

**SENATE JOURNAL
64TH LEGISLATURE
FORTY-FIRST LEGISLATIVE DAY**

Helena, Montana
February 23, 2015

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Barrett presiding. Invocation by Pastor Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

BILLS AND JOURNALS

2/23/2015

Correctly printed: **SB 9, SB 118, SB 207, SB 219, SB 223, SB 253, SB 266, SB 272, SB 280, SB 281, SB 293, SB 294, SB 349, SB 350, SB 388, SR 25, SJ 13, SJ 16, HB 87.**

Correctly engrossed: **SB 186, SB 195, SB 206, SB 263, SB 283, SB 325, SB 328, SB 329, HB 100.**

Examined by the sponsor and found to be correct: **SB 1, SB 51, SB 76.**

Transmitted to the House: **SB 224, SB 232, SB 245, SB 284, SB 288, SB 327.**

Signed by the Secretary of the Senate at 10:20 a.m., February 23, 2015: **SB 63, SB 64, SB 72, SB 135.**

Signed by the Secretary of the Senate at 3:40 p.m., February 23, 2015: **SB 1, SB 51, SB 76.**

Signed by the President at 12:10 p.m., February 23, 2015: **SB 63, SB 64, SB 72, SB 135.**

Signed by the President at 4:08 p.m., February 23, 2015: **SB 1, SB 51, SB 76.**

REPORTS OF STANDING COMMITTEES

NATURAL RESOURCES (Vincent, Chair):

2/20/2015

SB 330, introduced bill, be amended as follows:

1. Page 4, line 8.

Strike: "as"

Insert: "for a reservation provided in subsection (6) or a reservation "

And, as amended, do pass. Report adopted.

PUBLIC HEALTH, WELFARE AND SAFETY (Thomas, Chair):

2/20/2015

SB 336, introduced bill, be amended as follows:

1. Title, page 1, line 12.

Following: "STATEMENT"

Insert: "FOR RULES PROPOSED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING PAYMENTS THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS ENTITLED TO COLLECT FROM CERTAIN PROVIDERS"

Strike: "SECTION"

Insert: "SECTIONS"

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Following: "2-4-405"

Insert: "AND 53-6-111"

2. Page 2, line 8 through line 9.

Strike: "an impacted business, impacted contractor, elected official, or"

3. Page 2, line 14.

Strike: "a"

Insert: "the"

4. Page 2, line 15.

Strike: "if"

Strike: "originated the request, the committee"

5. Page 3, line 7.

Strike: "completed"

6. Page 3, line 8 through line 9.

Strike: "and the impacted business, impacted contractor, or elected official, if applicable,"

7. Page 3, line 24.

Following: line 23

Insert: "(8) For rules proposed to be adopted, amended, or repealed by the department of public health and human services, an impacted business, impacted contractor, or elected official may request an economic impact statement and, if requested, must receive the completed statement."

Insert: "**Section 3.** Section 53-6-111, MCA, is amended to read:

"53-6-111. Department charged with administration and supervision of medical assistance program -- overpayment recovery -- sanctions for fraudulent and abusive activities -- adoption of rules. (1) The department of public health and human services may administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in Title 53, chapter 2, and this chapter and that is in compliance with Title XIX of the Social Security Act.

(2) (a) The department is entitled to collect from a provider, and a provider is liable to the department for:

(i) the amount of a payment under this part to which the provider was not entitled; ~~regardless of whether the incorrect payment was the result of department or provider error or other cause~~ if the incorrect payment was the result of the provider's unreasonable interpretation of the pertinent rule or billing code; and

(ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the department for the rate period.

(b) For the purposes of determining whether the provider's interpretation of a pertinent rule or billing code is unreasonable pursuant to subsection (2)(a)(i), the provider's interpretation is unreasonable if:

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(i) it directly conflicts with a written interpretation of the department in existence at the time of the billing for that rule or billing code; or

(ii) if there was no written interpretation of the department in existence at the time of the billing for that rule or billing code, the department demonstrates by a preponderance of the evidence that the provider's interpretation is unreasonable.

~~(b)~~(c) In addition to the amount of overpayment recoverable under subsection (2)(a), the department is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30 days after the date of mailing of notice of the overpayment by the department to the provider, except that interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

~~(c)~~(d) The department may collect any amount described in subsection (2)(a) by:

(i) withholding current payments to offset the amount due;

(ii) applying methods and using a schedule mutually agreeable to the department and the provider; or

(iii) any other legal means.

~~(d)~~(e) The department may suspend payments to a provider for disputed items pending resolution of a dispute.

~~(e)~~(f) The fact that a provider may have ceased providing services or items under the medical assistance program, may no longer be in business, or may no longer operate a facility, practice, or business does not excuse repayment under this subsection (2).

(3) The department shall adopt rules establishing a system of sanctions applicable to providers who engage in fraud and abuse. Subject to the definitions in 53-6-155, the department rules must include but are not limited to specifications regarding the activities and conduct that constitute fraud and abuse.

(4) Subject to subsections (5) and (6), the sanctions imposed under rules adopted by the department under subsection (3) may include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) suspension of participation in the program for a specified period of time;

(c) permanent termination of participation in the medical assistance program; and

(d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties applicable to a specific activity, act, or omission involving intentional or knowing violation of specified standards.

(5) In all cases in which the department may recover medicaid payments or impose a sanction, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to recovery of overpayment.

(6) The remedies provided by this section are separate and cumulative to any other administrative, civil, or criminal remedies available under state or federal law, regulation, rule, or policy.""

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

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MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

2/21/2015

HB 200, introduced by R. Pinocci
HB 334, introduced by R. Cook
HB 366, introduced by G. Custer
HB 382, introduced by M. Dunwell
HB 412, introduced by D. Zolnikov
HB 436, introduced by K. Dudik
HB 447, introduced by K. Wagoner
HB 448, introduced by K. Wagoner
HB 449, introduced by K. Wagoner
HB 461, introduced by S. Lavin
HB 503, introduced by T. Berry
HB 522, introduced by T. Berry
HB 537, introduced by T. Berry

MOTIONS

Senator Jones explained a new process adopted by the Rules Committee related to re-referring a bill with fiscal impact to the Finance and Claims Committee (FCC) following second reading. The new procedure will re-refer the bill to the FCC following its report out of the policy committee but before second reading by the Committee of the Whole. The bill would be heard by the Committee of the Whole following its report out of the FCC.

In accordance with the new process, Senator Jones moved that **SB 298**, **SB 262** and **SB 338** be re-referred from the second reading board to the Finance and Claims 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 389, introduced by B. Hamlett, P. Connell, S. Stewart-Peregoy, referred to Natural Resources.
SB 390, introduced by E. Arntzen, referred to Business, Labor, and Economic Affairs.

The following Senate bill was introduced and read first time:

SB 391, introduced by F. Moore.

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

HB 298, introduced by B. Harris, N. Ballance, G. Bennett, S. Berglee, M. Blasdel, R. Brodehl, B.

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Brown, A. Doane, J. Fielder, C. Fiscus, K. Flynn, F. Garner, C. Glimm, E. Greef, D. Hagstrom, B. Harris, G. Hertz, S. Hess, J. Hinkle, R. Hollandsworth, K. Holmlund, D. Howard, D. Kary, A. Knudsen, D. Lamm, M. Lang, S. Laszloffy, F. Mandeville, T. Manzella, W. McKamey, M. Miller, D. Moore, F. Moore, D. Mortensen, M. Noland, A. Olszewski, R. Osmundson, R. Pinocci, L. Randall, A. Redfield, K. Regier, V. Ricci, T. Richmond, S. Sales, D. Salomon, N. Schwaderer, C. Smith, S. Staffanson, B. Tschida, G. Vance, K. White, A. Wittich, D. Zolnikov, referred to Judiciary.

HB 375, introduced by S. Lavin, referred to Highways and Transportation.

HB 414, introduced by M. Lang, referred to Highways and Transportation.

HB 466, introduced by M. Miller, referred to Judiciary.

HB 470, introduced by C. Clark, referred to Business, Labor, and Economic Affairs.

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

HJ 12, introduced by G. Hertz, J. Fielder, R. Pinocci, D. Salomon, J. Taylor, referred to State Administration.

HJ 15, introduced by M. Tropila, E. Buttrey, G. Kipp, G. Meyers, C. Pease-Lopez, R. Peppers, B. Smith, S. Stewart-Peregoy, S. Webber, L. Whitford, J. Windy Boy, referred to Energy and Telecommunications.

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

Majority Leader Rosendale moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator T. Brown in the chair.

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

SB 83 - Senator Kaufmann moved **SB 83** do pass. Motion carried as follows:

Yeas: Ankney, Barrett Dick, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Hamlett, Hansen, Hoven, Jones, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Sands, Sesso, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.

Total 36

Nays: Arntzen, Blasdel, Brenden, D. Brown, Fielder, Hinkle, Howard, Kary, Keenan, Rosendale, Sales, Smith, Vance, Vincent.

Total 14

Absent or not voting: None.

Total 0

Excused: None.

Total 0

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SB 251 - Senator D. Brown moved **SB 251** do pass. Motion carried as follows:

Yeas: Arntzen, Blasdel, Brenden, D. Brown, Buttrey, Connell, Fielder, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moore, Ripley, Rosendale, Sales, Smith, Swandal, Taylor, Thomas, Vance, Vincent, Webb, Ms. President.
Total 26

Nays: Ankney, Barrett Dick, T. Brown, Caferro, Cohenour, Driscoll, Facey, Hamlett, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Stewart-Peregoy, Tutvedt, Vuckovich, Whitford, Windy Boy, Wolken.
Total 24

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 321 - Senator Blasdel moved **SB 321** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, T. Brown, Buttrey, Caferro, Connell, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keane, Keenan, Larsen, Moore, Phillips, Ripley, Rosendale, Sales, Sands, Sesso, Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Webb, Windy Boy, Wolken, Ms. President.
Total 39

Nays: D. Brown, Cohenour, Driscoll, Kaufmann, Malek, McNally, Moe, Pomnichowski, Stewart-Peregoy, Vuckovich, Whitford.
Total 11

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 107 - Without objection, Chair T. Brown moved consideration of **SB 107** to the bottom of the second reading board.

SB 148 - Senator C. Smith moved **SB 148** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Connell, Fielder, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moore, Ripley, Rosendale, Sales, Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Webb, Ms. President.
Total 29

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Nays: Barrett Dick, Caferro, Cohenour, Driscoll, Facey, Hamlett, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Stewart-Peregoy, Vuckovich, Whitford, Windy Boy, Wolken.

Total 21

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 180 - Senator Hoven moved **SB 180** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vincent, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.

Total 47

Nays: Keenan, Sales, Vance.

Total 3

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 210 - Senator Vuckovich moved **SB 210** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hoven, Jones, Keane, Larsen, Malek, McNally, Moe, Moore, Ripley, Sales, Sands, Sesso, Stewart-Peregoy, Swandal, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Whitford, Windy Boy, Wolken, Ms. President.

Total 38

Nays: Blasdel, Hinkle, Howard, Kary, Kaufmann, Keenan, Phillips, Pomnichowski, Rosendale, Smith, Taylor, Webb.

Total 12

Absent or not voting: None.

Total 0

Excused: None.

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Total 0

SB 216 - Senator Webb moved **SB 216** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.

Total 46

Nays: Hinkle, Sales, Vance, Vincent.

Total 4

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 344 - Senator Webb moved **SB 344** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Connell, Driscoll, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keenan, Larsen, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sales, Sands, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Windy Boy, Ms. President.

Total 42

Nays: Barrett Dick, Cohenour, Facey, Keane, Malek, Sesso, Whitford, Wolken.

Total 8

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 332 - Senator Buttrey moved **SB 332** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.

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Total 46

Nays: D. Brown, Kary, Sales, Vincent.

Total 4

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 270 - Senator Taylor moved **SB 270** do pass.

SB 270 - Senator Facey moved **SB 270**, second reading copy, be amended as follows:

1. Page 2, line 23.

Following: "guardian"

Strike: "."

Insert: "; or"

2. Page 2, line 24.

Following: "of a seasonal"

Insert: "nonprofit"

Strike: "amusement or recreational establishment,"

3. Page 2, line 25.

Following: "camp"

Strike: ", "

Following: "religious or"

Strike: "nonprofit"

4. Page 2, line 25 through line 26.

Strike: "exempt" on line 25 through "213" on line 26

Amendment adopted as follows:

Yeas: Ankney, Arntzen, Barrett Dick, D. Brown, Caferro, Cohenour, Driscoll, Facey, Hamlett, Jones, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sales, Sands, Sesso, Stewart-Peregoy, Swandal, Tutvedt, Vuckovich, Whitford, Windy Boy, Wolken.

Total 28

Nays: Blasdel, Brenden, T. Brown, Buttrey, Connell, Fielder, Hansen, Hinkle, Hoven, Howard, Kary, Keenan, Moore, Ripley, Rosendale, Smith, Taylor, Thomas, Vance, Vincent, Webb, Ms. President.

Total 22

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Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 270 - As amended, passed as follows:

Yeas: Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Whitford, Windy Boy, Wolken, Ms. President.
Total 45

Nays: Ankney, Barrett Dick, Cohenour, Sales, Webb.
Total 5

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 292 - Senator Rosendale moved **SB 292** do pass.

SB 292 - Senator Facey moved **SB 292**, second reading copy, be amended as follows:

1. Title, page 1, line 7.

Following: "INDUSTRY;"

Insert: "REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT TO THE 66TH LEGISLATURE;"

2. Page 2, line 19.

Following: line 19

Insert: "NEW SECTION. **Section 2. Drug formulary -- advisory council -- reporting.**

The department of labor and industry shall report to the 66th legislature the following information regarding implementation of [section 1]:

(a) the number of prescription drugs denied by the insurer; and

(b) the number of petitions pursuant to [section 1(1)(f)] filed with the workers' compensation court."

Renumber: subsequent sections

Amendment adopted as follows:

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Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sales, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 292 - As amended, passed as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Connell, Fielder, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moore, Ripley, Rosendale, Sales, Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Webb, Ms. President.
Total 29

Nays: Barrett Dick, Caferro, Cohenour, Driscoll, Facey, Hamlett, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Stewart-Peregoy, Vuckovich, Whitford, Windy Boy, Wolken.
Total 21

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 295 - Senator Blasdel moved **SB 295** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moe, Moore, Phillips, Ripley, Rosendale, Sales, Sands, Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Webb, Windy Boy, Ms. President.
Total 33

Nays: Barrett Dick, Caferro, Cohenour, Connell, Driscoll, Facey, Kaufmann, Keane, Larsen, Malek, McNally, Pomnichowski, Sesso, Stewart-Peregoy, Vuckovich, Whitford, Wolken.
Total 17

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Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Buttrey assumed the chair.

SB 107 - Senator T. Brown moved **SB 107** do pass. Motion carried as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Connell, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keane, Keenan, Moore, Ripley, Rosendale, Sales, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Windy Boy, Ms. President.

Total 35

Nays: Barrett Dick, Cohenour, Driscoll, Facey, Kaufmann, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Whitford, Wolken.

Total 15

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Majority Leader Rosendale moved the committee **rise and report**. Motion carried. Committee arose. Senate resumed. President Barrett presiding. Chair T. Brown moved the Committee of the Whole report be adopted. Report adopted as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Connell, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keane, Keenan, Malek, Moore, Pomnichowski, Ripley, Rosendale, Sales, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.

Total 42

Nays: Cohenour, Driscoll, Kaufmann, Larsen, McNally, Moe, Phillips, Sands.

Total 8

Absent or not voting: None.

Total 0

Excused: None.

Total 0

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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:

SB 9 failed (due to 2/3 vote requirement) as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Connell, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moore, Phillips, Ripley, Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vuckovich, Webb, Ms. President.
Total 29

Nays: Barrett Dick, Caferro, Cohenour, Driscoll, Facey, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Pomnichowski, Rosendale, Sales, Sands, Sesso, Stewart-Peregoy, Vincent, Whitford, Windy Boy, Wolken.
Total 21

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 118 passed as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Hamlett, Hansen, Hinkle, Hoven, Jones, Kary, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sands, Smith, Stewart-Peregoy, Swandal, Thomas, Tutvedt, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.
Total 41

Nays: Blasdel, Fielder, Howard, Kaufmann, Sales, Sesso, Taylor, Vance, Vincent.
Total 9

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 207 passed as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Connell, Fielder, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moore, Ripley, Rosendale, Sales,

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Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Ms. President.
Total 30

Nays: Barrett Dick, Caferro, Cohenour, Driscoll, Facey, Hamlett, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Stewart-Peregoy, Whitford, Windy Boy, Wolken.
Total 20

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 219 passed as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sales, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 223 passed as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sales, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

SB 253 passed as follows:

Yeas: Ankney, Barrett Dick, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Sands, Sesso, Stewart-Peregoy, Swandal, Thomas, Tutvedt, Vuckovich, Whitford, Windy Boy, Wolken.

Total 35

Nays: Arntzen, Blasdel, Brenden, D. Brown, Hinkle, Keenan, Ripley, Rosendale, Sales, Smith, Taylor, Vance, Vincent, Webb, Ms. President.

Total 15

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 266 passed as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sales, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 280 passed as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Connell, Fielder, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moe, Moore, Ripley, Rosendale, Sales,

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Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Webb, Ms. President.

Total 30

Nays: Barrett Dick, Caferro, Cohenour, Driscoll, Facey, Hamlett, Kaufmann, Keane, Larsen, Malek, McNally, Phillips, Pomnichowski, Sands, Sesso, Stewart-Peregoy, Vuckovich, Whitford, Windy Boy, Wolken.

Total 20

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 281 passed as follows:

Yeas: Ankney, Arntzen, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Connell, Fielder, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Keenan, Moore, Ripley, Rosendale, Sales, Smith, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Webb, Ms. President.

Total 29

Nays: Barrett Dick, Caferro, Cohenour, Driscoll, Facey, Hamlett, Kaufmann, Keane, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sands, Sesso, Stewart-Peregoy, Vuckovich, Whitford, Windy Boy, Wolken.

Total 21

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 294 passed as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Caferro, Cohenour, Connell, Driscoll, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Jones, Kary, Kaufmann, Keane, Keenan, Larsen, Malek, McNally, Moe, Moore, Phillips, Pomnichowski, Ripley, Rosendale, Sands, Sesso, Smith, Stewart-Peregoy, Swandal, Taylor, Thomas, Tutvedt, Vance, Vincent, Vuckovich, Webb, Whitford, Windy Boy, Wolken, Ms. President.

Total 48

Nays: Howard, Sales.

Total 2

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

REPORTS OF STANDING COMMITTEES

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Buttrey, Chair):

2/23/2015

SB 254, do pass. Report adopted.

SB 258, introduced bill, be amended as follows:

1. Page 8, line 4.

Strike: ""employer""

Insert: ""employee" or "worker""

And, as amended, do pass. Report adopted.

SB 306, do pass. Report adopted.

SB 346, introduced bill, be amended as follows:

1. Title, page 1, line 5.

Following: "MANAGERS;"

Insert: "AMENDING THE DEFINITION OF "DESIGNATED MANAGER"; AMENDING THE EXPERIENCE REQUIREMENT FOR CERTAIN DESIGNATED MANAGERS;"

2. Title, page 1, line 7.

Strike: "32-9-116 AND 32-9-122"

Insert: "32-9-103 AND 32-9-109"

3. Page 1, line 11 through Page 3, line 1.

Strike: everything after the enacting clause

Insert: "**Section 1.** Section 32-9-103, MCA, is amended to read:

"**32-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, without performing any analysis of the information, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(2) "Advertising" means a commercial message in any medium that promotes, either directly or indirectly, a residential mortgage lending transaction.

(3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a response to a solicitation of an offer of residential mortgage loan terms and includes the information about the borrower that is customary or necessary in a decision on whether to make such an offer.

(4) "Approved education course" means any course approved by the NMLS.

(5) "Approved test provider" means any test provider approved by the NMLS.

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- (6) "Bona fide not-for-profit entity" means an entity that:
- (a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(4);
 - (b) promotes affordable housing or provides homeownership education or similar services;
 - (c) conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
 - (d) receives funding and revenue and charges fees in a manner that does not create incentives for the entity or its employees to act other than in the best interests of its clients;
 - (e) compensates employees in a manner that does not create incentives for employees to act other than in the best interests of clients;
 - (f) provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.
 - (g) is either certified by the U.S. department of housing and urban development or has received a community housing development organization designation as defined in 24 CFR 92.2.
- (7) "Bona fide third party" means a person that provides services relative to the origination of a residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.
- (8) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.
- (9) "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business. The location is considered a branch office if:
- (a) the address of the location appears on business cards, stationery, or advertising used by the entity;
 - (b) the entity's name or advertising suggests that mortgages are made at the location;
 - (c) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or
 - (d) the location is controlled directly or indirectly by the entity.
- (10) "Commercial context" means that an individual who acts as a mortgage loan originator does so for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or family purposes.
- (11) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.
- (b) A person is presumed to control an entity if that person:
- (i) is a director, general partner, or executive officer or is an individual that occupies a similar position or performs a similar function;
 - (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;
 - (iii) in the case of a limited liability company, is a managing member; or
 - (iv) in the case of a partnership, has the right to receive upon dissolution or has

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contributed 10% or more of the capital.

(12) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(13) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(14) "Designated manager" means a mortgage loan originator ~~with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator~~ who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control; and who:

(a) has at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator; or

(b) meets the requirements of 32-9-109(3).

(15) "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).

(16) "Entity" means a business organization, including a sole proprietorship.

(17) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

(18) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(19) "Expungement" means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.

(20) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

(21) "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.

(22) "Independent contractor" means an individual who performs duties other than at the direction of and subject to the supervision and instruction of another individual who is licensed and registered in accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or (1)(g).

(23) "Individual" means a natural person.

(24) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

(25) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(26) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs administrative or clerical tasks as an employee at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(b) For the purposes of subsection (26)(a), "origination of a residential mortgage loan" means all activities related to a residential mortgage loan from the taking of a residential mortgage loan application through the completion of all required loan closing documents and

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funding of the residential mortgage loan.

(27) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(28) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection (28), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

(29) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

(30) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

- (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129;

or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(31) "Mortgage servicer" means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; or

(b) meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans.

(32) "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration and licensing of persons providing nondepository financial services.

(33) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

(34) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(35) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale,

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purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections (35)(a) through (35)(d).

(36) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is wholly owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the NMLS.

(37) "Regularly engage" means that a person:

(a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the previous calendar year or expects to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the current calendar year; or

(b) has served as the prospective source of financing or performed other phases of loan originations on more than 12 residential mortgage loans in the previous calendar year or expects to serve as the prospective source of financing or perform some other phases of loan origination on more than 12 residential mortgage loans in the current calendar year.

(38) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

(39) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

(40) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(41) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLS. (See part compiler's comment regarding contingent suspension.)"

Insert: "Section 2. Section 32-9-109, MCA, is amended to read:

"32-9-109. Experience requirements. (1) An individual may not act as a designated manager without a minimum of 3 years of experience working as a mortgage loan originator or in a related field.

(2) The department shall by rule establish what constitutes work in a related field.

(3) An individual meets the experience requirements of subsection (1) if the individual:

(a) is under an exclusive written contract with and originates residential mortgage loans

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solely on behalf of a federally chartered savings bank;

(b) holds a current insurance producer license under Title 33, chapter 17, that is not suspended or revoked; and

(c) has a current notice of appointment under 33-17-231 from an insurer that controls, is controlled by, or is under common control with the same federally chartered savings bank that is an exclusive contract and licensing sufficient to meet the requirements of subsection (1).
(See part compiler's comment regarding contingent suspension.)"

And, as amended, do pass. Report adopted.

SB 347, do pass. Report adopted.

SB 351, do pass. Report adopted.

FINANCE AND CLAIMS (Jones, Chair):

2/23/2015

SB 252, do pass. Report adopted.

SB 261, do pass. Report adopted.

SB 269, do pass. Report adopted.

SB 367, do pass. Report adopted.

HB 166, be concurred in. Report adopted.

JUDICIARY (Sales, Chair):

2/23/2015

SB 318, do pass. Report adopted.

SB 356, do pass. Report adopted.

SB 372, do pass. Report adopted.

TAXATION (Tutvedt, Chair):

2/18/2015

SR 22, be adopted. Report adopted.

MOTIONS

Senator Arntzen moved that **SB 338** be taken from the Finance and Claims Committee and brought before the Committee of the Whole tomorrow, February 24, 2015. Motion carried as follows:

Yeas: Ankney, Arntzen, Barrett Dick, Blasdel, Brenden, D. Brown, T. Brown, Buttrey, Connell, Facey, Fielder, Hamlett, Hansen, Hinkle, Hoven, Howard, Jones, Kary, Kaufmann, Keenan, Moore, Ripley, Rosendale, Sales, Sands, Smith, Swandal, Taylor, Thomas, Vance, Vincent, Webb, Ms. President.

Total 33

Nays: Caferro, Cohenour, Driscoll, Keane, Larsen, Malek, McNally, Moe, Phillips, Pomnichowski, Sesso, Stewart-Peregoy, Tutvedt, Vuckovich, Whitford, Windy Boy, Wolken.

Total 17

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Absent or not voting: None.

Total 0

Excused: None.

Total 0

SPECIAL ORDERS OF THE DAY

Senator Smith introduced the Pages for the coming week:

Benjamin Bryant from Great Falls, sponsored by Senator Buttrey
Samantha Clark from Missoula, sponsored by Senator Facey
Lydia Dupuis from Polson, sponsored by Senator Taylor
Katherine Garfield from Wolf Point, sponsored by Senator Windy Boy
Kyle Johnston from Frenchtown, sponsored by Senator Larsen
Skylar Rispens from Helena, sponsored by Senator Cohenour

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Rosendale moved the Senate adjourn until 1:00 p.m., Tuesday, February 24, 2015, the forty-second legislative day. Motion carried.

Senate adjourned at 2:35 p.m.

MARILYN MILLER
Secretary of the Senate

DEBBY BARRETT
President of the Senate