the~~ The chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) Each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(7)~~(1)(e);

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) contract for services as provided in 47-1-216 and authorized by the chief public



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defender according to the strategic plan approved by the commission;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission and chief public defender for the region; and

~~(h) maintain a minimum client caseload as determined by the chief public defender; and~~

~~(i)~~(h) perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office and may not be considered a county or city obligation.""

**Insert: "Section 10.** Section 47-1-216, MCA, is amended to read:

**"47-1-216. Contracted services -- rules.** (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) The chief contract manager shall oversee the contracting program and may not maintain a client caseload.

~~(2)~~(3) ~~Beginning July 1, 2006, the~~ The state office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. All contracting pursuant to this section is exempt from the Montana Procurement Act, as provided in 18-4-132.

~~(3)~~(4) Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

~~(4)~~(5) Contracting for public defender services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

~~(5)~~(6) The chief public defender and deputy public defenders shall provide for contract oversight and enforcement to ensure compliance with established standards.

~~(6)~~(7) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

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(9) The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The commission shall implement rules requiring evaluation of every contract attorney on an annual basis by the chief contract manager based on written evaluation criteria."

**Insert:** "NEW SECTION. Section 11. Conflicts of interest. (1) The commission shall establish a conflicts office to contract for attorneys to represent indigent defendants in circumstances where, because of conflict of interest, the public defender program is unable to provide representation to a defendant.

(2) The commission shall appoint a conflicts manager to oversee the office. The conflicts manager reports directly to the commission and not to the chief public defender. The conflicts manager may not handle cases.

(3) All attorneys contracted for conflict of interest cases shall report to the conflicts manager."

**Insert:** "NEW SECTION. Section 12. Implementation -- termination of current terms -- appointments. (1) The terms of the current members of the public defender commission terminate June 30, 2011.

(2)(a) The governor shall appoint seven members of the public defender commission, as provided in 2-15-1028, to terms beginning on July 1, 2011, as follows:

(i) two members to terms ending June 30, 2012;

(ii) two members to terms ending June 30, 2013; and

(iii) three members to terms ending June 30, 2014.

(b) As the terms expire as provided in subsection (2)(a), members must be appointed to 3-year terms."

**Insert:** "NEW SECTION. Section 13. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [section 11]."

**Insert:** "NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

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

**HB 117**, be concurred in. Report adopted.

**HB 250**, be concurred in. Report adopted.

**HB 292**, be concurred in. Report adopted.

**TAXATION** (Tutvedt, Chairman):

3/18/2011

**SB 358**, introduced bill, be amended as follows:

1. Title, line 9 through line 10.

**Strike:** ", INCLUDING ADJACENT AREAS OR DISTRICTS"

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2. Page 29, line 10 through line 11.

**Strike:** "OR IF" on line 10 through "640 ACRES" on line 11

And, as amended, do pass. Report adopted.

**SB 382**, introduced bill, be amended as follows:

1. Title, lines 5 and 6.

**Strike:** "; AND" on line 5 through "DATE" on line 6

2. Page 1, line 12.

**Following:** line 11

**Insert:** "current year"

3. Page 1, line 14.

**Strike:** "justification for including each"

**Insert:** "rationale for adding or deleting a"

**Following:** "property"

**Insert:** "from those included"

**Following:** "study"

**Insert:** "in the prior year"

4. Page 1, line 16.

**Following:** line 15

**Insert:** "current year"

**Strike:** "at least"

5. Page 1, line 17.

**Following:** "issuing"

**Insert:** "the current year"

6. Page 1, line 18.

**Strike:** "10"

**Insert:** "20"

**Strike:** "receipt"

**Insert:** "the close of the comment period"

7. Page 1, line 21.

**Following:** "value"

**Insert:** "by more than 15%"

8. Page 1, line 24.

**Insert:** "(5) Nothing in this section may be construed as affecting an appraisal judgment.

(6) Inaccuracy or inadequacy of compliance with this section does not invalidate a determination of value or provide independent grounds for appeal."

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9. Page 1, line 28.

**Strike:** section 3 in its entirety

And, as amended, do pass. Report adopted.

**SJR 17**, introduced joint resolution, be amended as follows:

1. Page 1, line 10 through page 1, line 28.

**Strike:** page 1, line 10 through page 1, line 28 in their entirety

**Insert:** "WHEREAS, the Legislature has heard concerns about centrally assessed property and large industrial facility taxation; and"

2. Page 1, line 30.

**Strike:** "; and"

**Insert:** "."

3. Page 2, line 1 through line 7.

**Strike:** line 1 through line 7 in their entirety

4. Page 3, line 4.

**Following:** "assessment"

**Insert:** ", including equalization with other classes of property,"

And, as amended, do pass. Report adopted.

**HB 111**, be amended as follows:

1. Page 1, line 24.

**Following:** "fund"

**Insert:** "and distribute the portion of the amount deducted that was paid with federal funds to the department of administration for return to the federal government as provided in 17-3-106(2)"

2. Page 1, line 27.

**Following:** "fund,"

**Insert:** "distributed to the department of administration,"

3. Page 3, line 1.

**Following:** "fund"

**Insert:** "and distribute the portion of taxes paid with federal funds to the federal government"

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

**HB 333**, be concurred in. Report adopted.

**HB 467**, be concurred in. Report adopted.

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**MESSAGES FROM THE GOVERNOR**

March 17, 2011

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

Dear Senator Peterson:

Please be informed that I have signed **Senate Bill 21** sponsored by Senator Shockley, **Senate Bill 27** sponsored by Senator Kaufmann, **Senate Bill 31** sponsored by Senator Wanzenried, **Senate Bill 62** sponsored by Senator Jones, and **Senate Bill 72** sponsored by Senator Gillan on March 17, 2011.

Sincerely,

BRIAN SCHWEITZER  
Governor

March 17, 2011

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

Dear President Peterson:

Attached is the fourth list of appointments to various boards, councils and commissions submitted to the Montana State Senate for confirmation. For each appointment, the following information has been supplied:

Reference to statute and a brief description of the statute  
Name, address and phone number(s) for each appointee  
Appointee qualifications and term of appointment  
Brief biographies

Additional information, including a complete list of gubernatorial appointees, is available online at: <http://boards.mt.gov>. Please don't hesitate to contact our office if my staff or I can be of assistance to you.

Sincerely yours,

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BRIAN SCHWEITZER  
Governor

Copy to: Marilyn Miller, Senate Secretary; Susan Fox, Legislative Services Division

**Board of Aeronautics**

Alexander C. Edwards, Billings  
Fred Lark, Lewistown  
Robert Buckles, Bozeman  
Charles Manning, Lakeside

**Air Pollution Control Advisory Council**

John Lei, Lame Deer  
Dyrck Van Hying, Great Falls  
Edward Madler, Whitefish

**Board of Environmental Review**

Heidi Kaiser, Park City  
Joseph Russell, Kalispell  
Larry Mires, Glasgow

**Fish Wildlife and Parks Commission**

Dan Vermillion, Livingston  
A.T. "Rusty" Stafne, Wolf Point

**Hard Rock Mining Impact Board**

Marianne Roose, Eureka  
Donna von Nieda, Nye

**Montana Historical Society Board of Trustees**

Thomas Nygard, Bozeman  
Crystal Wong Shors, Helena  
Bob Brown, Whitefish

**Board of Investments**

Karl Englund, Missoula  
Jon Satre, Helena  
Gary Buchanan, Billings  
Quinton Nyman, Helena

**Board of Labor Appeals**

JP Pomnichowski, Bozeman

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**Board of Occupational Therapy Practice**

Cindy Stergar, Butte  
Nate Naprstek, Bozeman

**Board of Real Estate Appraisers**

Todd Schmidt, Kalispell  
Anzarina Moore, Great Falls

**Board of Social Work Examiners and Professional Counselors**

Peter Degel, Helena  
Rosemary Hertel, Deer Lodge  
Beverley McCurry, Columbus

**State Compensation Insurance Fund Board**

Elizabeth Best, Great Falls  
Joe Brenneman, Kalispell  
Wayne Dykstra, Billings

**OTHER HOUSE MESSAGES**

**Senate bills** concurred in and returned to the Senate: 3/17/2011

**SB 32**, introduced by Wanzenried

**SB 38**, introduced by Hawks

**Senate bills** concurred in as amended and returned to the Senate for concurrence in House amendments:

3/17/2011

**SB 28**, introduced by Kaufmann

**SB 36**, introduced by Hamlett

**MOTIONS**

Senator Essmann moved **HB 106** be moved from the Committee of the Whole to the Judiciary committee. Without objection, so ordered.

**FIRST READING AND COMMITMENT OF BILLS**

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

**SB 412**, introduced by Augare, Ankney, Belcourt, Blasdel, Evans, Hendrick, O'Hara, Pease-Lopez, Small, F. Smith, Welborn, Buttrey, Facey, Gillan, Jones, Kaufmann, Sonju, Steinbeisser, Stewart-Peregoy, Vincent, C. Williams, Windy Boy, Zinke, referred to Taxation.

**SB 413**, introduced by Balyeat, Tutvedt, referred to Taxation.

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**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 Moore in the chair.

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

**SB 251** - Senator Kaufmann moved **SB 251** do pass. Motion **failed** as follows:

Yeas: Blewett, Branae, Caferro, Erickson, Essmann, Facey, Gillan, Hamlett, Hawks, Jent, Kaufmann, Keane, Larsen, Moss, Murphy, Tutvedt, Van Dyk, Vuckovich, Wanzenried, Williams.  
Total 20

Nays: Arthun, Augare, Balyeat, Barrett, Brenden, Brown, Buttrey, Gallus, Hinkle, Jackson, Jones, Lake, Lewis, Moore, Mowbray, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Vincent, Walker, Windy Boy, Wittich, Zinke, Mr. President.  
Total 29

Absent or not voting: None.  
Total 0

Excused: Hutton.  
Total 1

**SB 251** - Senator Essmann moved **SB 251** be **indefinitely postponed**. Motion carried as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Gallus, Hinkle, Jackson, Jones, Lake, Lewis, Moore, Mowbray, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Vincent, Walker, Windy Boy, Wittich, Zinke, Mr. President.  
Total 31

Nays: Blewett, Branae, Caferro, Erickson, Facey, Gillan, Hamlett, Hawks, Jent, Kaufmann, Keane, Larsen, Moss, Murphy, Van Dyk, Vuckovich, Wanzenried, Williams.  
Total 18

Absent or not voting: None.  
Total 0

Excused: Hutton.  
Total 1

**SB 299** - Senator Hamlett moved **SB 299** do pass. Motion carried as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Erickson,



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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, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 47

Nays: Caferro, Stewart-Peregoy.

Total 2

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**SJR 15** - Senator Tutvedt moved **SJR 15** 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, Moss, Mowbray, Murphy, Olson, Priest, Shockley, Sonju, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 47

Nays: Moore, Ripley.

Total 2

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 402** - Senator Vincent moved consideration of **HB 402** be passed for the day. Without objection, so ordered.

**HB 219** - Senator Essmann moved **HB 219** be concurred in. Motion carried as follows:

Yeas: Arthun, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Gillan, Hinkle, Jackson, Jones, Lake, Lewis, Moore, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Tutvedt, Vincent, Walker, Wittich, Zinke, Mr. President.

Total 28

Nays: Augare, Blewett, Branae, Caferro, Erickson, Facey, Gallus, Hamlett, Hawks, Jent, Kaufmann, Keane, Larsen, Moss, Stewart-Peregoy, Tropila, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy.

Total 21

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Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 273** - Senator Ripley moved **HB 273** be concurred in. Motion carried as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, 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, Vincent, Vuckovich, Walker, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 47

Nays: Erickson, Van Dyk.

Total 2

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 536** - Senator Wittich moved **HB 536** be concurred in. Motion carried as follows:

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

Total 45

Nays: Augare, Erickson, Larsen, Williams.

Total 4

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 573** - Senator Van Dyk moved **HB 573** be concurred in. Motion carried as follows:

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

Total 25

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

Total 24

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HJR 1** - Senator Balyeat moved **HJR 1** be concurred in. Motion carried as follows:

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

Total 43

Nays: Caferro, Erickson, Kaufmann, Stewart-Peregoy, Williams, Windy Boy.

Total 6

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 Moore moved the Committee of the Whole report be adopted. Report adopted as follows:

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

Total 44

Nays: Erickson, Kaufmann, Larsen, Wanzenried, Williams.

Total 5

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

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**THIRD READING OF BILLS**

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

**HB 42** concurred in 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, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 48

Nays: Walker.

Total 1

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 49** concurred in as follows:

Yeas: Arthun, Augare, 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, Tutvedt, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 43

Nays: Balyeat, Hinkle, Sonju, Vincent, Walker, Wittich.

Total 6

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 110** concurred in 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, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vincent, Vuckovich, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

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Total 45

Nays: Priest, Sonju, Walker, Wittich.

Total 4

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 141** concurred in as follows:

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

Total 45

Nays: Facey, Gillan, Kaufmann, Williams.

Total 4

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 181** concurred in as follows:

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

Total 42

Nays: Augare, Brenden, Essmann, Moore, Ripley, Vincent, Windy Boy.

Total 7

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

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**HB 213** concurred in 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, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, Tropila, Tutvedt, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy, Wittich, Zinke, Mr. President.

Total 45

Nays: Priest, Sonju, Vincent, Walker.

Total 4

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 259** concurred in as follows:

Yeas: Arthun, Augare, Balyeat, Barrett, Blewett, Branae, Brenden, Brown, Buttrey, Caferro, Erickson, Essmann, Facey, 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 48

Nays: Gallus.

Total 1

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 293** concurred in as follows:

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

Total 41

Nays: Erickson, Essmann, Facey, Kaufmann, Steinbeisser, Tutvedt, Van Dyk, Windy Boy.

Total 8

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Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 446 failed** as follows:

Yeas: Augare, Blewett, Branae, Caferro, Erickson, Facey, Gallus, Gillan, Hamlett, Hawks, Hinkle, Jent, Kaufmann, Keane, Larsen, Moss, Stewart-Peregoy, Tropila, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy.

Total 23

Nays: Arthun, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Hutton, Jackson, Jones, Lake, Lewis, Moore, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Tutvedt, Vincent, Walker, Wittich, Zinke, Mr. President.

Total 27

Paired: Gillan, Aye; Hutton, No.

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**HB 484 concurred in** as follows:

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

Total 38

Nays: Brenden, Buttrey, Jones, Lewis, Olson, Priest, Sonju, Steinbeisser, Vincent, Walker, Zinke.

Total 11

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**HB 497 concurred in** as follows:

Yeas: Arthun, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Gallus, Hamlett, Hinkle, Hutton, Jackson, Jent, Jones, Keane, Lake, Larsen, Lewis, Moore, Mowbray, Murphy, Olson,

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Priest, Ripley, Shockley, Sonju, Steinbeisser, Tutvedt, Vincent, Walker, Wittich, Zinke, Mr. President.  
Total 33

Nays: Augare, Blewett, Branae, Caferro, Erickson, Facey, Gillan, Hawks, Kaufmann, Moss, Stewart-Peregoy, Tropila, Van Dyk, Vuckovich, Wanzenried, Williams, Windy Boy.  
Total 17

Paired: Hutton, Aye; Gillan, No.

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**REPORTS OF STANDING COMMITTEES**

**TAXATION** (Tutvedt, Chairman):

3/18/2011

**SB 371**, introduced bill, be amended as follows:

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

**Strike:** "PROVIDING" on line 6 through "CHEMICALS;" on line 9

2. Title, page 1, lines 10 AND 11.

**Strike:** "15-6-219" on line 10 through "27-1-720," on line 11

**Following:** "90-1-118" on line 11

**Strike:** ", "

3. Title, page 1, line 11 through line 12.

**Following:** "DATE"

**Strike:** "AND" on line 11 through "DATES" on line 12

4. Page 1, line 16.

**Strike:** "7"

**Insert:** "4"

5. Page 1, line 30.

**Strike:** "7"

**Insert:** "4"

6. Page 2, line 2.

**Strike:** subsection (1) in its entirety

**Renumber:** subsequent subsections



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7. Page 2, line 7 through line 9.  
**Strike:** subsection (4) in its entirety  
**Re-number:** subsequent subsections
  
8. Page 2, line 20 through page 3, line 17.  
**Strike:** sections 4 and 5 in its entirety  
**Re-number:** subsequent subsections
  
9. Page 3, line 23 through page 11, line 21.  
**Strike:** section 7 through section 12 in their entirety  
**Re-number:** subsequent sections
  
10. Page 12, line 14.  
**Strike:** "6"  
**Insert:** "4"
  
11. Page 13, line 1.  
**Strike:** "6"  
**Insert:** "4"
  
12. Page 13, line 4.  
**Strike:** "(1)"  
**Strike:** "7"  
**Insert:** "4"
  
13. Page 13, line 6.  
**Strike:** "7"  
**Insert:** "4"
  
14. Page 13, lines 7 and 8.  
**Strike:** subsection (2) in its entirety
  
15. Page 13, line 16 through line 20.  
**Strike:** section 18 in its entirety

And, as amended, do pass. Report adopted.

**FIRST READING AND COMMITMENT OF BILLS**

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

**SB 414**, introduced by Vincent, Hamlett, Zinke, Brenden, Balyeat, Hinkle, Cuffe, B. Bennett, Walker, Lewis, Hutton, J. Peterson, Tutvedt, Murphy, Mowbray, Augare, Jackson, Brown, De. Barrett, Ripley, Moore, Olson, Jones, Buttrey, Steinbeisser, Lake, Sonju, Kennedy, Essmann, Arthun, Priest, C. Smith, referred to Finance and Claims.

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**MOTIONS**

Senator Windy Boy moved to change his vote on **HB 497** from Yes to No. Without objection, so ordered.

Senator Wanzenried moved to reconsider third reading action on **HB 446**. Motion **failed** as follows:

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

Total 22

Nays: Arthun, Balyeat, Barrett, Brenden, Brown, Buttrey, Essmann, Hinkle, Jackson, Jones, Lake, Lewis, Moore, Mowbray, Murphy, Olson, Priest, Ripley, Shockley, Sonju, Steinbeisser, Tutvedt, Vincent, Walker, Wittich, Zinke, Mr. President.

Total 27

Absent or not voting: None.

Total 0

Excused: Hutton.

Total 1

**ANNOUNCEMENTS**

Committee meetings were announced by the committee chairs.

Majority Leader Essmann moved that the Senate adjourn until 8:00 a.m., Saturday, March 19, 2011. Motion carried.

Senate adjourned at 2:48 p.m.

MARILYN MILLER  
Secretary of the Senate

JIM PETERSON  
President of the Senate