

**SENATE JOURNAL
61ST LEGISLATURE
FIFTY-FIFTH LEGISLATIVE DAY**

Helena, Montana
March 12, 2009

Senate Chambers
State Capitol

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

Roll Call. All members present, except Senator Squires, Senator Wanzenried, excused. Quorum present.

BILLS AND JOURNALS:

3/12/2009

Correctly printed: **SB 506, SR 10, HB 27, HB 38, HB 46, HB 48, HB 57, HB 82, HB 101, HB 114, HB 118, HB 137, HB 149, HB 203, HB 223, HB 244, HB 245, HB 294, HB 308, HB 311, HB 383, HB 425, HJR 6.**

Correctly engrossed: **SB 100, HB 179.**

Correctly enrolled: **SB 155, SB 160, SB 196, SB 262.**

Signed by the Speaker at 9:30 a.m., March 12, 2009: **SB 72, SB 157, SB 161, SB 252.**

Signed by the Secretary of the Senate at 2:55 p.m., March 11, 2009: **SB 91, SB 103, SB 256, SJR 2, SJR 14.**

Signed by the President at 4:00 p.m., March 11, 2009: **SB 91, SB 103, SB 256, SJR 2, SJR 14.**

Examined by the sponsor and found to be correct: **SB 91, SB 103, SB 256, SJR 2, SJR 14.**

REPORTS OF STANDING COMMITTEES

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

3/11/2009

HB 119, be amended as follows:

1. Title, page 1, line 11.

Following: "~~CONDITIONS;~~"

Insert: "INCLUDING RELIGIOUS ORGANIZATIONS AS EMPLOYERS FOR WORKERS' COMPENSATION PURPOSES UNDER CERTAIN CONDITIONS;"

2. Title, page 1, line 12.

Following: "~~EMPLOYER;~~"

Insert: "CLARIFYING CERTAIN PROCEDURES USED BY THE UNINSURED EMPLOYERS' FUND;"

3. Title, page 1, line 19.

Following: "FUND;"

Insert: "CLARIFYING THE JURISDICTION OF THE WORKERS' COMPENSATION COURT;"

4. Title, page 1, line 20.

Following: "~~39-71-123;~~"

Insert: "39-71-117, 39-71-118, 39-71-123,"

Following: "~~39-71-501;~~"

Insert: "39-71-501, 39-71-506,"

5. Title, page 1, line 21.

Following: "39-71-2339,"

Insert: "39-71-2905,"

6. Title, page 1, line 22.

Following: "DATES"

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Insert: "AND A RETROACTIVE APPLICABILITY DATE"

7. Page 2.

Following: line 15

Insert: "NEW SECTION. **Section 3. Uninsured employer as party to benefits disputes -- indemnification by uninsured employer for benefits paid -- lien for payment -- levy and execution.** (1) An uninsured employer or an employer alleged to be uninsured is a party to all disputes concerning any benefits for which the employer may become obligated to indemnify the department pursuant to 39-71-504(1)(b).

(2) (a) After mediation pursuant to department rules, an uninsured employer or an employer alleged to be uninsured is joined as a party when a dispute over benefits is brought before the workers' compensation judge pursuant to 39-71-2905.

(b) The workers' compensation judge may enter a judgment, including a default judgment, requiring an uninsured employer to indemnify the department with respect to any benefits paid or ordered payable by the department in relation to the claim.

(c) If a judgment ordered under subsection (2)(b) includes a specific amount paid or ordered payable, the department may issue to the uninsured employer a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.

(3) (a) An uninsured employer is obligated to make claim reimbursements as provided in 39-71-504(1)(b), plus the interest and other charges assessed on the claim reimbursement as provided in 39-71-504(2), when demand for those payments is made to the uninsured employer.

(b) If the uninsured employer does not make the payments and does not dispute the obligation in the manner provided by 39-71-520, the department may issue a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.

(4) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose."

Renumber: subsequent sections

8. Page 15.

Following: line 6

Insert: "**Section 6.** Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; ~~and~~

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities; and

(d) a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for agricultural production, manufacturing, or a construction project conducted by its members on or off the property of the religious corporation, religious organization, or religious trust.

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(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed."

Insert: "Section 7. Section 39-71-118, MCA, is amended to read:

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

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

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

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

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

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

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

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

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

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

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

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

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

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

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

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

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

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

(i) nonresident employees are hired in Montana;

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

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- (iii) nonresident employees are supervised in Montana; and
- (iv) business records are maintained in Montana.

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

Insert: "Section 8. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

- (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;
- (b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
- (c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;
- (d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;
- (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and
- (f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

- (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;
- (b) the amount of the payment made by the employer for employees, if the payment was made for:
 - (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;
 - (ii) sickness or accident disability under a workers' compensation policy;
 - (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;
 - (iv) death, including life insurance for the employee or the employee's immediate family;
 - (c) vacation or sick leave benefits accrued but not paid;
 - (d) special rewards for individual invention or discovery; or
 - (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) Except as provided in 39-71-118(7)(c), the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned

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by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due."

Renumber: subsequent sections

9. Page 19.

Following: line 28

Insert: "Section 11. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of 39-71-501, 39-71-503 through 39-71-511, ~~and~~ 39-71-515 through 39-71-520, and [section 3], "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

Insert: "Section 12. Section 39-71-506, MCA, is amended to read:

"39-71-506. Lien for payment of unpaid penalties, fees, and interest, ~~and claims~~ -- levy and execution.

(1) (a) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in 39-71-504(1)(a), (1)(c), and (2), the unpaid penalties, fees, and interest, ~~and claims~~ have the effect of a judgment against the employer at the time the payments become due. After issuing an order to the uninsured employer requiring payment of penalties, fees, and interest and after the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed entered on the docket, it becomes a lien upon all real property of the uninsured employer. ~~After satisfying any due process requirements, the~~ The department may enforce the judgment at any time within 10 years of creation of the lien.

(b) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.

(2) The department may settle through compromise with an uninsured employer the amount due the fund under ~~39-71-504~~ subsection (1)."

Renumber: subsequent sections

10. Page 26, line 14.

Strike: "who is a"

Insert: "if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:

(a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;

(b) a chiropractor licensed under Title 37, chapter 12;

(c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;

(d) a dentist licensed under Title 37, chapter 4;

(e) an advanced practice registered nurse licensed under Title 37, chapter 8; or

(f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state."

11. Page 26, line 15 through line 16.

Strike: "treating physician as defined in 39-71-116" on line 15 through "practice." on line 16

Following: "practice." on line 16

Insert: "(3)"

Renumber: subsequent subsection

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12. Page 33.

Following: line 21

Insert: "**Section 24.** Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation judge -- time limit on filing. (1) ~~☆ If a claimant, or an insurer who,~~ an employer alleged to be an uninsured employer, or the uninsured employers' fund has a dispute concerning any benefits under this chapter, 71 of this title it may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in this chapter 71 of this title. If the dispute relates to benefits due to a claimant under this chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under this chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under this chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under this chapter 71.

(2) A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied."

Renumber: subsequent sections

13. Page 34.

Following: line 11

Insert: "(3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section 3]."

14. Page 34, line 13.

Strike: "[This act]"

Insert: "Except as provided in [section 30], [this act]"

15. Page 34, line 18.

Strike: "9, 10, and 19 through 21"

Insert: "3, 11, 12, 15, 16, 24, 26 through 28, and 30"

16. Page 34.

Following: line 19

Insert: "NEW SECTION. Section 30. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to liens filed by the department of labor and industry on judgments issued against uninsured employers prior to [the effective date of this act] and to actions pending within the department of labor and industry or the workers' compensation court on [the effective date of this act] regarding benefit disputes and penalty disputes as provided in [sections 3, 12, and 24]."

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

HB 204, be concurred in. Report adopted.

HB 283, be concurred in. Report adopted.

HIGHWAYS AND TRANSPORTATION (Brueggeman, Chairman):

3/11/2009

HB 304, be amended as follows:

1. Page 1.

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Following: line 8

Insert: "WHEREAS, Trooper David A. Graham was a dedicated trooper to the safety and protection of the citizens of Montana; and
WHEREAS, David was dedicated to the happiness of his family and friends; and
WHEREAS, David will always be loved and missed dearly as he was the most helpful and loving person we have known."

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

LOCAL GOVERNMENT (Esp, Chairman): 3/12/2009
HB 45, be concurred in. Report adopted.
HB 545, be concurred in. Report adopted.

STATE ADMINISTRATION (Shockley, Chairman): 3/11/2009
SR 2, introduced resolution, be amended as follows:

1. Page 3, line 3.

Strike: line 3 in its entirety

And, as amended, be adopted. Report adopted.

TAXATION (Essmann, Chairman): 3/12/2009
SB 244, introduced bill, be amended as follows:

1. Title, line 9 through line 13.

Strike: "REQUIRING" on line 9 through "FORM;" on line 13

2. Page 1, line 24 through line 30.

Strike: section 1 in its entirety

Renumber: subsequent sections

3. Page 2, line 12.

Strike: subsection (A) in its entirety

Renumber: subsequent subsections

4. Page 2, line 13.

Following: "DUE"

Insert: "with the tax return or"

5. Page 2, line 14.

Strike: "TAX"

Insert: "amount"

Following: "DUE;"

Insert: "or"

6. Page 12, line 4 through line 5.

Strike: section 5 in its entirety

Renumber: subsequent sections

7. Page 12, line 9.

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Strike: "Sections 1(2) and 3"

Insert: "Section 2"

8. Page 12, line 15.

Strike: "[Sections" through "apply"

Insert: "[Section 2] applies"

And, as amended, do pass. Report adopted.

SB 264, introduced bill, be amended as follows:

1. Page 1, line 24.

Strike: "as defined in 90-5-101"

Insert: "or a facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a)"

2. Page 2, line 23.

Strike: "as defined in 90-5-101"

Insert: "or a facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a)"

And, as amended, do pass. Report adopted.

HB 24, be concurred in. Report adopted.

HB 163, be concurred in. Report adopted.

MESSAGES FROM THE OTHER HOUSE

Senate bills concurred in and returned to the Senate:

3/11/2009

SB 155, introduced by Cooney

SB 160, introduced by Jent

SB 196, introduced by Windy Boy

SB 262, introduced by Wanzenried

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

3/11/2009

SB 54, introduced by Steinbeisser

FIRST READING AND COMMITMENT OF BILLS

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

SR 11, introduced by Gebhardt, referred to Natural Resources.

SR 12, introduced by Gebhardt, referred to Natural Resources.

SR 13, introduced by Gebhardt, referred to Natural Resources.

SR 14, introduced by Gebhardt, referred to Natural Resources.

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

Senator Squires present by telephone.

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

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

SB 377 - Senator Perry moved **SB 377** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Hawks, Hinkle, Jackson, Jent, Keane, Laible, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Tutvedt, Windy Boy, Zinke, Mr. President.

Total 32

Nays: Branae, Cooney, Erickson, Gallus, Gillan, Hamlett, Hansen, Juneau, Kaufmann, Larsen, Moss, Schmidt, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Williams.

Total 17

Absent or not voting: None.

Total 0

Excused: Wanzenried.

Total 1

HB 23 - Senator Cooney moved **HB 23** be concurred in. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Wanzenried.

Total 1

HB 30 - Senator Cooney moved **HB 30** be concurred in. Motion **failed** as follows:

Yeas: Barrett, Black, Branae, Brueggeman, Cooney, Erickson, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Larsen, Laslovich, Moss, Schmidt, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Williams.

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Total 24

Nays: Bales, Balyeat, Barkus, Brenden, R. Brown, T. Brown, Curtiss, Esp, Essmann, Gebhardt, Hinkle, Jackson, Laible, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Tutvedt, Windy Boy, Zinke, Mr. President.

Total 25

Absent or not voting: None.

Total 0

Excused: Wanzenried.

Total 1

HB 30 - Senator J. Peterson moved **HB 30** be **indefinitely postponed**. Motion **failed** as follows:

Yeas: Bales, Balyeat, Barkus, Brenden, R. Brown, T. Brown, Curtiss, Esp, Essmann, Gebhardt, Hinkle, Jackson, Laible, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Tutvedt, Zinke, Mr. President.

Total 24

Nays: Barrett, Black, Branae, Brueggeman, Cooney, Erickson, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Larsen, Laslovich, Moss, Schmidt, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Williams, Windy Boy.

Total 25

Absent or not voting: None.

Total 0

Excused: Wanzenried.

Total 1

HB 39 - Senator Perry moved **HB 39** be concurred in. Motion carried as follows:

Yeas: Bales, Balyeat, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.

Total 47

Nays: Barkus, Jackson.

Total 2

Absent or not voting: None.

Total 0

Excused: Wanzenried.

Total 1

HB 44 - Senator Curtiss moved **HB 44** be concurred in. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau,

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Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Wanzenried.
Total 1

HB 70 - Senator Schmidt moved **HB 70** be concurred in. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Wanzenried.
Total 1

HB 136 - Senator J. Tropila moved **HB 136** be concurred in. Motion carried as follows:

Yeas: Balyeat, Barrett, Branae, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Jackson, Jent, Juneau, Kaufmann, Keane, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy.
Total 39

Nays: Bales, Barkus, Black, Brenden, Esp, Hinkle, Laible, McGee, Zinke, Mr. President.
Total 10

Absent or not voting: None.
Total 0

Excused: Wanzenried.
Total 1

HB 192 - Senator Brueggeman moved **HB 192** be concurred in. Motion carried as follows:

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Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hinkle, Jackson, Keane, Laible, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, M. Tropila, Tutvedt, Zinke, Mr. President.

Total 34

Nays: Cooney, Erickson, Hansen, Hawks, Jent, Juneau, Kaufmann, Larsen, Laslovich, Moss, Schmidt, Squires, J. Tropila, Williams, Windy Boy.

Total 15

Absent or not voting: None.

Total 0

Excused: Wanzenried.

Total 1

Senator McGee assumed the chair.

HB 278 - Senator Gebhardt moved **HB 278** be concurred in. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Curtiss, Esp, Essmann, Gallus, Gebhardt, Hamlett, Hawks, Hinkle, Jackson, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Squires, Steinbeisser, Stewart-Peregoy, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.

Total 37

Nays: Branae, Cooney, Erickson, Gillan, Hansen, Jent, Juneau, Kaufmann, Moss, Schmidt, J. Tropila, M. Tropila.

Total 12

Absent or not voting: None.

Total 0

Excused: Wanzenried.

Total 1

Senator Peterson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Story in the chair. Chairman Gebhardt moved the Committee of the Whole report be adopted. Report adopted unanimously.

THIRD READING OF BILLS

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

HB 38 concurred in as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.

Total 45

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Nays: Balyeat, Hinkle, Shockley.
Total 3

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

HB 46 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

HB 57 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

HB 101 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr.

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President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

HB 114 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 47

Nays: McGee.
Total 1

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

HB 149 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

HB 244 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hansen, Hawks, Hinkle, Jackson, Jent, Keane, Laible, Larsen,

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Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.

Total 41

Nays: Branae, Hamlett, Juneau, Kaufmann, Schmidt, J. Tropila, M. Tropila, Wanzenried.

Total 8

Paired: Laslovich, Aye; Wanzenried, No.

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

HB 245 concurred in as follows:

Yeas: Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Schmidt, Shockley, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke.

Total 39

Nays: Bales, Balyeat, Hinkle, McGee, Ripley, Steinbeisser, Stewart-Peregoy, J. Tropila, Mr. President.

Total 9

Absent or not voting: None.

Total 0

Excused: Squires, Wanzenried.

Total 2

HB 308 concurred in as follows:

Yeas: Black, Branae, Brueggeman, Cooney, Curtiss, Erickson, Esp, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Schmidt, Shockley, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy.

Total 32

Nays: Bales, Balyeat, Barkus, Barrett, Brenden, R. Brown, T. Brown, Essmann, Gebhardt, Hinkle, Jackson, Laible, McGee, Ripley, Steinbeisser, Zinke, Mr. President.

Total 17

Paired: Wanzenried, Aye; Barkus, No.

Absent or not voting: None.

Total 0

Excused: Squires.

Total 1

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HB 426 concurred in as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 47

Nays: Larsen.
Total 1

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

HJR 6 concurred in as follows:

Yeas: Bales, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Gallus, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Williams, Windy Boy, Zinke, Mr. President.
Total 42

Nays: Balyeat, Barkus, Esp, Essmann, Gebhardt, McGee.
Total 6

Absent or not voting: None.
Total 0

Excused: Squires, Wanzenried.
Total 2

MOTIONS

Senator Schmidt moved to change her vote on **HB 244** from yes to no. Without objection, so ordered

Senator Shockley moved to change his vote on **HB 38** from yes to no. Without objection, so ordered.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Peterson moved that the Senate adjourn until 1:00 p.m., Friday, March 13, 2009. Motion carried.

Senate adjourned at 3:08 p.m.

MARILYN MILLER

ROBERT STORY

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Secretary of the Senate

President of the Senate