SENATE JOURNAL
62ND LEGISLATURE
ADDENDUM

Helena, Montana — Senate Chambers, State Capitol

BILLS AND JOURNALS: 5/2/2011

Delivered to the Governor for approval at 2:30 p.m., May 2, 2011: **SB 97**, **SB 166**, **SB 199**, **SB 206**, **SB 212**, **SB 233**, **SB 241**, **SB 253**, **SB 279**, **SB 292**, **SB 295**, **SB 305**, **SB 306**, **SB 338**, **SB 348**, **SB 406**, **SB 409**, **SB 410**.

Signed by the Speaker at 12:00 p.m., May 2, 2011: **SB 97**, **SB 166**, **SB 199**, **SB 206**, **SB 212**, **SB 233**, **SB 241**, **SB 253**, **SB 279**, **SB 292**, **SB 295**, **SB 305**, **SB 306**, **SB 338**, **SB 348**, **SB 406**, **SB 409**, **SB 410**, **SJR 15**, **SJR 20**, **SJR 23**, **SJR 27**, **SJR 28**, **SJR 29**, **SJR 30**.

Correctly enrolled: **SB 35**, **SB 36**, **SB 100**, **SB 136**, **SB 156**, **SB 207**, **SB 266**, **SB 312**, **SB 329**, **SB 372**, **SB 423**.

5/3/2011

Signed by the President at 9:30 p.m., May 3, 2011: **SR 14**.

Signed by the Secretary of the Senate at 5:35 p.m., May 2, 2011: **SR 14**.

Signed by the Speaker at 11:00 a.m., May 3, 2011: **SB 418**, **SB 426**.

Signed by the President at 9:15 a.m., May 10, 2011: **SB 418**, **SB 426**.

Signed by the Secretary of the Senate at 5:35 p.m., May 2, 2011: **SB 418**, **SB 426**.

Signed by the Speaker at 11:00 a.m., May 3, 2011: **SB 35**, **SB 36**, **SB 100**, **SB 136**, **SB 156**, **SB 207**, **SB 265**, **SB 266**, **SB 312**, **SB 329**, **SB 372**, **SB 423**.

Signed by the President at 9:30 a.m., May 3, 2011: **SB 35**, **SB 36**, **SB 100**, **SB 136**, **SB 156**, **SB 207**, **SB 265**, **SB 266**, **SB 312**, **SB 329**, **SB 372**, **SB 423**.

Signed by the Secretary of the Senate at 5:35 p.m., May 2, 2011: **SB 35**, **SB 36**, **SB 100**, **SB 136**, **SB 156**, **SB 207**, **SB 265**, **SB 266**, **SB 312**, **SB 329**, **SB 372**, **SB 423**.

Delivered to the Governor for approval at 1:30 p.m., May 3, 2011: **SB 35**, **SB 36**, **SB 100**, **SB 136**, **SB 156**, **SB 207**, **SB 265**, **SB 266**, **SB 312**, **SB 329**, **SB 372**, **SB 423**.

5/4/2011

Delivered to the Governor for approval at 8:35 a.m., May 4, 2011: **SB 29**, **SB 106**, **SB 108**, **SB 125**, **SB 143**, **SB 174**, **SB 201**, **SB 225**, **SB 229**, **SB 277**, **SB 286**, **SB 297**, **SB 298**, **SB 307**, **SB 356**, **SB 358**, **SB 366**.

Delivered to the Secretary of State at 8:56 a.m., May 4, 2011: **SB 418**, **SB 426**, **SJR 15**, **SJR 20**, **SJR 23**, **SJR 27**, **SJR 28**, **SJR 29**, **SJR 30**, **SR 14**, **SR 15**, **SR 18**.

Correctly enrolled: **SR 5**.

Delivered to the Secretary of State at 10:52 a.m., May 5, 2011: **SR 5**.

SENATE JOURNAL
ADDENDUM
62ND LEGISLATURE

REPORTS OF STANDING COMMITTEES

The Senate Committee on Committees has approved the following committee assignment:

Legislative Finance Committee

Senator Ripley
Senator Gallus

Finance & Claims Committee

Senator Lewis
Senator Jones
Senator Wanzenried
Senator Williams

Capital Complex Advisory Council

Senator Moss
Senator Murphy

Legislative Consumer Committee

Senator Murphy
Senator Tropila

Economic Affairs Interim Committee

Senator Balyeat
Senator Facey
Senator Walker
Senator Windy Boy

Children, Families, Health, and Human Services Interim Committee

Senator Caferro
Senator Kaufmann
Senator Priest
Senator Wittich

Law and Justice Interim Committee

Senator Auguare
Senator Gallus

Senator Hinkle
Senator Moss
Senator Shockley
Senator Wittich

Revenue and Transportation

Senator Peterson
Senator Essmann
Senator Tutvedt
Senator Erickson
Senator Gillan
Senator Kaufmann

State Administration and Veterans' Affairs

Senator Arthun
Senator Blewett
Senator Jent
Senator Lewis

Energy and Telecommunications

Senator Jackson
Senator Keane
Senator Larsen
Senator Olson

State Tribal Relations Committee

Senator Augare
Senator Brown
Senator Mowbray
Senator Stewart-Peregoy

Water Policy Interim Committee

Senator Barrett
Senator Hamlett
Senator Stewart-Peregoy
Senator Vincent

Legislative Branch Computer Systems Planning Council

Senator Buttrey
Secretary of the Senate Marilyn Miller

Legislative Council on River Governance

Voting members: Senator Brenden, Senator Hamlett
Other members: Senators Barrett, Gallus, Jent, Vincent

Board of Investments Legislative Liaisons

Senator Balyeat

Community Health Center Advisory Group

Senator Murphy
Senator Van Dyk

Drinking Water State Revolving Loan Program Advisory Committee

Senator Steinbeisser

Economic Development Advisory Council

Senator Buttrey
Senator Vuckovich

Electronic Government Advisory Council

Senator Essmann

Future Fisheries Review Panel

Senator Walker

Gaming Advisory Council

Senator Sonju

Information Technology Board

Senator Jones

Land Information Advisory Council

Senator Walker

Natural Resource Damage Litigation Oversight

Senator Lewis
Senator Keane

Workforce Investment Board

Senator Buttrey
Senator Gillan

Legislative Council

Senator Tutvedt
Holdovers: Senators Wanzenried, Tropila, Essmann

Environmental Quality Council

Senator Brenden
Senator Hamlett
Senator Keane
Senator Ripley
Senator Vincent
Senator Vuckovich

Reserved Water Rights Compact Commission

Senator Barrett
Senator Williams

Pacific Northwest Economic Region

Senator Peterson
Senator Ripley (alternate)

Legislative Audit Committee

Senator Barrett
Senator Branae
Senator Brown
Senator Larsen

Senator Moore
Senator Tropila

MESSAGES FROM THE GOVERNOR

May 12, 2009
The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 97 (SB 97), **"AN ACT REPEALING THE PARENTAL NOTICE OF ABORTION ACT AND ENACTING THE PARENTAL NOTICE OF ABORTION ACT OF 2011; PROVIDING THAT THE PROVISIONS OF THE ACT APPLY TO MINORS UNDER 16 YEARS OF AGE; REVISING THE JUDICIAL BYPASS PROVISIONS UNDER THE ACT; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201,5020-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20212, AND 50-20-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

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

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

The District Court considered evidence on teen pregnancies to determine whether a "compelling state interest" existed to justify the privacy infringements contained in the Parental Notice of Abortion Act and rejected every reason advanced by the state to support the infringements. Notably, the legislative purpose and findings contained in the 1995 law to justify the legislation, found to be unconstitutional in Wicklund, were reenacted virtually verbatim in SB 97.
I recognize that the most obvious difference between SB 97 and the current parental notice act ruled unconstitutional is that SB 97 lowers the age under which the law's provisions would apply from 18 to 16. However, counsel advises that the District Court in Wicklund considered evidence

concerning decisions made by adolescents under 15, and this difference between SB 97 and the current law is not likely to affect the Court's analysis or cure the constitutional deficiencies of the legislation.

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

Sincerely,

BRIAN SCHWEITZER
Governor

May 12, 2009
The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

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

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

First, the Montana Constitution establishes the Montana Attorney General as the "legal officer of the state." MONT. CONST. Art. VI, § 4(4). The Montana Constitution also expressly establishes three distinct branches of government and prohibits one branch from exercising the powers of another. MONT. CONST. Art. III, § 1. I have been advised that the bill in its current form likely runs afoul of these provisions of the Montana Constitution. I understand that the Legislature, too, received an opinion from its own, former, chief legal counsel questioning the constitutionality of SB 106.

Second, any effort by the State of Montana to join the federal lawsuit will not be without cost to the state treasury. The lawsuit is proceeding on its own, without Montana's involvement, and Montana's

participation would have no bearing on the outcome. It is evident that despite costing taxpayers money, SB 106 is intended to serve a symbolic purpose, only.

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

Sincerely,

BRIAN SCHWEITZER
Governor

May 10, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 174 (SB 174), **"AN ACT PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM EXPENDING ANY FUNDS ON THE RELOCATION OR TRANSPLANTATION OF WILD BUFFALO OR BISON ON THE SPOTTED DOG WILDLIFE MANAGEMENT AREA; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

I issue this veto of SB 174 because, like other bison bills this past legislative session, its underpinnings lie not in scientific fact, but in the perpetuation of unfounded fears related to disease management and bison management. In this case, SB 174 unduly precludes the transplantation of disease-free bison to the Spotted Dog Wildlife Management Area (WMA). Increased tolerance for bison in Montana and relocation of bison to other suitable habitats and tribal lands was part of the court-ordered Interagency Bison Management Plan adopted in 2000, to which two state agencies and three federal agencies were parties. Proponents of SB 174 who helped write and agreed to that plan now seek to undermine it through this legislation.

The bison quarantine and relocation study was written over 6 years ago. In well over a dozen industry-sanctioned and federally-approved tests, the quarantined bison now available for relocation have in every instance tested negatively for brucellosis. These are quite possibly the most tested animals in the history of animal health management. No other group of animals has been tested so rigorously over such a long period of time.

The claim that these bison risk the spread of brucellosis, which is the underpinning for SB 174, is without merit. Those who do not believe the science apparently would throw out the entire

structure of the U.S. animal health system we have relied on for decades to control disease in livestock. I find this position a disturbing one, given the picture it presents to consumers about disease control and the safety of the entire U.S. food supply. Based on the very same testing protocol we rely on to assure disease-free animals across the country, these bison are at least as safe as any other animal in Montana, or the world, for that matter.
Also without merit are arguments that relocated bison somehow present inordinate property and safety risks. Given the existence of dozens of domestic bison herds throughout Montana, I question that assertion. Further, I note that Rock Creek Cattle Company, former owner of the Spotted Dog Ranch and still next door neighbor, has for many years been home to no less than 800 bison at a time. In fact, Rock Creek Cattle Company still runs bison next door to the Spotted Dog WMA.

The Fish, Wildlife, and Parks Commission currently has this issue under study, using a deliberative, open public process in which all parties have ample opportunity to weigh in. This public process will determine how and where wild bison can be successfully managed in Montana. Senate Bill 174 would halt this process before all facts are known, based on the fears of a few.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 6, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, for the following reasons, I hereby veto Senate Bill No. 198 (SB 198), **"AN ACT REVISING THE CONTENT OF FISCAL NOTES; AND AMENDING SECTIONS 5-4-201, 5-4-203, AND 5-4-205, MCA."**

Senate Bill 198 amends the law on fiscal notes involving bills estimated to have a fiscal impact exceeding $10 million in general fund money over the biennium. For these bills, the bulk of which are expected to be revenue bills, SB 198 upends the requirements of fiscal notes from objective, focused analyses of fiscal impacts to the state treasury to fiscal impacts to the private sector, along with subjective projections of "behavior changes" that will occur as a result of legislation.

Assessing the impacts of legislation on human behavior is problematic, at best. State agencies do not have the expertise to accurately estimate behavioral consequences of legislation. Even highly specialized economists trained in assessing such subjective outcomes as human behavior will

reach widely differing conclusions, based on their biases and assumptions. Likewise, many agencies have little or no expertise in analyzing the fiscal impact of legislation on the private sector. Absent the expertise and a uniform framework for making the assessment, fiscal notes written under SB 198 will either be overly general and meaningless or lack objectivity, credibility, and quality, thereby compromising the integrity of the fiscal note product produced by the Budget Office overall.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 12, 2009
The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 199 (SB 199), **"AN ACT REVISING CERTAIN PROVISIONS RELATED TO THE ADMINISTRATION OF INDIVIDUAL INCOME TAXES; REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT INDIVIDUAL INCOME TAXES AND CERTAIN OTHER TAXES; PROVIDING THAT INTEREST ASSESSMENTS ON DELINQUENT INCOME TAXES ARE BASED ONLY ON THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; CLARIFYING THE TAXATION OF FEDERAL INCOME TAX REFUNDS; PROVIDING THAT UNDERPAYMENT INTEREST ON ESTIMATED INDIVIDUAL INCOME TAXES IS NOT REQUIRED UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 15-1-216, 15-30-2110, AND 15-30-2512, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."**

Senate Bill 199 reduces certain tax penalties, interest payments, and costs associated with delinquent taxpayers. The bill would diminish state revenue by $3.82 million in the 2013 biennium.

This reduction in revenue would not be an issue had I been able to coordinate SB 199 with Senate Bill 411 , which provided some offset of the lost revenue in SB 199 by raising certain penalty and interest charges for those who intentionally avoid their tax responsibilities. To balance the checkbook, however, SB 199 required an amended effective date, to delay its implementation until the new revenue from SB 411 is realized. Unfortunately, I was unable to offer an amendatory veto of SB 199, because legislative leadership refused to transmit the bill to me until after the session, despite the fact that the Director of the Department of

Revenue alerted leadership that an amendment was necessary. This delay prevented me from amending the two bills so as to reduce the cost of SB 199 to a fiscally responsible level.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 10, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 201 (SB 201), **"AN ACT REQUIRING THAT A SMALL BUSINESS IMPACT ANALYSIS BE CONDUCTED PRIOR TO THE ADOPTION OF AN ADMINISTRATIVE RULE; DEFINING "SMALL BUSINESS"; AMENDING SECTION 2-4102, MCA; AND PROVIDING AN EFFECTIVE DATE."**

Senate Bill 201 is another bill falling in the category of a "solution in search of a problem." Under SB 201, prior to the adoption of administrative rules, executive branch agencies would be required to determine whether the proposed rule would impact small businesses and, if so, prepare a small business impact analysis of the proposed rule, as outlined in the bill. It is similar to another bill I vetoed today, HB 100, which would authorize fiscal notes containing business impact statements.

Although SB 201 was flagged by the majority party as one of its top 10 "jobs" bills, virtually all those who testified in support stated they have great working relationships with agencies, which listen to their concerns, and offered no examples of any executive branch agency that had ignored their comments during the rule-making process. Indeed, agencies often have worked through a statutorily-created negotiated rule-making process when developing their rules. At a minimum, current law already provides significant opportunity for public comment in the rulemaking process.

Finally, as with HB 100, I rhetorically ask: who is best-suited to explaining the impact of a proposed administrative rule on small businesses -agency bureaucrats or the small businesses, themselves? Senate Bill 100 may be "feel good" legislation, but the only "jobs" it would create would be through its meaningless "make work" requirements for agencies.
In sum, agencies should not be telling small businesses the impact of their rules on the

businesses. Businesses should be telling agencies, and in all instances, this administration welcomes their comments.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 13, 2011

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

Dear Secretary McCulloch:

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

Senate Bill 225 amends Montana statutes implementing the federal Public Utility Regulatory Policies Act (PURPA) and related rules. The bill would both add to and subtract from the criteria that guide the Public Service Commission (PSC) in setting rates for small power production facilities. A prominent amendment to current law found in SB 225 is the direction given to the PSC to base power rates on a consideration of whether a small power production facility has attributes that "meet the needs of a utility as outlined in the utility's plan." Given that the utility's plan is a creation of the utility itself, this rate-setting criterion is totally circular and is in the exclusive self-interest of the utility. This self-serving criterion, which is not found in PURPA, appears contrary to the purpose of the federal law, making it an invitation to litigation.

Additionally, the intent of PURPA is to encourage substantial investments in new power facilities. As with any generation facility, the cost of these new power facilities can only be recovered over the long term. Therefore, it would be a critical mistake to strike the existing statutory language encouraging long-term contracts, which unfortunately is one of the things that SB 225 does.
I also ask legislators to recall that the key portion of SB 225, dealing with avoided cost, is duplicated by the content of HB 92, which was introduced at the request of the Energy and

Telecommunications Interim Committee following a request from the Public Service Commission itself, and which I have already signed into law.

Although I sought to cure these identified problems with SB 225 through an amendatory veto, the sponsor of the bill asked the Senate to pass consideration of my proposed amendments and, as a result, those improvements to the bill were never considered by the Legislature.
Given the problems that remain in the bill, I have chosen to veto it to avoid preemption issues, potential litigation, and confusion.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 10, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 253 (SB 253), **"AN ACT REPEALING CERTAIN TAX CREDITS; REPEALING INDIVIDUAL INCOME TAX AND CORPORATE LICENSE TAX CREDITS FOR UTILIZING LOCAL GOVERNMENT EMPOWERMENT ZONES, THE CREDIT FOR ENERGY-CONSERVING INVESTMENTS AND EXPENDITURES, THE CREDIT FOR ALTERNATIVE FUEL MOTOR VEHICLE CONVERSION, THE CREDIT FOR NEW OR EXPANDED INDUSTRY, THE EMPOWERMENT ZONE NEW EMPLOYEES CREDIT, THE CREDIT FOR GEOTHERMAL SYSTEMS, THE CREDIT FOR INSTALLING ALTERNATIVE ENERGY SYSTEMS, THE CREDITS FOR ALTERNATIVE ENERGY GENERATION, THE CREDIT FOR MINERAL AND COAL EXPLORATION, THE CREDITS FOR THE RECYCLING OF MATERIAL, THE CREDIT FOR OILSEED CRUSHING FACILITIES, THE CREDIT FOR BIODIESEL OR BIOLUBRICANT PRODUCTION FACILITIES, "rHE CREDIT FOR BIODIESEL BLENDING AND STORAGE FACILITIES, AND "rHE CREDIT FOR INVESTMENT IN CAPITAL COMPANIES; REPEALING LOCAL GOVERNMENT EMPOWERMENT ZONES; REPEALING THE MONTANA CAPITAL COMPANY ACT; PROVIDING A TRANSITION FOR CREDITS THAT ARE SUBJECT TO A CARRYFORWARD; AMENDING SECTIONS 15-31-125, 15-32-104, 15-32-105,15-32-106,15-32-502, 176-302,17-6-311,17-6-312,17-6-313,30-10-105, 32-1-422, 75-2-103, AND 75-5-103, MCA; REPEALING SECTIONS 7-21-3701, 7-21-3702, 7-21-3703, 7-21-3704, 7-21-3710, 7-21-3715, 15-30-2319, 15-30-2320, 15-30-2356, 15-31-124, 15-31-134, 15-31137,15-32-109,15-32-115,15-32-201, 15-32-202,15-32-203,15-32-401,15-32-402, 15-32-404, 15-32-405, 15-32-406, 15-32-407, 15-32-501, 15-32-503, 15-32-504, 15-32505, 15-32-506,**

15-32-507, 15-32-508, 15-32-509, 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, 15-32-701, 15-32-702, 15-32-703, 33-2-724, 90-8-101, 90-8-102, 90-8-103, 90-8-104, 90-8-105, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8205, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN APPLICABILITY DATE."

I am at a loss for why the Legislature has presented this bill to me. SB 253 would repeal clean energy tax credits that have served as crucial agents of economic growth and jobs. To repeal these credits would be to subtract jobs in Montana's energy, construction, and agriculture sectors. In repealing these tax credits, SB 253 is also the single largest tax increase proposed by the 2011 Legislature. I have never raised taxes, and will not do so now.\

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 255 (SB 255), **"AN ACT REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO FOLLOW CERTAIN CRITERIA FOR MAKING DECISIONS RELATING TO THE OPPORTUNITY TO HUNT OR FISH."**

Senate Bill 255 mandates the Fish, Wildlife, and Parks (FWP) Commission to undertake extensive additional bureaucratic process without associated benefits.

The fiscal note for this bill estimates an additional cost of over $1.4 million per biennium to meet these burdens, but no funding was included for the new requirements imposed by SB 255 in the general appropriations act, House Bill 2. I stand with Montana sportsmen, who believe their license dollars are better spent on more important hunting and fishing priorities.

In the midst of various competing interests and emotionally-charged issues, the FWP Commission conducts itself in an effective and transparent manner, providing several steps for significant public input along the way. Justifications for proposed changes to fish and game management decisions and data to support those changes are always included in recommendations from FWP to the Commission. Proposed changes are introduced to the Commission formally at regularly scheduled

and publicly advertised meetings. At those meetings public comment is taken, and if a proposal is tentatively adopted, it then goes out for at least a 3~-day public comment period. Additional public meetings are often held to consider complex regulations and proposals, and meetings are often held in locally-affected areas as well. All public comments are provided to the Commission for its review, as is a summary of public comments. Proposals are then returned to the Comrnission with any changes resulting from public comments, and are either approved, approved with changes, or denied by the Commission.

By way of example, the public process for adopting biennial hunting regulations starts with a public scoping process to identify significant issues. Scoping is followed by the adoption, in a Commission meeting, of proposed regulations that go out for public review and comment for at least 30 days, and includes 44 public meetings throughout the state. Finally. the process concludes with a public Commission meeting where all public comments are considered in the final adoption of the biennial hunting regulations.

Governing criteria and objectives related to fish and wildlife management are clearly defined in Montana statute and rule--probably more so than in any other aspect of state government. Additionally, many of these decisions go through Montana Environmental Policy Act review.
I see no benefit in adding to the already considerable public processes in place. All Commission business is conducted using sound scientific data, through a very public process, with recorded minutes available from each meeting. Be that as it may, I am directing the Department and the Commission to continue to meet the intent of this legislation by broadening as much as possible their public processes and, where necessary, more clearly spelling out management criteria and objectives.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 6, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 299 (SB 299), **"AN ACT AN ACT PROVIDING FOR THE OWNERSHIP OF THE CHANNEL AND FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM; PROVIDING THAT A FORMER CHANNEL IS OWNED BY THE ADJACENT LANDOWNER AND THE LAND UNDER THE NEW CHANNEL IS OWNED BY THE STATE; DEFINING THE TERM "NAVIGABLE"; PROVIDING RULEMAKING AUTHORITY; AMENDING**

SECTION 771-102, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN APPLICABILITY DATE."

Senate Bill 299 may be the singular piece of legislation passed by the 62nd Legislature to have slipped by with the gravest unintentional consequences. The bill primarily was intended to define the ownership of the channel of navigable waters altered through avulsion (see section 1 of SB 299). However, in the process of dealing with the subject of avulsion, SB 299 divests the State of its ownership of a large portion of the beds of navigable rivers -authority held by the State of Montana since passage of the Enabling Act by Congress in 1889 -contrary to well-settled federal and state constitutional law. See The Daniel Ball, 77 U.S. (10 Wall.) 557 (1870); Montana Coalition for Stream Access, Inc. v. Curran, 210 Mont. 38, 682 P.2d 163 (1984).

Specifically, SB 299 amends § 77-1-102, MCA -a statute addressing the administration of state lands that has remained unchanged since its enactment in 1937 -to define navigable rivers as only those that have been "adjudicated" navigable. By defining navigable rivers in this narrow way, SB 299 could be construed to divest the Land Board of its power to fulfill its constitutional duty to administer all the public trust lands granted to the State of Montana at the time of statehood, regardless of whether a river has been adjudicated. Under this scenario, SB 299 would unintentionally divest the State of its ownership of over approximately 1,500 miles of riverbed granted to the state at statehood.

I understand the 62nd Legislature used a similar narrow definition of "navigable" rivers in SB 35, which establishes a regulatory process for leasing beds of navigable rivers. Senate Bill 35 contained nine new sections of law, to be codified presumably as a new part in Title 77, chapter 1, MCA, for the exclusive purpose of establishing the regulatory scheme for leasing riverbeds. Senate Bill 35 also contains an express proviso that nothing in the bill "diminishes the state's ownership of the beds of navigable rivers, streams, or lakes under any other law." See section 1 (3) of SB 35. This limiting provision in SB 36 is markedly absent from SB 299, a bill which amends Montana's bedrock law regarding the administration of state lands and limits state ownership of those lands.

While I would not have objected to codifying the matter of the ownership interests, and therefore the tax consequences, of beds of streams and rivers whose channels have changed through avulsion, given the consequences of SB 299, I have no choice but to veto it. The amendments to the 1937 statute contained in SB 299 would affect the ability of the Land Board to fulfill its constitutional duty to administer all the public trust lands granted to the State at the time of statehood.

I strongly urge legislators to sustain my veto of SB 299.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

SENATE JOURNAL
ADDENDUM
62ND LEGISLATURE

May 12, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 306 (SB 306), **"AN ACT CLARIFYING THE PROHIBITION OF CYANIDE HEAP AND VAT LEACH OPEN-PIT GOLD AND SILVER MINING; AND AMENDING SECTION 82-4-390, MCA."**

I issue this veto because SB 306 contradicts the decision, twice made by Montana voters, to restrict the use of cyanide to process ore from gold mines in the state. Ultimately the bill forces me to choose between the decision of the citizens of Montana and the decision of 91 members of the 62nd Montana Legislature. That is not a difficult choice.

I understand that Golden Sunlight Mine in Jefferson County is able to process ore from other mines, and that its lined impoundment has up to six million tons of capacity over and above the amount of tailings projected to result from currently approved operations at that site. Under current statute, the company has the ability and capacity to process ore and concentrates from operating underground mines and waste rock and tailings from abandoned mines. In fact, recently the Montana Department of Environmental Quality prepared plans to use Golden Sunlight to re-process tailings from the McLaren site in the New World Mining District near Yellowstone Park and to dispose of the remaining tailings at the Golden Sunlight repository. The plan was eventually abandoned, though not because of any legal constraints over the use of cyanide to reprocess the tailings at Golden Sunlight.

I believe the citizens of Montana knew what they were voting for when they first, in 1998, and again, in 2004, voted to restrict cyanide heap and vat leach open-pit gold and silver mining. I veto SB 306 because it contradicts the explicit will of Montana voters, and because it provides for mining activities that are already allowed by existing statute.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

SENATE JOURNAL
ADDENDUM
62ND LEGISLATURE

May 13, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 307 (SB 307), **"AN ACT REVISING THE PRIVATIZATION PLAN REVIEW PROCESS; REQUIRING LEGISLATIVE INTERIM COMMITTEES TO SOLICIT PUBLIC INPUT ON TERMINATING OR PRIVATIZING PROGRAMS; REQUIRING THE LEGISLATIVE AUDITOR TO REVIEW THE RECOMMENDATIONS AND REPORT TO THE LEGISLATURE ON THE ADVANTAGES OR DISADVANTAGES OF TERMINATING OR PRIVATIZING A PROGRAM AND TO PROVIDE THE GOVERNOR WITH A COPY OF THE REPORT; AMENDING SECTIONS 2-8-102,2-8-105,2-8-301, AND 2-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

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

Where current law requires executive branch agencies to explain and justify any considerations they may have to privatize a program by preparing a detailed privatization plan, including among other things a cost-benefit and qualitative analysis that would be subject to public review and scrutiny (see Title 2, chapter 8, part 3, MCA), SB 307 would institutionalize as the responsibility of every interim legislative committee the task of conSidering and recommending the privatization of programs as part of the committee's routine functions with no requirement that the detailed factors requiring analysis by executive branch agencies even be considered by the interim committees. Additionally, I object to the amendment to the definition of the term "privatize" in SB 307. While current law defines "privatizing" as contracting with the private sector for the performance of work currently conducted by public sector employees, under SB 307, privatizing would be defined as the transfer of the "control or management" of state government to the private sector. Montana's constitution provides that the control and management of government lies with its elected officials who are accountable to the people of Montana, not with the private sector. This amendment to the definition of the term "privatize' is extremely troublesome.

Further, I oppose the provision in SB 307 that strikes from current law the right of the public, bargaining agents or employee representatives, elected officials, legislators, and agency directors to submit to the legislative audit committee a request to review programs currently being conducted

under contract that may be administered more cost-effectively by the agency. This amendment, like the others, is contrary to sound public policy.

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

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 13, 2011

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

Dear Secretary McCulloch:

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

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

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

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

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 13, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 358 (SB 358), **"AN ACT GENERALLY REVISING TAX INCREMENT FINANCING DISTRICT LAWS; PROVIDING FOR CREATION OF TARGETED ECONOMIC DEVELOPMENT DISTRICTS; ALLOWING COUNTIES TO CREATE TARGETED ECONOMIC DEVELOPMENT DISTRICTS AND TO USE TAX INCREMENT FINANCING; ADDING COMPONENTS THAT MUST BE INCLUDED IN AN URBAN RENEWAL PLAN; REMOVING PROVISIONS FOR CREATION OF AND BONDING IN TECHNOLOGY DISTRICTS, AEROSPACE TRANSPORTATION AND TECHNOLOGY DISTRICTS, AND INDUSTRIAL DISTRICTS; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4286, 7-15-4288, 7-154290,7-15-4292,7-15-4293,7-15-4294, 7-15-4301, 7-15-4302, 7-15-4304, AND 7-154324, MCA; REPEALING SECTIONS 7-15-4295, 7-15-4296, 7-15-4297, 7-15-4298, 7-154299, AND 17-5-820, MCA; AND PROVIDING AN EFFECTIVE DATE."**

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

appropriate sideboards to satisfy the constitutional and policy tests, I have chosen to veto it.

The most important problem with SB 358 is one that would endanger the State's constitutional obligation to equalize the funding of schools. As passed, SB 358 allows new property values arising from centrally assessed property --mUlti-county pipelines, transmission lines, railroads, and the like --to be included in targeted economic development districts, even though the economic decisions that create the investment in such property are not a product of local economic development efforts, but rather a result of national and international economic factors. Hence, it is not appropriate for a local government to capture their value --to the tune of tens of millions of dollars a year taken away from state school funding --in an effort to prop up the financing of a targeted economic development district.

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

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

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

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

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

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

Montana has a tax increment law that works well without the passage of S8 358, and my veto of S8 358 will not hamper the effective functioning of tax increment financing as an economic development tool. While local infrastructure to support economic development is important, it cannot come at a grave, overly-broad cost to the state that risks compromising school equalization

required by the Montana Constitution, which we have spent so many years litigating, improving, and protecting from another challenge. As passed, S8 358 abandons that responsibility and, because of that, I have chosen to veto it.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 12, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 366 (SB 366), **"AN ACT GENERALLY REVISING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' RESPONSIBILITIES REGARDING ADMINISTRATION OF THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT REGULATIONS REQUIRING A 30-DAY SUSPENSION OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BENEFITS WHEN AN ADULT FAMILY MEMBER VOLUNTARILY QUITS A JOB; REQUIRING COMPLETION OF ALL WORK ACTIVITIES FOR THE BENEFIT PERIOD BEFORE RECEIPT OF BENEFITS; AND AMENDING SECTION 53-4-212, MCA."**

Senate Bill 366 would change Montana's Temporary Assistance to Needy Families Program (TANF) by imposing a 30-day waiting period for benefits when an applicant has voluntarily quit a job of 20 hours/week or more without good cause and by requiring the Department of Public Health and Human Services (DPHHS) to establish what is called a "pay for performance" requirement, under which a TANF recipient could not receive the benefit until after the required work was performed.

TANF benefits assist not only parents who voluntarily leave their employment, they assist children. Additionally, Montana already requires TANF recipients to work 30 hours/week as a condition of receiving benefits, along with a progressive sanction period, which works well, if recipients do not perform the required work, up to and including denial of benefits. Because these benefits are available to assist families in times of crisis, I believe it is not constructive to make the families wait 30 days, until the end of the benefit period, after they have completed their work assignments, to receive the benefit.

I proposed amendments to SB 366 to lessen the hardship on families and children, but the Legislature chose to reject my amendments. For the reasons above, I have vetoed the bill.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 6, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 379 (SB 379), **"AN ACT GENERALLY REVISING COUNTY ZONING LAWS; REVISING PROCEDURES FOR THE ESTABLISHMENT OR REVISION OF BOUNDARIES FOR A ZONING DISTRICT AND THE ADOPTION OR AMENDMENT OF ZONING REGULATIONS; CLARIFYING ZONING PROTEST REQUIREMENTS; PROVIDING THAT A BOARD OF COUNTY COMMISSIONERS MAY VOTE TO OVERRIDE A SUCCESSFUL PROTEST UNDER CERTAIN CIRCUMSTANCES; REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO DEVELOP FINDINGS OF FACT TO OVERRIDE A ZONING PROTEST; CLARIFYING PROCEDURES FOR THE ADOPTION OF ZONING REGULATIONS AND BOUNDARIES; AMENDING SECTIONS 76-2-101 AND 76-2205, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE."**

Current Montana law sets forth a complex procedure for counties to successfully enact county-initiated zoning (so-called "Part 2" zoning, authorized under Title 76, chapter 2, part 2, MCA), to promote the public health, safety, morals, and general welfare. These provisions recently have been challenged in several Montana counties as an unlawful delegation of legislative authority to private parties (under the current statute, for no reason or any reason, certain landowners may override a county commission, which must make its decisions based on legal criteria to protect the public interest) and a violation of equal protection (only certain landowners are authorized to protest).
In expressed anticipation of a Montana Supreme Court decision holding the current protest provisions unconstitutional, SB 379 provides statutory changes that would take effect only if and when such a court decision is issued. The changes under SB 379, however, are deficient from the get-go, as they fail to remedy the bases for the legal challenges to the current law and would continue to allow and further impair the ability of county commissioners to prevent a few large landowners from blocking zoning regulations meant to promote the public interest of all the residents in the community.

First, SB 379 provides county commissioners with the ability to override a zoning protest, but makes that override exceedingly difficult to attain by requiring a supermajority vote of the county commission. Current law provides that if a certain percentage of specific landowners protest a county's adoption of Part 2 zoning, county commissioners cannot adopt the proposed zoning. Under SB 379, if a certain percent of landowners in the proposed district protest the proposed zoning, the landowner protest could be overridden, but only by a unanimous vote of the commission in the majority of Montana counties. Senate Bill 379 also extends these same protest provisions and override requirements to citizen-initiated zoning, known as "Part 1" zoning (codified at Title 76, chapter 2, part 1, MCA).

Second, in order to even consider an override, SB 379 would require county commissions to analyze the potential economic impact of the proposed zoning action on the property values of only the protesting landowners (not other landowners) and make a finding that no less restrictive means exist to promote the public interest. These heightened and selective standards for the adoption of zoning are not consistent with the well-settled rational basis review of local zoning regulations. They are unnecessary, unreasonable, and counterproductive.

In short, the protest provisions contained in SB 379 elevate the rights of a minority of landowners over the rights of the community as a whole, and over other landowners whose quality of life and economic interests may also be affected -whether positively or negatively -by zoning. Moreover, if SB 379 takes effect because the current law is found to be unconstitutional, its provisions do not appear to remedy the current statutes being challenged. Local government officials should not be unreasonably limited in their ability to protect the interests of all their residents and the long-term development goals of their communities. It is for these reasons that I have vetoed SB 379.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2011

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

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 402 (SB 402), **"AN ACT PROVIDING FOR SPRING WOLF HUNTS; ESTABLISHING FEES FOR SPRING WOLF HUNTING LICENSES; AMENDING SECTIONS 87-1-304, 87-2-523, 87-2-524, AND 87-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

Senate Bill 402 was introduced in anticipation of federal delisting of wolves from the Endangered Species Act. According to proponents, Montana "lost" the fall 2010 hunting season to the relisting of wolves earlier in the year, and SB 402 was an effort to allow, essentially for the purposes of just the current year, a spring hunt of wolves. This legislation provides a mandate for this single-year spring hunt, despite numerous biological, administrative, and practical difficulties associated with such a hunt.

In federal legislation recently shepherded through Congress by U.S. Senator Jon Tester, wolves have been delisted. This uncommonly helpful congressional action was passed in uncommonly quick fashion. At the moment, Montana awaits the necessary federal regulations and protocols for implementation of the recent delisting, which I understand may take up to 60 days. For purposes of a hunt, that timeline would put Montana into the middle of June, at which time the Fish, Wildlife, and Parks (FWP) Commission would take up matters such as season-setting, quotas, hunting districts, public input, and license sales. The net result is that Montana would be looking at July or August for its "spring hunt," even as we expect fall wolf hunting in the backcountry to begin in mid-September. Because of these difficulties with timing, and for practical reasons involving the mingling of hunting seasons, and for the sake of public safety during the summer months when Montana families are enjoying other activities in the woods, I believe a wolf hunt outside of fall to be unworkable and ill-advised. In any event, stated otherwise, it is not practically possible for a "spring hunt" to occur, as S8 402 would require.

There are several biological and social reasons why a spring wolf hunt is further ill-advised. Female wolves with pups will be vulnerable and tied to their dens. Montana has long-avoided hunting during these times, due not only to biology, but social acceptance. The prospect of field-dressing pregnant females or the likelihood of starving, abandoned pups does not meet ethical standards of fair chase or humane treatment of animals. Further, wolves are undernourished and in their poorest condition coming into the spring, and the young are immature through the summer. The harvest of animals in poor condition with mangy pelts and the taking of underdeveloped animals are not what most Montanans have in mind when buying a hunting license. FWP and the Commission already have the authority to set any season that is appropriate to the agency's mission, including a special season for wolves as circumstances may dictate. However, a statutory setting of mandatory hunting without consideration of these broader implications, in my opinion is ill-advised.

Additionally, FWP has a wolf management plan, and the substance of that plan helped secure passage of Senator Tester's legislation to de-list wolves in Montana. Enactment of SB 402 has the potential to jeopardize Montana's delisted status, a result none of us desire. Ultimately, delisting was facilitated by Montana's sensible and scientific approach.

Montana will indeed have a wolf hunt this fall, and I am not willing to jeopardize recent hardfought gains to put wolf management back where it belongs, in the hands of the state. I respectfully ask for your support to sustain my veto.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 11, 2011

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

Dear Secretary McCulloch:

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

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

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

SB 406 also has a cost. By replacing the State Tax Appeals Board's expertise in making valuations with the testimony of hired-gun experts in district courts, the bill would increase litigation costs to the public. At the hearings on this bill, the proponents were candid about these effects being intended to drive the Department of Revenue to the negotiating table and settle claims. But the taxpayer cost of settling these cases would generally two to four times higher than taking these cases through the normal appeals process. The Department has estimated that under the bill, corporations that perennially appeal their taxes as an inherent corporate strategy would win double to quadruple settlement bonuses-with the cost shifted unfairly to smaller taxpayers.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2011

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

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 415 (SB 415), **"AN ACT GENERALLY REVISING LAWS RELATED TO OIL AND GAS LEASES; DEFINING TERMS; CLARIFYING THAT THE LESSEE PAYS THE COSTS OF PRODUCTION FROM THE WORKING INTEREST; REQUIRING THE STATE TO SHARE THE EXPENSE OF TRANSPORTING THE OIL TO THE NEAREST MARKET BASED ON THE STATE'S PROPORTIONAL SHARE OF THE ROYALTY INTEREST; AND AMENDING SECTIONS 77-3-432, 77-3-434, AND 82-10-110, MCA."**

SB 415 seeks to force the State Board of Land Commissioners (Land Board) to enter into "wellhead" oil and gas contracts with oil and gas producers. The Board has been utilizing, and for decades companies have been complying with, "gross proceeds" oil and gas contracts with producers. Wellhead contracts fix the point of royalty valuation at the wellhead, thus allowing deductions for compression and transportation to be taken from the royalty value received by the state's school trusts. Gross proceeds contracts place the point of royalty valuation at the location where oil and gas production is rendered marketable and sold.

The courts have recognized gross proceeds contracts as a legitimate provision in oil and gas leases, and have recognized that such contracts are properly interpreted as not allowing deductions from the point of sale back to the wellhead. This type of contract is obviously more equitable to the state, as the school trust receives the royalty share based on the gross revenue obtained by the producer. Wellhead contracts are typically

offered by producers to private mineral owners because they allow royalty deductions favorable to the oil and gas producer. The Land Board, on behalf of the school trusts, has chosen not to utilize industry-developed contract terms. Not all private mineral owners accept industry-developed contract terms. Likewise, the federal government and many other oil &gas producing states do not utilize industry contract terms. Finally, it remains unclear whether placement of SB 415's new sections 1 and 2 into Title 82 negatively affects private mineral owners in a similar manner.

The fiscal impacts are potentially significant approximately $1.0 million over the next four years, increasing to $2.5 million per year over the long term. These figures are supported by the fact that recent audits recovered $1.2 million in school trust revenue that would not have been received under SB 415.

As drafted, SB 415 would usurp the Land Board's constitutional authority to determine oil and gas lease contract terms that are in the best interest of the state's school trusts. Additionally, other Montana mineral owners could be affected. For these reasons I veto SB 415.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR